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CHAPTER 1: THE PRESIDENT OF INDIA (ARTICLE 52-59)

BY CHOUDHARY BHAVNA NEMARAM

INTRODUCTION

The Indian Republic President holds a constitutional role of great importance in the constitution of the country. In the nominal role of head of the Union executive, the President serves as the symbol of the unity, sovereignty and continuity of the State. The President performs all the constitutional and executive duties in accordance with Article 74(1), which stipulates that the President must act on the advice and assistance of the Council of Ministers; despite the stipulation, the Prime Minister and the Council of Ministers have the substantive executive power.[1] As a result, the office confirms both institutional stability and formal legitimacy, although it plays a very limited role in the daily running of the government, being a foundation of the constitutional edifice.

The provisions that are governing the presidential office are outlined in Part V, Chapter I (Articles 52–78) of the Indian Constitution. Taken together, these clauses constitute the establishment of the office, the mode of election, the qualification to hold office, the term of the office, as well as the terms of service. The legal setting up of the position, as well as the restatement of republican values that overshadow royal customs is expressed in the Article 52, which states that there shall be a President of India.[2] The Indian President is also elected as

[1] The Constitution of India, art. 74(1).
[2] *Id*, art. 52.

opposed to hereditary monarchs where one has to be of a specific lineage to be elected as President. This means continuity of democracy.

The President is both a constitutional protector and the protector in that the running of the government does not exceed the limits of the law but in the same regard, the Indian State has a ceremonial representation at the national and international levels. Based on this, the presidential office is not just a mere formality; at times of political crisis, constitutional crisis, or national crisis, it protects the balance of the constitutional order.

Articles 54 and 55 in the electoral procedures outline a federally equal and democratically representative system. The elective members of the Legislative Assemblies of the States (and of both Houses of Parliament) compose the Electoral College.[3] The use of a single transferable vote and a secret ballot, follows the principle of proportional representation, thus making sure that there is confidentiality and fairness in the electoral mechanism. The act of the presidential and vice-presidential elections of 1952 gives the power to the Election commission of India to monitor and supervise the electoral process.[4]

The worth of the votes is also adjusted in accordance with the Articles 54 and 55 to provide equal representation to both the Union and the States and thus strengthens the federal structure that the architects wanted.

The behaviour of the Presidency regarding its impartiality, stability, and dignity is guaranteed by the combination of Articles 56, 58 and 61. Article 58 provides the independence of the President concerning the legislative and executive branches, provides eligibility requirements, such as citizenship, the minimum age of thirty-five, and membership in the Lok Sabha, and also prohibits any concurrent office. Article 56 provides continuity because it has a renewable period of five years that has not elapsed due to a lawfully elected successor coming to power. Article 61 ensures the integrity of the office through the establishment of a strict impeachment process which requires the special majority in Parliament in order to lose it on the basis of the constitutional violation.

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[3] *Id,* arts. 54 and 55.

[4] Presidential and Vice-Presidential Elections Act, 1952 (Act 31 of 1952).

The office of the President serves the purpose of balance between legislative arm, executive arm and the judicial arm despite its ceremonial nature. The President makes sure that the spirit of constitutionalism is preserved over expediency politics by clinging to constitutional traditions and exercising discretion within given boundaries. In the debates of the Constituent Assembly, the main designer of the Constitution, Dr. B. R. Ambedkar, noted that:

The President is accorded the same status as the King by the British Constitution. The President is not the president of the Executive, but he/she forms the head of the State.[5]

The constitutional idea of the Indian presidency, the attempt to find a compromise between democratic accountability and the symbolic power of readjusting the Westminster system to the conditions of India, is concisely summarized in this statement. During the writing of the Constitution, long discussions were made on the democratic legitimacy of the office. On 24 July 1947, one of the members said:

Should the nominated members be allowed to vote during the election of the future President of the Republic of India, it would be a shame to the democracy.[6]

The constitutional outlay has designed the President office in such a way that it depicts democratic representation, republican accountability and constitutional legitimacy. In Indian parliamentary democracy, the President is a constitutional protector and ensures the pre-eminence of the Constitution, the continuity of the rule, and the integrity of the Republic.

HISTORICAL BACKGROUND

Articles 52 to 59 of the Indian Constitution define the office of the President as one of the republican heads of state, a combination of the Westminster system of parliament, the colonial administrative traditions and to a lesser degree the American system of president. To make the Council of Ministers, reporting to the Prime Minister, in fact an executive power, the framers intentionally designed the presidency as a symbolic non-hereditary institution that granted the

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[5] VII, *Constituent Assembly Debates*, 31.
[6] IV, *Constituent Assembly Debates,* 11.

presidency constitutional dignity and the representational powers of nations. This system represents ideas of parliamentary democracy and republican government, and as such, balances ceremonial sovereignty, constitutional accountability and executive responsibility.

1. Republicanism in between Colonial Constitutionalism and Republicanism

The institutional antecedent of the contemporary Indian Presidency is the office of the Governor-General which was instantiated in the Government of India Acts of 1919 and 1935. Having a legislative body lacking any real democratic basis, the Governor-General, in place of the British Crown, had the executive power of the Sovereign. In spite of the fact that the future executive system in the 1935 Act was described as hierarchical, it still provided a structural blueprint of architectural design of the post-colonial administration. After gaining independence, the Constituent Assembly replaced the hereditary Crown with an elected republican head of state, thus making the brave effort of democratizing and indigenizing an already existing constitutional system. This transfer of the sovereign power of the Crown over Indian people was the completion of constitutional change of India, the country ceasing to be dependent on colonial powers and becoming autonomous through its democratic self-government, and the confirmation of the republican idea of self-determination of people.

2. The Constitutional Headship Model and the British Influence

The framers avoided eliminating the salient aspects of the British constitutional monarchy in order to bring the republican culture of India into agreement with the constitutional heritage inherited by it. Instead of the direct executive authority the President was envisioned, in the British monarchical style, as a constitutional head of continuity and unity, a ceremonial figure.

According to Article 77(1) of the Indian Constitution, the President, who serves as the executive branch's nominal head, must be formally mentioned in all executive activities of the Indian government. The Prime Minister and the Council of Ministers, who exercise actual power under Article 74(1) by supporting and counseling the President, hold the substantive decision-making authority. The collective ministerial responsibility doctrine of Westminster was internalized with the 42nd and 44th Constitutional amendments where a custom was codified that the President should act with the aid and advice of the Council of Ministers. The British custom of royal

assent, which is not discretionary, but procedural, maintaining the pre-eminence of parliament in the legislative procedure, is paralleled by the assent of the President in Articles 111.

3. Effects of Comparative Constitutions

The Indian Presidency constitutes a blend of international constitutional traditions, primarily of the American, German, and British types.

(a) The Influence of Britain

The Indian executive architecture is the direct reflection of the Westminster model where the Prime Minister acts as the de facto executive authority, and the President is the de jure head of state. This convention supports the value of political neutrality, consent to legislation, and the accountability of the ministers.

(b) The Impact of America

The U.S. Constitution provided India with the procedure’s security and republican legitimacy.

- Elected Head of State: The President is chosen through an Electoral College which is a federal system modelled on the American system as determined under Articles 54 and 55.
- Impeachment: Article 61 was based on the example of Article II, Section 4 of the United States constitution, which has provided constitutional accountability by including a stringent form of parliamentary accountability in it.
- Veto Power: Despite being limited by the sovereignty of the parliament in India, the suspensive and pocket vetoes demonstrate an American notion of influence.
- Judicial Review and Appointments: To maintain the system of checks and balances, the President has the authority to appoint the judges according to Articles 124 and 217, similar to the United States but consultations with the judiciary and ministers are needed.

(c) The Weimar Constitution of Germany

In reference to Article 48 to the Weimar Constitution, India had included emergency provisions in Articles 352, 356, and 360, giving the President the power to take decisive action in case of crisis. However, the clauses are checked by the constitution to ensure stability and unity of the country and to avoid accretion of power to such an extent that it becomes authoritarian.

4. Balance and Election at the Federal Level

The presidential election process is a federal compromise between the Union and the States which was strongly discussed in the Constituent Assembly. Articles 54 and 55, constitutionally, reject the option of direct election, in favour of an indirect method in which both State Legislatures and Parliament are implicated. This setup prevents future tension between the President and the Prime Minister by ensuring that both have federal representation as well as political neutrality and institutional balance.

In the Constituent Assembly Debates, Dr. B.R. Ambedkar gave the most famous quote when he said that the President is the head of the State but not the head of the Executive, thus pointing out the parliamentary doctrine that the Council of Ministers had real power.

5. The View of the Constituent Assembly

The Constituent Assembly thought of the President as a constitutional watchdog, who would watch over the constitutional morality without being partisan. Dr. Rajendra Prasad emphasized that the President should still be a stabilizing and moral figure in government and therefore always be above party lines. To guarantee a balance of republican accountability on the one hand and legislative responsibility on the other, the framers endeavoured to balance the best of both the republican and legislative responsibilities of the President.

6. Judicial Elaboration and Constitutional Practice

The judicial decisions have continually sustained the constitutional leadership of the President and his limited powers.

By placing the power of the President under Article 356 under judicial review, *S.R. Bommai v. Union of India*, limited the political abuse of the emergency powers.[7]

The Court decided in the case of *Kehar Singh v. Union of India* that the power of the President to pardon under Article 72 is not absolute and it has to be in accordance with rationality and ethics of the Constitution.[8]

These decisions supported the image of the President as a constitutional guardian as opposed to an independent executive branch consolidating the idea of a dignified restraint.

CONCEPTUAL AND DOCTRINAL FRAMEWORK

DOCTRINAL FRAMEWORK

1. Doctrine of constitutional supremacy

Another pillar of the presidential institution is the principle of constitutional supremacy, according to which all the powers of the executive are subordinate to the primacy of the Constitution. The Constitution is the tool that expresses the will of the people, and the President cannot be a sovereign body. As a result, the power of the presidential office is devolved and restricted, as opposed to being inherent.

As interpreted by H.M. Seervai, the President is a creature of the Constitution, in whom there is nothing expressed to the contrary, but he is subject to the words and forms of the Constitution, and he is to be a help to the Council of Ministers, and counselled by them.[9] Such a limitation in the doctrine protects the presidency against whims and independent decision-making and thus makes it a constitutional office.

2. The responsible Government Doctrine

Articles 52 and 74 demonstrate the Westminster theory of responsible government by stating that although the President continues to be the nominal constitutional head of state, the Council of Ministers, led by the Prime Minister, still enjoys substantive administrative power. The acts of

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[7] *S.R. Bommai v. Union of India* (1994) 3 SCC 1.
[8] *Kehar Singh v. Union of India*, AIR 1989 SC 653.
[9] H.M. Seervai, II *Constitutional Law of India* 2035 (Universal Law Publishing Co., 1996).

the President are constitutionally valid only when they are taken under the assistance and recommendation of the Council of Ministers, and thus the executive authority of the Union should be exercised on behalf of the President, however, under the supervision of the ministers.

In *Shamsher Singh v. State of Punjab*, the Supreme Court of India clearly expressed that the president and governor are in command according to the constitution. They can only exercise the executive authority in reaction and within the recommendations of the Council of Ministers with exception under extraordinary circumstances.[10]

This statement made it clear that instead of the President looking upwards to the executive, the executive was accountable to Parliament, and as a result, it changed the constitutional convention into a constitutional provision that had the force of the law.

3. The Republican Accountability Doctrine

The republican character of Indian politics is emphasized by articles 54, 56 and 61, which express the idea of republican accountability. The Indian President is not a permanent and inherited office, but elected and removable, as the British monarchy is. It is the President, thus, charged with a responsibility of being simultaneously representative of federal equilibrium and a representative of national unity by the indirect election process of the Electoral College, which is a body of elected individuals representing the Union and the States.

D.D. Basu explains in his Commentary on the Constitution of India, the Indian Presidency is a place of honour, not of authority; it balances the greatness of the State and the meekness of democratic responsibility.[11]

CONCEPTUAL FRAMEWORK

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1. The President as the Protector of the Constitution

[10] *Supra* note 7.
[11] D.D. Basu, *Commentary on the Constitution of India*, Vol. E (LexisNexis Butterworths Wadhwa, Nagpur, 9th ed., 2019).

The Presidency plays the role of the protector of constitutional order and it has established its intellectual base. The President is the moral and legal conscience of the state since he makes sure that the other branches of the government are acting within the limits of the constitution. Granville Austin makes a brief exposition in *The Indian Constitution: Cornerstone of a Nation* that the President is a moment of symbolic representation of power whose effectiveness is understood in restraint, he is the moral centre of the constitutional design.[12] The discretionary powers of the President are exercised under the constitution as an obligation not as a political privilege in the face of constitutional emergency or constitutional stalemate, but within the limits of decency and legality.

2. The Non-Partisanship and Neutrality Principle

During the Constituent Assembly Debates, the conceptual neutrality of the Presidency was stressed many times. Dr. Rajendra Prasad says that the President has to be above the flow of politics and act in the interest of constitutional government only. This principle of nonpartisan headship is the reflection of the Dicey concept of the constitutional monarch whose personal will has been superseded by the constitutional requirement.[13] Therefore, the role of the President seems ceremonial as it should be constitutionally substantial to preserve the unity of the Republic and ensure the correct balance of its organs.

3. Continuity of the State and Sovereignty as a Symbol

Article 56 of the constitution gives the principle of continuity of governance, which provides that the President will still serve until a successor assumes power thus ensuring that the sovereignty of the State is never threatened. This confirms the claim put forward by Dicey that the Constitution should put in place an uninterrupted line of lawful authority. So the President continues to play the role of the image that maintains the identity of the Republic and its continued existence under the constitution, the legal expression of sovereignty, in spite of the change in political regimes.

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[12] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966).
[13] A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn., Macmillan, 1959).

4. Republican moderation and constitutional righteousness

The Presidency is ruled by constitutional morality which is defined as habits of obedience to the spirit of the Constitution by Dr. B.R. Ambedkar. Based on this, the actions of the President should reflect some moderation, objectivity, and adherence to the constitutional principles. The 42nd and 44th Constitutional Amendments made this morality, bringing to an end personal discretion, and imposing collective responsibility, by directing the President to heed the counsel of his ministers.

ARTICLE- WISE DISCUSSION

ARTICLE 52: PRESIDENT OF INDIA

The head of state will be the President of India.

Article 52 makes the President the constitutional head of the Union Executive. It ensures the perpetuation, cohesiveness and integrity of the Republic via the head of state. Despite the executive powers vested in the President, it is seen that he/she makes use of the executive powers in relation to the Constitution and by the support and consultation of the Council of Ministers as provided in Article 74.

In *State of Punjab v. Shamsher Singh,* the Supreme Court ruled that the President as a formal or constitutional leader does not act except at a strictly defined extraordinary circumstance and he acts as the follower of the proposals of the Council of Ministers.[14]

ARTICLE 53: THE EXECUTIVE POWER OF THE UNION

The subordination executive power shall be vested to the President of the Union and he shall indirectly or directly exercise the same through his officers as indicated in the constitution.

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[14] *Shamsher Singh v. State of Punjab,* AIR 1974 SC 2192.

This provision, even though it is well-executed by the Prime Minister and the Council of Ministers, puts the President in the centre of the given executive power. The Article defines the de facto executive (Council of Ministers) and the de jure head (President) and creates the hierarchical system within which the President can execute his functions with the help of the subordinate officers.

In *Union of India v. S.R. Bommai*, the Court once again made it clear that the constitutional restrictions of the exercise of executive power is constrained by these constitutional provisions that the actions of the President under Article 356 of the Constitution are under the scrutiny of the judiciary.[15]

ARTICLE 54: PRESIDENTIAL ELECTION

The Electoral College that will select the President will consist of:

(i) members of the two Houses of Parliament who are elected; and

(ii) members of State Legislative Assemblies elected violatively.

Article 54 allows the President to be indirectly elected to offer representation to the Union and the States. Within this kind of federal system, the President represents cooperative federalism thus balancing between the federal and the state governments.

In *Union of India v. Charan Lal Sahu*, the Supreme Court noted that the indirect process of electing the Presidential office represents the federal system justly and thus supported it.[16]

ARTICLE 55: THE PROCESS OF PRESIDENTIAL ELECTION

The election will be done by secret ballot, using the proportional representation system with the single transferable vote. The reason behind the use of this method is to make the electoral outcomes representative of the electorate as well as maintaining the mathematical proportionality of the representation.

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[15] *S.R. Bommai v. Union of India*, AIR 1994 SC 1918.

[16] *Union of India v. Charan Lal Sahu,* AIR 1990 SC 1480.

To ensure uniformity between the Union and the States as regards to size in terms of representative figures, Article 55 outlines the procedure and general principles that should guide the process of the president-selection. The votes of members of state legislative bodies

and parliament are given an equal weight to make sure there is equilibrium and balance among the federal entities.

In the case of *Re Presidential Election,* the Supreme Court reviewed the constitutionality and the integrity of the presidential election process. It noted that Article 55 which uses the proportional representation system founded on a single transferable vote maintains the federal equilibrium that the framers of the Constitution intended and enhances the democratic sufficiency of the presidency.[17]

ARTICLE 56: THE TERM OF OFFICE OF THE PRESIDENT

The President will have a term of five years since the appointment of office and will serve until a successor is properly put into office. This clause ensures that there is stability and continuity of the government. It also uses the chance of early resignation or impeachment thus averting any constitutional vacuum that may come up in between transitions.

In *Venkata Rao v. State of Andhra Pradesh*, the Supreme Court stated that under the Article 56(1)(c) of the Constitution, the President shall continue to stay in office until his successor has assumed office, which will lead to continuity in the constitutional executive and will avoid any constitutional vacuum in office.[18]

ARTICLE 57: ELIGIBILITY TO RE-ELECTION

Ex-President can be re-elected into the position. The Article also allows an unlimited number of terms to be sought by a President in re-election thus securing the continuity of leadership in cases of re-election with such a mandate reconfirmed by the electoral college.

[17] *Re Presidential Election,* AIR 1974 SC 1682.
[18] *Venkata Rao v. State of Andhra Pradesh*, AIR 1966 SC 828.

ARTICLE 58 -ELIGIBILITY TO BECOME PRESIDENT

To become a President, one has to be a citizen of India, 35 years of age, be eligible to be elected as a member of the Lok Sabha and also must not be elected to any office of profit under Government of India or any State Government. These are the qualifications that are used to ensure that the office holder is mature, neutral, and full of integrity with no executive or political bias. The Lok Sabha qualification will provide democratic representativeness and the ban on any office of profit will allow promoting impartiality and avoiding conflict of interests.

In *Kihoto Hollohan v. Zachillhu*, SC restored the significance of independence and neutrality in constitutional offices which is a principle incorporated in Article 58.[19]

ARTICLE 59 - STATUSES OF THE PRESIDENTIAL OFFICE

- The President may not hold any office in a State Legislature, or in any of the Houses of Parliament.
- The President is not permitted to hold any other position, which is making profit.
- The President is then allowed the remunerations, benefits and privileges as determined by Parliament.
- The salary of the President is not subject to being lowered in the process of his reign.

This Article safeguards the independence and impartiality of the office of the President by making sure that the President is not compromised on a financial or political basis. The assurance of non-reduction of remunerations or benefits during the term of office promotes the honor and independence of the highest office in the constitution.

In *Union of India v. Kehar Singh*, the Supreme Court that the President is to comply with the limits set in the Constitution and fairness norms even when he turns to his prerogative of pardon provided in Article 72.[20]

[19] *Kihoto Hollohan v. Zachillhu*, AIR 1993 SC 412.
[20] *Union of India v. Kehar Singh,* AIR 1989 SC 653.

CONTEMPORARY RELEVANCE AND CHALLENGES

The Constitution of India is a constitutional guardian and a representative of the Republic making the President. Being considered as a very ceremonial office traditionally, it provides constitutional continuity, democratic stability, and federal balance. The discretionary powers of the President have become even more important in the modern period of coalition governments, in the context of greater political volatility, especially with regard to the issue of government formation, the dissolution of the Lok Sabha, and even the constitutional crisis.

In *Shamsher Singh v. State of Punjab*, the Supreme Court ruled that even though the President acts on advice of the minister, the office is a constitutional watchdog with a responsibility of seeing that things are legal and appropriate, but not simply a rubber stamp. However, the impartiality and federal spirit of the framers is tested because of the politicisation of the position, the pressure of the majoritarianism in elections, and the uncertainty about discretionary power.[21]

The constitutional duty of the President makes him have legitimate power according to the findings of scholars H.M. Seervai and D.D. Basu. With this principle the President retains as the constitutional conscience of the nation the integrity of the Republic, the stability of its government and the pre-eminence of the Constitution.

CRITICAL ANALYSIS

The constitutional clauses as spelled out by Articles 52- 59 of the Indian Constitution represent a considered combination of republican responsibility and hereditary British parliamentary tradition. As the framers put it, the presidency was to be a nominal executive, a head of state representing national sovereignty, but no substantive administrative power. Practically, however, the office has become one of the pillars of constitutional government, striking a balance between the pompous dignity of the office and the. delivery of humble, constitutionally authorized functions.

[21] *Shamsher Singh v. State of Punjab*, AIR 1974 SC 2192.

Article 74 makes it possible to have the democratic control of the executive through the binding on the President by the Council of Ministers, requiring him to follow their advice and help. However discretionary powers accorded by the Constitution include; the power to dissolve the Lok, to send a bill back to be re-considered in accordance with Article 111 and the appointment of the Prime Minister where there is uncertainty in parliament. Such narrow latitude enabled the President itself to defend against the subversiveness of the democratic process, and act as a constitutional sentry in a strictly constrained context.

Despite these precautions, the institution is faced with a lot of modern challenges. Preservation of independence and impartiality of the office has been questioned by the politicisation of presidential campaigns, the possible abuse of discretionary power, and the ambiguity of emergency powers implementation according to Articles 352-360.

Finally, the maintenance of the balance of the constitution makes the presidency indispensable. The office has to be free of any partisan reach and a symbol of republican virtues, moral authority and constitutional restraint, as discussed by Seervai, Basu and Austin. In its turn, this means that to maintain continuity, unity and the primacy of the Constitution, the President acts as the stabilising institution and symbolic conscience of the democratic polity of India.

CONCLUSION

The republican and democratic principles of India are evident in the Constitution in the form of the Presidency as stipulated by Articles 52- 59. It is mostly ceremonial but is essential in ensuring constitutional continuity, federal balance and democratic accountability. The President still remains the symbolic protector of constitutional morality, and he serves as the guarantor of the holiness of the Constitution operating upon the advice of the ministers. The office needs to be non-partisan and one ruled by constitutional conscience within a changing political environment. As a result, the Presidency still symbolizes that of the unity, integrity and constitutional supremacy of the Indian Republic.

CHAPTER 2: OATH, VACANCIES AND IMPEACHMENT (ARTICLE 60- 62)

BY RIDIMA AHUJA

INTRODUCTION

Suppose India is a vessel (Ship), and the President is the commander. For the ship to have a smooth sailing, three things are necessary:

1. The captain must swear loyalty (Oath).
2. There must always be a person steering it to continue sailing (Vacancies).
3. If the captain violates the trust, there should be a mechanism to remove him/her through a just and fair procedure (Impeachment).

This is a broad overview of Article 60[22] -62[23], which deal with oaths, vacancies, and impeachment of the President. The President is the nominal head of the executive and is regarded as the first citizen of the country. The office of the President is usually held for a term of 5 years from which he/she enters the office. Unlike the Prime Minister, the President is elected by an electoral college including both houses of Parliament of India and also the legislative assemblies of each state and union territory within India. Article 60 of the Indian Constitution highlights the affirmations made by the President to protect, preserve, and defend the Constitution of India. Further, Article 61 includes the detailed procedure in case there is a situation to remove the President on certain reasonable grounds. Herein, the office of the President, who is removed, does not remain vacant, and the provision for fulfilling the vacancy is included under Article 62.

[22] Article 60 Constitution of India, 1950

[23] Article 62 Constitution of India, 1950

HISTORICAL BACKGROUND

Historically, there was a constitutional debate[24] related to the phrase "Preserve, protect and defend the Constitution"; the members debated whether to include the phrase or substitute the particular phrase in order "to uphold the sovereignty and integrity of India". Later during the debate, it was upheld that sovereignty is an implicit part of the Indian Constitution, and it does not sincerely require any such inclusion. Further, during the final adoption, no major changes were made, and the phrase "Preserve, protect and defend the constitution" was included, which was initially inspired by the Irish Constitution. The phrase "faithfully execute the office" was inspired by the Presidential oath of the US. This article was a testament to reflect the aim of India to create a constitutional and not a political President.

In relation to the history and debates related to Article 61[25]The major debate centred on the grounds for impeachment, with members arguing that India needed not an executive President but a constitutional and ceremonial head, due to which the impeachment process should not be politically motivated. As a reason, the grounds of violation were narrowed down only to the violation of the Constitution, which impliedly included the case of abuse of powers, acting without authority and breaching the constitution, which became the basis of the impeachment process of the President. Some of the members also included that the two third majority of the total membership must be removed and there must be a system of simple majority but later it was established that impeaching a person from the position of a President includes grave injustice if based on unreasonable grounds therefore it requires a strict adherence to the power of removal and the majority of two third of the total membership is upheld based on its stringent nature[26]. The procedure, though inspired by the British parliamentary process and the US Senate trial model but the actual system was a unique system created by the great Indian minds.

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[24] Constituent assembly debates, Volume 7, 28th December 1948 (India)

[25] Constituent assembly debates, Volume 7, 28th December 1948 (India)

[26] CONSTITUENT ASSEMBLY DEBATES, December 28, 1948 *speech by* KAZI SYED KARIMUDDIN 7.74.5 available at https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-28

The question during the constitutional debates related to Article 62[27] was to consider a limited timeframe to fulfil the vacancy, which, after taking Due consideration, was fixed for a period of six months.

ARTICLE 60 – OATH OF THE PRESIDENT

Article 60, Constitution of India 1950[28]: *Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the seniormost Judge of the Supreme Court available, an oath or affirmation in the following form, that is to say —*

"I, A. B., do swear in the name of God solemnly affirm that I will faithfully execute the office of President (or discharge the functions of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India."

Article 60 lays down the form and procedure for oath and affirmation affirmed by the President before entering Office. It lays down the exact form of the oath or affirmation which the President takes to abide by the Constitution and, in a loyal sense, fulfil his duties under his office. Article 60 ensures that the actions of the President are consistent with the constitutional values and public welfare. It also ensures that the decisions taken by the President are not arbitrary but for the benefit of the people. The aforesaid article binds the President with a responsibility to faithfully execute the work under his office.

[27] Constituent assembly debates, Volume 7, 28th December 1948 (India)

[28] Article 49: Draft Constitution of India (1948) and Article 60: Constitution of India (1950), Constitution of India archive, available at Article 60: Oath or affirmation by the President - Constitution of India

What promises / swears are made by the president under Article 60?

In accordance with the provision of Article 60 President reaffirms:

- Faithful execution – The President promises to faithfully execute and discharge his duties honestly while upholding the dignity of his office and working while abiding to the Constitution of India.
- Preserve, protect, and defend – Significantly, the President affirms the responsibility to protect, preserve and defend the Constitution while becoming a guardian of the Constitution. It makes the President a symbolic protector of constitutional values and democracy.
- Devotion to service – The President swears and commits himself to work for the welfare of the citizens of India and devotes his actions to the service of people and not towards any particular organisation or group.

Who administers the oath?

According to the provisions of Article 60, usually the Chief Justice of India administers the oath of the President, but in case of his absence, the senior-most Supreme Court Judge is placed with the responsibility to administer the oath.

Significance of Article 60:

- Accountability towards the Constitution of India: Article 60, including the oath and affirmation made by the President, ensures that any person holding the office of President is accountable in respecting, preserving and protecting the rules and the principles of the Constitution of India.
- Symbolic role of the protector of the constitution: The oath and affirmation made under Article 60 form the basis and the groundwork for the President's power in preserving the Constitution. Example: in returning the ordinary bills, ensuring that the union executive acts in accordance with the Constitution of India and dealing with the constitutional breakdowns
- Foundation of the powers entrusted with the President: Article 60 ensures that the President, during the term of his office, is consistent with the usage of powers entrusted

by the Constitution of India and upholds the public welfare, rule of law and the values of the Constitution.

Therefore, oaths and affirmations are of significant importance to ensure the liability of the President towards his office and his loyalty and honesty during the tenure are reaffirmed by the President before entering into the office by oath and let's study a fact that during President Zakir Hussain's sudden death, V.V. Giri took the oath as Acting President.

ARTICLE 61 – IMPEACHMENT OF THE PRESIDENT[29]

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(1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

(2) No such charge shall be preferred unless —

(a) the proposal to prefer such change is contained in resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and

(b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained,

[29] Article 50: Draft Constitution of India (1948) and Article 61: Constitution of India (1950), Constitution of India archive, available at [Article 61: Procedure for impeachment of the President - Constitution of India]

such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

Article 61 provides for a strict and elaborate process of impeachment from the office of the President in case there is a violation of the Constitution of India. The sole ground for the removal is in case the Constitution is violated. Once the ground of violation is alleged, the charge can be preferred by either House of Parliament, but the prior requirement insists on a mandatory 14-day notice signed by not less than one-fourth of the total members of that house who have given their intention to move the resolution. Once a notice is duly compiled the aforementioned resolution must have been passed by a majority of not less than two-thirds of the total membership of the house. Likewise, in case the Lok Sabha has preferred a charge, then the other house of Parliament, i.e. Rajya Sabha, shall investigate the charge or cause the charge to be investigated or as the case may be, vice versa. Once the charge is established after the due investigation and consideration, such resolution shall have the effect of removing the President from his office.

Historically[30]The issue of including additional grounds and substituting a two-thirds majority with a simple majority was debated during the Constitutional debates. The chairman of the drafting community, while responding to the concerns, upheld that unlike a no-confidence motion, an impeachment motion would associate the President with shame, moral turpitude and ruination of the public career of the President. Therefore, it was necessary to set the high bar of a two-thirds majority of the total membership to pass an impeachment motion. Additionally, it was held that the office of the President is a symbol of democracy and a protector of the Constitution to preserve the office[31]. The ground must be strictly limited and therefore, violation of the Constitution is upheld to be the sole ground for impeachment.

Key features of the impeachment procedure:

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[30] CONSTITUENT ASSEMBLY DEBATES, December 28, 1948 *speech by* DR. B. R. AMBEDKAR 7.74.153 available at
https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-28

[31] CONSTITUENT ASSEMBLY DEBATES, December 28, 1948 *speech by* PANDIT THAKUR DASS BHARGAVA 7.74.120 available at
https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-28

- The only ground for impeachment is the violation of the Constitution, and no other misconduct qualifies as a reasonable ground. The phrase "violation of the constitution" implicitly includes acting beyond the constitutional powers, breaching the Oath undertaken under Article 60 of the Constitution of India, and taking any unconstitutional decisions that are arbitrary in nature and inconsistent with the welfare of the public at large.
- The impeachment process can be initiated by either House of Parliament, Lok Sabha or Rajya Sabha, which means that either house of the Parliament can start the process, unlike money bills or the removal procedure for other authorities.
- Before starting with the resolution of impeachment, A fourteen-day prior notice shall be given to the President and notice herein mentioned must be signed by at least one-fourth of the total members of the house that moves the charge against the President.
- When either of the Houses initiates a charge, the other House will investigate the alleged violation. For example, if Lok Sabha initiates the charge, then Rajya Sabha will start the investigation against the President for the violation of the Constitution of India. During the investigation, the President has the right to appear to defend and to be represented by counsel
- Once the notice is done. The House can move on with the impeachment resolution. In order to pass the resolution, it requires two-thirds of the total membership of that house. The significant point is not just members present and voting, but the total membership of that House, which is a high threshold in the process of impeachment.
- If the house approves the charge by a two-thirds majority of its total membership, then in that case the President stands impeached and removed from his office

Nature of the impeachment process:

- Quasi-judicial because it involves investigation and rights of Defence
- Bipartisan because both houses must agree with a super majority
- Involves and ensures that the president is removed only in extreme cases of grave violation

CASE ANALYSIS

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1. In the case of *Shamsher Singh vs State of Punjab*[32]

Background: The petitioner in the instant matter challenges the constitutionality of a case when the Governor acts without or in conflict with the advice of the Council of Ministers, which is a mandate under the Constitution of India.

Issues:

- whether the governor of Punjab acted independently of the Council of Ministers?
- whether such independent actions by the governor are constitutionally valid?

Judgement: the honourable Supreme Court observed that according to the Constitution of India, the President of India and the Governor of a state are under a mandate to act according to the aid and advice of the respective Council of Ministers. The court held that any action that is taken without such advice or concurrence is not constitutionally valid. In this case, the actions were deemed invalid as they do not align with the required constitutional procedures.

Relevance: This case clarifies the constitutional limits on presidential powers of the President and if in case a president willfully violates any rule, this may amount to a violation of the Constitution, further including a ground for impeachment under Article 61 of the Indian Constitution.

2. In another case of *Kehar Singh vs Union of India*[33]

Background: Kehar Singh, a Delhi administration employee, was convicted of conspiracy in the assassination of Prime Minister Indira Gandhi. He was sentenced to death, but his conviction was upheld by the Delhi High Court and later by the Honourable Supreme Court.

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[32] Shamsher Singh vs State of Punjab 1974 AIR 2192

[33] Kehar Singh vs Union of India (1989) 1 SCC 204

After exhausting all the judicial remedies, Kehar's Son submitted a mercy petition to the President of India, who rejected the herein mentioned above without giving any reason

Issue: Whether the act of the President under Article 72 of the Indian Constitution was valid or not?

Judgment: It was held by the Honourable court that the scope of the President's Authority is open to judicial scrutiny, falling squarely within the domain of the purview of the court. Analogically, the power of the President is constitutionally restricted if they violate the Constitution.

Hence, in case of violation, the office is relevant to impeachment. These are some of the grounds that can be included implicitly under the ground of violation of the Constitution

3. Referring to the case of *United States vs Nixon*[34]

Background: Following a break-in at the Democratic National Committee headquarters, President Richard Nixon was subpoenaed for audio recordings of his White House conversations in case. Further, Nixon refused, claiming the executive privilege, arguing there is a need for confidentiality in presidential communications.

Issue: Whether the President can outweigh the need for evidence under the blanket of executive privilege?

Judgment: the court issued an unanimous decision against President Richard Nixon, ruling that Executive privilege did not outweigh the need for evidence in a criminal matter. This decision established that the President is not above the law and must comply with the judicial process. As a consequence, the impeachment process was started further, Nixon resigned on August 9 1974.

Thereby, no President has ever been impeached. On the contrary, in the US, Presidents have been impeached (Andrew Johnson, Bill Clinton, Donald Trump) but not removed. This reflects India's stricter and unused impeachment process.

[34] United States vs Nixon 418 U.S. 683 (1974)

ARTICLE 62 – TIME OF ELECTIONS AND VACANCIES

Article 62, Constitution of India 1950

(1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and the person elected to fill the vacancy shall, subject to the provisions of article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

The Legislative intent behind Article 62 is to ensure that the office of the president never remains vacant and there is a smooth and timely transition of the presidential powers into new hands. It deals with when and how the fresh elections shall be conducted to fill the vacant office of the president, either after the expiration of the term or in case of the sudden occurrence of the vacancy within a fixed period of maximum six months. It acknowledges and reaffirms the tenure of the fresh president to hold the office for a full term of five years.

Key features of Article 62 of the Indian Constitution:

- In case the office of the President becomes vacant due to death, resignation, removal (through impeachment) or otherwise, a fresh election must be held as soon as possible, and the newly elected President within this time serves a full term of five years from the day term which he enters upon his office.
- The election to fill the office of the new President must be completed before the expiration of the term of the sitting President from office. This is done to ensure and prevent a vacuum in the highest constitutional office.
- There is a fixed time period of six months from the date of the vacancy, and until then, the Vice President acts as President (Article 65), and this is done to ensure that there is a continuity of functions of the executive and no interruption takes place in the governance.

Purpose of Article 62 of the Indian Constitution:

- It ensures the effective and smooth functioning of the constitutional machinery.
- It provides a time-bound mechanism to conduct fresh elections for the new President.
- In short, the office of the President is never awakened beyond the reasonable fixed period of time.

Article 62 of the Indian Constitution was triggered when :

- o After Dr Zakir Hussain's death (1969) → V.V. Giri became Acting President.
- o After Fakhruddin Ali Ahmed's death (1977) → B.D. Jatti acted as President.

In both cases, fresh elections were held within six months, and these cases demonstrate the smooth functioning of Article 62 and constitutional succession.

COMPARATIVE ANALYSIS: INDIA AND US[35]

The process of impeachment is greatly different under the jurisdiction of India and the US. The major differentiation between the process of impeachment is the grounds established under the constitutions of both jurisdictions. In India, the sole ground for impeachment is the "violation of the constitution", while in the US, treason, bribery, high crimes and misdemeanours are the grounds on which the president of the US can be impeached and convicted. In the Constitution of India, the phrase "violation of the Constitution" is used in a broader sense and includes acting beyond the powers given by the Constitution, breaching the principles in the Constitution, and making any such unconstitutional decisions. Nevertheless, the grounds are the remedies that are provided under the respective constitutions to address the stringent cases of professional misconduct on the part of the President, who is a public official of high office. It is expected by

[35] Comparative Analysis of Impeachment Procedure of President of India and the U.S., Manupatra , available at Comparative Analysis of Impeachment Procedure of President of India and the U.S., last visited : 23:28

the Legislature that this remedy shall be used in good faith and for upholding the principles of the Constitution.

CONCLUSION

Together, Articles 60, 61 and 62 collectively establish a constitutional framework for the office of the President of India, starting from entering the office to honestly abide in office and continuity after the tenure by filling up the vacancies. These articles together reflect the vision and intent of the Constitutional Assembly to create a non politically motivated Constitution and an accountable head of the state whose functions are with the intent to benefit the welfare of people and function within the boundaries of law. These provisions altogether uphold the supremacy of the Constitution, and they also guarantee the uninterrupted functioning of the democratic system of India.

CHAPTER 3: VICE- PRESIDENT: ELECTION AND FUNCTIONS (ARTICLE 63-71)

BY AZRA FATMA

INTRODUCTION

India, being the largest democracy in the world, possesses a complex and subtly organized political system that is enshrined in its Constitution. The Constitution establishes a parliamentary system of governance, which is differentiated by the separation of powers among the Executive, Legislature, and Judiciary. Within this structure, the Vice President's office occupies a unique and crucial role. Serving as the second-highest constitutional authority, the Vice President imparts stability to the executive branch. The Vice President's office was instituted to ensure the continuity of governance, particularly in situations where the President is absent or there is a vacancy in the presidency. This role circumscribes both ceremonial and functional aspects, with duties that mainly include presiding over the Rajya Sabha, acting as the President when required, and engaging in various national events. This position is a reflection of the principles of federalism, neutrality, and adherence to the Constitution, acting as a crucial link between the Executive and the Legislature. Further, to reflect his allegiance to bipartisanship and an apolitical stance, the Vice-President refrains from being a member of any political party or holding any other profit-generating office. Additionally, due to his constitutional designation, the utterances of the Vice President carry national importance.

As the Chairman of the Rajya Sabha[36], the Vice President serves as the conclusive authority on interpreting the Constitution and the Rules of Procedure concerning all matters related to the house. His decisions thereby set binding precedents. He even has the authority to determine if a

[36] Article 64 of The Indian Constitution

member of the Rajya Sabha should be disqualified on the basis of defection. These powers position him as a vital participant in the operation of our parliamentary democracy[37]. Therefore, this chapter dwells on the provisions regarding the office of the Vice President in the Constitution, i.e., Articles 63-72, focusing on the procedure of his election and functions.

HISTORICAL BACKGROUND

The office of the Vice President of India is a pivotal constitutional position that has evolved significantly. While initially conceived as a ceremonial role, its functions and influence have progressed, especially in its capacity as the ex-officio Chairman of the Rajya Sabha. This office was promulgated by the Constitution of India, which came into effect on January 26, 1950. The framers of our Constitution drew inspiration from both the American model of Vice Presidency and the British system of parliamentary governance. However, unlike the U.S. Vice President, who is a direct successor to the President,[38] The Indian Vice President has a finite executive role.

B.N. Rau, who was the Constitutional Adviser proposed in his Memorandum of 30 May 1947 that there should be no Vice-President[39]. However, this proposition was not accepted and the Drafting Committee incorporated this prestigious office in draft Article 52. The Constituent Assembly adopted this Article on 28 December, 1948 without any discussion[40].

Subsequently, the Vice President's role in the capacity of the Chairman of the Rajya Sabha became more significant. His responsibility in moderating discussions and ensuring impartiality became prominent due to the increasing politicization. The office holders began to assert their authority in managing disruptions, reflecting a growing importance of the office in legislative affairs.

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[37] Following the elections of the Vice President of India

[38] Section 1 of the 25th Amendment to the U.S. Constitution

[39] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, London, 1966)

[40] CAD, Vol 7, P. 1088

CONCEPTUAL FRAMEWORK

The Indian Constitution provides that there shall be a Vice-President of India.[41]The Articles 64 and 89(1) also provide that the Vice-President shall be the ex- officio Chairman of the Council of States. The holder of the office of Vice President is a part of the Executive in the constitutional setup but as Chairman of the Rajya Sabha he is a part of the Parliament. He has thus a dual capacity and thereby holds two apparent and separate offices.

The Dual Role

The Office of the Vice-President is a unique attribute of the Constitution of India. It has no exact parallel in the constitutions of other democratic countries of the world. Another Constitution which provides for such an office is that of the United States of America[42]. But the office of the Vice-President of India is not identical, although analogous, to that of the Vice-President in the United States of America for the obvious reason that it has a Presidential System of Government and not a Parliamentary one as in India. However, the framers of the constitution took inspiration from the American model in creating this office.

The Vice-President of India has been vested with a dual capacity as the second head of the Executive and as the Presiding Officer of the Upper House of Parliament, similar to that of the US. Thus, naturally an enormous burden of responsibility is cast on the holder of the two offices. He has to keep the responsibilities of the two offices distinct and bifurcated. The Chairman cannot allow his mind to be swayed by the information gained in his capacity as the Vice-President. While performing his duties as the Vice-President, he shall not do anything as such which may undermine his obligation as Chairman.

[41] Article 63 of The Indian Constitution
[42] Article 1 of The U.S. Constitution

CONSTITUTIONAL PROVISIONS

Article 63. ***The Vice-President of India****- There shall be a Vice-President of India.*

This article was accepted by the members of the Constituent Assembly without any debate[43]. This office is accorded with the highest position next to the President of India in the Official Warrant of Precedence[44]. The members were convinced that India should have a vice-president in order to avoid any interregnum in the Presidency.

Article 64. ***The Vice-President to be ex-officio Chairman of the Council of States****- The Vice-President shall be ex-officio Chairman of the Council of States and shall not hold any other office of profit:*

Provided that during any period where the Vice-President acts as President or discharges the functions of the President under article 65, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 97.

This article vests the Vice-President with his utmost function and responsibility as the Chairman of the Council of States i.e. the Rajya Sabha. As the ex-officio Chairman, he presides over the proceedings of the House and functions with reference to all its matters as the counterpart of the Speaker in Lok Sabha. Further the proviso makes it clear that while acting as President during any contingency, the Vice-President shall not perform the duties of the office of the Chairman of Rajya Sabha, and shall also not be entitled to the salaries or allowances payable as such. During this period, the Deputy Chairperson of the Rajya Sabha has the presiding authority of the House.

Article 65. ***The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President.****- (1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President*

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[43] CAD, Volume 7, P. 1088

[44] Dr. Subhash C. Kashyap, *Constitutional Law of India,* Volume 2, (Universal Law Publishing, Second Edition, 2015)

elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

(3) The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of, President, have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

This article elucidates another vital function of the Vice-President as the Acting President owing to any vacancy, other than by means of expiration of the term, in the office of the President. This duty continues until the new President enters upon his office. Article 65(1) is complementary to Article 62(2).[45]

Vacancy in the office of the President

A vacancy in the office of the President may be caused on any of the following occasions-

(i) On the expiry of his term of five years

(ii) By his death

(iii) By his resignation

(iv) On removal by impeachment

(v) Otherwise, for instance, on the setting aside of his election as President[46].

- When a vacancy is anticipated by the expiration of the term of the sitting President, an election to fill the vacancy must be completed before the expiration of the term[47]. However, in order to prevent an interregnum, owing to any possible delay in such completion, it is provided that the outgoing president must continue to hold office, notwithstanding that his term has expired, until his successor enters upon his office [Art.

[45] Presidential Elections; ;

[46] P.M. Bakshi, *The Constitution of India,* (Universal Law Publishing, Seventh Edition, 2006)

[47] Article 62(1) of The Indian Constitution

56(1)(C)]. Thus, there is no scope for the Vice-President getting a chance to act as President in this case.

- An election to fill a vacancy arising by reason of any cause other than the expiry of the term of the incumbent in office, must be held as soon as possible after, and in no case later than, six months from the date of occurrence of such vacancy[48]. Therefore, it can be inferred that the Vice-President can act as the President for a maximum period of six months.
- Apart from a permanent vacancy, the President may be temporarily unable to discharge his functions, owing to his absence due to illness or any other cause such as foreign visit. Hence, in such cases of absence of the President, the Vice-President shall discharge his functions until the date on which the President resumes his duties.[49]

Article 66. ***Election of Vice-President****- (1) The Vice-President shall be elected by the members of an electoral college consisting of the members of both Houses of Parliament in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.*

(2) The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for election as Vice-President unless he-

(a) is a citizen of India;

(b) has completed the age of thirty-five years; and

(c) is qualified for election as a member of the Council of States.

(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

[48] Article 62(2) of The Indian Constitution

[49] Article 65(2) of The Indian Constitution

Explanation-For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

Manner of the Election

The Vice-President of India is elected by the members of an electoral college which consists of the members of both Houses of Parliament assembled in a joint meeting in accordance with the system of proportional representation by means of single transferable vote by secret ballot[50]. However, unlike the election of President, the Vice-President's election does not involve the members of the State Legislative Assemblies.

This was widely criticised in the Assembly addressing Dr. B.R. Ambedkar, Chairman of the Drafting Committee, said: *"The President is the head of the State and his power extends both to the administration by the centre as well as to the States. It is necessary that in his election, not only members of Parliament should play their part, but the members of the State legislatures should have a voice, but when we come to the Vice-President, his normal functions are to preside over the Council of States."*[51]

Conditions of office

A Vice-President shall not be an MP or an MLA, and if any such person is elected as a Vice-President, he shall be deemed to vacate that office for the obvious reason that a person cannot hold two distinct offices at the same time[52]. Further, it is also essential that the candidate must be a citizen of India; must be above the age of 35 years; and must be qualified for contesting election of the Rajya Sabha as a disqualified person cannot be vested with the presiding authority of the House. [53]Also, the candidate must not hold any office of profit[54]. Additionally, from the explanation to the above Article, it can also be inferred that a

[50] M.P. Jain, *Indian Constitutional Law,* (Kamal Law House, Calcutta, 5th Edition, 2003)
[51] Constitutional Assembly Debates, Volume 7, Page 1001
[52] Article 66(2) of The Indian Constitution
[53] Article 66(3) of The Indian Constitution
[54] Article 66(4) of The Indian Constitution

Vice-President is also entitled to re-election although there is no specific provision in this regard.[55]

Article 67. ***Terms of office of Vice-President****-The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:*

Provided that-

(a) a Vice-President may, by writing under his hand addressed to the President, resign his office;

(b) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;

(c) A Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

Tenure

The normal tenure of the office of the Vice-President is five years from the date on which he enters upon his office. However, notwithstanding the completion of these five years, he may continue to hold office until his successor arrives [Proviso (c) to Art.67]. The office may also terminate before the completion of the term by writing to the President. Furthermore, he may be removed from his office by a resolution passed by a majority of all the then members of the Rajya Sabha i.e. by an “effective majority”. Such a resolution cannot be moved in the Lok Sabha. However, it must be agreed to by the Lok Sabha by a simple majority. Also, a notice of intention to move such resolution must be given at least fourteen days prior to the moving of the resolution[56]. Thus, the preponderant voice in this matter has been given to the Rajya Sabha, the reason being obvious that he is the Chairman and thereby is one of its officers.[57]

The procedure prescribed for removal of Vice-President is much simpler than that provided for removing the President. The President can only be removed by impeachment, but no such formal procedure is necessary to remove the Vice-President. In case of the latter, only a resolution passed by both the Houses would suffice. In addition, the President can be removed only on the

[55] P.M. Bakshi, *The Constitution of India,* (Universal Law Publishing, Seventh Edition, 2006)

[56] Proviso b to Article 67 of The Indian Constitution

[57] M.P. Jain, *Indian Constitutional Law,* (Kamal Law House, Calcutta, 5th Edition, 2003)

ground of violation of the Constitution by a two-third majority of both the Houses[58]. A provision for thorough enquiry into the charges against him is also provided in the Constitution[59]. The Vice-President, on the other hand, can be removed on any ground, without any special majority of the two Houses, and without any inquiry into the charges against him.[60]

Current Highlight

Exercising the discretion under Article 67(a), on 21 July 2025, the former Vice-President Mr. Jagdeep Dhankhar resigned from his post mid-term, prioritizing his health. The provision in Article 67(c) does not apply to an incumbent who resigns ahead of the expiration of their term. Thus, the Constitution allows the office of the Vice-President to be vacant after a resignation until a fresh election is conducted. During this period, his function as the Chairperson of the Upper House is exercised by the Deputy Chairperson of the House. Thus, recently the office had been left vacant until the present Vice-President, Mr. C.P. Radhakrishnan assumed office on September 12, 2025.

Article 68. *Time of holding election to fill vacancy in the office of Vice-President and the term of office of the person elected to fill casual vacancy* *- (1) An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.*

(2) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 67, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

According to clause 1 of the above article, before the Vice-President's office falls vacant by efflux of the incumbent's term, an election to fill the office is to be completed. In case of a vacancy arising on account of any other reason, an election to fill the same is to be held as soon

[58] Article 56 and 61 of The Indian Constitution
[59] Article 61(3) of The Indian Constitution
[60] M.P. Jain, *Indian Constitutional Law,* (Kamal Law House, Calcutta, 5th Edition, 2003)

as possible after the vacancy occurs. The person thus elected is gratuitously entitled to serve as Vice-President for the full term of five years from the date on which he enters upon his office [Article 68(2)].

Article 69. ***Oath or affirmation by the Vice-President***- *Every Vice-President shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say-*

"I, A.B., do swear in the name of God/ solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter".

This lays down another condition of the office of the Vice-President. According to this provision, the Vice-President, like his counterparts, has to subscribe to, before the President or someone appointed by him for this purpose, an oath or affirmation in the manner prescribed therein before entering upon his office.

Article 70. ***Discharge of President's functions in other contingencies***- *Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this chapter.*

In addition, Parliament is empowered to make such provisions as it thinks fit for the discharge of the President's functions in case of any other eventuality not mentioned herein. In pursuance of this provision, Parliament has enacted the President (Discharge of Functions) Act[61]. It provides that in case of a dual vacancy, i.e., when vacancies occur in the offices of both the President and the Vice-President, the Chief Justice of India or, in his absence, the senior-most Judge of the Supreme Court available, is to discharge the President's functions until a new President or Vice-President enters upon his office.[62]

Article 71. ***Matters relating to, or connected with, the election of a President or Vice-President***-*(1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.*

[61] President (Discharge of Functions) Act, 1969, Act No. 16 of 1969

[62] Section 3 of *ibid.*

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.[63]

This Article was amended by the Constitution (Thirty-ninth Amendment) Act, 1975 and later substituted by the Constitution (44th Amendment) Act, 1978 in its present form.

A. Decision of Doubts and Disputes relating to Presidential Election[64]

Law prior to 1975- Under the original Article, the jurisdiction to decide disputes relating to the election of a President or Vice-President was vested in the Supreme Court. Subsequently, the 39th Amendment took away this jurisdiction and vested it in a body to be set up by law to be made by Parliament.

Law after 1975- After coming into power, the Janata Government, headed by Desai, was pledge-bound to do away with this anti-democratic step of replacing the highest judicial tribunal by a non-judicial body. Therefore, the Article 71 was itself recast by the Constitution (44th Amendment) Act, 1978. It restored the original Constitutional provision vesting the jurisdiction in the Supreme Court as a final tribunal.

B. Scope of Supreme Court's jurisdiction when election of President or Vice-President is challenged

In ***Charan Lal Sahu v. Zail Singh***[65] *The* Supreme Court held that such elections can be set aside only on the grounds specified in the Presidential and Vice-Presidential Elections Act, 1952.

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[63] Added by *The Constitution (Eleventh Amendment) Act, 1961*

[64] D.D. Basu, *Introduction to the Constitution of India* (27th Edition, Lexis Nexis, 2024)

[65] Charan Lal Sahu & Ors. vs Giani Zail Singh & Another, 1984 AIR 309; 1984 (1) SCC 390

However, any acts done before the final decision of the Supreme Court by the person whose election is in question, in the exercise of his powers, shall not be invalidated merely on the ground of the election being declared as void.

C. Power of Parliament to regulate election

Parliament is empowered to enact legislation to regulate any matter connected with the election of the President or Vice-President subject to the provisions of this Constitution. It is in the pursuance of this power, that the Parliament has enacted the **Presidential and Vice-Presidential Elections Act, 1952** to carry out the purposes of Art.71(1).

Judicial Interpretations:

In ***Charan Lal Sahu v. N. Sanjeeva Reddy***[66], it has been held that a petitioner must come within the four corners of the Act to have locus standi to challenge the Presidential election and to be able to maintain the petition.

In ***N.B. Khare v. Election Commission***[67], the Supreme Court has held that it would not entertain any petition challenging the Presidential election before the completion of the election process and declaration of the result. The reason for this stand is that if a doubt or dispute arising in connection with the election of a President is brought before the Court before the whole election process is concluded, then conceivably, "the entire election may be held up till after the expiry of five years' term which will be non-compliant to the provisions of Art. 62."

D. Vacancies in Electoral College

Clause 4 of Art.71 provides that the election of a President or Vice-President shall not be invalidated on account of any vacancy in the electoral college. In view of this exposition, it is manifest that the language is of wide amplitude. In ***In Re Presidential Elections***,1974[68], it was held that any case where a person who as an elected member of the Houses of Parliament or the Legislative Assembly of a State became entitled to be a member of the Electoral College but

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[66] Charan Lal Sahu vs N. Sanjeeva Reddy, 1978 AIR 499; 1978 SCR (3) 1
[67] N.B. Khare vs Election Commission, 1957 AIR 694; 1957 SCR 1081
[68] In Re: Presidential Poll vs Unknown, (1974) 2 SCC 33; (1975) 1 SCR 504

ceased to be an elected member at the relevant date of the election and therefore became disentitled to cast vote at the election and that vacancy among members of the Electoral College was not filled up will also be within the purview of this clause.

COMPARATIVE ANALYSIS

At this point of time, the position of Vice-President of India is quite clear. For further crystallization, let's dwell into a comparative summarization between the Indian and the U.S. Vice-President.

Establishment

- The office of the Vice President in India is established under Article 63 of the Indian Constitution.
- The office of the Vice President in the U.S. is established by Article I, Section 3, and Article II, Section 1 of the U.S. Constitution.

Election

- In India, the Vice President is elected separately from the President, indirectly by an electoral college by the means of proportional representation.
- The Vice President of the U.S. is elected alongside the President as a running mate directly by the populace.

Legislative Role

- The primary role of the Indian Vice President is to preside over the Rajya Sabha ensuring the smooth functioning of legislative debates. As the presiding officer, he ensures that parliamentary proceedings adhere to rules and decorum.

  He does not have the right to participate in debates or voting, except when there is a tie, where he exercises a casting vote. Unlike the Speaker of Lok Sabha, the Vice President has limited control over the legislative process.

- The Vice President of the United States serves as the President of the Senate, but their role is largely ceremonial. Similar to their Indian counterpart, the U.S. Vice President does not participate in Senate debates but can cast a deciding vote in case of a tie. However, unlike in India, the U.S. Vice President is next in the line of succession and assumes the presidency in case of the President's death, resignation, or removal.[69]

Executive Role

- The Vice President does not hold any executive powers as such. He only acts as the President when the President of India is unable to discharge duties due to illness, resignation, impeachment, or death, until a new election is conducted. Also, he does not have an advisory role in policymaking or governance or his role is very limited.
- On the other hand, the U.S. Vice President often serves as a key advisor to the President and takes part in executive decision-making. He immediately assumes the presidency upon the death, resignation, or removal of the President. Unlike in India, he is a formal member of the President's Cabinet and actively participates in policy discussions. Moreover, he frequently represents the U.S. in diplomatic missions and international negotiations.[70]

Removal

- In India, the Vice-President can be removed by a resolution passed by an effective majority of Rajya Sabha and agreed to by the Lok Sabha. However, any such resolution must be introduced with prior notice of at least 14 days.
- On the contrary, the U.S. Vice-President can only be removed by impeachment on the grounds of "treason, bribery, or other high crimes and misdemeanours," similar to the President. Thus, he has a stronger protection against removal compared to their Indian counterpart.[71]

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[69] Vice President of India vs. USA: Powers and Responsibilities Compared, *UPSC Magazine*
[70] *Ibid.*
[71] *Ibid.*

CRITICISM

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1. **Partisan Allegiance**- Vice-President are often seen as political veterans like the Speaker which raises substantial questions about neutrality and impartiality.
   In the case of ***Kihoto Hollohan v. Zachillhu***[72]***The*** Apex Court upheld the disqualification power of Speaker or Chairmen acting as tribunal under the anti-defection law but subjected it to judicial review, underscoring that neutrality on the part of such political veterans cannot always be presumed. This reasoning of the Supreme Court highlights the possibility of partisan on the part of dignitaries like the Vice-President.

2. **Limited Political Influence**- Owing to the largely ceremonial role, the Vice President does not hold significant political influence. The office has only a procedural impact rather than substantive.
3. **Weaker Succession Role-** The Vice-President gets to serve as an Acting President only in exceptional situations only for a maximum period of six years. He does not automatically become the President, indicating his limited role in succession.

CONCLUSION

This chapter furnishes an in-depth analysis of the office of Vice-President in the Indian Constitution, delineating his dual responsibilities – one as the ex-officio Chairperson of the Rajya Sabha, entrusted with ensuring legislative continuity, and another as the Acting President during any vacancy, thereby maintaining executive stability. These constitutional roles manifest a well-poised institutional function. The Vice President is elected indirectly by an electoral college composed exclusively of both Houses of Parliament, employing the system of proportional representation. The office may not wield extensive powers, but plays a significant role in ensuring that governance does not stand disrupted in times of political flux.

[72] Kihoto Hollohan vs Zachillhu & Ors., 1992 SCR (1) 686; 1992 SCC SUPL. (2) 651

However, despite the structural probity, certain procedural deficiencies persist. The silence of the Constitution on the period to fill a vacancy in this office exhibits the lacuna in the practicality. This also allows for potential administrative delays or political manoeuvring. The recent event of the Vice-President's resignation highlighted both the strengths and weaknesses of the system. Despite the structural position, the role has often been described as ceremonial or superfluous, highlighting the relatively limited powers compared to the high rank it demands.

CHAPTER 4: PARDONING POWER, COUNCIL OF MINISTERS, PRIME MINISTER & ATTORNEY GENERAL (ARTICLE 72- 78)

BY HARSH KASHYAP

INTRODUCTION

The Indian Constitution specifies the scope of executive authority and the requirements for accountability in Articles 72 to 78. These articles illustrate the adoption of a few elements of the Westminster model while also practising indigenous ideals such as collective responsibility and constitutional morality. The powers of clemency in Article 72, for example, spare the state from murder in the case of a death penalty, but judicial interpretation restrains those powers for the sake of fairness in achieving a legal conclusion. Articles 74 and 75 provide for a Council of Ministers, headed by a Prime Minister. The head of the Council of Ministers must ultimately be accountable to the House of the People, thus drawing upon democratic legitimacy. By virtue of being the head of a party seated in the Lok Sabha, the Prime Minister acts as an executive head, rather than serving the ceremonial role assigned to the President in the Constitution. Article 76 establishes an Attorney General, the chief legal advisor to the Government, with an inherently complex relationship between the executive power and political authority, as the Attorney General serves the executive while simultaneously having a duty to uphold the law and the judicial process. Article 78 requires the Prime Minister to keep the President of India informed of all decisions made by the executive, thereby enhancing executive accountability.

Together, these provisions shape India's parliamentary democracy, setting limits on executive power, allowing for mercy in governance, and emphasising adherence to constitutional principles. Their interpretation and application are crucial for understanding the Indian constitutional framework.

HISTORICAL & CONSTITUTIONAL BACKGROUND

The constitutional structure found in Articles 72-78 has its roots fundamentally in India's colonial legacy, as well as in the proceedings of the Constituent Assembly. The provisions reflect both the existing British constitutional traditions and the creativity that was more appropriate for India as a republic and democracy.

Colonial Origins

The authority to grant clemency vested in the President's panel under Article 72 stems from the prerogative power of the British Crown. The Government of India Act, 1935, conferred similar powers upon the Governor-General and Governors to suspend, remit or commute sentences[73], mirroring the transplantation of royal pardon powers into a colonial constitutional framework. Again, under the 1935 Act, the position of Advocate General in provinces provided the model for the Attorney General under Article 76 of the Constitution. [74]

However, the colonial Acts framed the executive structure in favour of the Crown. The Governor-General and Governors were not bound by the advice of ministers, thereby undermining accountable or responsible government. This colonial legacy was a source of considerable debate in the Constituent Assembly, as the members had concerns about importing an executive system that could act unfettered from democratic institutions.[75]

Constituent Assembly Debates

During the debates of the Constituent Assembly, Articles 72–78 (then Draft Articles 59, 61–66) generated significant debate. Dr B.R. Ambedkar, while introducing provisions on the Council of

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[73] Government of India Act, 1935 (26 Geo. 5 & 1 Edw. 8 c. 2), s. 295.
[74] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 185 (Oxford University Press, 1966).
[75] Constituent Assembly Debates, Vol. VII, December 30, 1948, available at: https://cadindia.clpr.org.in/ (Visited on September 24, 2025).

Ministers, maintained that the President of India would act on the "aid and advice" of the Council, so that the President could not develop into a rival centre of power.[76] K.M. Munshi and Alladi Krishnaswamy Ayyar supported this notion, noting that the Westminster conception of responsible government was the best fit for India's parliamentary democracy.[77]

On the subject of the pardoning power, members such as K.T. Shah and Pandit Thakur Das Bhargava questioned whether vesting even such wide powers in the President would not potentially undermine the finality of judicial decisions. Until Dr Ambedkar explained that the clemency power was not intended to foster arbitrariness but was intended to allow relief in cases of miscarriage of justice, regardless of the executive's necessity, or on humanitarian grounds.[78] The debates demonstrated an intentional effort to strike a balance between respect for judicial independence and executive compassion.

In the office of the Attorney General, members emphasised the importance of continuity with British practice, while also ensuring that the Attorney General advised the Union government as a legal advisor without becoming politically entangled in the executive. The role was modelled on the Attorney General of England but made accountable within the Indian system of parliamentary responsibility.[79]

Constitutional Philosophy and Preamble Link

Articles 72–78 relate to the broader constitutional philosophy underpinning the Preamble. Article 72 expresses the value of justice, permitting action for redress when harsh consequences may result because of the rigid application of law; Articles 74–75 express the principle of democracy and popular sovereignty because the Council of Ministers is accountable collectively to the House of the People; Article 76, establishing the Attorney General, affirms the principle of the rule of law by formalising legal advice as government; and Article 78 also expresses the

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[76] B. Shiva Rao (ed.), *The Framing of India's Constitution: Select Documents* Vol. III, 412 (Universal Law Publishing, 2004).
[77] Constituent Assembly Debates, Vol. VIII, 6 Jan. 1949, available at: https://cadindia.clpr.org.in/ (Visited on Sept. 24, 2025).
[78] H.M. Seervai, *Constitutional Law of India* Vol. I, 516–517 (Universal Law Publishing, 4th edn., 2013).
[79] V.N. Shukla, *Constitution of India* 232 (Eastern Book Company, 14th edn., revised by M.P. Singh, 2016).

principle of accountability because it requires the Prime Minister to provide the President with information about governmental affairs.

Overall, the history and constitutional background of Articles 72–78 demonstrate that they were not merely a transfer of the British system of governance, but rather novel adaptations to India's federal and democratic governance. They indicate a measured rejection of colonial authoritarianism and an acceptance of constitutional morality, executive accountability, and humanitarian principles.

ARTICLE-WISE DISCUSSION

Article 72 and 73: President's clemency powers and the constitutional limits of the Union executive's powers

Article 72 – Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases

1. *"The President 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 of any offence—*
   (a) *In all cases where the punishment or sentence is by a Court Martial;*
   (b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;
   (c) In all cases where the sentence is a sentence of death."

2. *Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence by a court martial.*

3. *Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.*

Article 73 – Extent of Executive Power of the Union

1. *"Subject to the provisions of this Constitution, the executive power of the Union shall extend—*
   (a) to the matters with respect to which Parliament has power to make laws; and
   (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

"Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State also has power to make laws."

2. *Until otherwise provided by Parliament, a State, and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.*

Scope: Together, Articles 72 and 73 outline the humanitarian limits of the President's clemency powers and the constitutional limits of the Union executive's powers. Article 72 provides the President with the authority to act as a constitutional safety valve, protecting individuals from the harshness of the law by granting pardons, commutations, or remissions for convictions resulting from court-martials, offences under Union law, and death sentences.[80] This authority sits in contrast to the historically rooted authority of mercy in the royal prerogative, but it functions in India as a structured constitutional device, acting on the aid and advice of the Council of Ministers to ensure consistency with democratic accountability.[81]

[80] H.M. Seervai, *Constitutional Law of India* Vol. I, 521 (Universal Law Publishing, 4th edn., 2013).
[81] M.P. Jain, *Indian Constitutional Law* 459 (LexisNexis, 8th edn., 2018).

Article 73 discusses the Union executive's powers and describes this power as co-extensive with Parliament's legislative competence. The Union executive is empowered to act in all areas subject to parliamentary legislation and in matters related to international treaties and obligations. However, Article 73 explicitly prohibits the Union from interfering with State legislative areas without express permission from the Constitution or by statute. This provides a safeguard against the federal character of India's government and the unchecked centralisation of power.[82]

Taken together, Articles 72 represent the principle of mercy within the justice system, while Article 73 provides the structural limits of executive governance. Both embody the balance between discretion and accountability, ensuring that executive authority operates within the larger framework of constitutional morality.

The judicial interpretation of Article 72 has been significant in determining the contours of the power to pardon conferred on the President. In *Maru Ram v. Union of India*, the Supreme Court held that the President does not exercise this power at his discretion but rather does so on the advice of the Council of Ministers. Not that the power of pardoning is boundless, though its breadth is unquestionable, the power is still subject to judicial review where allegations of mala fides, arbitrariness, or extraneous factors are present.[83] This position of the affected party was elaborated in *Kehar Singh v. Union of India*, where the Court stated that the President can reconsider the merits of the case before it in the exercise of mercy. However, the Court stated that the President's reanalysis ought to be carefully and fairly deliberated and must not be an exercise of whim, thereby preventing the President from sitting in appellate review of the courts' verdicts.[84]

In *Epuru Sudhakar v. Government of Andhra Prade*sh, the Court clarified that clemency must not be exercised on irrelevant or extraneous considerations, as such decisions remain subject to judicial review to prevent arbitrariness. This judgment marked a significant advancement in ensuring that constitutional morality becomes an integral part of the clemency process.[85]

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[82] Constitution of India, art. 72.
[83] *Maru Ram v. Union of India*, (1981) 1 SCC 107.
[84] *Kehar Singh v. Union of India*, (1989) 1 SCC 204.
[85] *Epuru Sudhakar v. Government of Andhra Pradesh*, (2006) 8 SCC 161.

Through Union of India v. V. Sriharan, the boundaries of this power were redefined, and the Court clarified the relationship between Union and State powers regarding remission for persons convicted to death penalty. The Court concluded that although the President's powers under Article 72 are broad, they cannot be exercised in a way that undermines the federal framework of India's criminal justice system.[86] Similarly, Article 73, which dictates the limits of the Union's executive power, has been elaborated via a number of quintessential judgments. For example, Ram Jawaya Kapur v. State of Punjab determined that executive power is co-extensive with legislative power; if the Union lacks legislative power, then it cannot act.[87] The Court reaffirmed this principle in the case of State of West Bengal v. Union of India when it invalidated the Centre's attempt to expropriate State property, holding, once again, that absent express constitutional or statutory authority, the Union executive is confined by State autonomy. Later, in Union of India v. H.S. Dhillon, the Court advanced Union supremacy by holding that residuary subjects are legislative matters within Parliament's power, thus extending Union executive authority in the process. Taken in combination, these two cases show that while Article 72 reflects a proper sequence of mercy as part of justice, Article 73 reflects constitutional limits to Union power - in both cases, the judicial exercise has been managed at preserving the balance between mercy and rule of law, and between Union authority and autonomy of the States.

Articles 74 & 75 – The Council of Ministers and the Prime Minister

Text (verbatim)

Article 74 – Council of Ministers to aid and advise the President

"(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice: Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court."

[86] *Union of India v. V. Sriharan*, (2016) 7 SCC 1.
[87] *Ram Jawaya Kapur v. State of Punjab*, AIR 1955 SC 549.

Article 75 – Other provisions as to Ministers

"(1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(2) The Ministers shall hold office during the pleasure of the President.
(3) The Council of Ministers shall be collectively responsible to the House of the People.
(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and secrecy according to the forms set out for the purpose in the Third Schedule.
(5) A Minister who, for any period of six consecutive months, is not a member of either House of Parliament shall, at the expiration of that period, cease to be a Minister.
(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule."

Scope: Articles 74 and 75 are significant to the parliamentary executive setup of India. Article 74 states that there shall be a Council of Ministers under the leadership of the Prime Minister, and such advice shall be binding on the President. The 44th Constitution (Amendment) Act provides that the President can return such advice once for reconsideration; however, the President is bound to act in accordance with the advice of the Council of Ministers once it is given again.[88] As a result, the President holds a nominal position, while the real power resides with the Prime Minister and the Council of Ministers.

Additionally, Article 75 outlines the appointment of Ministers and their functions. Article 75 states that the President shall appoint the Prime Minister, who is typically the leader of the party that has received the highest number of votes in the Lok Sabha. Similarly, Article 75(3) addresses the accountability of Ministers and binds the Council of Ministers to the Lok Sabha, adhering to a policy of collective responsibility; this mechanism embodies the notion of

[88] 44th Constitution Amendment Act, 1978, s. 11.

responsible government.[89] As a result, there is a balance of power between Articles 74 and 75, which carry out the roles of a permanent and ceremonial head of state, respectively, against that of the executive political head of government.

The Supreme Court plays a crucial role in interpreting Articles 74 and 75. For example, in *Shamsher Singh v. State of Punjab*, the Court stated that both the President and the Governors must act on the advice of their Councils of Ministers, which established a parliamentary model executive government.[90]

In *U.N.R. Rao v. Indira Gandhi*, the Court held that the Prime Minister is necessary for the existence of the Council of Ministers. The Court also reaffirmed the doctrine of collective responsibility in *S.R. Bommai v. Union of India* by allowing judicial review of the President's proclamation under Article 356, holding that the dismissal of state governments after less than ten minutes in office, without ascertaining a majority in the House, was unconstitutional.[91]

In *Rameshwar Prasad v. Union of India*, the Court invalidated the premature dissolution of the Bihar Legislative Assembly and established that all executive power must be exercised in accordance with constitutional morality and democratic accountability.[92]

Article 76 – Attorney General of India

"(1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties, the Attorney-General shall have the right of audience in all courts in the territory of India.

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[89] *Shamsher Singh v. State of Punjab*, (1974) 2 SCC 831.
[90] *U.N.R. Rao v. Indira Gandhi*, (1971) 2 SCC 63.
[91] *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.
[92] *Rameshwar Prasad v. Union of India*, (2006) 2 SCC 1.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine."

Scope: Article 76 creates the office of the Attorney General of India (AGI) as the highest law officer of the Union. The AGI must be a person qualified to be appointed as a judge of the Supreme Court, thereby ensuring that the position is occupied by a person with serious depth of experience and qualification in law.[93] The primary functions of the AGI are to advise the Government of India on legal matters, to perform any legal functions assigned to it by the President, and to represent the Union in Courts, including the Supreme Court and High Courts.[94] The provision also grants the AGI the right to be heard in all Courts in India, underscoring the centrality of the AGI as a position used in all legal proceedings involving the Union. However, unlike a ministerial post, the AGI does not hold a seat in Parliament and is, therefore, not a member of the Cabinet. The AGI holds the post at the pleasure of the President, which in effect means at the discretion of the Union executive, thereby raising significant concerns about independence.[95]

The courts have made it clear that the Attorney General holds a unique position. In *P.N. Duda v. V.P. Shiv Shankar,* the Court explored the AG's dual role of recognising loyalty to the government while being mindful of fairness to the court. The case made clear that while the AG is filing pleadings on behalf of the government, the AG is also an officer of the court with a duty not to mislead the court and maintain professional independence.[96]

The Supreme Court has brought the AG into the court even more so in recent proceedings to provide constitutional guidance on sensitive issues, including presidential references, constitutional amendments, and federal issues. Even though he is not a judicial officer, the AG is viewed as the guardian of constitutional adherence regarding executive actions.[97] More recently, the controversy about the AG's position on politically sensitive issues, such as the abrogation of

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[93] Constitution of India, art. 76(1).
[94] Constitution of India, art. 76(2)– (3).
[95] V.N. Shukla, *Constitution of India* 312 (Eastern Book Company, 14th edn., revised by M.P. Singh, 2016).
[96] *P.N. Duda v. V.P. Shiv Shankar*, (1988) 3 SCC 167.
[97] Granville Austin, *Working a Democratic Constitution: The Indian Experience* 213 (Oxford University Press, 1999).

Article 370 and demonetization, demonstrates once again the competing ideas of professional independence vs. loyalty to executive privilege.

Article 77 – Conduct of Business of the Government of India

"(1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business."

Scope: Article 77 outlines the formal requirements for exercising executive action at the Union level. It specifies that all executive action is to be taken in the name of the President, thereby preserving the constitutional fiction of the President being the executive head of the Union.[98] The provision serves the purpose of ensuring that the decisions of the Government of India carry equal authority and should not be challenged solely on the basis of who physically issued them.

Clause (2) of Article 77 protects the executive orders from being declared invalid on technical grounds, in relation to authentication[37]. An order that is taken in the name of the President and authenticated in the specified way cannot be called into question.[99] Clause (3) enables the President to make Rules of Business which assign work to Ministers and govern and regulate the conduct of government business. In practice, the Rules of Business are significant, as they govern the internal workings of the Union executive system.

Evolution through Case Law

The Supreme Court has provided clarification on the law relating to Article 77 in several judgments. In *Dattatraya Moreshwar v. State of Bombay*, the Supreme Court stated that Article 77 is mainly directory, not mandatory. Thus, the failure to comply with its provisions does not

[98] Constitution of India, art. 77(1).
[99] Constitution of India, art. 77(2).

render executive action invalid in and of itself, as long as the action itself is substantively within the executive's competence.[100]

In *Samsher Singh v. State of Punjab*, the Supreme Court interpreted Article 77 in conjunction with Article 74 to emphasise that executive power is not exercised by the President personally, but rather on the advice of the Council of Ministers.[101] In *State of Bihar v. Kripalu Shankar*, the Supreme Court similarly stated that authentication under Article 77(2) is procedural and "irregularities in form cannot in any way invalidate an action which could not be challenged otherwise.[102] In summary, these cases establish that Article 77 serves an administrative and formal function, providing consistency and certainty in executive action, but does not confer independent powers on the President.

Article 78 – Duties of the Prime Minister

"It shall be the duty of the Prime Minister—

(a) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

(c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council."

Scope: Article 78 outlines the constitutional mode of communication between the Prime Minister and the President of India. Its main objective is to keep the President, as the official Head of the Union, informed of the decisions of the Council of Ministers and measures introduced in Parliament. Clause (a) places an obligation upon the Prime Minister to keep the President informed of the collective decisions of the Cabinet on a regular basis. Clause (b) gives the President the authority to request information from the Prime Minister regarding the administration or legislation, ensuring the President is never unaware of the executive function.

[100] *Dattatraya Moreshwar v. State of Bombay*, AIR 1952 SC 181.
[101] *Shamsher Singh v. State of Punjab*, (1974) 2 SCC 831.
[102] *State of Bihar v. Kripalu Shankar*, (1987) 3 SCC 34.

Clause (c) reinforces Cabinet responsibility by requiring the Prime Minister to put before the Council of Ministers any decisions made by an individual Minister, if requested by the President and if such decisions were not made at a collective Cabinet meeting. [103]

This provision reflects the Westminster model's principle that the President (like the British monarch) can reign but cannot rule, with the Prime Minister having the obligation to keep the Head of State informed. It works to prevent the executive from becoming opaque, formally placing the President within the information flow in governance, while the real decision-making remains with the Council of Ministers.[104]

Evolution through Case Law

Article 78, concerning executive power, has seen less litigation than other related clauses, but remains significant. In *Shamsher Singh v. State of Punjab*, the Supreme Court emphasised that the President acts as a constitutional head on the advice of the Council of Ministers. The Court also indicated that, under Article 78, the President can seek information and request reconsideration, thereby highlighting the principle of accountability within the executive system.[105]

In *U.N.R. Rao v. Indira Gandhi*, the importance of the Prime Minister's office was reiterated, with Article 78 placing constitutional duties on the Prime Minister as the key link between the nominal and real executive.[106]

In practice, this article has gained importance during periods of political dysfunction, with Presidents such as K.R. Narayanan and A.P.J. Abdul Kalam exercising their right to seek information and reconsider decisions. While court cases under Article 78 have been rare, the power it provides has served as a check against unilateral actions in executive governance, promoting responsible government.

CRITICAL OBSERVATIONS

[103] Constitution of India, art. 78.

[104] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 229 (Oxford University Press, 1966).

[105] *Shamsher Singh v. State of Punjab*, (1974) 2 SCC 831.

[106] *U.N.R. Rao v. Indira Gandhi*, (1971) 2 SCC 63.

Articles 72 to 78 establish the framework for the Union executive in India. Articles 72 and 73 outline the President's powers of clemency and executive competence. Articles 74 and 75 create the Cabinet system led by the Prime Minister, while Article 76 appoints the Attorney General as the Union's legal advisor. Articles 77 and 78 govern the conduct of business and communication between the President and the Prime Minister. Despite their clarity, these articles have led to debates about federal balance, executive accountability, and constitutional morality.

Article 72 is perhaps the most controversial provision, as it empowers the President to grant pardons, reprieves, remissions, or commutations of sentences. While clemency serves a humanitarian purpose, concerns arise when discretion appears influenced by extraneous considerations. Courts have intervened to ensure decisions comply with Article 14 standards of non-arbitrariness. Delay in mercy petitions, especially in death penalty cases, also raises serious Article 21 concerns. The Courts, in fact, have been forced to intervene to curtail arbitrariness, as seen in Epuru Sudhakar, but this does not remove the reality that the powers of mercy are not entirely free from political elements.[107] Additionally, unreasonable delay in the finalisation of mercy petitions, especially in death penalty cases, raises issues around human rights law and the constitutionally protected right to life under Article 21.

Article 73, which extends the executive authority of the Union to the same domain as Parliament's legislative power, signifies a further shift of the federal balance toward the Centre. While Article 73 begins with an assurance to favour State autonomy, the judicial interpretation has extended Union supremacy. For instance, in *H.S. Dhillon*, the Court upheld an expansive residuary power for Parliament, thereby increasing the Union executive's power over the States.[108] In practice, the Union typically exercises its executive authority in contexts of national security, internal disturbance, and criminal law, often overlapping with the understood jurisdictions of the Union and its Member States.

On the other hand, the provisions concerning the Prime Minister and Council of Ministers (Arts. 74-75) enshrine the Westminster model of responsible government in India. As observed in the

[107] *Epuru Sudhakar v. Government of Andhra Pradesh*, (2006) 8 SCC 161.
[108] *Union of India v. H.S. Dhillon*, (1972) 2 SCC 779.

Shamsher Singh case, the principle that the President acts on the advice of the Council of Ministers strongly suggests that it is elected representatives, on behalf of the country's citizens, who exercise actual executive power, as opposed to a monarch whose role is largely nominal.[109] The intensification of power in the office of the Prime Minister has led some to question the practicality of Cabinet government in India. In particular, over the past few decades, the emergence of the Prime Minister's Office (PMO) as the primary decision-making body in government matters has overshadowed the Cabinet's role in terms of collective Cabinet responsibility. In the 1990s and 2000s, coalition politics magnified the extent of the issue that led to the questioning of the principle of collective responsibility within the Cabinet. Since 2014, the dominance of a single party has led to an unprecedented centralisation of powers in the Prime Minister. This illustrates the difference between the constitutional theory and the political practice related to the separation of powers.

Article 76 establishes the Attorney General, adding another layer of institutional tension: although AG is supposed to serve as an independent legal adviser, the fact that the office is at the "pleasure of the President" effectively subordinates its existence to the political executive. The AG has had an important role in major developments in Indian constitutional law, but controversies have persisted over the independence of the office. In certain high-profile constitutional matters, questions have occasionally been raised regarding the balance between professional independence and executive loyalty.[110] Scholars are wary that until reforms, such as a fixed term of office or clearer safeguards of independence, are adopted and implemented, the credibility of the office remains susceptible. Thus, while the constitutional framework is adequate, modest safeguards enhancing independence and clarity of tenure may strengthen the institutional credibility of the office.

Articles 77 and 78 often run the risk of being disregarded, but serve a meaningful constitutional purpose. Article 77 protects the ceremonial power of the President by requiring that all executive acts be done in the name of the President, while simultaneously outlining principles for the internal disposition of governmental business. The judiciary has, in various rulings (see

[109] *Shamsher Singh v. State of Punjab*, (1974) 2 SCC 831.
[110] Granville Austin, *Working a Democratic Constitution: The Indian Experience* 213 (Oxford University Press, 1999).

Dattatraya Moreshwar and *Kripalu Shankar*), interpreted these articles as primarily directory, and does not allow for technical objections to the executive action (Article 77).[111] Article 78, on the other hand, requires that the Prime Minister keep the President "informed" so that the President is not only a chartered, ornamental constitutional head, but a constitutional sentinel and authority. In practice, assertive Presidents such as K.R. Narayanan and A.P.J. Abdul Kalam has invoked Article 78 to make demands for reconsideration of Council decisions, reminding governments that constitutional heads are not entirely ornamental heads of constitutional processes.[112]

Overall, Articles 72–78 of the Indian Constitution embody principles of parliamentary democracy, federalism, and the rule of law, yet they face tensions between law and politics. While designed to guard against authoritarianism, their effectiveness hinges on political commitment to constitutional morality. Without adherence to these principles, powers like the pardon authority and the Cabinet may devolve into political tools. The Courts have attempted to maintain balance through judicial review, but the executive must exercise its powers in good faith. Enhancing transparency, accountability, and the independence of the Attorney General through reforms can better align these articles with constitutional ideals.

CONTEMPORARY RELEVANCE

The constitutional provisions set forth in Articles 72 to 78, established over seventy years ago, continue to have a significant impact both legally and politically in India. The application of these provisions in contemporary governance raises issues of humanitarian justice, federalism, executive accountability, and institutional independence—all of which are crucial in a constitutional democracy.

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[111] *Dattatraya Moreshwar v. State of Bombay*, AIR 1952 SC 181; *State of Bihar v. Kripalu Shankar*, (1987) 3 SCC 34.

[112] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 229 (Oxford University Press, 1966).

Article 72's pardoning authority has been involved in significant discussions around the death penalty and human rights. Cases that have garnered significant public interest include, for example, the mercy petitions of the convicts of the Nirbhaya gang rape and murder case, and Rajiv Gandhi's assassination case—both of which led to scrutiny of presidential clemency[113] by the public and the judiciary, which was unprecedented. In *Shatrughan Chauhan v. Union of India*, the Supreme Court characterised excessive delay in making a decision on a mercy petition as torture, resulting in the commutation of several death sentences on that basis.[114] These cases highlight the extent to which Article 72 has become a focal point for balancing considerations of retributive justice and human dignity. Questions surrounding political bias when exercising clemency (granting clemency or otherwise) remain, leaving room for guidance around clemency, or lack thereof, to be made more transparent.

Article 73, which delineates the limits of Union executive authority, is increasingly coming to its own in relation to Centre (Federal)–State tensions due to recent developments, including: the abrogation of Article 370 in Jammu and Kashmir; the Union's handling of the COVID-19 pandemic; and the consistent involvement of Union Agencies in State affairs (amongst other reasons). Many have raised the question of whether these affairs of the Union executive (the Government of India, in essence) infringe on State autonomy.[115] As reiterated by the Supreme Court of India in *State (NCT of Delhi) v. Union of India* (2018), the principle of cooperative federalism mandates that the Union (Federal) government essentially must respect the jurisdictional boundaries of the States.[116] Political practice is often more centrally focused, which highlights the broader tension that exists between autonomy in the constitutional text and political practice**.**

The provisions relating to the Council of Ministers and the Prime Minister, as outlined in Articles 74-75, are becoming increasingly important due to the consolidation of power in the Prime Minister's Office (PMO) in recent years, leading to increasing claims of a move from Cabinet government to "Prime Ministerial government". The principle of collective

[113] Mercy Petition, Ministry of Home Affairs records in *Mukesh v. NCT of Delhi*, (2020) 10 SCC 120.
[114] *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.
[115] Suhrith Parthasarathy, "Abrogation of Article 370: Federalism in Crisis," *Economic and Political Weekly* Vol. 54, Issue 33 (2019).
[116] *State (NCT of Delhi) v. Union of India*, (2018) 8 SCC 501.

responsibility, which was integral to the Cabinet's functioning, has faded and is now mostly nominal, as decision-making has been centralised in the PMO.[117] In contrast, the coalition period of the 1990s and early 2000s demonstrated the fragility of Cabinet solidarity when managing the interests of several diverse allied parties, allowing for Articles 74–75 to grow in importance in the current political landscape in India.

Article 76 and the role of the Attorney General of India (AGI) have garnered substantial attention in recent years. The Attorney General has defended government official positions regarding Article 370, demonetization, electoral bonds, and other matters, which have often been criticised for undermining the independence of the legal profession.[118] Detractors claim that the Attorney General serves as the government's advocate rather than an independent promoter of legality, in addition to the very important role and function the Attorney General performs in illuminating constitutional questions and tensions, balancing professional independence with political loyalty.

Articles 77 and 78, which deal with the conduct of government business and the Prime Minister's obligation to convey information to the President, respectively, are less practically prominent discussions, but still important in a more tangible sense. The examples of Presidents K.R. Narayanan and A.P.J. Abdul Kalam providing advice or seeking more information exemplifies the practical impact of these provisions.[119] In addition, the informational role of Article 78 is particularly relevant in crisis situations, as the President serves as a constitutional sentinel acting at the request of the Council of Ministers' advice.

To sum up, Articles 72-78 remain important in the twenty-first century by addressing new challenges while also upholding constitutional values. They address key issues that govern India's governance, including mercy petitions and Centre-State relations. Ultimately, whether a

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[117] Pratap Bhanu Mehta, "Rise of the Prime Ministerial State," *Journal of Democracy* Vol. 18, No. 2, 70–83 (2007).

[118] Alok Prasanna Kumar, "The Attorney General and Constitutional Morality," *Indian Journal of Constitutional Law* Vol. 11, 45–62 (2019).

[119] Granville Austin, *Working a Democratic Constitution: The Indian Experience* 229 (Oxford University Press, 1999).

constitutional democracy survives depends on the continuous commitment of institutions and actors to constitutional morality.

CONCLUSION

Articles 72 to 78 of the Indian Constitution collectively outline the structure and operation of the Union executive, striking a balance among authority, accountability, and constitutional morality. They together transplant the Westminster model of responsible government into Indian soil while considering Indian concerns such as federal balance and humanitarian justice. Article 72 brings compassion to the criminal justice system through the President's clemency power, while Article 73 qualifies the limits of Union executive powers, retaining some State discretion. Articles 74 and 75 establish Cabinet accountability and centralise the Prime Minister in executive functions. Articles 76 to 78, by creating the Attorney General's office, regulating the conduct of business, and obligating duties to the PM individually, complete the framework of legal advice, order of precedence, and accountability.

In the realm of judicial interpretation, the courts have proven indispensable in clarifying and specifying these articles in practice. For example, *Maru Ram* and *Kehar Singh* constrained the arbitrariness of the exercise of the power of pardon. *Shamsher Singh* formally established that the President acts in accordance with, or is bound by, the advice of the ministers. *S.R. Bommai* emphasised the principle of cabinet accountability, also known as collective responsibility, as well as the rules governing federal principles.[120] These judicial decisions exemplify how constitutional text, political practice, and judicial authority combine to curtail executive excess and protect our democratic norms.

Even with coherence, ongoing issues persist. The exercise of the pardoning power has been plagued by frustrating delays and allegations of political abuse. The consequence of creating a broader union executive power through Article 73 at the expense of the States raises concern for the health of federalism. The cabinet government, in practice, has begun to lean toward an increasing predominance of the Prime Minister at the expense of collective government

[120] *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

accountability. The independence of the Attorney General is compromised by their proximity to the government, and while Articles 77 and 78 were introduced to ensure order and communication, they are always dependent on the constitutional assertiveness of each President. Legitimate reforms are possible to enhance these provisions, including incorporating accountability for Cabinet ministers into the process of pardoning petitions, eliminating overlapping accountability between the Executive and Cabinet, providing formal and informal protections for the Attorney General, and consolidating conventions surrounding the relationship between the President and the Prime Minister. However, as Ambedkar pointed out in the Constituent Assembly, no constitution can ever regain the moral high ground unless it is surrounded by institutional fidelity.[121]

In effect, Articles 72-78 are not simply technical provisions of the Constitution, but the backbone of executive government in India. Their institutional site lies in their reminder that legitimate and ethical governance emerges from the intersection of governance, accountability, and the rule of law - all of these principles will remain vital to the legitimacy of India's democratic experiment.

[121] Constituent Assembly Debates, Vol. XI, 25 Nov. 1949, speech of Dr. B.R. Ambedkar, available at: https://cadindia.clpr.org.in/ (Visited on Sept. 22, 2025).

CHAPTER 5-THE OFFICERS AND SECRETARIAT OF PARLIAMENT (ARTICLE 89-98)

BY VAISHNAVI HEGDE

INTRODUCTION

The principle of separation of powers to maintain a system of checks and balances is integral to the core structure of the Indian Constitution. The main intent of this doctrine is to ensure the smooth functioning of all three branches of a government as equally integral parts of a well-oiled machine, without which the essentials of a democracy could be trampled upon through interbranchial overreach. Under this system, each part of the government is assigned a set of functions that are unique to their particular institution alone, to avoid overlap, and provided with the ability to construct corresponding intellectual and physical infrastructure. The Indian Constitution is steeped in the belief in the need to guard against absolutism and fascism, through a diffusion of power under Part V & VI (Union & State Governments). This reflects various political influences, foremost of which is the theory of separation of powers by Montesquieu[122], one of the key pioneers of the French Revolution, which claims that for the avoidance of tyranny and the protection of liberty, government should be divided into three distinct and independent branches: the legislative, executive, and judicial. He asserts that were all three powers to reside in a single person or body, liberty would be destroyed, insofar as such a person or body could enact and execute tyrannical laws with impunity. The Supreme Court in the case of Ashwini Kumar Upadhyay vs Union Of India & Ors[123], emphasized that, "It is not for the courts to

[122] Baron de Montesquieu, *The Spirit of Laws* (Kessinger Publishing, Montana, 2004).
[123] *Ashwini Kumar Upadhyay vs Union Of India,* WP (Civil) No. 1246 of 2020.

consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts."

The second factor was the choice of type of government by the makers of the constitution. India was formally set upon the path of parliamentary government during the early June meetings of the Union Constitution Committee in 1947. The definitive moment came at a joint meeting with the Provincial Constitution Committee, with Sardar Vallabhai Patel as Chairman, on 7 June 1947, when the decision was made that India should have, 'The parliamentary system of constitution, the British type of constitution, with which we are familiar' [124]. However this specific principle is also surely dominated by American elements as, although a parliamentary executive analogous to that of Britain was adopted, the explicit mechanisms of judicial review, by which the judiciary curtails legislative and executive power, and legislative oversight, by which the legislature supervises the executive, align more closely with American constitutional principles than with Britain's fusion of powers.[125]

BRIEF OVERVIEW OF THE COMPOSITION OF THE PARLIEMENT

The Parliament of India is a bicameral federal legislature comprising two Houses, the Lok Sabha (House of the People, the Lower House) and the Rajya Sabha (Council of States, the Upper House), together with the President.

The structure and functions of these two Houses, along with the constitutional framework, shape the balance of representation between the people and the states within the Indian Union as there are numerous ways in which they are different from one another. From a functional perspective, they do not have a co-equal position because they are based on completely distinct ideas. The Lok Sabha is a democratic body that is directly elected by the population using adult suffrage.

[124] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, London, 1966).
[125] Arun. K. Thiruvengadam, *The Constitution of India* (Hart Publishing, OXFORD AND PORTLAND, OREGON 2017).

The discontinuation of reservations under Article 331 for Anglo-Indians under the 104th Amendment[126] marked the last major deviation in its composition. As a result, its power is found in its design, which reflects the will of the populace. Unlike the Lok Sabha, the Rajya Sabha is a permanent body and is not subject to dissolution; instead, one-third of its members retire every two years, with elections held to fill those vacancies. Members representing states are elected indirectly by the elected members of the State Legislative Assemblies through a system of proportional representation using a single transferable vote, while representatives from Union Territories are chosen in accordance with laws enacted by Parliament. In the case of Kuldip Nayar vs. Union of India (2006)[127] , which challenged the constitutional validity of amendments (Act 40 of 2003)[128] to the Representation of the People Act, specifically requiring open ballot voting in Rajya Sabha elections and removing the residency requirement for candidates, the judgment affirmed Parliament's power to modify electoral laws for the upper house, clarified that the federal principle does not strictly require Rajya Sabha members to reside in their represented state and established that open voting, while departing from secret ballots in Lok Sabha, does not inherently violate constitutional principles for Rajya Sabha elections

According to the Constitution, the Council of Ministers is not answerable to it, the constitutional text, but instead to the elected legislature (Lok Sabha). These factors make the Rajya Sabha's position in national affairs somewhat subordinate to that of the Lok Sabha. It was intended to serve as a platform for seasoned public figures to gain access without having to deal with the chaos of a general election, which is unavoidable in order to secure a seat in the Lok Sabha. Therefore, the Upper House's strength is in its ability to use talent, expertise, and knowledge that could otherwise be lost for the benefit of the nation.[129]

The President of India is an integral part of Parliament, as the constitutional head of the country, he summons and prorogues Parliament, addresses its first session each year, and grants assent to bills, thereby enabling their enactment while functioning as the constitutional head of the Union. This was a topic pondered and debated over intensely by the framers of the constitution, especially regarding the President’s role as a figurehead which was to be reflected in his indirect

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[126] *104th Constitutional Amendment Act, 2020*
[127] *Kuldip Nayar vs Union Of India & Ors,* AIR 2006 SUPREME COURT 3127.
[128] *The Representation Of The People (Amendment) Act, 2003*
[129] M. P. Jain, *Indian Constitutional Law*, (LexisNexis, 9th Edition, 2025).

election. If the President was elected by adult franchise "and yet (we) did not give him any real powers, it might become slightly anomalous", said Jawaharlal Nehru, especially since "we wanted to emphasize the ministerial character of the Government, that power really resided in the Ministry and in the Legislature and not in the President as such".[130] Thereby, the Union Constitution Committee was fully agreed that the President should be a constitutional head, and the idea of his direct election was considered only in passing.

The question of parliamentary overreach by either the Lok Sabha or Rajya Sabha in India is generally handled under the doctrine of separation of powers and the principle of judicial review, with the Supreme Court serving as the ultimate interpreter of the Constitution. This is further depicted in the case of Kesavananda Bharati (1973)[131], in which The Supreme Court held that while Parliament has the power to amend the Constitution (under Article 368)[132], it cannot alter or destroy its fundamental features, such as the supremacy of the Constitution, the rule of law, and judicial review. This acts as the primary judicial check on potential legislative overreach by both Houses.

THE CHAIRMAN

The concept of a Rajya Sabha in India was first birthed in the oppressive colonial legislative environment created by the British, during the Montague-Chelmsford Reforms (Govt. of India Act, 1919). This reform created a second chamber to offer a careful review and represent states. The position of Chairman was engineered to avoid an interregnum due to the absence of the President and ensure the implementation of impartiality in the system of bicameralism, which further underwent significant evolution.

Although the Indian Constitution establishes the Lok Sabha as the more powerful body, as it should be since it is directly elected by the people, and that the Rajya Sabha has much less powers. But thanks to the eminence of Dr. Radhakrishnan, the first Chairman, and the respect he

[130] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, London, 1966).
[131] *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.
[132] *The Constitution of India*, Art 368

enjoyed from the first Prime Minister Jawaharlal Nehru, and the attitude of Pandit Nehru to the Rajya Sabha and his cooperation with the Chairman, it became firmly established that both the Houses of Parliament were equally important. Neither was superior or inferior to the other, each enjoyed its powers under the Constitution and had its own role to play. This position was clearly established in what is known as N.C. Chatterjee's case, which further enabled the procedure through which Rajya Sabha members could become members of the Public Accounts Committee with full rights, and following this precedent they later became full members of the Committee on Public Undertakings[133]. This is a depiction of a mutually respectful and intellectual harmony among the Chairman and other representatives, showcasing the resulting growth within the branches of the parliament.

According to Article 64[134] of the Indian Constitution, the Rajya Sabha's Chairman's position is ex officio (or through an external office) of India's Vice President; consequently, there is no separate election for the position of the Rajya Sabha Chairman. Essentially, to elect the Rajya Sabha Chairman is to elect a Vice President of India. The Vice President of India is elected by an Electoral College composed of all elected and nominated members of both Houses of Parliament, the Lok Sabha (the lower house of Parliament) and Rajya Sabha (the upper house of Parliament), using a method called proportional representation by a single transferable vote and by secret ballot. In order to be considered eligible for election as Vice President, an individual must be a citizen of India, at least 35 years old, and qualified to be a member of the Rajya Sabha. The Vice President serves a five-year term and can be removed from office by a resolution passed in Rajya Sabha with the agreement of Lok Sabha per Article 67. The Chairman holds the highest position within the Rajya Sabha as designated by the Constitution under Article 64. The basis for this foundation is primarily, as stated beforehand, the rule of law, the Rules of Parliament, established practice and tradition.[135]

As Chairman of Rajya Sabha, the Vice President presides over the sessions/meetings of the Rajya Sabha and is responsible for ensuring orderliness in the conduct of its business. The role of the Chairman as presiding officer is additionally defined by Article 89[136], which gives them the

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[133] B. N. Bannerjee, *A Commemorative Volume*, (Prentice- Hall, New Delhi, Secretariat of Rajya Sabha, 1988)
[134] *The Constitution of India*, Art 64
[135] Rajya Sabha Secretariat, *Ruling and Observations from the Chair*, (New Delhi, 2018).
[136] *The Constitution of India*, Art 89

authority to decide who speaks, maintain discipline within the House and enforce compliance and cooperation with the parliamentary rules. In case of any disorder occurring within the House, the Chairman has the authority to either adjourn or suspend the proceedings. Under Article 110(3), the Chairman has the power to determine whether a bill is a Money Bill at the time of its referral to the Rajya Sabha, and this decision is final. He also acts as the final adjudicator as specified in the Tenth Schedule of the Constitution.[137] Responsible for nominating members to various Parliamentary Committees, presiding over debates, calling motions, resolutions and questions, and for counting votes, while the Chairman is not technically a member of the Rajya Sabha, he is entitled to cast a deciding vote in the event of a tie.

THE DEPUTY CHAIRMAN

The Deputy Chairman is elected by members of the Rajya Sabha, the upper chamber of Parliament, from amongst themselves and holds office continuously as long as he remains a member of the House, or until he resigns or is removed from office by a resolution of the Rajya Sabha. He performs a number of key responsibilities, primary of which is his role to preside over the sittings of Rajya Sabha during the absence of the Chairman. While on the chair, he maintains the order and decorum in the House, regulates the debates, gives recognition to Members to speak, and puts questions before the House to vote. His decisions on points of order are normally final. Besides, as a Deputy Chairman, he protects the rights and privileges of members, contributing much to the smooth and efficient functioning of the House. He may refer matters to parliamentary committees and guide discussions in a manner that is fair and impartial. In the capacity of presiding officer, he exercises powers analogous to those of the Chairman.

The Deputy Chairman is supposed to be impartial and above partisan politics to maintain the dignity of the House. Thus, the office of the Deputy Chairman has a crucial position in

[137] Rajya Sabha Secretariat, *Handbook for Members of Rajya Sabha*, (New Delhi, 2024).

reinforcing parliamentary democracy and ensuring the effective functioning of the legislature in India.

THE SPEAKER

The Speaker is believed to have acquired an independent status historically sometime during the Prime Ministership of Walpole in the first half of the 18th century and functioned as the spokesman of the House of Commons, who summed up the proceedings of the meetings in the house and thereafter conveyed it to the monarch.[138] In contemporary India, the Speaker's authority originates from many sources, including the Constitution of India, particularly Articles 93-97, the Rules of Procedure and conduct of business in the Lok Sabha parliamentary conventions, and the President.[139]

The Speaker acts as the presiding officer of the House. Elected by the members of the Lok Sabha and represents an impartial authority for maintaining order, interpreting procedural rules, and protecting the rights and privileges of Members of Parliament. He or she prescribes the agenda, regulates the admission of questions and debates, and certifies Money Bills. It has been said of the office of the Speaker that while the members of Parliament represent the individual constituencies, the Speaker represents the full authority of the House itself. He symbolizes the dignity and power of the House over which he is presiding.[140] In upholding democratic principles and parliamentary traditions, this ensures that deliberations are conducted fairly, substantially, and in the true spirit of the Constitution.

The Speaker of Lok Sabha is elected from amongst its own members, as is clarified in Article 93 of the Indian Constitution. This means that the Speaker has to be already a member of Lok Sabha

[138] U. N. Gupta, *Indian Parliamentary Democracy*, (Volume 2, Atlantic Publishers & Distributors, 2003).
[139] Lok Sabha Secretariat, *Speakers of Lok Sabha*, (Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha, 14th Edition, New Delhi).
[140] Ministry of Parliamentary Affairs*, Manual of Parliamentary Procedures in the Government of India*, (2018)

and share similar qualifications as any Lok Sabha member. The election is held in the first meeting of Lok Sabha in its new formation, and this is done through simple majority of members present and voting. The Speaker would stay as such for the entire duration of Lok Sabha, which is five years, and in fact would continue to be so even when Lok Sabha is dissolved till a new Lok Sabha elects another person as its Speaker. The person occupying this chair quits in three ways, namely through resignation in writing to the Deputy Speaker, ceasing to be Lok Sabha member, or as resolved in an absolute majority of Lok Sabha total membership, with not less than 14 days' notice.

The constitutional status of the Speaker is firmly embedded in Articles 93 to 97 of the Indian Constitution. These provisions grant the Speaker a definite position in the parliamentary structure as they are no longer answerable to the executive or judiciary in matters strictly related to internal functioning of the house, enjoy protection under parliamentary privileges and are immune from court proceedings in matters involving procedural rulings made in the house. The office also holds the status equal to that of a cabinet minister in terms of protocol and remuneration. The Constitution of India under Article 97, provides that the Speaker's salary and allowances are not to be voted by Parliament and are to be charged on the Consolidated Fund of India.[141] Thus, this dual foundation of both legal and traditional precedent ensures the Speaker's office is both constitutionally robust and symbolically revered.[142]

As the guardian of the rights and privileges of the House, he presides over the sittings of the House, maintains order and decorum, and decides points of order. His decisions in regard to the interpretation of the Constitution, the Rules of Procedure, and parliamentary precedents are final and not subject to appeal within the House. He decides whether a Bill is a Money Bill under Article 110, and his decisions in this regard are conclusive. He regulates debates, allows or disallows motions, questions, adjournments, and discussions, and may suspend members for disorderly conduct.[143] His administrative powers include acting as the ex- officio chairperson,

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[141] Lok Sabha Secretariat, *Speakers of Lok Sabha*, (Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha, 14th Edition, New Delhi).
[142] U. N. Gupta, *Indian Parliamentary Democracy*, (Volume 2, Atlantic Publishers & Distributors, 2003).
[143] Vivek Kumar Chauhan, *The Indian Parliament: Structure, Powers, Functions*, (1st Edition, A. G Publishing House, 2025

constituting parliamentary committees appointing their chairpersons, and supervising the Secretariat. He is the *ex officio* President of the Indian Parliamentary Group (IPG), set up in 1949, which functions as the National Group of the Inter-Parliamentary Union (IPU) and the Main Branch of the Commonwealth Parliamentary Association (CPA). In that capacity, members of various Indian Parliamentary Delegations going abroad are nominated by him after consulting the Chairman of the Rajya Sabha. Most often, the Speaker himself leads such delegations. Besides, he is the Chairman of the Conference of Presiding Officers of Legislative Bodies in India. Under the Tenth Schedule, he acts as the adjudicating authority in disqualification cases arising on grounds of defection. The representative of the House, he communicates its decisions to the President, and other authorities. Though himself a member of the House, the Speaker does not vote in the House except on those rare occasions when there is a tie at the end of a decision. Till date, the Speaker of the Lok Sabha has not been called upon to exercise this unique casting vote.

The Speaker is looked upon as the true guardian of the traditions of parliamentary democracy.[144] However the impartisan, politically neutral nature of the position can only be upheld if there is fulfillment of two essential conditions, namely, (i) The Speaker's constituency must not be contested, (ii) the Speaker's office must be held in the highest regard and not as a stepping stone to higher political offices.[145]

In some recent instances, what can be construed as trespassing into the domain of the speakers' authority, the Supreme Court has even directly monitored the working of the Parliament or the state legislatures passing on the instructions to the speakers. The ruling of the speaker/chairman has been made subject to judicial scrutiny notwithstanding the provision of the tenth schedule added by the Fifty-Second Constitutional Amendment Act, vide Supreme Court ruling in the *Kihoto Holohan v. Zachillhu case (1992)*[146]. Then, there are several Supreme Court decisions that

[144] Lok Sabha Secretariat, *Speakers of Lok Sabha*, (Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha, 14th Edition, New Delhi).
[145] Maya Dube, *The Speaker in India*, (S. Chand, New Delhi, 1971).
[146] *Kihoto Hollohan vs Zachillhu And Others*, AIR 1993 SC 412

have set aside legislations of the Parliament on the ground of jurisdiction. Even the actions within the legislative bodies have been subjected to judicial review. [147]

THE DEPUTY SPEAKER

The Deputy Speaker is an officer of great importance in the Lok Sabha with a constitutional role to play. He is elected by the members of the Lok Sabha from amongst themselves, immediately after the election of the Speaker. The Deputy Speaker continues his term until the Lok Sabha dissolves and works in very close coordination with the Speaker. The Deputy Speaker is mainly responsible for chairing Lok Sabha sittings in the absence of the Speaker, assuming all responsibilities vested in the Speaker. This includes ensuring orderly functioning of the House, conducting debates in a proper manner, allowing Members to express themselves, and giving rulings on points of order, in conformity with the rules of parliamentary procedure. In addition, the Deputy Speaker protects the rights and privileges accorded to Members of Parliament and enforces adherence to parliamentary procedures. He may also be appointed as Chairman of parliamentary committees to contribute to detailed legislative work. The Supreme Court retains jurisdiction to intervene in elections to the office of the Deputy Speaker or matters connected with such election when there are issues related to constitutional validity, anti-defection considerations under the Tenth Schedule, or violations of fundamental principles and abuse of power. However, judicial intervention is generally circumscribed, for courts do not usually interfere with the way elections are conducted. As seen from jurisprudence emerging from the 2023 Maharashtra political crisis due to which the *Nabam Rebia v Deputy Speaker* (2016)[148] The judgement was referred to a larger bench for reconsideration, thus depicting that intervention may happen when the Speaker acts in excess of jurisdiction or when decisions are unduly delayed in cases involving no-confidence motions directed against the Speaker himself.

[147] Edited by Ajay. K. Mehra, *The Indian Parliament and Democratic Transformation,* (Routledge, New York, 2018)
[148] *Nabam Rebia And Etc. Etc. vs Deputy Speaker*, Judgement Reversed in 2016

THE POWERS OF CONSTITUTIONAL PRESIDING OFFICERS: LEGAL ANALYSIS

Due to the significant value of presiding officers with regard to the running of the legislative part of the government, the aforementioned roles have come under intense judicial scrutiny across multiple instances since the time of independence.

In the case of P.N Dubey v. Union Of India And Others[149], the Madhya Pradesh High Court dismissed a public interest litigation, calling for the removal of a corrupt Rajya Sabha member, thus explaining that constitutional provisions carry mechanisms for disqualification and removal, alluding to the doctrine of separation of powers, as courts, as held in the present case, cannot normally issue direct writs to the presiding officers of Parliament commanding them to remove a member.

The 52nd Amendment Act in 1985 introduced the Tenth Schedule to the Indian Constitution. Its agenda was to control defections through disqualification, whether voluntary through resignation or through voting against party signals and gave powers to both the Speaker of Lok Sabha and the Chairman of Rajya Sabha to decide upon disqualifications in accordance with such a schedule. In effect, defection would be considered an offense against a party's code, which would help to ensure greater stability in governance as a means to reduce the attraction towards changing loyalties. Presiding officers would have quasi-judicial powers in matters of disqualification in accordance with such a schedule, though not unaccountable to court scrutiny, as clarified in the Kihoto Hollohan[150] case.

Following the ruling of the Delhi High Court, judicial review on behalf of the Speaker of the Lok Sabha can only be based upon jurisdictional errors as defined in the Constitution, specifically regarding violations, actions taken in 'bad faith' or an absence of due process or "natural justice" rather than on the substance of the decision, highlighting the considerable administrative power

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[149] *P. N. Dubey v. Union of India And Others*, AIR 1989 MP 225
[150] *Kihoto Hollohan vs Zachillhu And Others*, AIR 1993 SC 412

that has been granted to the Speaker by the Parliament under various Acts, including the Lok Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1955, to control substantial appointments to and regulate service in the Secretariat in the case of P.K. Bhandari vs The Hon'Ble Speaker Lok Sabha.[151]

The 2007 Raja Ram Pal v. Hon'ble Speaker, Lok Sabha landmark judgement in which the Supreme Court held that while Parliament enjoys certain privileges as set forth in Articles 105/194 of the Constitution, all actions taken by Parliament can be subject to judicial review by the Courts based upon illegality and/or unconstitutionality; therefore, Courts will provide a balance between parliamentary sovereignty and constitutional authority. The Supreme Court established that acts of the Speaker are not absolute. Furthermore, such acts will be subject to judicial review by the Courts to ensure compliance with the Constitution.[152]

In the case of Keisham Meghachandra Singh v Speaker, Manipur Legislative Assembly (2020), the Court reinterpreted Kihoto Hollohan[153] by stating that only judicial orders that stop the Speaker from performing duties are prohibited as quia timet. Judicial orders requiring prompt decision-making do not fall within this category. Also, the Court noted that the defector's former party members had a significant effect on why the Speaker acted in the manner that he did and how this action led to misuse of power which caused serious damage to the fair implementation of the law. Finally, the Court suggested that the Speaker should be replaced with a non-partisan, neutral tribunal.[154]

The Speaker functions as both a political official and an adjudicator over disqualification petitions, a fact further established in the case of Rajendra Singh Rana And Ors vs Swami Prasad Maurya And Ors. Determination of whether or not a split exists within a political party is part of a Speaker's responsibility when considering petitions for disqualification. The Court emphasized the judicial review function which exists over the decisions or actions taken by the Speaker on

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[151] P.K. Bhandari vs The Hon'Ble Speaker Lok Sabha, 1997(42)DRJ52
[152] *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*, AIR 2007 SC (SUPP) 1448
[153] *Kihoto Hollohan vs Zachillhu And Others*, AIR 1993 SC 412
[154] *Keisham Meghachandra Singh vs. The Hon'ble Speaker Manipur Legislative Assembly and Ors*, 2020 SCR 132 2020 (2) scale 329

the basis of disqualification petitions, the authority of which cannot be eliminated through the Speaker's assertion of absolute immunity. Expeditious and timely decisions regarding disqualification petitions are necessary in order to prevent protracted proceedings from occurring; there are no exceptions to this necessity as indicated by the specific circumstances leading up to this case.[155]

[155] *Rajendra Singh Rana And Ors vs Swami Prasad Maurya And Ors*, AIR 2007 SUPREME COURT 1305

CHAPTER 6: OATH, QUALIFICATIONS & SALARIES OF THE MPs

(ARTICLE 99- 106)

BY CHETNA SHARMA

INTRODUCTION

India, the world's largest democracy, rests on the foundation of the four pillars of the constitution, one of which is the legislature, the most important and first one. These, along with the courts and executive, make up the democratic structure. Thus, the parliament becomes the very heart of democracy. The people's speech, which is represented by over one billion citizens, is heard and passed in the parliament at every decision, debate, or law. A carefully designed constitutional structure that guarantees the hearing of every voice from every corner of the country in India's parliament lies behind this grandeur.

The articles from 99 to 106 of the Indian Constitution are considered to be of great significance in the Constitution. These Articles actually support the Constitution as a whole. They provide the criteria for the people's representatives to come, the modes of their working in the respective offices and also their salaries. The whole of this together puts constitutional democracy in the daily governance process.

The creators and the drafters of the constitution (articles) were conscious of their responsibility and the burden that would fall on future generations. They had the lessons learned from the British rule in India and the global factors of democracy from the different countries. They realized that the liberation which they had been fighting for in decades couldn't come without the

burden of responsibility. A member of parliament cannot be in their position unless it is at the same time worthy and accountable as their actions have consequences that affect thousands of people.

This chapter explains how the constitutional provisions affect daily life making sure that only the qualified persons get the post, work and remuneration to make the Constitution work independently and efficiently. Simply put, the oath is the pledge of allegiance to the country, the qualification is the barrier and the salary is the payment.

HISTORICAL BACKGROUND

All Acts and provisions have their own history and roots go back to the same origin, The Colonial Period. With this, the oath, qualification and salaries of the members of the parliament (Article 99-106) has the same story. The backbone of today's parliament derives from the pre-independence Indian government under British rule (1919-1935).[156] During the Pre-independence era, the members are required to take an oath towards the British Empire rather than the country itself to show submission and obedience. With this, the qualification and the disqualification for public office depends on the tax payments and the loyalty to the empire itself. The salaries of the members were under the direct control of the governor general to ensure complete obedience and the control the British Empire had on the members at that time.[157]These pros and cons of the empire made the makers of the constitution realise the weakness and strength of the colonial government itself which later became a lesson to be remembered for the makers as they were drafting the constitution itself.

[156] B. Shiva Rao, The Framing of India's Constitution (1st edn, The Indian Institute of Public Administration 1968)
[157] 'Constitutional History of India' (Constitutionnet) <https://constitutionnet.org/country/india> accessed 13 December 2025

Influence from Other Constitutions

The Constitution of India is very popularly known as the Borrowed constitution as many of the provisions, system, design are borrowed. It's borrowed, not copied as the makers modified the Borrowed aspects to fulfill the needs of our diverse country.

- British: Makers of the constitution adopted the westernised parliamentary government where the executive power lies in the hands of the council minister and the legislature control remains with the restrictions of proper requirement and standards.

- United States: The makers of the constitution took the system of proper reimbursement for the legislature in order to prevent dependence and dominance on the executive.

- Canadian: Took the federal balance from Canada in India the Raja sabha.

CONSTITUTION ASSEMBLY DEBATES

The Drafters of the constitution Dr.Bheem Rao Ambedkar stated that the oath is not just a pledge but the promise to the country of loyalty and Respect to its principal, rules, rights, responsibility and guidelines.[158]

Many other scholars of the constitution whether they are the makers, drafters or critics of the constitution. Everyone has something to express whether it is positive or negative or just an expression of gratitude. Opinion and ideas came from every part of the nation: religion, gender, caste, color to fulfil the diverse needs of our diverse country.

Thinkers and members like K.M. Munshi and Alladi Krishnaswamy Ayyar also agreed and added the qualifications should be the right path for the rightful position rather than wealth or prestige which is Contrastingly different from the colonial period.

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[158] V. N. Shukla (rev. Mahendra P. Singh), *Constitution of India* (Eastern Book Company, 14th edn., 2021) 228.

Salary and allowances which was also one of the topics in debates. It was highly debated whether the salary should be that much to ensure that even the modest background candidates can do their job without any financial hardship. Ultimately, it was decided that the parliament itself should have the power to decide the salaries to ensure that there is no domination or abuse of power against the members.[159]

RATIONALE FOR INCLUSION

These provisions and articles were added in the constitution of India only to achieve few things.

1. Legitimacy: To ensure that every member of the parliament pledge to the constitution itself which ultimately puts the constitution at the highest regards.
2. Diversity: It ensures that India's diversity is being reflected into the members depending on their qualifications and protects the dignity of the constitution.
3. Independence: It is to ensure the members are not dependent on any outside bodies in the terms of allowances and salaries.
4. Accessibility: making sure that all individuals from all social backgrounds have the right to participate in this election that is based on the qualifications.

POST CONSTITUTION DEVELOPMENT

From 1958 to today, The parliament has modified and used its power to adjust pay and allowances of its members under article 106. Various commissions have studied them from time to time to ensure account ability and exposure. Judicial intervention on privileges has also insured the balance between autonomy and responsibility.

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[159] Govt. Notifies 24% Salary Hike for Members of Parliament, **Bus. Standard** (Mar. 24, 2025), https://www.business-standard.com/politics/govt-notifies-24-salary-hike-for-members-of-parliament-effective-apr-2023-125032401198_1.html.

Text and Key Features of Articles 99–106

Article 99-106 talks about the members salaries, oath and even the qualifications. Article 99 talks about the Oath or affirmation by members.[160]

Article 99

In simple words article 99 declares that before taking any duties as the member of parliament, a member must take an oath towards the constitution of India.[161] Without this, they cannot take part in any of the parliament procedures including the voting as well. It is mandatory for all the members of the parliament elected and nominated as well. It ensures accountability commitment towards people of India and the constitution.

Article 100 - Voting in House, Power of the Houses

In simple words, This article 100 talks about the members presence in the parliament of India. This article declares that even if the members are absent on the days of decision making or otherwise. The parliament shall continue to function normally without hindrance. The decision will entirely depend on the voting of those who are present and did participate actively.

Article 101 - Vacation of seats

In simple words, this article 101 talks about the legitimacy dual membership of both the parliament and the state assembly. A member of a parliament cannot be the member of a state assembly at the same time. It also states that members of a particular house can be disqualified if absent for more than 2 months (60 days) without any reason or permission.

Article 102 - Disqualification

In simple words, this article talks about the Disqualification of members of the parliament.

If an MP is a person of an unsound mind, makes an improper benefit from the government or is declared unworthy because he/she has committed any offence which is a crime by laws of the parliament. Another condition of the disqualification is a loss of citizenship. It ensures that

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[160] The Constitution of India, 1950

[161] M. P. Jain, Indian Constitutional Law (8th edn, LexisNexis, Gurgaon, 2018)

people who are representing the country's different regions, race, Ethnicity, gender, caste etc. are capable and ethical human beings to ensure a good representation.

Article 103 - Questions on the MPs Qualifications

In simple words, this article talks about the freedom of speech on the members qualifications in the parliament. If someone challenges an MPs qualifications or eligibility, the election commission will examine and advise. The final say on the matter like that will be the president itself. This ensures that the decision is not being affected by any outside elements and is fair and impartial.[162] It also ensures that there is no involvement of any political factor that can negatively affect the decision making in such a sensitive matter and can lead to the dominance of one political party.

Article 104 - penalties

In simple words, This article talks about consequences of sitting or voting in the parliament before making an oath or while being disqualified. If an MPs does the voting or sit in parliament before taking his/her oath or if MPs are disqualified and still he/she participates in voting, they are required to pay a particular amount as penalties. These amounts are set by the parliament itself. It ensures illegal representation in the parliament and it also protects the decision itself.

Article 105 - Benefits of being an MP

In simple words, This article talks about the power, privileges and immunity of parliament that are given to its members as they perform their duties diligently. If an MPs speaks against the government or fellow member inside the parliament House. He/She can't be held liable in the court of law in personal or public offence.[163] The MPs have the right to speak freely in the parliament House without any fear of a legal action. He/She can also enjoy special rights to perform their duties. It protects them from the dominance of the outside body.

Article 106 - Salaries of MPs

[162] D.D. Basu, Commentary on the Constitution of India Vol.2 (9th edn, LexisNexis, Gurgaon, 2016)
[163] Members of Parliament – Qualifications, Oath and Disqualification, PrepP.in, https://prepp.in/news/e-492-membership-of-parliament-indian-polity-notes.

In simple words, This article talks about the salaries and allowance of the members of the parliament. This article declares that salaries of the members of the parliament are to be decided by the parliament itself until such a law is made. This allows the periodic review of the salaries of the members who are given allowance for the travel, consistency in the line of the duty. This allows the people from every background to participate in the governance without any financial hindrance.

Summary

From Article 99-106 together establish a few things that are meant to help the governance of the country. From the entry requirements for the members of the parliament to eligibility criteria, rules, discipline and last but the most important the financial independence. There are few things that are established from article 99-106. There is one more thing that is established but is not for the members but the protection of the autonomy and the respect for the constitution.

CASE LAW ANALYSIS

This section of the chapter talks about the important court decisions that have shaped the functioning of the article 99-106 oath, qualifications, disqualifications, privileges and salaries of the members of the parliament. Each of the cases include citation, facts , issues and impact.

1. Shamsher Singh vs State of Punjab (1974)[164]

Citation: (1974) 2 SCC 831,Connected to : Article 99

Facts:This case questioned whether the president has independent will when it comes to exercising his/her powers over matters like appointment and removal of the judicial service members.

Issues: Is the president and governor meant to act on ministerial advice or not?

Judgement: The Supreme court declares that the president and governor are to act according to the advice of the council ministers except in exceptional circumstances.

[164] Shamsher Singh vs. State of Punjab (1974) 2SCC 831.

Impact: The court clarifies that the MPs with the President are the part of parliament and the parliament works for the satisfaction of the people Aka. the MPs.

2. Kihoto Hollohan Vs Zachillhu (1992) [165]

Citation: 1992 (2) SCC 651, Connected to: Article 102

Facts: Questioned the authority of the speaker on the disqualification of MPs on unethical speaking.

Issues: Does the speaker really have the power to decide without any judicial review?

Judgement: The Supreme Court held that the speaker does have the authority and that does come with the judicial review but only after the president has passed the order.

Impact : It upheld anti- defection laws and strengthened ethical accountability of MPs

3. Raja Ram Pal vs speaker, Loksabha (2007)[166]

Citation: (2007) 3 SCC 184, Connected to : Article 105 and 101.

Facts: Parliament conducted a string operation to identify the ongoing corruption of the members of the parliament. 10 MPs were exposed for taking bribes for asking questions in the parliament.

Issues: Does the parliament have their authority to remove a member without a proper procedures (Article 101)

Judgement: The court held that parliament does have the authority to remove its members for unethical conduct.

Impact: The parliament authority and privileges exist to protect the dignity of the constitution and even the parliament is not above the constitution when it comes to authority.

4. Amrinder Singh Vs Punjab Vidhan Sabha (2010)[167]

Citation: 6 SCC 113, Connected to: Article 105

Facts: An MLAs was expelled for his disturbing remarks towards the female member of the house.

Issues: Does the privilege of the members of the parliament have no limits?

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[165] Kihoto Hollohan vs Zachillhu 1992 (2) SCC 651

[166] Raja Ram Pal vs. Speaker, Lok Sabha (2007) 3 SCC 184

[167] Amrinder Singh vs. Punjab Vidhan Sabha 6SCC 113

Judgement: The privileges are only accumulated when the act is directly related to the legislature duties.
Impact: Upheld and restored the balance between the fairness and privileges.

Summary of Case Laws

These cases establish that constitutional values overwrite the personal privilege States the constitutional fairness and authority is more important than privileges of the MPs. This also ensures accountability of MPS on ethical approach.

APPLICATION & CHALLENGES IN THE WORKING OF ARTICLE 99 - 106

Article 99 - 106 talks about oath, qualifications, disqualification and privileges of the members of the parliament. Even though the constitution itself is pretty clear, the application always leaves aside some pretty large and small gaps.

Practical Application

Administration of Oath (Article 99)
Before taking part in any of the parliament procedures any member of the parliament must take a pledge or an oath towards the constitution that ensures loyalty and respect for the constitution itself. Without an oath a member of the parliament cannot speak, vote or even withdraw his/her salary.[168]

Example: A newly elected MPs in every election must take an oath.

Eligibility and Ineligibility (Articles 102 and 103)

[168] The Constitution of India 1950, Art. 99

- Eligibility requires citizenship and registration as a voter.
- Ineligibility is due to an office of profit, fraud, betrayal, bankruptcy, and mental illness.
- Ineligibility is a matter for the President to decide, upon the recommendation of the Election Commission.

Example: Entry of MPs is outlawed, as ruled in the Yadav case (2013).

Parliamentary Privileges (Articles 105 and 106)

- MPs are privileged to speak freely and are granted immunity for what they say, and vote, in Parliament.
- This is to ensure the independence of the functioning of legislators.
- These are not privileges to engage the institution in wrong doing, but to protect it.

Example: Raja Ram Pal v Speaker, Lok Sabha (2007).[169]

Article 106: Parliamentary Remuneration

- Parliament has the right to prescribe its own remuneration by law.
- Parliamentary remuneration includes a constituency allowance, a daily allowance, reimbursement of travel expenses, and office expenditure.
- To enable effective functioning and prohibit corruption.

Example: In 2017, the Supreme Court proposed a salary commission to be appointed.[170]

Challenges in implementation (Practical)

Disqualification: Although disqualification itself is a powerful tool that empowers and protects the power from misuse, this same power has gaps and the speaker's decision can become powerfully controversial and the disqualification under anti-defection law can be delayed and often done in order to get political advantages.

[169] Raja Ram Paul vs. Speaker, Lok Sabha (2007) 3 SCC 184

[170] The Salary, Allowances and Pension of Members of Parliament (Amendment) Act, No. 20 of 2018 (India)

Controversises: It was decided that the members of the parliament should decide their salaries until parliament passes a law itself but this also leads to criticism and lack of transparency that causes the seed of doubt.

Misuse: Parliamentary privileges that are defined under article 105 were written specifically to make sure that members of the parliament have the right to speak freely in the parliament to express their opinion fully with any outside concerns and to make sure that the parliament had the autonomy to work without any pressure but at the ground level the same had to face many significant challenges. For example members of parliament using these powers not just for doing their job but also to stop people from questioning them for example: journalists.

In Raja Ram Pal vs. Speaker lok sabha, the supreme court declared that parliamentary privileges doesn't include the protection for the public scrutiny when they are questioned or when the values of our constitution are under threat. This judgement clears that the parliamentary privileges are a necessity not a shield to be used when questioned.

Ethical Concern

One of the most serious issues that now is affecting and harming the Essence of Articles 99–106 is the election of people with criminal backgrounds in today's politics. Even though our constitution clearly states the standards for the members of Parliament, it doesn't ban selection of the individuals based on the criminal records only which is pretty concerning. Which leads to individuals with heavy criminal charges get elected, take oath and exercise the powers and privileges of the position under article 105.

The presence of individuals with criminal background creates distrust among the public as the oath is pledge of the Members of the parliament to fulfill their duties with honesty, sincerity and to always respect and uphold the constitution of India. Usually in such matters the judicial intervention is delayed due the complexity of the system letting such individuals stay in the system way longer than they should.

In an interesting case Public Interest Foundation Vs Union of India (2019)[171] The supreme court of India admitted and expressed the need for electoral reforms highlighting that the election of individuals with serious criminal backgrounds is a threat to constitutional democracy. This shows the clear gap between ideas and the ground realities especially when it comes to accountability.

Lack of Accountability

Originally, the oath is meant to ensure the members of parliament loyalty to the constitution and the promise to fulfill their duties under their position but in reality accountability of the members of the parliament has been questioned especially reading the issue of the wastage of the public funds. The actions that are promised by the constitution and the reality highlights the huge difference between ideas and the actual reality.

COMPARATIVE PERSPECTIVE

A comparative perspective is always perfect in order to understand how Indian democracy is different from other democracies around the world.

1. Oath and Qualification

In India, the president/ Chairperson of the house is who the elected member of the parliament takes an oath to. The qualification comes to a citizenship, voter, qualifications and age not taking oath and not meeting qualifications has detailed procedures and grown to the disqualifications mentioned in the constitution.[172]

In the United Kingdom, the speaker of the house of the common is who the members are supposed to take an oath to and the qualification leads to British citizenship and elected MPs and

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[171] Public Interest Foundation vs Union of India (2019) 3 SCC 224

[172] **Journal of Parliamentary Information, Parliament of India**, *Oath of Members: Constitutional and Procedural Aspects*, available at https://eparlib.sansad.in/bitstream/123456789/761265/1/jpi_October_1957.pdf?utm_source=chatgpt.com

not meeting this qualification leads to disqualifications from the house. (House of Commons Disqualification Act, 1975)

In the United States, the speaker administers the Oath and the qualification and the candidate age should be 25 (House), 30 (senate) and must hold 7 to 9 years of citizenship and the constitution describes strict eligibility qualifications and courts all around the country cannot intervene. The perfect illustration is Powell v. McCormack, 395 U.S. 486 (1969).

In Canada, the governor general is the person candidates administrative their oath, and qualification including citizenship, age and residency. The members there are appointed and not elected.

2. Privileges of legislature

In India, the privileges are listed under the article 105 and 194 and are based on constitutional and parliamentary presence. In the United Kingdom, the privileges are historically absolute and are the root for the Indian system.

Observation: From what I personally observed the Indian privileges can be studied and denied and criticized by the public and judiciary forces unlike the UK where privileges are a sovereign function.

3. Salaries and allowance

In India, the salaries and allowances are decided by the parliament itself. The authority was given by the constitution in order to avoid interference and dominance of an outer force other than the parliament under article 106 and it was criticised as a conflict of interest.[173]

In the United Kingdom, the salaries and allowances are decided by the independence body called IPSA that will record everything. One of the most prominent features of this IPSA is its public

[173] Runa Mehta Thakur, *Vicissitudes of Parliamentary Privileges in India*, 4 **J. Emerging Tech. & Innovative Res.** 222 (2017), https://www.jetir.org/papers/JETIR1712222.pdf.

record for expenses reporting means every penny used by the ministers are for the public to see and easy to access. This prevents misuse of power and wastage of money.

In the USA the salaries and allowances of the members are ultimately decided by the vote but automatic increase to tackle inflation is much required. It is unless the Congress rejects or opposes. One of the prominent features of this USA system is that the detailed public disclosure means everything regarding salaries are for the public to see.

In Canada, the salaries and allowances of the members are decided by the independent commission recommendation rather than the members itself. This allows the salaries and allowances to be reviewed after once in a while.

Many of the above examples show that democracies around the world prefer that independent bodies should decide the salaries and allowances of the members instead of the members itself or the other parts of the working bodies.

4. Disqualifications and ethics

In India, the disqualifications of the members are done by the president or the election commission. Anti defection laws are used and applied in many of the circumstances.
In the UK, the MPs are to be taught again by the public (Votes) under recall of MPs Act 2015.
USA and Canada: in USA and Canada there are ethics committees that keep the members' behaviour in check if found suspicious or guilty. The committees can recommend suspension or expulsion.

REFORMS

In India elections are a big deal specially when it is the election that decides who is going to be the next President of the country even small elections matter the same because it decides the

future of a country specially when the country is so diverse and geographically wild spread. With this there are some open gaps that need immediate attention like the rising influence of money and power in the elections. Money is needed by every political party in order to have a good campaign in the elections. This leads to some hidden strings as more investment means more influence if the supported party won. Another important gap is in the public view; it is none other than the criminalisation of politics. Politics is seen as a field of schemes, underground connections and what not. This leads to less and less participants, especially youths when it comes to being elected as a leader of a particular party from a particular region. Especially nowadays with one party dominating the voter turnout is getting less and less. There are various reasons from the mindset of “nothing will Change” or “We don't have a better option than this party”. Law Commission of India, 170th & 244th Reports supports this statement with the clear results.

RECOMMENDATIONS

State funding of elections even partially can do wonders when it comes to reducing money influence as it is getting more serious as the time passes. Banning Candidates with serious criminal charges from participating in an election is also one of the most effective methods. This will not only partially prevent misuse of power but also prevent the criminalisation of politics. The funding received by the political parties should be disclosed to people itself, easy to access. This will allow transparency.

CHAPTER 7: LEGISLATIVE PROCEDURE & PRESIDENT’S ASSENT (ARTICLE 107- 111)

BY ASHISH PRATAP SINGH

INTRODUCTION

In 2023, even state bills had been pending with governors or the president for more than two years without a decision. Articles 107-111 of the Constitution establish a clear legislative process, requiring bills passed by Parliament or state legislatures to be passed by the President or governor before they become law.[174] The executive can give assent, withhold it, or return the bill for reconsideration. However, the Constitution provides no time limit for this decision, resulting in a gap that has allowed indefinite executive delay to function as a de facto veto.

While constitutional scholars acknowledge that presidential assent can balance legislative authority, defend national interests, and uphold legal standards, the lack of time constraints reduced his role from careful analysis to strategic delay.[175] The 2023 Supreme Court decision in State of Tamil Nadu v. Governor of Tamil Nadu addressed this gap by establishing a three-month deadline for executive action, but questions about enforceability and compliance remain unresolved.

This chapter examines the constitutional framework that governs legislative procedure and presidential assent in India, focusing on the tension between legislative sovereignty and executive discretion. It begins with British-era systems and traces the changes shaped by constitutional debates. The Constitution's key provisions, Articles 107-111, are clearly stated,

[174] D D Basu, Introduction to the Constitution of India (27th edn, LexisNexis 2024)

[175] M P Jain, Indian Constitutional Law (9th edn, LexisNexis 2025)

with legal meaning and function indicated. The discussion concludes with an examination of the current challenges facing India's divided power system.

HISTORICAL BACKGROUND

The Indian legislative process, along with the system of presidential assent, developed during the colonial period[176], influenced by global constitutional ideas. Prior to India achieving independence, the authority of its legislative institutions progressively grew. The rise in power stemmed from a series of significant legislative changes. Among these stood out the Regulating Act of 1773, along with the Indian Councils Acts; then came the Government of India Acts from 1919 and later 1935.[177] Commentaries on the 1919 and 1935 Acts emphasise that these statutes cautiously expanded Indian participation in legislatures while still reserving key subjects and ultimate veto power to the British executive so that representative bodies operated under tight imperial supervision.[178] They carved a divide between lawmakers and executors—this happened under British rule or while viceroys watched closely—with power usually tipping toward the Crown in the end.

During Constituent Assembly debates, members drew upon experiences of legislative gridlocks, centralisation under colonial governance, and examples from other federations. [179]The Assembly meticulously relied on the processes for enacting laws and the potential risks associated with the executive's absolute power. There are comparative models, such as the British parliamentary assent, the U.S. presidential veto, and the Australian system of the “governor-general’s reserve power,” that informed the final structure.[180] The framers intended for the president’s role to be

[176] B. Shiva Rao, The Framing of India’s Constitution (1st edn, The Indian Institute of Public Administration 1968)

[177] Granville Austin, Indian Constitution: Cornerstone of a Nation (Oxford University Press 1999)

[178] ‘Constitutional History of India’ (Constitutionnet) <https://constitutionnet.org/country/india> accessed 13 December 2025

[179] Constituent Assembly Debates, Vol. VIII, 157-196

[180] Nicholas Aroney and John Kincaid, Courts in Federal Countries: Federalists or Unitarists (University of Toronto Press 2017)

limited and ceremonial in most ordinary cases but substantive in instances involving the states' autonomy or the constitutional ambiguities. Analyses of the Constituent Assembly Debates on the draft article that became Article 111 show that members consciously rejected proposals for an aggressive presidential veto and instead framed assent as a limited, largely suspensive check that would be overridden once Parliament reaffirmed its will.[181] These historical apprehensions sought to balance swift legislative action with thorough constitutional review, thereby preserving the delicate balance of the federal compact.

CONCEPTUAL AND DOCTRINAL FRAMEWORK

In India lawmaking is governed by established legal procedures, with Parliament playing a central role. The rules found in Articles 107 to 111 governs how bills advance.[182] These articles explain, step by step, how a bill becomes law after it is submitted to Parliament. After Parliament votes in favour, the President must still give final consent before any new rule becomes effective. When a bill passes, the President, under Article 111, steps in as a safeguard; they can pause it, block it, or send it back, except in cases involving budgets or amending the Constitution.[183] The views of jurists like D.D. Basu, M.P. Jain, or H.M. Seervai largely agrees: the President's job is meant to allow for careful review while protecting the interest of the states, instead of blocking laws simply because it is possible.

The doctrinal debates centre on terms such as "assent," "blocking power," and "review."[184] Let us understand this with an example: the idea of violating constitutional operations (under Article

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[181] 'Constituent Assembly Debate on the Urgency of Giving Assent to Bills by Governor' (TheLawmatics, 13 April 2025) <https://thelawmatics.in/constituent-assembly-debate-on-the-urgency-of-giving-assent-to-bills-by-governor/> accessed 13 December 2025

[182] M P Jain, Indian Constitutional Law (9th edn, LexisNexis 2025)

[183] Seervai H M, Constitutional Law of India: A Critical Commentary with Supplement (4th edn, N M Tripathi 1991)

[184] Gautam Bhatia, 'Constitutional Detours and Perverse Incentives: How States will Respond to SC's Governors' Judgment' (Constitutional Law and Philosophy, 11 December 2025) <https://indconlawphil.wordpress.com/author/gautambhatia1988/> accessed 13 December 2025

356) or holding back state legislation for the President's review (covered in Articles 200–201)—these require close reading.[185] Jurists in federal law, along with court opinions, keep pointing out that presidential choices should be thoughtful rather than random, backed by solid legal safeguards. The absence of an explicit time limit for assent has led to complicated litigation and judicial pronouncements, including the recent Supreme Court directives on expeditious presidential decisions in cases of reserved state bills. Reports on the 2023–2025 line of decisions note that the Court treated prolonged inaction by Governors and by extension the President as constitutionally impermissible, insisting that assent, return, or reservation must be exercised within a reasonable and relatively short period.[186]

ARTICLE 107: INTRODUCTION & PASSAGE OF BILLS IN THE PARLIAMENT

Provisions as to introduction and passing of Bills.—(1) Subject to the provisions of articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.

(2) Subject to the provisions of articles 108 and 109, a bill shall not be deemed to have been passed by the House of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A bill pending in Parliament shall not lapse by reason of the prorogation of the House.

(4) A bill pending in the Council of States that has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.

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[185] Louise Tillin, Federalism and Democracy in Today’s India (Economic and Political Weekly, 18 August 2018) <https://www.epw.in/journal/2018/33/indias-democracy-today/federalism-and-democracy-todays-india.html#:~:text=in%20Today's%20India-,India's%20Democracy%20Today,to%20uphold%20in%20undemocratic%20settings accessed 13 December 2025

[186] ‘Presidential Reference on Powers of the Governor and President’ (Supreme Court Observer) <https://www.scobserver.in/cases/presidential-reference-on-powers-of-the-governor-and-president-re-assent-withholding-or-reservation-of-bills-by-the-governor-and-president-of-india/> accessed 13 December 2025

(5) A bill that is pending in the House of the People, or that, having been passed by the House of the People, is pending in the Council of States, shall, subject to the provisions of article 108, lapse on a dissolution of the House of the People.

Article 107 lays down the process of how ordinary bills may be initiated in either house, debated, amended, and voted upon. It provides for the stepwise progression of draft legislation through readings in both cases—committee scrutiny and eventual passage. Landmark cases have affirmed Parliament's autonomy to set internal procedures, except where the Constitution specifies otherwise.[187]

ARTICLE 108: JOINT SITTING OF BOTH HOUSES

Joint sitting of both Houses in certain cases—(1) If after a Bill has been passed by one House and transmitted to the other House—

(a) the Bill is rejected by the other House; or

(b) the Houses have finally disagreed as to the amendments to be made in the Bill; or

(c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it,

(2) In reckoning any such period of six months as is referred to in clause (1), no account shall be taken of any period during which the House referred to in sub-clause (c) of that clause is prorogued or adjourned for more than four consecutive days.

(3) Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification, and, if he does so, the Houses shall meet accordingly.

(4) If at the joint sitting of the two Houses the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present

[187] M.N. Kaul and S.L. Shakdher, Practice and Procedure of Parliament (Anoop Mishra ed, 7th edn, Metropolitan Book Co. PVT. LTD. 2016)

and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting—

(a) If the bill, having been passed by one house, has not been passed by the other house with amendments and returned to the house in which it originated, no amendment shall be proposed to the bill other than such amendments (if any) as are made necessary by the delay in the passage of the bill.

(b) If the bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the bill and such other amendments as are relevant to the matters with respect to which the houses have not agreed, and the decision of the person presiding as to the amendments that are admissible under this clause shall be final.

(5) A joint sitting may be held under this article, and a bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the Houses to meet therein.

Article 108 enables the resolution of House deadlocks via joint sittings[188], a crucial mechanism for securing legislative outcomes despite bicameral disagreements. The president acts on cabinet advice to convene such a sitting, signifying executive facilitation of legislative consensus.[189]

ARTICLE 109: MONEY BILLS

Special procedure in respect of Money Bills—(1) A Money Bill shall not be introduced in the Council of States.

(2) After a Money Bill has been passed by the House of the People, it shall be transmitted to the Council of States for its recommendations, and the Council of States shall, within a period of fourteen days from the date of its receipt of the Bill, return the Bill to the House of the People with its recommendations, and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

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[188] Subhash C. Kashyap, Our Parliament: An Introduction to the Parliament of India (1st edn, National Book Trust 1989)

[189] Granville Austin, Working a Democratic Constitution: The Indian Experience (Oxford University Press 1999)

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People.

Money bills have special procedures and can only be introduced in the Lok Sabha.[190] Guides to parliamentary practice stress that the Rajya Sabha's role is limited to offering non-binding recommendations within fourteen days, after which the Bill is deemed passed in the form approved by the Lok Sabha. The president's recommendation is mandatory at inception, but subsequent assent is mostly ceremonial, reflecting executive oversight in fiscal matters.

ARTICLE 110: DEFINITION OF MONEY BILL

Definition of "Money Bills." — (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;

(c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of money into or the withdrawal of money from any such Fund;

[190] V.N. Shukla, Constitution of India (M.P. Singh ed, 13th edn, EBC Publishing (P) Ltd. 2017)

(d) the appropriation of money out of the Consolidated Fund of India;

(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or

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

(2) A bill shall not be deemed to be a money bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licenses or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration, or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a bill is a money bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill, when it is transmitted to the Council of States under article 109 and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

A Money Bill is defined under Article 110.[191] It qualifies as one only when its contents are limited strictly to topics listed in clause (1) of that article, like tax rules, government loans, or spending from India's main fund. The authors clarify that any attempt to combine significant non-financial subjects with these fiscal matters should prevent a Bill from being certified as a Money Bill, and that this strict test is meant to protect the Rajya Sabha's role in ordinary legislation.[192] Notably, no extra issues can be included; otherwise, it fails the test. The decision on classification rests with the Lok Sabha Speaker, whose verdict cannot be challenged.[193] Because of this rule, financial laws stay mainly within reach of the house chosen by voters.

ARTICLE 111: PRESIDENT'S ASSENT TO BILLS

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[191] M P Jain, Indian Constitutional Law (9th edn, LexisNexis 2025)

[192] Pratik Datta, Shefali Malhotra & Shivangi Tyagi, 'Judicial Review and Money Bills' (2017) 10 NUJS L. REV

[193] Seervai H M, Constitutional Law of India: A Critical Commentary with Supplement (4th edn, N M Tripathi 1991)

Assent to Bills—When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Provided that the President may, as soon as possible after the presentation to him of a bill for assent, return the bill if it is not a money bill to the houses with a message requesting that they reconsider the bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a bill is so returned, the houses shall reconsider the bill accordingly, and if the bill is passed again by the houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.

Article 111 confers three options to the President:

- Assent the Bill (becomes law);
- Withhold assent (Bill fails);
- Return the bill for reconsideration (except for a money bill/constitutional amendment).

  If repassed by Parliament, the President is constitutionally bound to assent. Judicial interpretations, especially S*tate of Tamil Nadu vs. Governor of Tamil Nadu*[194] (2023), have held that indefinite delay in conveying assent is unconstitutional and prescribed a three-month deadline, reinforcing the principle of non-arbitrariness. If the president withholds assent after reconsideration, it must be reasoned and communicated. Inaction or undue delay is amenable to judicial scrutiny via writs, and the Supreme Court may exercise powers under Article 142 to provide complete justice.

LANDMARK JUDGMENTS & CASE LAWS

State of Tamil Nadu v. Governor of Tamil Nadu (2023): The Supreme Court imposed a three-month deadline for presidential assent to state bills. Extended delays were held

[194] State of Tamil Nadu v. Governor of Tamil Nadu, 2025 INSC 481

unconstitutional; the Court can deem assent under Article 142 in cases of persistent executive inaction.

S*R Bommai v. Union of India*[195] (1994): This case explained the relationship between the federal government and the president during state emergencies, emphasising the importance of fair use of executive authority.

Kuldip Nayar v. Union of India[196] (2006): Reaffirmed Parliament's authority over legislative procedures.

Deemed Assent Cases[197] (2025): The Supreme Court ruled that an unlimited delay by the government may lead to judicial intervention and that withholding without justification contravenes constitutional expectations. These instances demonstrate how the courts ensure that the executive branch's actions align with the Constitution and protect the integrity of the federal government.

These cases mark the judiciary's role in aligning executive action with constitutional principles and ensuring federal integrity.

CONTEMPORARY RELEVANCE AND CHALLENGES

Between 2023 and 2025, the slow approval of regional laws by the President, along with New Delhi's power to veto those laws, led to increased discussion about how the federal government operates in practice. New court decisions that called for faster evaluations helped somewhat, but there is still friction because politics often influences the results of approvals. The fact that bills take a long time to pass, that there are recurrent interruptions, and that local and national governments can't agree on sensitive issues like dividing river resources, GST tax income, or unrest in Jammu and Kashmir shows that systemic pressure is still there. Judicial intervention

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[195] SR Bommai v. Union of India, 1994 SSC (3) 1

[196] Kuldip Nayar v. Union of India & Ors, 2006 AIR SCW 4394

[197] Special Reference No. 1 of 2025 (In Re: Assent, Withholding, or Reservation of Bills by the Governor and President of India, 2025 INSC 1333

has restricted executive overreach[198], but the enduring balance depends on obeying constitutional rules and being more careful about how to govern.

CRITICAL ANALYSIS

Though laws and presidential assent were meant to balance power in India's government, they've often caused friction. Without fixed time rules, delays by leaders have weakened states' freedom. Courts stepped in with a set of deadlines and ideas like automatic approval to fix part of the problem, yet gaps still exist.[199] Progressive jurisprudence and possible legislative safeguards may further curtail executive excess, facilitating a more cooperative and harmonious federal partnership.

The President's limited discretion is a valuable constitutional safeguard, yet it demands transparency and reasoned exercise. Excessive political instrumentalisation erodes federal trust[200] and undermines the constitutional promise. There is a need for express statutory timeframes, greater legislative-judicial collaboration, and an emphasis on constitutional morality as a guiding principle.

CONCLUSION

Lawmaking and presidential assent constitute the foundation of how India's governance as defined in the Constitution[201], influencing interstate collaboration, limiting executive power, or upholding Parliament's lead. From old colonial rules to intense discussions in the Constituent

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[198] 'Presidential Reference on Powers of the Governor and President' (Supreme Court Observer) <https://www.scobserver.in/cases/presidential-reference-on-powers-of-the-governor-and-president-re-assent-withholding-or-reservation-of-bills-by-the-governor-and-president-of-india/> accessed 13 December 2025

[199] Gautam Bhatia, 'Constitutional Detours and Perverse Incentives: How States will Respond to SC's Governors' Judgment' (Constitutional Law and Philosophy, 11 December 2025) <https://indconlawphil.wordpress.com/author/gautambhatia1988/> accessed 13 December 2025

[200] Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta, The Oxford Handbook of the Indian Constitution (1st edn, Oxford University Press 2016)

[201] Granville Austin, Indian Constitution: Cornerstone of a Nation

Assembly to carefully written constitutional clauses[202] and perceptive court decisions, this system slowly took shape. Commitment to the separation of powers and respect for constitutional authority means that change must be ongoing, subject to careful scrutiny by the courts. To make laws intelligible, courts need to ensure the separation of powers, which helps build real trust between levels of government. Without transparent policies and mutual respect, India's version of federalism can not survive for long. What works today might fail tomorrow if leaders stop adjusting and listening.

[202] B. Shiva Rao, The Framing of India's Constitution (1st edn, The Indian Institute of Public Administration 1968)

CHAPTER 8: RULES OF PROCEDURE & ORDINANCE POWERS (ARTICLE 118- 123)

BY RAHUL K BIJU

INTRODUCTION

The Indian Constitution is regarded as a living document that evolves and adapts its laws in response to the changing needs of the people and shifts in societal relevance. A major part of this is the effectiveness of the legislature, which makes laws for the nation. This chapter aims to understand the rules of procedure to be followed by the legislature, as outlined in articles 118 to 123.

India follows a unique mechanism for the separation of powers for governance. In a standard democracy, the legislative branch enacts laws, the executive branch implements them, and the judicial branch mediates the conflicts that arise. Unlike other democracies, such as the USA, the Indian constitution implements a more flexible separation of powers. This can be understood from the rules of procedure outlined in sections 118-122 of the constitution, which coexist with the president's power to issue ordinances under Article 123.

This special arrangement ensures that the parliament enjoys independence in governing its rules and procedures while allowing for the passing of laws when it is not in session. This less strict model of separation of powers enables the parliament to function independently and maintain its dignity, while allowing for temporary intervention in cases of emergencies.[203] The constitution highlights two essential limbs of this procedural independence. Article 118 to 122 provides for

[203] Subhash C. Kashyap, *Our Constitution: An Introduction to India's Constitution and Constitutional Law* (National Book Trust, New Delhi, 2011).

the independence of the parliament. Article 118 states that each house of parliament is competent to enact rules for regulating its own procedures. Article 122 further builds on this by providing immunity to parliamentary proceedings before the court on the grounds of procedural irregularity and internal functions.

On the other hand, Article 123 enables the President of India to promulgate ordinances during the recess period of the Parliament. Ordinances can be defined as temporary laws that are promulgated by the President when the parliament is not in session. This promulgated law has the same force and effect as a ratified law, making it binding when it comes into operation. This power is vested in the President to pass laws in extraordinary circumstances where the parliament is not in session[204]. It contradicts the strict division of powers by allowing the executive organ to temporarily implement laws. Through such a The Constituent Assembly attempted to impose a careful balance between a strong central government and democratic accountability using these two limbs. [205]However, it also raises a crucial question of the sanctity of the separation of powers.

This chapter will delve into the articles governing the rules and procedures, the historical context in which these were established, the doctrinal framework of their establishment, and the conflict between the separation of powers and its bypass under Article 123. This chapter aims to provide an in-depth analysis of the encroachment of powers by examining the provisions of the constitution, while also comparing the intent with the actual usage of such powers and their potential for misuse.

HISTORICAL BACKGROUND

The use of laws to exercise executive power over the legislature can be seen from the colonial governance under the Second Government of India Act 1935. The Governor-General included provisions to legislate independently of the legislature to secure the needs of the British. Thus,

[204] M.P. Jain, *Indian Constitutional Law* (LexisNexis, Gurugram, 8th edn., 2018).
[205] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, New Delhi, 1966)

Sections 42 and 43[206] The Act gave the Governor General powers to promulgate ordinances during legislative recess. In contrast, Section 43 extended that power even during sessions, contingent upon his satisfaction regarding the discharge of specific functions. Freedom fighters proclaimed this framework as "Ordinance Raj," a regime in which executive decrees routinely supplanted representative deliberation.

After independence, the Constituent Assembly recognized the need to include a provision for introducing and implementing laws when the parliament is not in session. Thus, the Assembly introduced Draft article 102 but restricted the power of promulgation to when the sessions are in recess. The discussion of this same power can be seen in the Constituent Assembly[207], where, while discussing Draft Article 102 in detail, it had to grapple with the question of carrying similar powers into the new Constitution as it transformed a colony into a republic. Members like H.N. Kunzru and K.T. Shah opposed the proposition and argued that placing legislative power in the hands of the President was no different from the autocratic privileges enjoyed by the British Governor-General. Shah cautioned that such a provision ran counter to the theory of separation of powers and had the effect of making the Parliament subordinate, inviting executive overreach.

Ambedkar however, contended that the Constitution needed an outlet for "unforeseen contingencies" that might arise. He advanced a hypothesis that, when the two Houses of Parliament were in recess, the country was still confronted with an emergency that called for "swift action." If the Executive was not thus competent to enact legislation at the time, it would result in the paralysis of the state. The ordinance power, in his assessment, constituted a "necessary evil," a transitional step towards ensuring continuity of government rather than as part of political rule.

Granville Austin highlighted that this decision underlined the framers' intention to create a strong center that would guarantee stability in diversity[208]. Comparative analysis played a seminal role in the framing of this "middle path". The Assembly declared that while the Constitution of the United States enforces rigid separation of powers and denies the President all legislative authority, the British system is based on absolute Parliamentary supremacy. India's peculiar

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[206] The Government of India Act, 1935, ss. 42, 43

[207] Constituent Assembly Debates, Vol. VIII, p. 213 (Lok Sabha Secretariat, New Delhi)

[208] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, New Delhi, 1966).

needs demanded a synthesis. While framers accepted the ordinance mechanism, they encased it in parliamentary safeguards, such as the mandatory six-week expiration upon the reassembly of the House, to prevent a colonial-type rule from returning by the back door[209]. Although the article remains identical to that of 1935, the essence has changed from an imperial rule of control to a shield for democratic governance. Article 123 included "satisfaction" of the president as a means to tackle genuine situations rather than serve political ends.[210]

CONCEPTUAL AND DOCTRINAL FRAMEWORK

The constitutional validity of Articles 118-123 of the Constitution depends on the balance between the separation of powers and the lawfulness of the reach of such separation. This lawful breach of the separation of powers is possible due to the lack of strict separation of powers in American jurisdictions. In the case of Indira Gandhi vs. Raj Narain[211]The Supreme Court highlighted that, although there does not exist a strict separation, the doctrine of separation of powers is a basic feature of the Constitution. It also stipulated that one organ cannot perform without the essential functions of the other. This position taken by the Court highlights that Article 123 is an exception necessitated by urgency rather than a parallel source of law-making.

As this is an ordinance power that acts as an exception, the doctrine of Conditional Legislation binds it conceptually. Article 123 provides the President's authority on the existence of circumstances that render "immediate action" necessary. For decades, such "satisfaction" remained a subjective power which was immune from judicial gaze. A significant shift occurred in S.R. Bommai v. Union of India (1994)[212] when the Supreme Court laid down that such satisfaction must be based on relevant material. Justice Sawant, in his concurring opinion, held that if satisfaction is based on mala fide intent or extraneous grounds, the courts have the jurisdiction to invalidate it, thereby making the legislative competence of the executive susceptible to judicial review.

[209] M.P. Jain, *Indian Constitutional Law* (LexisNexis, Gurugram, 8th edn., 2018).
[210] H.M. Seervai, *Constitutional Law of India* (Universal Law Publishing, New Delhi, 4th edn., 2015).

[211] Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1
[212] S.R. Bommai v. Union of India, (1994) 3 SCC 1

Fraud on the Constitution as a doctrine thus arose to combat such subversion of the legislative process by the repeated re-promulgation of ordinances inter alia, without laying these before Parliament. In D.C. Wadhwa v. State of Bihar[213], the Supreme Court termed the continuance of ordinances for several years without any legislative endorsement as a perversion of constitutional power. According to Chief Justice P.N. Bhagwati, this usurps the law-making function and reduces an emergency power to a political weapon. This jurisprudence had finally matured in Krishna Kumar Singh v. State of Bihar[214], where the Court held that the requirement to lay an ordinance before the legislature is mandatory. Justice D.Y. Chandrachud said treating the ordinance-making power as a permanent substitute for parliamentary legislation amounts to a serious constitutional transgression and voids the laws ab initio.

The doctrine of Procedural Immunity, however, also protects the internal autonomy of the House. Article 122 prohibits courts from questioning parliamentary proceedings for procedural irregularities. D.D. Basu construes this as a shield to the dignity of the House from judicial control of its day-to-day functioning[215]. An essential differentia persists between a simple procedural mistake, which is granted immunity, and a substantive illegality or unconstitutionality, which is not.

ARTICLE-WISE DISCUSSION

A. Rules of Procedure and Conduct of Business (Articles 118–122)

Operational autonomy of the Indian Parliament is established by a multitude of constitutional provisions aimed at leaving the legislature free to regulate its internal conduct without external interference. This autonomy is a constitutional right expressly conferred by Article 118, which enables each House of Parliament to make rules for regulating its procedure and the conduct of business. As an incident of lex parliamenti, this power constitutes an indispensable attribute of a sovereign legislature. The rule-making power of the Indian Parliament is explicitly "subject to

[213] D.C. Wadhwa v. State of Bihar, (1987) 1 SCC 378.
[214] Krishna Kumar Singh v. State of Bihar, (2017) 3 SCC 1
[215] D.D. Basu, Introduction to the Constitution of India (LexisNexis, New Delhi, 26th edn., 2023).

the provisions of this Constitution," unlike the absolute sovereignty that the British House of Commons enjoyed historically. This means that while the House regulates the introduction of Bills or the conduct of debates, it cannot make rules that violate the Fundamental Rights guaranteed under Part III of the Constitution.

The tension between parliamentary privilege and fundamental rights first emerged in Pandit M.S.M. Sharma v. Shri Sri Krishna Sinha (1959), where a newspaper editor published expunged parts of a legislative speech, prompting privilege motions against him. He contended that this was an infringement of freedom of speech under Article 19(1)(a). The Supreme Court ruled that express constitutional provisions on legislative privilege would override the general fundamental right of free speech. This early jurisprudence hinted at a doctrine of non-interference, making the "walls of the legislature" impenetrable to the courts.[216]

However, this position of absolute immunity was adjusted in the Keshav Singh Case. When the Assembly imprisoned a citizen for contempt and two High Court judges released him on bail, the Assembly adopted a resolution to arrest the judges. At the instance of a presidential reference, the Supreme Court interpreted the scope of Article 122. Chief Justice P.B. Gajendragadkar differentiated between "procedural irregularity" and "substantive illegality." The judgment held that while Article 122 protects the legislature from scrutiny over mere procedural irregularities, this protection does not extend to instances where the legislature commits a breach of a citizen's fundamental right to life and liberty under Article 21. This judgment tore the veil of immunity, affirming that the Constitution was supreme even over Parliament.[217]

The distinction between irregularity and illegality was further established in the judgment of Raja Ram Pal v. Hon'ble Speaker, Lok Sabha (2007). This case emerged from the "cash-for-query" scandal and involved the expulsion of tainted members who subsequently challenged the House's authority to expel them. A Constitution Bench undertook an exhaustive review of the separation of powers. Justice Y.K. Sabharwal observed that though the parliament has the power to make and e its own procedure, it cannot use exercise Article 122 to absolve liability for unconstitutional acts. The Court formulated a test permitting judicial review if proceedings suffer from gross illegality, unconstitutionality, or violate the basic structure. This

[216] Pandit M.S.M. Sharma v. Shri Sri Krishna Sinha, AIR 1959 SC 395
[217] Special Reference No. 1 of 1964, AIR 1965 SC 745

establishes the judiciary as an examining authority, ensuring procedural rules do not subvert democratic norms.[218]

Further constitutional interpretation has expanded the scope of this interaction through the landmark case of Kalpana Mehta v. Union of India (2018)[219]. The Supreme Court adopted a functional approach to the admissibility of Parliamentary Standing Committee reports as evidence in court. The Bench ruled that while the validity of a report cannot be questioned, in keeping with the spirit of Article 122, its contents may be used as "external aids" to interpretation. This judgment closed the gap between these organs while recognizing the need to keep gaps between the walls of separation. According to D.D. Basu, these rules are the arteries of the democratic will, immunized to keep them free but limited by higher principles lest autocracy emerge.[220]

B. Legislative Power of the President (Article 123)

Article 123 is a provision that goes directly against the basic constitutional doctrine of separation of powers by empowering the President to assume extraordinary legislative powers by promulgating Ordinances during the recess of Parliament. The Article provides as follows:

123. Power of the President to promulgate Ordinances during the recess of Parliament.—(1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.[221]

The article highlights an objective and subjective criteria for the exercise of this power, which is "recess of Parliament" and "satisfaction of the President." The former is a jurisdictional fact; if both Houses are in session, the President cannot issue an ordinance, since this would be a direct breach of the legislative function. If only one House is in session, the President retains the authority to act, since neither House can enact legislation. The latter phrase, regarding the

[218] Raja Ram Pal v. Hon'ble Speaker, Lok Sabha, (2007) 3 SCC 184
[219] Kalpana Mehta v. Union of India, (2018) 7 SCC 1
[220] D.D. Basu, *Introduction to the Constitution of India* (LexisNexis, New Delhi, 26th edn., 2023).

[221] *The Constitution of India*, art. 123.

"satisfaction" of the President, has been the subject of intense judicial debate, shifting from a purely subjective privilege to a justiciable standard subject to judicial control.

Judicial review of this subjective criterion can be seen in the case of R.C. Cooper v. Union of India (1970)[222], also known as the Bank Nationalization Case. The Supreme Court faced a challenge to the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969, which nationalized fourteen major commercial banks. In this case, Petitioners argued that promulgating the ordinance days before Parliament convened constituted a colorable exercise of power and lacked any genuine emergency which required an immediate action. The Union government argued that the Article necessitated the President's view which is subjective and final, essentially a political decision immune from judicial scrutiny. The court rejected this claim of absolute immunity and held that while the satisfaction is subjective, it is not entirely beyond judicial review. The court upheld that the the judiciary could intervene when the satisfaction was mala fide or that the circumstances cited for the immediate action did not exist is established, .This ruling indicated a change, confirming that the executive's authority to legislate is not absolute but conditional.

However, the abuse of Article 123 persisted through a new method of re-promulgation by way of which the very same ordinance is repeatedly issued without placing it before the legislature. The abuse in Bihar led to the seminal judgment in D.C. Wadhwa v. State of Bihar (1987)[223]. In this case, the Bihar Governor had issued 256 ordinances over fourteen years, keeping them alive by re-promulgating them immediately after the legislature's session ended. Some of them survived for more than a decade, ensuring they never lapsed and avoided debate by elected representatives. The constitutionality of this practice was questioned before the supreme court. Chief Justice P.N. Bhagwati held that the power to promulgate an ordinance is essentially a power to act in an emergency and cannot be "perverted to serve political ends." The judgment described re-promulgation as a "fraud on the Constitution" arguing that the executive usurped the law-making function by creating a parallel system of governance. What is crucial is the Court's insistence that every ordinance must be presented to the legislature; failing to do so is to betray the constitutional check-and-balance system.

[222] R.C. Cooper v. Union of India, (1970) 1 SCC 248
[223] D.C. Wadhwa v. State of Bihar, (1987) 1 SCC 378

Despite the judgment in D.C. Wadhwa, the position of such re-promulgated ordinances remained uncertain until the definitive judgment in Krishna Kumar Singh v. State of Bihar (2017)[224]. A seven-judge Constitution Bench sat to reconsider the ambit of the ordinance-making power. The question involved an ordinance repeatedly re-promulgated to assume and take over the management of Sanskrit schools, ultimately lapsing without having been converted into an Act. Appointees under that ordinance contended that their appointments must survive the lapse of time.

Undertaking a deep textual and structural analysis of Article 123, and its state counterpart, Article 213, the majority judgment overturned the earlier position that the laying of an ordinance before the legislature was merely directory. The Court held that the laying requirement of the ordinance before Parliament is mandatory. The rationale inheres in democratic accountability: since the ordinance is a law made by the executive, it must seek ratification from the people's representatives at the earliest opportunity. The Court further expanded the scope of judicial review over the "satisfaction" of the President, holding that courts could inquire whether any material existed before the President to justify "immediate action" or whether the power was being invoked for an extraneous purpose. The Bench held that re-promulgation inherently contradicts the principle of parliamentary supremacy and abuses the temporary power vested in the President. The judgment stated that an ordinance is not a parallel source of law, but rather a stopgap arrangement, and any attempt to bypass the Legislature by reissuance renders the law void. It clarified that the "necessity" to act must be genuine, and the failure to lay the ordinance before the House itself constitutes a serious constitutional transgression, rendering the law itself invalid.

The contemporary understanding of Article 123, therefore, significantly restricts the executive branch's authority. The President's powers are not absolute, but rather a conditional authority, exercised within the framework of the Constitution. The stipulation for "immediate action" is a standard that courts are prepared to examine, and its associated requirement of presenting the ordinance to Parliament guarantees that Parliament retains ultimate decision-making power. This judicial commitment, evident from R.C. Cooper to Krishna Kumar Singh, demonstrates the

[224] Krishna Kumar Singh v. State of Bihar, (2017) 3 SCC 1

judiciary's determination to prevent the exception outlined in Article 123 from undermining the established principles of parliamentary procedure.

CONTEMPORARY RELEVANCE AND CHALLENGES

The central challenge facing the courts today is no longer one of interpreting the text, but rather applying these provisions in an era of aggressive majoritarianism. The use of the ordinance power under Article 123 has evolved from a constitutional safety valve in emergencies to a regular tool of legislative convenience, raising fundamental questions about the erosion of parliamentary sovereignty.

A related trend is the "ordinance-first" approach to legislation. Significant structural reforms, such as the recent farm laws and amendments to land acquisition statutes, were introduced into the legal framework through the ordinance route before being presented to Parliament. Although the legislature ultimately approved these actions, the initial dependence on Article 123 circumvents the examination by Standing Committees and the pre-legislative discussion mandated by Article 118. It can also be contended that these practices establish a state of exception as the norm. Consequently, when the executive branch routinely enacts legislation on contentious policy issues during parliamentary recesses, the legislature's duty and effectiveness would be reduced to a mere formality with post-approval rather than active deliberation. [225]

This is despite the warning issued by the Supreme Court in the case of Krishna Kumar Singh. While the judgment declared re-promulgation unconstitutional, it did not hold that the government could not use ordinances for non-emergency political agendas, as long as they are laid before the House eventually. Under this exception, the government can easily create a fait accompli where a law is implemented immediately and the Parliament is forced to accept the status quo. As Pratap Bhanu Mehta points out, this is part of a larger trend in which executive centralization appears to erode the separation of powers. He argues that the judiciary might have asserted its sovereignty. However, the quotidian denigration of parliamentary procedure escapes

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[225] Ujjwal Kumar Singh, "Crisis of Constitutionalism in India", Critical Quarterly (1999).

judicial correction because courts are still reluctant to interfere with policy decisions masquerading as "immediate action."[226]

The question of protection under Article 122 also arises when there is misclassification of bills. Controversy centers on the Speaker's power to certify a "Money Bill" under Article 110. Since Money Bills do not require the assent of the Rajya Sabha, there exists a temptation to disguise ordinary legislation as Money Bills to bypass the upper chamber's scrutiny. This creates a loophole which could be misused and was thus examined by the supreme court despite immunity under Article 122 (1) in the Aadhaar judgment. In this case the court was compelled to examine whether misclassifying a bill constitutes a substantive "fraud on the Constitution" rather than a mere procedural error. Gautam Bhatia argues that such procedural subterfuge strikes at the heart of federalism. The Rajya Sabha represents the interests of the States; bypassing it through procedural loopholes fundamentally alters the federal balance and transforms the Parliament from a bicameral deliberative body into a unicameral extension of the executive.[227]This underlined a paradox of control of executive overreach by the courts as judgments such as D.C. v. Wadhwa and Krishna Kumar Singh aim for stricter implementation while political imperative to govern quickly tramples the same in practice

CRITICAL ANALYSIS

A close analysis of Articles 118 to 123 reveals a significant discrepancy between the constitutional promise inherent in these Articles and their actual operation within the Indian polity. The drafters conceived of Article 123 as an "idle safety valve" that was intended to be triggered only during exceptional crises where the legislature proved inoperable. Political practice in Independent India, on the other hand, has shown that this safety valve frequently acts as an ongoing spigot of power. A lack of clarity in the use of article 123 for events which necessitate immediate action highlights the improper balance of power being given to the

[226] Pratap Bhanu Mehta, "The Rise of Judicial Sovereignty", Journal of Democracy
[227] Gautam Bhatia, The Transformative Constitution (HarperCollins, 2019).

executive to overreach their authority. The executive thus enjoys discretion over when to legislate, preferring to take the easy route, thereby averting the rigors of parliamentary debate.[228]

This structural weakness is further compounded by limitations inherent in judicial review. Although the Supreme Court strengthened safeguards in Krishna Kumar Singh, the judiciary's response has traditionally been reactive rather than preventive. It only ensures that Ordinance raj festers on, with the courts not really making any effective decisions as to its constitutionality, and constitutional violations have become so normalized that they have ossified into administrative habit. Even today, despite re-promulgation having been declared unconstitutional, courts rarely examine whether or not the initial promulgation was done in good faith in real time. The burden of proving mala fide intent remains high for a petitioner, and judicial deference more often than not leaves the initial abuse unchecked, thus allowing the government to attain a fait accompli before intervention can occur.

Procedural immunity under Article 122 has similarly changed from a shield for independence into a cloak for evasion. The abuse of "Money Bill" certification in order to bypass the Rajya Sabha is an egregious failure in this regard. Deeming ordinary legislation as Money Bills has the effect of disenfranchising the federal chamber of the Parliament-a negation of the bicameralism which the framers intended. Such acts highlight an important lacuna: if the Speaker's decision is treated as a mere "procedural" matter outside the pale of judicial review, the Constitution offers no redress for a substantive fraud perpetrated through procedural means.

Reliance on Articles 118-123 discloses a crisis of "Constitutional Morality." The provisions presume a degree of self-restraint by constitutional functionaries that is largely missing in contemporary politics. For the executive, the ordinance power is a parallel track for legislating rather than an emergency detour. Robust reform thus requires legislative measures such as a constitutional amendment that incorporates a "Statement of Emergency" ratified by a judicial body or a stronger sunset clause that would allow an ordinance to instantly lapse upon the assembling of Parliament. Without such structural tightening, the balance of power will continue to precariously tilt towards the executive.

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[228] H.M. Seervai, Constitutional Law of India, Universal Law Publishing, 4th edn., updated volumes

CONCLUSION

Articles 118 to 123 carve out a constitutional terrain marked by the discursive tension between the imperatives of executive speed and the sanctity of legislative deliberation. From its origins in the Constituent Assembly as a grudging concession to a major characteristic of Indian governance, the ordinance power has evolved in its interpretation While the structural framework was inherited from the colonial "Ordinance Raj", judicial interpretation of this power has undergone a sea change. A hesitation to interrogate the high office of the President gave way to robust scrutiny, with the walls of immunity coming tumbling down. From the tentative intervention in R.C. Cooper to the surgical strike against "fraud on the Constitution" in D.C. Wadhwa and Krishna Kumar Singh, the Supreme Court has instituted that executive legislative power is conditional, temporary, and accountable.[229]

Yet, the persistence of re-promulgation and the strategic bypassing of the Rajya Sabha through procedural loopholes suggest that judicial safeguards alone are not enough. The "Rules of Procedure" designed as Parliament's armor have very often become instruments for majoritarian dominance, which, in a paradoxical result, undermines the separation of powers they were intended to preserve. The doctrinal autonomy of the House would ultimately be used as a tool to silence debate, rather than shield it.

Sustaining the balance between the legislature and the executive requires more than mere textual fidelity. It requires what Dr. B.R. Ambedkar called Constitutional Morality, a commitment to the spirit of the Constitution, not mere adherence to the letter. The use of ordinance power necessitates the exercise of restraint and constitutional morality as a means to utilize such power in extraordinary circumstances, rather than as a legislative backdoor.

[229] Krishna Kumar Singh v. State of Bihar, (2017) 3 SCC 1

CHAPTER 9: SUPREME COURT’S ESTABLISHMENT, APPOINTMENT PROCEDURES, AND JURISDICTION (ARTICLE 124- 131)

BY ROZA KHAN

INTRODUCTION

This provision establishes the principle of federal adjudication, making the Court the constitutional referee in India’s cooperative federal structure. Through decisions in cases like "State of Rajasthan v. Union of India (1977)" and "State of Karnataka v. Union of India (1977)", the Court has clarified that these disputes must involve legal rights, not political issues. To protect India's varied society from government overreach, the Constitution's authors recognized the need for an independent judiciary free from political pressure, while still committed to the guiding principles of the document. To maintain balance among the legislative, executive, and judicial branches, the Constitution must ensure judicial independence, as Dr. B. R. Ambedkar emphasized in the Constituent Assembly..[230] The Supreme Court, therefore, was not an institution of dispute resolution, but rather the conscience-keeper of the constitutional order. Articles 124–131 strike this delicate balance. In Article 124, the Court is established and the process for appointing and terming judges is defined; in Articles 125–128 of the Constitution, the financial and institutional independence of the judiciary is preserved. With the ability to punish contempt of court granted to it by Article129, the Court becomes a court of record.[231] Article 130 establishes the seat of the Court and Article 131 vests exclusive original jurisdiction in the Court in Centre-State and in inter-State disputes, which places it in the framework of the federal

[230] Constituent Assembly Debates, Vol. VIII, 24 May 1949, Speech by Dr. B. R. Ambedkar, available at https://cadindia.clpr.org.in/ (last visited Oct. 2025).

[231] M. P. Jain, *Indian Constitutional Law* (LexisNexis, 8th edn., 2023) 1825–1830.

structure. In this chapter, the comparative approach, historical approach, and doctrinal approach are used to investigate these provisions. It follows their colonial and Constituent Assembly birth, and explains their development in the light of judicial precedents, e.g., the Judges Cases, and the NJAC decision, and places them in the context of the larger philosophy of judicial independence and cooperative federalism. In this way, the chapter attempts to assess the role of Articles 124-131 in defining the role of the Supreme Court as custodian of constitutional democracy and federal balance in India.

HISTORICAL AND CONSTITUTIONAL BACKGROUND

The Supreme Court of India as established by Articles 124 to 131 is a result of continuity as well as constitutional creativity. It is based on the colonial judicial system, which over time, had developed out of the courts of record of the British Crown to an independent apex court that was formed to serve a sovereign, federal democracy. These clauses were crafted by the Constitution's founders after careful study of the American, British, and Commonwealth judicial systems; their goal was to establish a system of democratic accountability and judicial independence.[232]

The Supreme Court of Calcutta was established as the first court of record with limited authority on British subjects through the Regulating Act of 1773, which also established the basic framework of India's high judiciary. Bombay and Madras too had such courts later on. Local systems of government often found themselves at odds with colonial institutions, which were primarily established to further imperial administration interests. A unified judicial structure was established in 1861 with the incorporation of the High Courts Act, which eliminated the Sadar Adalats and the supreme courts. The existing Supreme Court of India owes its origins to the Government of India Act, which established the Federal Court of India. Disputes between the federal government and individual provinces, as well as appeals from lower courts, could be heard by the Federal Court. Despite its narrow jurisdiction, it was the first time a constitutional

[232] D. D. Basu, Introduction to the Constitution of India (LexisNexis, 25th edn., 2021) 303.

court was set up in a federal system - a matter that was later extended by the Constituent Assembly[233]

The establishment of the Supreme Court was debated with incredible vision in the Constituent Assembly. B. R. Ambedkar, Alladi Krishnaswamy Ayyar, and K. M. Munshi insisted on the fact that the Court should be free of the influence of the executive, and at the same time, it should not be outside of constitutional accountability. The establishment of the Supreme Court was debated with incredible vision in the Constituent Assembly. B. R. Ambedkar, Alladi Krishnaswamy Ayyar, and K. M. Munshi insisted on the fact that the Court should be free of the influence of the executive, and at the same time, it should not be outside of constitutional accountability.[234] In the same manner, the framers knew that the Supreme Court had two functions, as the court of last resort and, under Article 131 as the federal judge during the controversies between the Union and the States. The judiciary is, as it was observed by Ambedkar, the keystone in the arch of the Constitution; it is akin to the existence of a neutral and authoritative umpire.[235] The controversies were also indicative of an adherence to the Westminster principles of judicial dignity as well as the American constitutional review.

The framers were based on several systems. The idea was taken from the United States' Supreme Court, which could hear cases in both the first and second instance and could even perform judicial reviews. Particularly in relation to British law, they modified the idea of a court of record and parliamentary power in certain respects. In Australia, they borrowed the pattern of a High Court having authority to resolve inter-State disputes, but making sure that the Constitution as the governing charter remains supreme.[236]

Although the contents of the Articles 124-131 have mostly been preserved, a number of amendments to the constitution and rulings by the courts have altered their interpretation. The Forty-Second and Forty-Fourth Amendments tried to restrain judicial authority and reinstate the balance, respectively, by renewing independence of the judiciary. Subsequently, a participatory model of appointments was proposed under the Ninety-Ninth Amendment (2014) and the

[233] *The Government of India Act, 1935*, 26 Geo. 5 & 1 Edw. 8, c. 2, ss. 200–210.
[234] Constituent Assembly Debates, Vol. IX, 27 May 1949, Speech by Alladi Krishnaswamy Ayyar, available at https://cadindia.clpr.org.in/ (last visited Oct. 2025).
[235] Ibid
[236] V. N. Shukla (rev. Mahendra P. Singh), *Constitution of India* (Eastern Book Company, 14th edn., 2021) 228.

National Judicial Appointments Commission Act (2014), but these both were invalidated in "Supreme Court Advocates-on-Record Association v. Union of India (2015)" reintroducing the collegium system into the basic structure.[237]

CONCEPTUAL AND DOCTRINAL FRAMEWORK

Articles 124 131 reflect some of the basic constitutional principles that shape the personality of the higher courts in India. These are not structural prescriptions but commitments to philosophy, which are expressed in the ideologies of judicial independence, judicial accountability, and federal balance of power. Therefore, both constitutional theory and judicial practice should be considered while interpreting the Supreme Court's jurisdiction in these Articles.

Judicial Independence and Accountability

Judicial independence is the bedrock of constitutional democracies. The purpose of Article 124, which governs the hiring, firing, and removal of judges, is to prevent the executive branch from having undue influence over the judiciary. As observed in "*S.P. Gupta v. Union of India* (First Judges Case)", For the rule of law and the safeguarding of basic rights, the independence of the judiciary is a cornerstone of the Constitution.[238] Meanwhile, unconditional autonomy free of accountability mechanisms can encourage transparency and elitism in the institution.

This tension was addressed in "*Supreme Court Advocates-on-Record Association v. Union of India* (Second Judges Case)", The Court changed the meaning of "consultation" in Article 124 to mean "concurrence," which gave the judiciary the upper hand in appointment concerns instead of the executive[239]

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[237] Supreme Court Advocates-on-Record Association v. Union of India (2016) 5 SCC 1.
[238] S.P. Gupta v. Union of India, AIR 1982 SC 149. AIR 1982 SC 149.
[239] Supreme Court Advocates-on-Record Association v. Union of India, (1993) 4 SCC 441.(1993) 4 SCC 441.

Doctrine of Separation of Powers

The Constitution's design incorporates the idea of separation of powers, even if it is not expressly written. To promote mutual regard and moderation, it defines the respective roles of the legislative, executive, and judicial branches. Articles 124–131 put this theory into practice by creating a separate branch of government with the power to evaluate laws and executive orders. Because of its role as the Constitution's last arbiter, the Supreme Court is more appropriately described as a constitutional watchdog than a political player. The expansion of the judiciary's role, brought about by developments such as judicial review and public interest litigation, has, nevertheless, raised worries about judicial overreach. In "*Kesavananda Bharati v. State of Kerala*", Judgmental review was proclaimed by the Court to be an essential component of the, while in "*Indira Nehru Gandhi v. Raj Narain*", it curtailed parliamentary supremacy in electoral disputes.[240] Judicial activism is allowed but judicial supremacy is cautioned against in these rulings, which represent a dynamic interpretation of separation of powers.[241]

Supreme Court as Court of Record and Guardian of Federalism

Under Article 129, as a court of record, the Supreme Court has two important functions: first, to ensure that its decisions are permanently preserved as authoritative evidence; and second, to safeguard the honor of the judiciary by punishing contempt. This authority protects the independence of institutions, but it has also sparked controversy about the limits of contempt jurisdiction when it comes to freedom of speech.

Article 131 is just as significant, which says that the Supreme Court has to settle any disagreements between the states or the central government. All of these kinds of cases are handled by the Supreme Court. The Court has made it plain that these fights must be about legal rights, not politics, in instances like "State of Rajasthan v. Union of India" and "State of Karnataka v. Union of India."[242]

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[240] Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225. (1973) 4 SCC 225.
[241](1975) Supp SCC 1.
[242] Indira Nehru Gandhi v. Raj Narain(1977) 3 SCC 592; (1977) 4 SCC 608.

Though the provision does not mention seniority, convention dictates that the most senior Judge is appointed. This helps maintain continuity within the institution. While the Article allows for some flexibility, it does not specify timelines or require consultation with the collegium, which may give room for executive discretion. The conceptual strength of Articles 124–131, therefore, lies in harmonizing autonomy with accountability and central authority with federal diversity.

ARTICLE- WISE DISCUSSION

Article 124 – Establishment and Constitution of the Supreme Court

Text and Meaning

Article 124 constitutes the highest court in India, which includes the Chief Justice and as many more judges as the legislature decides by law. It forms the fundamental framework of judicial independence by outlining the process for the appointment, qualifications, tenure, and removal of judges.

Appointments and the Evolution of the Collegium System

Originally, Article 124(2) according to the provision, judges are chosen by the president "after consultation" with high court and supreme court judges as may be required. Much judicial-executive friction resulted from the vagueness of the term "consultation." In "*S.P. Gupta v. Union of India*", According to the Court's ruling, the Executive Branch is given precedence because consultation does not imply concurrence.[243] This position was reversed in "*Supreme Court Advocates-on-Record Association v. Union of India*", where the Court ruled that the Chief Justice's opinion, formed collectively with senior-most Judges, must have primacy. The 1998 *Presidential Reference* further expanded this into a five-member collegium.[244]

Removal and Security of Tenure

Article 124(4) requires a two-thirds majority in both houses of parliament to address the matter

[243] S.P. Gupta v. Union of India , AIR 1982 SC 149.
[244] In re Presidential Reference (No. 1 of 1998),(1998) 7 SCC 739.

before a presidential order can be issued to remove a judge from office. This stringent requirement ensures judicial security but renders removal extremely rare, as seen in the unsuccessful motion against Justice V. Ramaswami.[245]

Article 125 – Salaries, Allowances, and Privileges

Article 125 ensures that judges maintain their financial autonomy by prohibiting any changes to their salary, allowances, or pensions after they have been appointed. Economic security was important to the framers' vision of fair judgment. The Supreme Court in *Union of India v. Pratibha Bonnerjea* affirmed that adequate remuneration is a constitutional safeguard of judicial independence.[246]

Article 126 – "Appointment of Acting Chief Justice"

Article 126 enables the appointment of a temporary chief justice to take over if the current chief justice can't do their job or if there is a vacancy. Even though the provision doesn't say anything about seniority, it's common practice to appoint the most senior Judge. This helps keep things going smoothly at the facility. The Article does not set any deadlines or necessitate consultation with the collegium, which could provide the executive considerable leeway.

In practice, the convention of seniority has been consistently maintained, ensuring smooth transitions. Acting CJIs exercise all administrative and judicial powers of the CJI, including participation in collegium meetings during interim periods.[247]

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245 Report of Justice V. Ramaswami Impeachment Committee, Lok Sabha Records (1993).
246 Union of India v. Pratibha Bonnerjea, (1995) Supp (2) SCC 58.
247 M. P. Jain, *Indian Constitutional Law* (LexisNexis, 8th edn., 2023) 1854.

Article 127 – “Appointment of Ad Hoc Judges”

Article 127 gives the Chief Justice the authority to ask competent High Court judges to fill in for absent quorums on the Supreme Court, subject to presidential permission. This keeps the judicial process running smoothly even when there are vacancies or a large number of cases.

Although the Article references the defunct NJAC (99th Amendment), in practice the collegium performs this function. In *Lok Prahari v. Union of India*, the Court observed that Article 127 could be used to reduce arrears but has been rarely invoked.[248] Given the 80,000-plus pending cases in 2025, many scholars urge systematic use of ad hoc appointments until permanent vacancies are filled.

Article 128 – “Attendance of Retired Judges”

Article 128 a permits the Chief Justice, with the approval of the President, to nominate retired judges from the highest court or from lower courts to serve as judges. This provision recognizes the value of judicial experience and institutional memory.[249] Retired Judges enjoy the same jurisdiction and privileges while sitting but are not deemed permanent members of the Court.

Though used sparingly, Article 128 has facilitated disposal of long-pending matters. However, critics warn that frequent reliance on retired Judges may undermine incentives for filling vacancies and blur post-retirement neutrality. Hence, transparency regarding recall reasons and duration has been recommended.

Article 129 – Supreme Court to Be a Court of Record

Article 129 bestows the authority to punish contempt onto the Supreme Court, elevating it to the rank of a court of record. This guarantees that the power of the judiciary and the execution of its orders will remain intact. In “*E.M.S. Namboodiripad v. T.N. Nambiar*”, the Court held that

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[248] Lok Prahari v. Union of India, (2016) 3 SCC 353.
[249] The Constitution of India, Art. 128.

criticism undermining public confidence constitutes contempt.[250] Similarly, in *Arundhati Roy v. Union of India* and *Prashant Bhushan Contempt Case*, the Court confirmed that freedom of speech does not cover defaming the institution.[251]

Nevertheless, the Court has warned that contempt powers should be used sparingly to protect institutional integrity, not judicial pride. The Contempt of Courts Act, 1971 outlines these principles, but Article 129 is still the constitutional source of authority.

Article 130 – Seat of the Supreme Court

Specifies Delhi as the seat of the Supreme Court.But it lets the Chief Justice of India convene hearings in other places with the President's permission. Even though it can be flexible, the Court has only worked out of Delhi since 1950.[252]

The **229th Law Commission Report (2009)** To make things easier to go to, the plan is to create regional benches in Mumbai, Hyderabad, Kolkata, and Chennai. The Court, on the other hand, is worried that these benches would make judges less powerful. Since COVID-19, new technologies like e-filing and virtual hearings have made it easier for people to communicate across distances, but they haven't completely fixed regional imbalances.

Article 131 – Original Jurisdiction of the Supreme Court

Grants the exclusive initial authority to the Supreme Court to decide on issues related to the validity or scope of legal rights. This applies whether the disputes arise between the federal government and a state or between states. This action preserves the balance of federal power and ensures that federal-state issues are resolved in a manner consistent with the Constitution.

In "*State of Bihar v. Union of India*", the Court held that such disputes must concern enforceable legal rights, not political disagreements.[253] The principle was reiterated in "*State of Rajasthan v.*

[250] E.M.S. Namboodiripad v. T.N. Nambiar, (1970) 2 SCC 325.
[251] (2002) 3 SCC 343; In re Prashant Bhushan, (2020) 13 SCC 739.
[252] The Constitution of India, Art. 130.
[253] State of Bihar v. Union of India(1970) 1 SCC 67.

Union of India", where challenges to dissolution of State Assemblies were deemed non-justiciable political issues.[254]

In recent years, States such as Kerala and Punjab have invoked Article 131 to challenge Union legislation — notably the *Citizenship (Amendment) Act (2019)*, farm laws (2020), and GST-related fiscal policies — claiming encroachment upon State autonomy.[255] Although those petitions are still pending, their increase shows a rise in the judicialization of federalism in India.

Article 131 depends on good decisions that are prompt. Delays in political disputes of a sensitive nature can undermine cooperative federalism and confidence in the judicial system by the citizens.

The precise language of Articles 124 to 131 obscures their dynamic nature as interpreted by the courts. Together, these Articles demonstrate the careful balance between independence and responsibility that supports India's constitutional democracy.

CONTEMPORARY RELEVANCE AND CHALLENGES

The practical operation of Articles 124 to 131 continues to influence India's constitutional landscape in 2025. These provisions are solid, but they face ongoing issues in judicial appointments, Centre-State relations, demands for transparency, and technological changes.

Judicial Appointments and Transparency

The collegium system, which was introduced following a ruling in 2015 that the National Judicial Appointments Commission (NJAC) was invalid, offers independence to the judiciary, while also being controversial. Although it protects the judiciary against interference by the government, there have been constant calls to change due to the existing problems of poor

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[254] *State of Rajasthan v. Union of India* (1977) 3 SCC 592.
[255] W.P. (Civil) No. 3 of 2020 (SC pending).

transparency and favoritism. In reaction to these criticisms, the Supreme Court has started to provide collegium resolutions, correspondence and appointment status on its official website. This unprecedented transparency program has increased the level of trust among the people albeit at the cost of the Executive taking long durations to approve names thus putting institutional efficiency under pressure.

Also, the fact that the collegium does not represent women, minorities, and first-generation lawyers well poses concerns to inclusivity in the constitutional ideology of equality. According to researchers such as Gautam Bhatia, judicial independence should exist hand-in-hand with democratic diversity to be legit.[256] Lack of statutory timeframes in which appointments are made has also created gaps that undermine the adjudicatory ability of the Court, which contests the goal of institutional stability pursued by Article 124.

Judicial Backlog and Accessibility

The Supreme Court's docket—exceeding eighty thousand pending cases—poses a serious threat to access to justice. Articles 127 and 128, enabling the use of ad hoc and retired judges, have been under-utilized despite constitutional sanction. Systematic invocation of these provisions could alleviate delays while preserving quality through experienced jurists.[257]

The same holds true for the non-use of the Article 130 flexibility in establishing regional benches. In order to improve litigants' access to justice in outlying areas, the 229th Law Commission Report (2009) and the Punchhi Commission Report (2010) suggested the creation of Cassation Benches in large cities. But institutional opposition has remained so strong that the Supreme Court has remained restricted to Delhi, and there has been an imbalance in accessibility on a federal basis. Introduced due to the COVID-19 pandemic, virtual hearings enhanced efficiency, but cannot replace the regional presence.[258]

[256] Gautam Bhatia, The Transformative Constitution (HarperCollins, 2019) 48.
[257] Lok Prahari v. Union of India (2016) 3 SCC 353.
[258] Supreme Court e-Committee, Phase II Project Report on Virtual Courts (2021).

Federal Litigation and Political Sensitivities

Article 131 has come back into the limelight as States are progressively questioning Union acts at the Supreme Court. Kerala, Punjab, and Tamil Nadu have exercised this authority in opposition to the Citizenship (Amendment) Act 2019, farm laws 2020 and GST compensation policies. These petitions indicate increased judicialization of Indian federalism, in which political disagreements have been converted into constitutional disputes. But such long pendency of such matters weakens the position of the Supreme Court as an immediate mediator of Centre-State tensions.

Institutional Legitimacy and Free Speech

The contempt power in article 129 is crucial to keeping the judicial system in power, yet is contested in the era of online critique. The timid stance of the Court following the Prashant Bhushan case indicates that there is a progressive movement towards the tolerance of fair criticism, in accordance with constitutional dignity and the democratic discourse.[259] Articles 124–131 uphold the concepts of federal balance and independence, but in light of current events, creative institutional solutions are needed to ensure that the judiciary retains its moral authority and constitutional applicability. Such solutions are open appointment, decentralization in the regions, gender representation, and timely decision.

CRITICAL ANALYSIS

The autonomy and responsibility are consciously integrated in the system of Articles 124 to 131 in the constitution. But this has long been the case, as real practice demonstrates, which points to the conflict between these two ideals. Institutionalization and structural constraint can be explained by the fact that the Supreme Court was formed as a colonial product and constitutional consciousness.

[259] In re Prashant Bhushan, (2020) 13 SCC 739.

Judicial interpretation in creating the collegium system to ensure autonomy is not interfered with by the executive has brought its share of problems including transparency and elitism. This is because the collegium concept is self-regulating. The absence of clear legal principles for selection criteria, diversity goals, or appointment timelines makes the process prone to inequality and delays. While the Supreme Court's decision to make collegium resolutions public in 2025 was a step toward transparency, critics argue that procedural openness without structural change does not significantly contribute to inclusion and fairness.

Another way to balance autonomy and accountability is a reorganized model that would maintain judicial primacy but put independent institutional checks on this office into place. Evidence provided by other jurisdictions including in the United Kingdom with the Judicial Appointments Commission proves that there can indeed be transparency and independence as well as merit-based appointments.[260] Since adjudication on intergovernmental disputes takes time as was noted by the Punchhi Commission, adjudication becomes a risk as it could turn legal grievances into political crises: judicial inertia.

The article 131 proceedings can be time constrained in order to have a special federal bench to hasten the resolution of these disputes in order to have better constitutional functionality. This would enforce the role of judiciary as a stabilizer of neutrality in the multi-tiered federation of India.[261] Since adjudication on intergovernmental disputes takes time as was noted by the Punchhi Commission, adjudication becomes a risk as it could turn legal grievances into political crises: judicial inertia.

The article 131 proceedings can be time constrained in order to have a special federal bench to hasten the resolution of these disputes in order to have better constitutional functionality. This would enforce the role of judiciary as a stabilizer of neutrality in the multi-tiered federation of India.

Articles 127 and 128, ad hoc and retired Judges, which will not be used enough, are able to reduce backlog and ensure efficiency.[262] The reluctance to use these provisions stems from the

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[260] Lord Phillips, "The U.K. Judicial Appointments System: Transparency and Merit," *Public Law Review* (2014) 25(2) 87 at 94.

[261] W.P. (Civil) No. 3 of 2020 (SC pending).

[262] Lok Prahari v. Union of India, (2016) 3 SCC 353.

fear of undermining judicial permanence. However, careful and open application may boost citizen trust without harming independence. Likewise, Article 130's inactivity regarding regional benches leads to geographic inequality and restricts access for litigants outside Delhi[263]

Art. 129 has legitimate powers of contempt that must be exercised with caution. Excessive use of them will make people feel detached and the democratic right to free criticism will be defeated. A balanced approach, which punishes those who block and allows dissent, supports both respect and discussion within constitutionalism.

Overall, Articles 124-131 continue to give the Supreme Court significant power, but they require reform to gain credibility. Clear methods for appointments, diverse representation, regional decentralization, and quicker federal decisions could help the Court become a more influential, participatory, and transparent defender of constitutional democracy.[264]

CONCLUSION

Articles 124 to 131 constitute the constitutional framework that secures the Supreme Court's position as the guardian of judicial independence and federal balance in India. While these provisions have enabled the Court to evolve from a colonial institution into a central pillar of constitutional governance, their contemporary operation reveals structural challenges that call for focused institutional reform rather than further doctrinal expansion.

First, the judicial appointments process under Article 124 requires recalibration to preserve judicial primacy while introducing transparent, objective norms relating to eligibility, diversity, and timelines. Such reform would strengthen public confidence in the collegium system without undermining the constitutional commitment to independence from executive influence.

Second, persistent judicial backlog highlights the need for fuller utilisation of constitutionally available mechanisms under Articles 127 and 128, as well as reconsideration of decentralised access through Article 130. Strategic use of ad hoc and retired judges, combined with

[263] Law Commission of India, 229th Report on Reform of Judicial System (2009).
[264] H. M. Seervai, *Constitutional Law of India* (Universal Law Publishing, 4th edn., Vol. 2, 2013) 1923.

institutional decentralisation, could significantly enhance efficiency and geographical accessibility to the Supreme Court.

Third, the effectiveness of Article 131 as an instrument of cooperative federalism depends upon timely and prioritised adjudication of Centre–State disputes. Procedural streamlining or specialised federal benches would reinforce the Supreme Court's role as a neutral constitutional umpire and prevent legal controversies from escalating into prolonged political conflicts.

Ultimately, the constitutional significance of Articles 124 to 131 lies not merely in their formal design but in their capacity to adapt to the evolving demands of constitutional governance. The long-term credibility of the Supreme Court will depend upon its ability to harmonise independence with accountability, authority with accessibility, and constitutional supremacy with democratic legitimacy.

CHAPTER 10: APPEALS, TRANSFERS & POWERS OF SUPREME COURT (ARTICLE 132–139A)

BY TIYASHA CHAKRABORTY

If the Supreme Court has jurisdiction and if people can go to it and their rights are to be secured through it we have to arm the Supreme Court with full powers. I am not talking of powers to the citizen but of giving powers to the Supreme Court itself so that it may do justice.

- Pandit Thakur Das Bhargava

(Constituent Assembly Debate, 14th June 1949)

ARTICLE 132 IN THE CONSTITUTION OF INDIA

132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under article 134A that the case involves a substantial question of law as to the interpretation of this Constitution

(3) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.

Explanation--For the purposes of this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

According to Art. 132, an appeal lies to the Supreme Court from any judgement, decree or final order, whether in a civil, criminal or other proceeding, of a High Court if it certifies that the case involves a substantial question of law as to the interpretation of the Constitution[265]. When such a certificate is given, any party in the case may appeal to the Supreme Court on the basis that any such question has been wrongly decided.

While applying Art. 132, the appellant under ordinary circumstances is required to restrict the scope of the case to the substantial question of law as to the interpretation of the Constitution, that is, the question of constitutional law on the basis of which the High Court has granted the certificate. However, if he wants to appeal on some other grounds apart from the one certified by the High Court, the permission of the Supreme Court must be obtained.

Justice Subba Rao noted that the principle that guides Article 132 is that the 'final authority of interpreting the Constitution must rest with the Supreme Court'.

A certificate under Art. 132 can be granted by the High Court subject to certain conditions:

An appeal can lie only from any judgement decree or final order of a High Court. Interim or interlocutory orders of the High Court cannot be subjected to appeal.

The nature of the proceeding can be civil, criminal or other than civil and criminal. The usage of "other" widens the nature of cases that are brought before the Supreme Court under Art. 132.

The question must be of a nature that a final and conclusive decision on it requires the interpretation of the Constitution. Furthermore, the parties to the case must contest the constructions of the provision that is to be interpreted, with both the parties supporting contrasting constructions.

The question raised must be a substantial one. If the law on the subject has been conclusively and authoritatively settled by the Supreme Court, and what the High Court is required to do is only apply that construction to the facts presented before it, then that cannot be called a substantial question of law.

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[265] K. P. Singh, 'The Jurisdiction of the Supreme Court of India (Evolution of Provisions Relating to it in the Constituent Assembly of India)', (1964) 25(3–4) *Indian Journal of Political Science* 192.

ARTICLE 133 IN THE CONSTITUTION OF INDIA

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133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters

(1)An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A-

(a)that the case involves a substantial question of law of general importance; and

(b)that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(2)Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3)Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

In the Constituent Assembly an amendment was proposed by Prof. Shibban Lal Saksena to add the words '*Subject to any law made by Parliament*' before 'An appeal'. This was negated by the Assembly for this would allow the Parliament to curtail the jurisdiction of the Supreme Court in all civil matters at any point of time.

Under Art. 133(2), any party appealing to the Supreme Court under Art. 133(1), may urge as a ground that a substantial question of law as to the interpretation of the Constitution has been wrongly decided.

A 'substantial question of law' is very restricted in scope. It is a very high standard of error or irregularity in law that has to go to the foundation of the matter lest the Apex Court will be flooded with frivolous appeals. Any procedural irregularity would not be a material ground for appeal unless it has in fact caused real and substantial prejudice to the party.

Under Art. 133(3) unless Parliament provides otherwise, no appeal lies to the Supreme Court from the judgment, decree or final order of a single High Court Judge.

A question can be said to be substantial when it involves issues of general public significance or directly and significantly affects the rights of the parties and warrants the consideration of differing interpretations of the law that is not conclusively settled by the apex court.[266]

A civil proceeding is one in which an individual seeks legal remedies for the breach of their civil rights by other person or the State and where if the claim is established, the court would expressly or impliedly recognise the asserted right and adequate grant relief, such as monetary compensation, delivery of specific property, enforcement of personal rights or determination of legal status.[267]

A question of law is substantial when there is room for difference of opinion on it, or when the court thinks it necessary to deal with that question at some length and discuss alternative views. It will not be a substantial question of law if it has already been addressed by the precedents of the Supreme Court or if the general principles of law relevant to arriving at a decision in the matter are firmly established.[268]

The certificate granted by the High Court does not automatically obligate the Supreme Court to hear the case. The Supreme Court will reserve a right to determine whether the certificate was rightly granted and whether the conditions pre-requisite to the grant were fulfilled.

When there is no justification for issuing the certificate by the High Court, the Supreme Court can always revoke it. In ***Express Newspapers Ltd. v. State of Madras***[269], the Supreme Court revoked the certificate granted by the High Court as there was no substantial question of law involved.

Once a certificate has been granted by the High Court, the appeal before the Supreme Court is not confined to the specific question of law but the entire scope of the matter unfolds for review

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[266] M.P. Jain, *Indian Constitutional Law*, 388 (9th edn, LexisNexis 2020)

[267] V.N. Shukla, Constitution of India, 485 (Eastern Book Company, Lucknow, 14th edn., 2023) case : P.GANESAN v M. REVATHY PREMA RUBARANI

[268] WEBSITE: https://chambersofsumitsuri.in/substantial-question-of-law-principles-summarized/

[269] Express Newspapers Ltd. v. State of Madras, (1981) 2 SCC 479

by the Court.[270] In an appeal under Art. 133, issues involving constitutional law may also be raised before the Supreme Court.

ARTICLE 134 IN THE CONSTITUTION OF INDIA

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134. Appellate jurisdiction of Supreme Court in regard to criminal matters

(1)An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court-

(a)has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

(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; or

(c)certifies under article 134A that the case is a fit one for appeal to the Supreme Court: Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

(2)Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

In the words of Shri Alladi Krishnaswami Ayyar, the Supreme Court has an unfettered discretion under this article, the terms of which are in no way restricted or conditioned. The one general principle that has been accepted by the Constituent Assembly without question is that where a man is condemned to death he should have at least one right of appeal, if not more.

Under Art. 134(1)(a), an appeal can be presented before the Supreme Court from any judgment, final order or sentence of a High Court in a criminal matter while the High Court has, while

[270] V.T.S. Chandrasekhar Mudaliar v. Khulandaivelu Mudaliar, AIR 1963 SC 185

hearing an appeal, has overturned an acquittal of an accused person and imposed death penalty. An appeal is also available where the High Court has withdrawn a case from a subordinate court for trial and sentenced the accused to death. Such an appeal lies as a matter of right.

Clauses (a) and (b) of the Article 134 restrict the Supreme Court's appellate jurisdiction to cases that involve the imposition of death penalties. These provisions confer a right of appeal specifically on persons who were initially acquitted but were initially acquitted but were ultimately sentenced to death by the High Court.

Under Art. 134(1)(c), the Supreme Court may hear an appeal in a criminal case if the High Court certifies that the matter is fit for appeal. This certification is subject to the conditions prescribed by the High Court and the procedural rules framed by the Supreme Court.

The High Court does not have an unfettered right to grant fitness certificates in criminal cases. It may issue a certificate only when certain exceptional or special circumstances are said to arise such as when there has been violation of natural justice principles, the involvement of complex legal questions of significant public or private importance or the trial has been unfair. Certificates cannot be granted on questions of fact alone.

The High Court has to exercise its discretion in granting certificates based on judicial principles and the Supreme Court has the power to determine if the same has been granted judiciously.

Under Art. 134, the Supreme Court does not delve into pure questions of fact and weigh the veracity of evidence that are already upheld by the High Court. It does so only when there has been a miscarriage of justice or that the findings have been arbitrary or perverse[271]. The predominant function of the Court is to see that the accused gets a fair trial on evidence that is neither inadmissible nor is the outcome of imaginative hypothesis, conjectures, illegal assumptions and presumptions.[272]

Art. 134(2) empowers Parliament to expand the criminal appellate jurisdiction of the Supreme Court beyond the three categories previously specified. The object behind the provision was to provide flexibility, authorising the Parliament to broaden the Court's criminal appellate authority whenever necessary, without taking recourse to the rigid procedure laid down for bringing about

[271] Madan Kishore v. Major Sudhir Sewal, (2008) 8 SCC 744
[272] Ramanbhai Naranbhai Patel v. State of Gujarat, (2000) 1 SCC 358

a constitutional amendment. Pursuant to this, the Parliament has enacted the **Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970**[273] which authorises the Supreme Court to entertain from High Court decisions in the following scenarios:[274]

(1) Where the High Court, in an appeal, overturns an order of acquittal and sentences the accused to life imprisonment or to imprisonment for a term of not less than ten years. In such cases, an appeal to the Supreme Court lies as of right and may extend even to questions of fact.

(2) Where the High Court withdraws a case from a subordinate court for trial, convicts the accused and imposes a sentence of life imprisonment or imprisonment of not less than ten years.

ARTICLE 135 IN THE CONSTITUTION OF INDIA

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135. Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court

Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.

The Federal Court established through the Government of India, 1935 preceded the Supreme Court of India that was introduced in 1950. This court remained in operation until it was replaced by the Supreme Court of India on January 26, 1950.

Article 135 provides that the Supreme Court shall exercise jurisdiction and powers in matters to which Article 134 does not apply, given that such jurisdiction and powers were exercised by the Federal Court under the laws in force immediately before the commencement of the Constitution.

The object of this provision is to guard the rights of litigants who previously enjoyed a right of appeal to the Federal Court before the Constitution came into force and who might otherwise

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[273] The Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 (Act 66 of 1970)
[274] M.P. Jain, Indian Constitutional Law (9th edn, LexisNexis 2020)

have lost that right when the Supreme Court replaced the Federal Court. This provision is transitional in nature.[275]

ARTICLE 136 IN THE CONSTITUTION OF INDIA

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136. Special leave to appeal by the Supreme Court

(1)Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2)Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

This Article confers on the Supreme Court broad and comprehensive authority to entertain and hear appeals by granting special leave against any judgment or order passed by any court or tribunal, other than a military tribunal, in any type of proceeding. The exercise of this power is not constrained by constitutional limitations and lies entirely within the discretion of the apex court.[276] The exercise of the power is not subject to any constitutional limitation and is left entirely to the discretion of the Supreme Court.[277]

The intent of the drafters was to erect the Apex Court as a safeguard against the High Courts heedlessly refusing to grant the requisite certificate. They envisioned cases when the High Court might refuse to grant a certificate even in suitable cases.

In **Pritam Singh v. The State**, the Supreme Court iterated that the power under Article 136 should be exercised only in rare and exceptional cases[278]. Special leave to appeal should be granted only where special circumstances are shown to arise, resulting in serious and substantial

[275] M.P. Jain, *Indian Constitutional Law*, 388(9th edn, LexisNexis 2020)
[276] *Constitution of India* (1950), art. 136.
[277] Durga Shankar Mehta v. Thakur Raghuraj Singh, (1954) 2 SCC 20
[278] Pritam Singh v. State, 1950 SCC 189

injustice, and where the case displays features of sufficient importance to justify a re-examination of the challenged decision. The Court further observed that this power should be exercised with caution and prudence rather than being permanently confined by rigid limitations.[279]

Although the Supreme Court under normal circumstances will not replace the determination of a tribunal with its own judgment, it will intervene to overrule the same under this article, if the quasi-judicial tribunal exceeds its jurisdiction or approaches the question referred to it in a manner that is likely to cause injustice or leads to a procedural irregularity that breaches the established principles of natural justice.[280]

ARTICLE 137 IN THE CONSTITUTION OF INDIA

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137. Review of judgments or orders by the Supreme Court

Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

As you already know by now, the judgments of the Supreme Court are binding all the Courts within the territory of India (*Article 141*). However, such judgements are not binding on the Supreme Court. The Supreme Court has the right to review its own judgements and orders subject to substantive and procedural limitations.

According to Honourable Shri K. Santhanam, the Supreme Court should be left unfettered to review its own judgment. When the Supreme Court is allowed an unfettered freedom on matters that are ordinarily dealt with by the Parliament and the State Legislatures, it should not be restricted from reviewing its own judgements.

Substantively, reviews are allowed on three grounds: when new and important evidence is discovered, when there is a mistake or an error that is apparent on the face of the record, and for any other sufficient reason.[281]

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[279] Mathai v. George, (2016) 7 SCC 700
[280] Durga Das Basu, Introduction to the Constitution of India, 350 (LexisNexis, Haryana, 26th edn., 2022)
[281] V.N. Shukla, Constitution of India, 505 (Eastern Book Company, Lucknow, 14th edn., 2023)

In ***Deo Narain Singh v. Daddan Singh***, the Supreme Court reversed its earlier decision upon realising that it had applied the incorrect set of rules, having relied on the U.P. Junior High School, Rules, 1978 instead of the U.P. Recognised Basic Schools and Junior High School Rules 1978 framed under the Basic Education Act, 1978.[282]

In ***Abdul Rehman Antulay v. RS Nayak***, the Court held that it may exercise its power of review as part of its inherent jurisdiction in matters pending before it, even before requiring compliance with the formal procedures for filing a review petition. The Court further observed that a larger Bench has the authority to overrule the decision of a smaller Bench, irrespective of the nature of the proceedings.[283] It emphasised that the Supreme Court has a duty to ensure that no individual suffers due to an error committed by the Court itself.

The Court has the inherent power to grant relief ex debito justitiae (justice demands it as a matter of right) to prevent abuse of its process and to cure a gross miscarriage of justice.[284]

The Supreme Court has observed that though judges of the highest court apply their judicial minds to the best of their abilities, yet situations may arise, in the rarest of the rare cases, which would require reconsideration of a final judgment to set right miscarriage of justice complained of.[285]

In ***Rupa Ashok Hurra v. Ashok Hurra***[286], the Supreme Court using its power to do complete justice under Article 142, judicially evolved the remedy of a curative petition also known as a second review petition. This mechanism enables litigants to seek reconsideration of a Court's final order in order to rectify serious errors. However, a second review is permitted only under limited circumstances, namely: (1) where there has been a violation of the principles of natural justice, such as when a person who was not made a party to the proceedings is adversely affected by the judgment of the Court, or when a party was not duly served notice and the case was decided as though proper notice had been given: and, (2) where a judge failed to disclose a

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[282] Deo Narain Singh v. Daddan Singh, 1986 Supp SCC 530
[283] Abdul Rehman Antulay v RS Nayak, (1988) 2 SCC 602
[284] M.P. Jain, *Indian Constitutional Law*, 1163 (9th edn, LexisNexis 2020)
[285] HDFC Bank Ltd. v. Union of India, (2023) 5 SCC 627
[286] Rupa Ashok Hurra v. Ashok Hurra, (1999) 2 SCC 103

connection with the subject-matter or the parties, giving rise to a reasonable apprehension of bias.[287]

ARTICLE 138 IN THE CONSTITUTION OF INDIA

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138. Enlargement of the jurisdiction of the Supreme Court

(1)The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2)The Supreme Court shall have such further jurisdiction, and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

This Article empowers the Parliament to confer on the Supreme Court additional jurisdiction with respect to the enforcement of any of the subjects enumerated in the Union List. Sub-clause (2) of the Article allows the Parliament to confer jurisdiction on the Supreme Court for those matters where the Union Government and any State Government have so decided to confer by a special agreement.

In 1970, Parliament passed the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act 1970, which conferred additional rights of appeal upon accused persons in two specific situations.[288] The issue of expanding the Supreme Court's jurisdiction was subsequently examined in detail by the Court in Re The Special Courts Bill, 1978.[289]

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[287] M.P. Jain, *Indian Constitutional Law*, 386 (9th edn, LexisNexis 2020)

[288] V.D. Kulshreshtha, Landmarks in Indian Legal and Constitutional History, 409 (Eastern Book Company, Lucknow, 12th edn., 2019)

[289] Kumar, K. Sivananda, Article 138: Enlargement of the Jurisdiction of the Supreme Court (December 19, 2019). Available at SSRN: https://ssrn.com/abstract=3506796 or http://dx.doi.org/10.2139/ssrn.3506796

ARTICLE 139 IN THE CONSTITUTION OF INDIA

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139. Conferment on the Supreme Court of powers to issue certain writs

Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant to and certiorari, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

Article 32 of the Constitution empowers the Supreme Court to issue directions, orders and writs such as habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of Fundamental Rights under Part III. It also authorises Parliament to empower the Supreme Court to issue such writs or orders for purposes beyond the protection of fundamental rights.

While the Constitution recognizes only five prominent writs, several other writs exist in legal history. These include ***Procedendo, Audita Querela, De Homine Replegiando, Writ of Error, Coram Vobis, and Scire Facias***.

Procedendo also called *Procedendo ad judicium* was a prerogative writ briefly exercised by the English Crown and is now obsolete. It was used to instruct a lower court either to proceed with its duties or to refrain from certain actions when it had failed to deliver a judgement it was required to pronounce. Failure by a judge to comply with such direction could result in punishment and even liability for contempt of court.[290]

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[290]Comparative Study on Writ Jurisdiction in India and the UK, *available at:* https://www.ijlmh.com/wp-content/uploads/Comparative-Study-on-Writ-Jurisdiction-in-India-and-the-UK.pdf (last visited on November 4, 2025)

CHAPTER 11: ANCILLARY PROVISIONS FOR SUPREME COURT (ARTICLE 140- 147)

BY ANIKET PANDEY

INTRODUCTION

Legislative majoritarianism carries an inherent risk of encroachment upon individual liberties,particularly when statutory measures lack constitutional sensitivity.

Laws regulating personal autonomy such as restrictions on marriage,residence or private life have historically raised concerns regarding arbitrariness and rights violations. In such circumstances the Constitution functions as the supreme normative framework,limiting legislative powers and ensuring accountability.The responsibility of interpreting and enforcing these constitutional limitations rests with the supreme court of India.

The supreme court acts as a guardian of our constitution and the rights of individuals.It helps to maintain proper balance of power between all three heads i.e. the Legislature, the Executive and the Judiciary.

This power was conferred upon it by our constitution makers via the constitution under the Part-V : The Union – Chapter IV :- The Union Judiciary { Articles -124 to Articles -147}

This chapter examines Articles 140 to 147,which collectively define the ancillary and supplemental powers of the supreme court.Among these article 140 assumes particular significance as it enables parliament to confer additional jurisdiction upon the court,thereby expanding its functional capacity within constitutional limits.

The term "ancillary" is derived from latin "ancillaries" originally denoted assistance or service and has evolved to signify powers that are supplementary or subsidiary in nature.

ARTICLE 140- ANCILLARY POWERS OF SUPREME COURT

"Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution."

In other words, the parliament can make laws which give the supreme court some additional powers or extra powers which will help the supreme court to exercise and work smoothly allowing it to carry the functions conferred upon it by the provisions of the Indian Constitution. But the powers given via the parliament by making a law by using the Article-140 shall not be inconsistent with any of the provisions of the constitution.

Historical Background

Article 116, Draft Constitution of India 1948

Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.[291]

Article 140, Constitution of India 1950

Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may

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[291] Article 140: Ancillary Powers of Supreme Court, Constitution of India, available at https://www.constitutionofindia.net/articles/article-140-ancillary-powers-of-supreme-court/ (accessed on 14 February 2026).

appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.[292]

Draft Article 116 (Article 140) was debated on 27th May 1949. It authorised Parliament to expand the Supreme Court's jurisdiction and powers.

The Draft Article was accepted without debate and adopted by the Assembly on 27th May 1949.

Examples of usage of Article.140

1. The Contempt of Courts Act, 1971

One of the prime examples of the use of article 140 to confer supplementary powers to supreme court is THE CONTEMPT OF COURTS ACT, 1971 made by the parliament to maintain and give autonomy to the court to take action against the individuals which hurt the dignity of the court.

"23. Power of Supreme Court and High Courts to make rules— The Supreme Court or, as the case may be, any High Court, may make rules, not inconsistent with the provisions of this Act, providing for any matter relating to its procedure."

2. Supreme Court Bar Association v. Union of India

Issue:- Can the supreme court while giving punishment to an advocate for contempt of court could also debar him from practising law by suspending his license under articles 129 and 142 of the constitution?

Facts:- In vinay Chandra mishra's case (1995) the supreme court had suspended an advocate's license for contempt using its constitutional powers.

The supreme court bar association challenged this decision arguing that only the bar councils have the authority to suspend or debar an advocate under the advocates act 1961 for misconduct.[293]

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[292] Article 140, Constitution of India

[293] Supreme Court Bar Association v. Union of India, AIR 1998 SC 1895.

Judgement Dr.Anand,J :-The Court held that its contempt powers under Article 129 (power to punish for contempt) and Article 142 (to do complete justice) are constitutional and wide, but they do not extend to suspending an advocate's license.

ARTICLE 141 – LAW DECLARED BY 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.[294]

Historical Background

Government of India Act,1935

The Government of India Act was passed by the British parliament in 1935 and came into effect in 1937. It was based on a report by a Joint Select Committee, led by Lord Linlithgow, set up the two houses of the British parliament. Section 212 of this act ensured that the decision of the federal court shall be binding on all the courts throughout the territory of India.[295]

Section 212 reads as follows:

"212. The law declared by the Federal Court and by any judgment of the Privy Council shall, so far as applicable, be recognised as binding on, and shall be followed by, all courts in British India, and, so far as respects the application and interpretation of this Act or any Order in Council thereunder or any matter with respect to which the Federal Legislature has power to make laws in relation to the State, in any Federated State."

[294] Article 141, Constitution of India
[295] Government of India Act 1935, India*, available a*t: https://www.constitutionofindia.net/historical-constitution/government-of-india-act-1935/ (Visited on October 28, 2025)

Post independence the drafting committee added this provision in the draft as,

Article 117 of the Draft constitution of India 1948

Proposed that the law declared by the Supreme Court shall be binding on all other courts within the territory of India.

Later, it was accepted without any amendments as the Article 141 of the Indian Constitution.

Mr. H.V. Kamath proposed to amend the language of the Draft Article so that the Supreme Court's decisions were binding on all other courts. He argued that it was unwise to bind the Supreme Court by its own decisions, as it prevented the court from rectifying mistakes in previous judgments. The Chairman of the Drafting Committee stated that the amendment was unnecessary because the phrase 'all courts' meant 'all other courts.' He clarified that the Draft Article did not bind the Supreme Court by its own decisions, and that the court was free to change its interpretation of the law as it saw fit.

Thus, the Supreme Court is not bound by its own decisions.

Doctrine of Precedent

The word "precedent" is derived from "precedence" which means 'to be considered important'

Keeton defines judicial precedent as the decision of a court that contains authority to a certain extent

According to Salmond a precedent is a judicial decision that contains a principle, where the stated principle known as the ratio decidendi forms the authoritative element and possesses the force of law for the world at large, while the concrete decision is binding only between the parties involved. He further described precedent as a judicial decision that contains principle with that principle having authority or the force of law that bonds courts.

Ratio decidendi -

It is a latin phrase which literally translates to "the reason" or "the rationale for the decision".

In a court judgment, the ratio decidendi is the legal rule derived from, and consistent with, those parts of its reasoning on which the outcome of the case depends. It refers to the legal, moral,

political, and social principles used by the court to compose the rationale of a particular judgment. In contrast to obiter dicta, the ratio decidendi is usually binding on lower courts through the doctrine of stare decisis. Certain courts can overrule decisions of a court of coordinate jurisdiction, but they generally try to follow earlier rationes out of interests of judicial comity.

In, ***Jayant Verma v. Union of India,***[296] where judgment is given without hearing other party without any line of reasoning and certain conclusions are arrived at without any reference to any case law, it would be difficult to hold such judgment having binding force.

In, ***State of Assam v. Barak Upadhyay D.U.K. Sanstha,***[297] it was stated, A precedent is a judicial decision containing a principle which forms an authoritative element termed as ratio decidendi. An interim order which does not finally and conclusively decide an issue cannot be a precedent.

In, ***Vishnu Dutta Sharma v. Manju Sharma,***[298] it was stated that, A mere direction of Court without considering the legal position is not a precedent.

In, ***Medley Pharmaceuticals Ltd. v. Commissioner of Central Excise and Customs,***[299] it was held that The Court should follow an earlier decision that has withstood the changes in time, irrespective of the rationale of the view taken

In, ***Land Acquisition, Officer v. Karigowda,***[300] it was stated that, The doctrine of precedent would be applicable where the judgment of the Court has attained finality before the highest Court.

In ***New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd.,***[301] The Court held that the ruling of a bench with a larger strength is binding on any subsequent bench of lesser or equal strength. An earlier decision by a larger bench will prevail over a later decision given by a bench of the same strength.

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[296] Jayant Verma v. Union of India AIR 2018 SC 1079
[297] State of Assam v. Barak Upadhyay D.U.K. Sanstha AIR 2009 SC 2249
[298] Vishnu Dutta Sharma v. Manju Sharma AIR 2009 SC 2254
[299] Medley Pharmaceuticals Ltd. v. Commissioner of Central Excise and Customs (2011) 2 SCC 601
[300] Land Acquisition, Officer v. Karigowda AIR 2010 SC 2322
[301] New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd.AIR 2016 SC 86

The doctrine of stare decisis ensures certainty and consistency in judicial decisions, thereby aiding the proper development of law. It also provides individuals with guidance on the likely consequences of their legal actions and increases public confidence in the judicial system. Moreover, it requires that the law laid down by the Supreme Court, being the highest court in [302]the country must be respected and enforced.

Once the Supreme Court declares law through its judgments, such pronouncements are binding on all courts across India. Every authority within the territory is duty-bound to act in support of it. Any interpretation of law given by the Supreme Court constitutes law declared under the Constitution.[303]

Additionally, when faced with conflicting opinions, courts are expected to follow the majority view rather than the minority view of the Supreme Court.[304]

Obiter Dictum

Obiter Dictum Latin word which translates to "something said by the way" refers to those observations or remarks made by a judge in a judgment which are not essential to the decision of the case. They do not form part of the ratio decidendi (the binding legal principle of the case) but are persuasive in nature.

Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a view point or sentiment which has no binding effect.

In ***Director of Settlements, A.P. and Others v. M.R. Apparao and Another,***[305] it was held:

"An obiter dictum as distinguished from ratio decidendi is an observation of the court on a legal question suggested in a case before it but not arising in such a manner as to require a decision. Such an obiter may not have binding precedent but it cannot be denied that it is of considerable weight."

We may usefully refer to an observation of Delvin J. made in Behrens v. Pertraman Mills, (1957) 2 QB 25, which is in the following terms:

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[302] Union of India v. Major S.P. Sharma (2014) 6 SCC 351

[303] Som Mittal v. Govt. of Karnataka (2008) 3 SCC 574

[304] M/s Videocon Industries Ltd. v. State of Maharashtra, AIR 2016 SC 2843

[305] Director of Settlements, A.P. and Others v. M.R. Apparao and Another (2002) 4 SCC 638

"If the Judge gives two reasons for his decisions, both are binding. It is not permissible to pick out one as being supposedly the better reason and ignore the other one; nor does it matter for this purpose which comes first and which comes second. But the practice of making judicial observation obiter is also well established. A judge may often give additional reasons for his decision without wishing to make them part of the ratio decidendi; he may not be sufficiently convinced of their cogency as to want them to have the full authority of the precedent, and yet may wish to state them so that those who later may have the duty of investigating the same point will start with some guidance. This is the matter which judge himself is alone capable of deciding, and any judge who comes after him must ascertain which course he has adopted for the language used and not by consulting his own preference."

Although the said observation of Delvin J. has been subjected to some criticism, it throws some light on the subject but may not be treated to be an authority.

ARTICLE 142- ENFORCEMENT OF DECREE AND ORDERS OF SUPREME COURT

Article 142, Constitution of India 1950[306]

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

[306] Article 142, Constitution of India

Draft Article 118 (Article 142) was debated on 27th May 1949[307]. It stated that any decree or order passed by the Supreme Court to do complete justice was enforceable throughout the territory of India.

The Draft Article was accepted without debate and adopted by the Assembly on 27th May 1949.

Article 142 gives extraordinary powers to the Supreme Court to provide complete justice in the exercise of its jurisdiction in case of any matter pending in front of it. Such decree or order shall be enforceable within the territory of India. Until the parliament makes any law for the same the decree or the order given by supreme court will be enforced as prescribed by the President.

In, ***Rupa Ashok Hurra v. Ashok Hurra & Anr.,***[308] the Supreme Court evolved the remedy of a curative petition. It held that even after a review petition is dismissed, the Court may reconsider its judgment in order to prevent gross miscarriage of justice. Such a petition can be filed where principles of natural justice have been violated, or where a judge failed to disclose a conflict of interest. The Court laid down that a curative petition must be certified by a senior advocate and will first be examined by the senior-most judges along with the judges who delivered the impugned judgment. It is to be entertained only in the rarest of rare cases. This decision is significant as it balances the finality of Supreme Court judgments with the need to ensure complete justice under Articles 137, 141 and 142 of the Constitution.

In, ***Union Carbide Corporation v. Union of India,***[309] arose out of the Bhopal Gas Tragedy of 1984, one of the worst industrial disasters in the world. The Supreme Court, using its powers under the article 142, approved a settlement between the government and the corporation for compensation to victims and also quashed criminal proceedings as part of the settlement. The judgment demonstrated the wide amplitude of Article 142 in enabling the Court to mould relief beyond statutory limitations to achieve complete justice.

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[307]Art. 142, Const. of India (Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.), available at https://www.constitutionofindia.net/articles/article-142-enforcement-of-decrees-and-orders-of-supreme-court-and-orders-as-to-discovery-etc/ (accessed on 14 February 2026).

[308] Rupa Ashok Hurra v. Ashok Hurra & Anr. (2002) 4 SCC 388

[309] Union Carbide Corporation v. Union of India AIR 1992 SC 248

In, ***Prem Chand Garg v. Excise Commissioner,***[310] U.P supreme court held that "Though the powers conferred on this Court under Article 142(1) are very wide, and the same can be exercised for doing complete justice in any case, this court cannot even under Article 142(1) make an order plainly inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any Constitutional provision".

In, ***Delhi Judicial Service Association v. State of Gujarat,***[311] The Supreme Court said that Article 142 is part of the Constitution's basic structure. The Court explained that its power under Article 142(1) to do 'complete justice' is unique and cannot be limited by ordinary laws. No law made by the Central or State Legislature can restrict this power. However, while using this power, the Court should still consider any relevant laws that govern the matter.

In, ***E.S.P. Rajaram v. Union of India,***[312] The Supreme Court held that the inherent powers of article 142 can only be invoked when there is no remedy available; also this power cannot be used to overwrite any provision already present.

Constitutional Limits of Article 142

Article 142 empowers the Supreme court to do "complete justice" in pending matters however, this power is not absolute. It must operate within the framework of the constitution and statutory law and cannot be used to override express legislative provisions.

A key limitation arises from the doctrine of separation of powers.The court cannot under article 142, assume legislative or executive functions.Directions that create new policies or norms risk judicial overreach and disturb institutional balance.

Furthermore,article 142 does not confer law making authority any gap filling directions issued by court are temporary in nature and cannot substitute legislative action.The discretionary power under this article therefore demands judicial restraint to preserve legal certainty .Orders made under this article are case specific and cannot be treated as binding precedents of general application.

[310] Prem Chand Garg v. Excise Commissioner 1963 AIR 996
[311] Delhi Judicial Service Association v. State of Gujarat (1991) 4 SCC 406
[312] E.S.P. Rajaram v. Union of India (2001) 2 SCC 186

ARTICLE 143- POWER OF PRESIDENT TO CONSULT SUPREME COURT

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(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.

(2) The President may, notwithstanding anything in clause (i) of the proviso to article 131, refer a dispute of the kind mentioned in the said clause to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

In other words, Article 143 of the Constitution of India grants power to the President to seek the advice of the Supreme Court on questions of law or facts that are of public importance.[313] This provision ensures that when any doubt arises on a constitutional or legal issue affecting the nation, the President can consult the highest judicial authority for guidance. Under clause (1), the President may refer such questions to the Supreme Court, which then examines the matter, holds hearings if necessary, and submits its advisory opinion. Although this opinion is not binding, it carries significant persuasive value and is usually followed in practice. Clause (2) extends this power to situations involving disputes between the Centre and the States, allowing the President to refer them to the Court even outside the normal original jurisdiction under Article 131. Note that the supreme court is not bound to answer any reference made to it by the president; we can interpret this by the use of the word "may" in the clause (1) of the article.

In ***Re Kerala Education Bill***, the Supreme Court laid down the following principles to be followed in such cases:

(1) The Supreme Court has under clause (1) discretion in the matter and in the proper case and for good reason to refuse to express any opinion on the question submitted to it.

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[313] Article 143, Constitution of India

(2) It is for the President to decide what question should be referred to the Court and if he does not entertain any serious doubt on the other provisions it is not for any party to say that doubts arise also out of them[314].

In Kerala Education bill the court had also held that the advisory opinion provided by the supreme court will not have a binding effect on the courts within the territory of India but later In re Special courts bill case AIR 1979 SC 478, the court held that the advisory opinion shall have binding effect on the courts.

In, ***The Berubari Union Case, 1960***

The President asked if India could give away a part of its land (Berubari area) to Pakistan under a treaty. The Supreme Court said that land cannot be given away without changing the Constitution. This case also discussed the legal status of the Preamble.

In Judges Appointment Case (Special Reference No. 1 of 1998)

The President asked the Supreme Court to explain the method of appointing judges to the higher courts. The Court's opinion created the Collegium System, where senior judges recommend appointments. It strengthened judicial independence.

In the matter of the Cauvery Disputes Tribunal, a Tribunal was appointed by the Central Government to decide the question of waters of the river Cauvery which flows through the States of Karnataka and Tamil Nadu. The Tribunal gave an interim order in June 1991 directing the State of Karnataka to release a particular quantity of water for the State of Tamil Nadu. The Karnataka government resented the decision of the Tribunal and promulgated an Ordinance empowering the Government not to honour the interim Order of the Tribunal. The Tamil Nadu government protested against the action of the Karnataka government. Hence the President made a reference to the Supreme Court under Art. 143 of the Constitution. The Court held that the Karnataka Ordinance was unconstitutional as it nullifies the decision of the Tribunal appointed under the Central Act (víz, the Inter State Water Dispute Act, 1956) which has been enacted under Art. 262 of the Constitution. The Ordinance is also against the principles of the rule of law as it has assumed the role of a Judge in its own cause[315].

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[314] Dr.J.N.Pandey,Constitutional Law of India, 609 (Central Law Agency,Prayagraj, 61st edn.,2024)
[315] Dr.J.N.Pandey,Constitutional Law of India, 610 (Central Law Agency,Prayagraj,61st edn.,2024)

Critical analysis of Article 143:Advisory Jurisdiction

Article 143 empowers the president to seek the advisory opinion of the supreme court on questions of law or fact of public importance.Although such opinions are constitutionally non binding they possess immense persuasive authority, often shaping executive and legislative action.This creates a constitutional tension between advisory assistance and judicial neutrality.

A primary concern arises from the potential executive order reliance on advisory opinions which may be used to shift political responsibility onto the judiciary.Further court's engagement with abstract or hypothetical questions under Article 143 risks blurring the distinction between adjudication and advice,thereby challenging the doctrine of separation of powers.

Furthermore the legitimacy of Article 143 depends upon the court's exercise of institutional restraint ensuring that advisory jurisdiction does not evolve into indirect judicial governance or compromise future adjudicatory impartiality.

ARTICLE 144- CIVIL AND JUDICIAL AUTHORITIES TO ACT IN AID OF THE SUPREME COURT

All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.[316]

Article 144 states that each and every civil and judicial authority in India is going to aid the supreme court.

Draft Article 120 (Article 144) was debated in the Constituent Assembly on 27th May 1949[317]. It stipulated that all civil authorities must act in aid of the Supreme Court.

The Draft Article was accepted without debate and adopted by the Assembly on 27th May 1949.

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[316] Article 144, Constitution of India

[317] Art. 144, Const. of India (Civil and judicial authorities to act in aid of the Supreme Court), available at https://www.constitutionofindia.net/articles/article-144-civil-and-judicial-authorities-to-act-in-aid-of-the-supreme-court/ (accessed on 14 February 2026).

145. Rules of Court, etc.

Article 145 of the Indian Constitution empowers the Supreme Court to make rules regarding the court's procedure and practice with the President's approval.[318] Since the recent amendments to Supreme Court rules in 2025 have been notified based on this Article, it confirms that the Court uses Article 145 to frame and update rules governing its functioning.

Clause - (1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including—

(a) rules as to the persons practising before the Court;

(b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

(c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;

[(cc) rules as to the proceedings in the Court under 5 [article 139A];]

(d) rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;

(e) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered;

(f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;

(g) rules as to the granting of bail;

(h) rules as to stay of proceedings;

(i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;

[318] Article 145, Constitution of India

(j) rules as to the procedure for inquiries referred to in clause (1) of article 317.

In simple terms article 145(1) says the Supreme Court can make rules about how it runs its proceedings, but it has to follow laws made by Parliament. The Court's power to make rules needs the President's permission before they become official.

These rules cover many topics. For example:

- Who can argue cases in the court like the qualifications lawyers needed [art.145 (1) (a)].
- How appeals are handled, including deadlines for filing them [art.145 (1) (b)].
- How the court enforces fundamental rights under part iii of the constitution [art.145 (1) (c)].
- Rules for hearing certain criminal appeals [art.145 (1) (d)].
- How and when the court can review its decisions [art.145 (1) (e)].
- Rules about fees and costs for court cases [art.145 (1) (f)].
- How and when bail can be granted [art.145 (1) (g)].
- When legal proceedings can be paused or stopped temporarily [art.145 (1) (h)]
- How to quickly reject appeals that have no good reason and waste time [art.145 (1) (i)].
- How the court conducts inquiries about judges' conduct and discipline [art.145 (1) (j)].

In short, this clause allows the Supreme Court to manage its own procedures but with respect to the laws made by the parliament and needing the president's approval. It ensures the court can keep order in its work while following the constitution.

Clause – (2) Subject to the, rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

Clause – (3) The minimum number of Judges who are to sit for the purpose of deciding any case involving involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five: Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this

Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

Article 145 clause (2) and clause (3) deals with the number of judges and bench Composition,

The supreme court rules, with the president's approval, can set the minimum number of judges who must hear any case. The rules can also specify the powers of single judges or smaller groups of judges (called division benches) for important cases involving a big constitutional question one that deals with interpreting the constitution the minimum number of judges must be five or more. This is called a constitution bench. If a smaller bench (fewer than five judges) is hearing an appeal but finds an important constitutional question during the hearing, it must send that question to a larger bench of at least five judges. Once the larger bench gives its opinion, the smaller bench must decide the appeal according to that opinion.

Clause – (4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.

This clause states that the supreme court cannot give any judgement in secret; every judgement shall be announced in an open courtroom for everyone to hear; this also applies for any official opinion given to the president under article 143.

Clause – (5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

The supreme court’s judgement or opinion will only be final if the majority of the judges agree upon it but this does not restrict for any of the judges to write their dissenting opinion explaining their reasons for not agreeing on it.

ARTICLE 146- OFFICERS AND SERVANTS AND THE EXPENSES OF THE SUPREME COURT

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(1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the Court as he may direct: Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose: Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.[319]

Draft of Article 122 (Article 146) was debated on 27th May 1949.[320] It laid out the rules pertaining to the salary of officers of the Supreme Court.

The Chairman of the Drafting Committee proposed to wholly replace the Draft Article with the following:

'(1) Appointments of officers and servants of the Supreme Court shall be made by the chief Justice of India or such other judge or officer of the court as he may direct:

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[319] Article 146, Constitution of India

[320] Art. 146, Const. of India (Officers and servants and the expenses of the Supreme Court), available at https://www.constitutionofindia.net/articles/article-146-officers-and-servants-and-the-expenses-of-the-supreme-court/ (accessed on 14 February 2026).

Provided that the President may by rule require that in such cases may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of services of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other judge or officer of the court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of India in consultation with the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India, and any fees or other monies taken by the court shall form part of those revenues.

'He further proposed that the proviso to clause (2) of the amendment be replaced to require that the rules pertaining to salaries, allowances, leaves or pensions receive the approval of the President.

The debates in the Assembly were based on the proposed amendments. The amendments expanded the Supreme Court's power to appoint officers and fix their salaries, and also ensured that the court's administrative expenses were charged on the revenues of India.

The amendments received the widespread support of the Assembly. One member stated that clause (1) ensured there would be 'no favouritism in the matter of appointments'. A member of the Drafting Committee lauded the amendment for securing the interests of the taxpayer as well as the independence of the judiciary.

However, one member believed that the requirement for the Chief Justice to obtain the approval of the President – rather than merely consult with him – infringed on the independence of the judiciary. Another member agreed with him, arguing that it was not right to 'subordinate…powers of the Supreme Court to an individual entrusted with the powers of an executive nature'. In response, one member stated that the approval requirement was necessary

as only the executive would be fully aware of the budgetary constraints of the exchequer. The Chairman of the Drafting Committee noted that the proposed amendment ensured uniformity in salaries for all civil servants, as it restricted the Chief Justice from fixing a salary scale which was markedly different from the scale fixed for officers of other branches of government.

Both amendments were accepted by the Assembly. Draft Article 122 was adopted on 27th May 1949.

ARTICLE 147- INTERPRETATION

In this Chapter and in Chapter V of Part VI, references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (including any enactment amending or supplementing that Act), or of any Order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.[321]

Draft Article 122A (Article 147) was not included in the Draft Constitution of India, 1948.[322] A member moved the following amendment:

'122-A. Interpretation. In this Chapter, references to any substantial question of law to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935, or of any Order in Council or order made thereunder or of the Indian Independence Act, 1947, or of any order made thereunder.'

Draft Article 122A was debated on 6th June 1949 and 16th October 1949. It stipulated that references to substantial questions of law involving 'the interpretation of this Constitution'

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[321] Article 147, Constitution of India

[322] Art. 147, Const. of India (Interpretation), available at https://www.constitutionofindia.net/articles/article-147-interpretation/ (accessed on 14 February 2026).

should be construed to include cases involving the interpretation of the Government of India Act, 1935 and the Indian Independence Act, 1947.

The proposing member argued if the scope of the expression ‘as to the interpretation of this Constitution’ was not expanded, pending cases which involved the interpretation of the 1935 and 1947 Acts could no longer be heard on appeal. The existing law allowed cases being heard in the Privy Council to be automatically transferred to the Supreme Court once the Constitution came into force. However, pending cases in the High Courts involving similar issues could only be heard on appeal by the Federal Court, which would cease to exist after the Constitution came into force. This amendment received the support of the Chairman of the Drafting Committee. One member argued that the 1935 and 1947 Acts would lapse on the date that the Constitution came into force, and that it was improper to force the courts to interpret dead constitutions. A member of the Drafting Committee responded that the proposed Draft Article would not impact the validity of the new Constitution. Citing instances where the legality of deeds executed by the Mughal courts arose years after lapsing, he argued that such a provision protected the interests of persons involved in disputes arising under the old constitutions.

Draft Article 122A was accepted by the Assembly and adopted on 6th June 1949.

Subsequently, the Draft Article was amended to apply to cases being referred for appeal to the High Courts. This amendment was adopted on 16th October 1949.

Article 147 clarifies how the term "substantial question of law as to the interpretation of this constitution" should be understood in legal proceedings. When this phrase is used in the constitution or in related sections, it also includes cases where there is an important legal question about interpreting the government of India act, 1935 including any changes, supplements, or orders made under that act as well as cases involving the Indian independence act, 1947 and any orders made under it. This means that questions involving these older foundational laws are treated with the same significance as questions of interpreting the current constitution in the courts.

CONCLUSION

Article 140 to article 147 of the Indian constitution together establish the framework for the effective and smooth functioning of the supreme court and the union judiciary. These articles empower the supreme court with ancillary powers necessary to supplement its constitutional jurisdiction, ensuring it can adapt to evolving judicial needs (provided under article 140). The law declared by the supreme court shall be binding on all of the courts throughout India, maintaining judicial consistency and authority (provided under article 141). The court is empowered to pass any order or decree in order to deliver complete justice, it also can enforce its decisions, and secure attendance or evidence, maintaining its control over proceedings (provided under article 142).

The constitution also grants the president the power to consult the supreme court for its opinion on important legal questions, promoting constitutional governance (provided under article 143). All civil and judicial authorities in India are bound to assist the supreme court in the exercise of its duties (provided under article 144).

Article 145 grants the power to the supreme court to set procedural rules, regulate practices, and govern its operations with presidential approval, including the authority to form benches and review its judgments. Articles 146 and 147 deal with the administration of the court and define the interpretation of substantial constitutional questions, respectively, by including references to important historical legislations such as the government of India act, 1935, and the Indian independence act, 1947.

All these articles together ensure that the supreme court functions as an independent, authoritative, and adaptable institution capable of upholding the constitution, delivering justice effectively, and maintaining the rule of law across the nation.

CHAPTER 12: COMPTROLLER AND AUDITOR- GENERAL (ARTICLE 148-151)

BY ADITHI SHENOY A

INTRODUCTION

The Constitution of India, through its framers' foresight, established an independent constitutional authority to ensure financial accountability and transparency within the democratic framework- the Comptroller and Auditor-General of India (CAG). Enshrined in Articles 148 to 151, the office of a CAG represents one of the most vital pillars of parliamentary control over public finance. The Constituent Assembly, deeply influenced by the British model of parliamentary democracy, sought to ensure that while the Executive possessed the authority to spend, its exercise would be subject to vigilant oversight. Dr. B.R. Ambedkar describes the CAG as "the most important officer under the Constitution of India",[323] as he viewed the office as essential for financial accountability, acting as the guardian of the public purse to ensure government spending aligns with parliamentary approval.

The CAG's mandate extends beyond the mere auditing of accounts. It embodies the principle of accountability fundamental to constitutional governance. Their duties include auditing all receipts and expenditures of the Union and the States, as well as those of authorities and bodies substantially financed by government funds.[324] By doing so, the CAG ensures that the legislative grants are utilized strictly in accordance with the law and within the bounds of financial propriety.

[323] B.R. Ambedkar, *Constituent Assembly Debates*, Vol. IX (Government of India, New Delhi, 1949)
[324] *The Constitution of India*, Articles 148-151

The significance of the CAG lies not merely in its constitutional position but in its role as the conscience of fiscal democracy.[325] The independence of the office, secured through tenure, removal safeguards, and conditions of service, is central to maintaining impartial scrutiny over governmental financial operations.[326] As the Supreme Audit Institution (SAI) of India, the CAG has evolved from a colonial legacy into a dynamic institution that now audits not only traditional expenditure but also performance, efficiency, and outcomes of public programs.

In essence, the CAG symbolizes the moral and institutional check on the misuse of public resources. Its reports, laid before Parliament and State Legislatures, stimulate democratic debate, and fortify the principles of accountability envisioned in the Preamble. Thus, the office of the CAG stands at the intersection of financial discipline and democratic responsibility, ensuring that the rule of law governs not only the making of policy but also the management of public funds.[327]

HISTORICAL BACKGROUND

The office of the Comptroller and Auditor-General of India finds its origins in the colonial administrative machinery established under British rule. The idea of a central auditing authority emerged from the need to ensure fiscal discipline and accountability within the vast framework of the British Indian administration. The earliest statutory reference to such an office can be traced to the *Government of India Act, 1858*, which transferred the control of India from the East India Company to the British Crown, thereby necessitating a more formalized system of financial audit.[328] The post of the Auditor-General, created soon thereafter, was meant to audit the accounts of revenues and expenditures of the Government of India, ensuring conformity with parliamentary grants and imperial directives.

[325] H.M. Seervai, *Constitutional Law of India*, Vol. II (N.M. Tripathi, Bombay, 4th edn., 1991)
[326] D.D. Basu, *Introduction to the Constitution of India* (LexisNexis, 25th edn., 2021)
[327] Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press, New Delhi, 1999)
[328] *Government of India Act, 1858* (21 & 22 Vict., c.106)

Subsequent legislative developments further institutionalized the audit framework. The *Government of India Act, 191*9 introduced a measure of financial devolution between the central and provincial governments and emphasized the necessity of independent financial supervision.[329] This process was carried forward and significantly strengthened under the *Government of India Act, 1935,* which for the first time established the office of the Auditor-General of India as a statutory authority.[330] The Act envisaged an independent officer, responsible for auditing all revenues and expenditures of both central and provincial governments- an arrangement that closely resembles the current constitutional structure.[331]

The Constituent Assembly, while drafting the Constitution, drew heavily from these colonial precedents but was equally influenced by comparative models such as the British Exchequer and Audit Department and the Australian system of parliamentary financial accountability.[332] The debates reflected a clear consensus that independence from the Executive was essential to uphold parliamentary control over public finance. Dr. B.R. Ambedkar, in his intervention during the debates, underscored the importance of ensuring that the CAG would act as "the eyes and ears of Parliament."[333] The Assembly also resolved long-standing anxieties regarding the misuse of public funds under colonial rule by constitutionalizing the independence of the CAG through safeguards concerning tenure, salary, and removal.

Thus, the historical evolution of the CAG represents a transition from an instrument of imperial audit to a constitutional guardian of public accountability in a sovereign democracy. By constitutionalizing financial oversight, the framers sought to address the historical deficit of fiscal transparency under colonial governance and to enshrine a system wherein the people's money would be spent under the people's watch.

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[329] Government of India Act, 1919 (9 & 10 Geo. 5, c.101)
[330] Government of India Act, 1935 (26 Geo. 5 & 1 Edw. 8, c.2)
[331] P. Chakraborty, Accountability and the Indian Audit System (Indian Audit and Accounts Department, New Delhi, 1981)
[332] Granville Austin, The Indian Constitution: Cornerstone of a Nation (Oxford University Press, London, 1966)
[333] B.R. Ambedkar, Constituent Assembly Debates, Vol. IX (Government of India, New Delhi, 1949)

CONCEPTUAL AND DOCTRINAL FRAMEWORK

Once the historical context is established, the conceptual foundation of the office of the Comptroller and Auditor-General of India must be examined within the framework of constitutional theory and doctrine. Articles 148 to 151 of the Constitution enshrine the CAG as an independent constitutional authority responsible for auditing the accounts of the Union and the States. Conceptually, the CAG represents a critical instrument of legislative control over the Executive, ensuring that financial administration remains consistent with constitutional propriety and democratic accountability. The doctrine underlying this institution rests on the separation of powers and the supremacy of Parliament in matters of public finance, as expressed in Articles 266 and 283.[334]

The framers of the constitution viewed financial accountability as an essential attribute of responsible government. Drawing upon the British parliamentary tradition, where the Comptroller and Auditor-General functions as the guardian of the public purse, the Indian model incorporated a similar institutional design but with stronger constitutional safeguards.[335] The CAG's independence, secured through provisions regarding appointment, tenure, and removal (Article 148), reflects a deliberate constitutional choice to insulate financial oversight from executive interference.[336] This insulation transforms the CAG from a mere administrative auditor into a constitutional watchdog empowered to uphold the principles of transparency, legality, and propriety in public spending.

From a doctrinal standpoint, the CAG's position aligns with the concept of constitutional accountability- a principle that demands public authorities justify the use of state resources before the legislature and ultimately, the people.[337] The Indian Judiciary, while interpreting the scope of the CAG's powers, has emphasized that the institution's role extends beyond audit to

[334] The Constitution of India, Articles 148-151, 266, 283

[335] S.P. Sathe, Judicial Activism in India (Oxford University Press, New Delhi, 2002)

[336] D.D. Basu, Commentary on the Constitution of India, Vol. 6 (LexisNexis, 9th edn., 2018)

[337] M.P. Jain, Indian Constitutional Law (LexisNexis, 9th edn., 2018)

ensuring adherence to constitutional values. In A.R. Antulay v. R.S. Nayak (1988), the Supreme Court noted that the CAG's functions are "in aid of Parliament", underscoring its constitutional stature rather than its bureaucratic identity.[338] The Court has also invoked the CAG's findings in cases involving corruption, misappropriation, and irregularities in allocation of resources, recognizing its reports as crucial instruments for enforcing public accountability.

Leading constitutional scholars such as D.D. Basu and H.M. Seervai have highlighted that the CAG is a unique creation of the Indian Constitution- neither part of the Executive nor an appendage of the Legislature, but an autonomous authority ensuring checks and balances within the financial framework.[339] Granville Austin similarly described the CAG as an embodiment of the "moral dimension" of the Constitution, designed to preserve fiscal integrity in governance.[340] The intellectual debates around the CAG thus revolve around its dual character as an audit institution rooted in colonial administrative practice, and as a constitutional guardian essential to the moral and democratic architecture of the Republic.

ARTICLE-WISE DISCUSSION

The constitutional framework relating to the Comptroller and Auditor-General of India (CAG) is contained in Articles 148 to 151 of the Constitution. Together, these provisions establish the office and define its functions in relation to both the Union and the States. Each article represents a carefully crafted component of the broader constitutional scheme of financial accountability, ensuring that the Executive remains subject to legislative control in fiscal matters.

Article 148: Appointment and Conditions of Service

Article 148(1) declares that there shall be a Comptroller and Auditor-General of India, appointed by the President by warrant under his hand and seal. This formulation, echoing the style of judicial appointments, was intended to emphasize the constitutional status and dignity of the

[338] A.R. Antulay v. R.S. Nayak (1988) 2 SCC 602

[339] H.M. Seervai, Constitutional Law of India, Vol. II (N.M. Tripathi, Bombay, 4th edn., 1991)

[340] Granville Austin, Working a Democratic Constitution: The Indian Experience (Oxford University Press, New Delhi, 1999)

office. The subsequent clauses insulate the CAG from executive interference: the CAG can be removed only in the manner and on the grounds prescribed for a judge of the Supreme Court (Article 148(1)-(2)). The salary and other service conditions are determined by Parliament, but cannot be altered to the CAG's disadvantage after appointment (Article 143(3)).[341] These safeguards collectively uphold the independence of the office, a principle reaffirmed by the Supreme Court in Union of India v. K.S. Subramanian (1976), where it was held that the CAG functions as an autonomous constitutional authority, not subordinate to any executive department.[342]

Article 149: Duties and Powers of the CAG

Article 149 defines the scope of the CAG's duties "in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament." The broad phrasing allows legislative flexibility, enabling Parliament to expand the CAG's jurisdiction beyond conventional government accounts to include public corporations, autonomous bodies, and authorities substantially financed by government funds. The Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 elaborates these functions, ranging from auditing expenditure to assessing performance and efficiency.[343] Judicial pronouncements such as Arvind Gupta v. Union of India (2015) have underscored that the CAG's reports play a crucial role in promoting transparency and accountability, serving as the basis for legislative scrutiny and, where necessary, judicial inquiry.[344]

Article 150: Form of Accounts

Under Article 150, the President is empowered to prescribe, on the advice of the CAG, the form in which the accounts of the Union and of the States shall be kept. This provision is significant as it institutionalizes the consultative relationship between the Executive and the CAG, while ensuring that the latter's expertise determines the standards of public accounting.[345] The

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[341] The Constitution of India, Article 148
[342] Union of India v. K.S. Subramanian, (1976) 3 SCC 677
[343] The Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971
[344] Arvind Gupta v. Union of India (2015) 9 SCC 213
[345] D.D. Basu, Commentary on the Constitution of India, Vol. 6 (LexisNexis, 9th edn., 2018)

underlying constitutional logic is to prevent the Executive from unilaterally defining accounting procedures in a manner that could obscure financial irregularities. Thus, Article 150 ensures that the principles of audit and accounting remain harmonized under a uniform, constitutionally endorsed framework.

Article 151: Audit Reports

Article 151(1) mandates that the reports of the CAG relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before both Houses of Parliament. Similarly, Article 151(2) provides for the submission of State audit reports to the Governor for presentation before the State Legislature. The Constitution thereby reinforces the principle of parliamentary supremacy over financial matters. The CAG reports, once tabled, are examined by the Public Accounts Committee (PAC), a key institution of legislative oversight. The Supreme Court in Comptroller and Auditor-General of India v. K.S. Jagannathan (1986) observed that these reports "embody the conscience of public finance" and provide Parliament the necessary foundation for enforcing executive accountability.[346]

The working of these articles has been especially relevant in contemporary governance. For instance, the CAG's reports on the 2G spectrum allocation (2010) and coal block allocations (2012) highlighted systemic failures in public resource management and became catalysts for legislative and judicial action. These episodes exemplify how the constitutional design of Articles 148-151 translates into practice, transforming audit findings into instruments of democratic correction. Through such interventions, the CAG continues to serve as both sentinel and interpreter of financial integrity within India's constitutional democracy.

CONTEMPORARY RELEVANCE AND CHALLENGES

In contemporary governance, the office of the Comptroller and Auditor-General of India remains indispensable to the constitutional scheme of accountability. However, the institution faces complex challenges that test its autonomy, relevance, and capacity to uphold financial integrity

[346] Comptroller and Auditor-General of India v. K.S. Jagannathan (1986) 2 SCC 679

in an era of rapid administrative expansion. The growing size of government expenditure, the proliferation of public-private partnerships (PPPs), and the increasing reliance on off-budget borrowings have collectively complicated the audit landscape.[347] These developments raise the question of whether the CAG's constitutional design under Articles 148-151 has kept pace with new forms of state financing and quasi-fiscal activities.

The past decade has seen several instances where CAG reports have had a transformative political and legal impact. The 2G spectrum and coal allocation audits (2010-2012) catalysed a wave of public accountability, resulting in Supreme Court scrutiny and policy reversals.[348] While these episodes reinforced the CAG's role as a "constitutional conscience-keeper", they also triggered debates about the boundaries of the office's mandate, particularly whether performance audits verge into the domain of policy evaluation.[349] Critics have argued that overstepping into policy analysis risks politicising the office, while others contend that such evolution is necessary to ensure meaningful oversight in a modern welfare economy.

Institutionally, questions of access to information and follow-up action persist. Although the CAG submits reports to legislatures, the efficacy of the Public Accounts Committee (PAC) in ensuring remedial measures often depends on political will and bureaucratic cooperation.[350] Furthermore, the delay between audit observation and parliamentary discussion frequently dilutes accountability. Digital governance and the use of artificial intelligence in financial systems pose new challenges to audit methodologies, necessitating reforms in capacity, data access, and technological expertise within the CAG's office.[351]

In the federal context, State governments occasionally resist central audit scrutiny over local bodies or state-owned enterprises, citing autonomy concerns.[352] Such tensions underscore the need for clearer legislative articulation under Article 149 and better coordination mechanisms between the Union and the States. Nevertheless, the Supreme Court has consistently upheld the

[347] D.D. Basu, Commentary on the Constitution of India, Vol. 6 (LexisNexis, 9th edn., 2018)
[348] CAG Report on the Allocation of 2G Spectrum Licenses, 2010; CAG Report on Allocation of Coal Blocks, 2012
[349] B.P. Mathur, Accountability and Governance: The CAG's Role (Oxford University Press, 2018)
[350] Subhash C. Kashyap, Our Parliament (National Book Trust, 2014)
[351] S. Narayan, "Auditing Digital India: The Next Frontier," Economic and Political Weekly, Vol. 58, No. 23 (2023)
[352] State of Punjab v. Union of India (2018) 3 SCC 263

CAG's expansive jurisdiction as intrinsic to parliamentary democracy, reiterating that the institution's purpose transcends mere book-keeping. It embodies the constitutional principle that "public money must be spent for public purposes."[353]

Thus, while the core constitutional vision of Articles 148-151 remains intact, the operational reality of the CAG's office has evolved in response to political, technological, and fiscal transformations. The contemporary challenge lies not in redefining the institution, but in reinforcing its independence and equipping it to confront new forms of financial opacity. Its continued effectiveness will determine the strength of India's democratic accountability in the decades ahead.

CRITICAL ANALYSIS

A critical examination of Articles 148-151 reveals both the constitutional strength and practical fragility of India's audit framework. The framers of the Constitution envisioned the Comptroller and Auditor-General of India (CAG) as an independent sentinel of public finance, one who would ensure accountability without succumbing to political influence. In practice, however, the balance between autonomy and effectiveness has often been delicate. While the CAG enjoys security of tenure and constitutional insulation from executive control, its institutional independence is occasionally undermined by administrative and procedural constraints, such as dependence on the executive for budgetary allocations and staffing approvals.[354]

A notable strength of these provisions lies in their enduring adaptability. The CAG's jurisdiction has expanded to accommodate novel fiscal mechanisms such as the Goods and Services Tax (GST), sovereign wealth funds, and government-owned enterprises. This evolution demonstrates the constitutional resilience of Articles 148-151, which continue to serve as a cornerstone of fiscal federalism. Yet, the same expansion also brings ambiguity, especially when auditing hybrid

[353] Comptroller and Auditor-General of India v. K.S. Jagannathan (1986) 2 SCC 679
[354] D.D. Basu, Commentary on the Constitution of India, Vol. 6 (LexisNexis, 9th edn., 2018)

entities like public-private partnerships (PPPs), which operate in a semi-commercial domain.[355] The absence of explicit statutory direction under Article 149 on such entities has led to interpretive gaps and inconsistent oversight practices.

From a democratic perspective, the CAG's reports have proven instrumental in shaping public discourse and strengthening legislative oversight. The 2G spectrum and coal allocation reports underscored the transformative potential of independent auditing in exposing systematic inefficiencies and corruption.[356] Nevertheless, the subsequent politicization of audit findings raises an important constitutional concern: whether the CAG's authority has been leveraged as a tool of accountability or weaponized for political advantage. Overreach in performance auditing, where the CAG's commentary borders on policy evaluation, risks blurring the constitutionally intended separation between financial supervision and executive policymaking.[357]

Judicial pronouncements have generally supported an expansive interpretation of the CAG's mandate, reaffirming that the office is an essential element of India's constitutional checks and balances.[358] Yet, the lack of statutory follow-up mechanisms on audit recommendations weakens the operational link between audit observation and executive compliance. The Public Accounts Committee (PAC), which serves as the principal legislative forum for reviewing CAG reports, often struggles with backlog and political partnership, diluting accountability outcomes.[359]

CONCLUSION

The constitutional scheme embodied in Articles 148-151 secures the Comptroller and Auditor-General of India as a cornerstone of financial accountability within the federal structure. Tracing its roots to the British model of parliamentary oversight, the Indian adaptation has

[355] S. Narayan, "Public-Private Partnerships and the Expanding Audit Mandate," Economic and Political Weekly, Vol. 57, N0. 12 (2022)
[356] CAG Report on the Allocation of 2G Spectrum Licences (2010); CAG Report on Allocation of Coal Blocks (2012)
[357] B.P. Mathur, Accountability and Governance: The CAG's Role (Oxford University Press, 2018)
[358] Comptroller and Auditor-General of India v. K.S. Jagannathan (1986) 2 SCC 679
[359] Subhash C. Kashyap, Our Parliament (National Book Trust, 2014)

evolved into a uniquely independent constitutional office, one that stands above partisan divisions to protect the integrity of public expenditure. The doctrinal analysis reveals that these provisions were framed not merely as procedural safeguards, but as vital instruments for ensuring transparency in a complex fiscal federation.

In practice, the CAG has emerged as both auditor and moral guardian of the Republic's finances, its reports often catalysing political and judicial scrutiny of executive action. Yet, this power also carries the burden of restraint. The modern fiscal landscape requires the CAG's mandate to be both adaptive and clearly demarcated. Judicial interpretations and parliamentary procedures must therefore evolve in tandem, preserving the CAG's credibility while preventing mission drift into policy evacuation.

A forward-looking approach demands greater institutional reinforcement: statutory clarity on audit scope and enhanced follow-up mechanisms through parliamentary committees. These reforms, coupled with a culture of constitutional morality and bureaucratic accountability, would ensure that the CAG continues to function as a true sentinel of the public purse. Ultimately, the efficacy of Articles 148-151 lies not only in their textual precision, but in their continued capacity to embody the spirit of responsible governance that underpins Indian federalism.

CHAPTER 13: THE STATE EXECUTIVE: THE GOVERNOR, THE MINISTRY, AND THE FEDERAL BALANCE (ARTICLE 152–167)

BY AMIT RAGHUWANSHI

INTRODUCTION

The Indian Constitution establishes a dual governance system, under which each state functions as an autonomous body. Three separate branches—executive, legislative, and judicial perform their functions in conjunction with the Union Government. That federal arrangement is a cornerstone of Indian political architecture. Articles 152 to 167 are keys that define the structure of the State Executive, the Governor, Chief Minister (i.e., CM), Council of Ministers (i.e., *CoM*), and Advocate-General. These provisions also describe the ceremonial head of state's relationship to the practical wielders of political power. This chapter outlines the historical developments, conceptual underpinnings, and specific provisions of these articles, interpreting them against the backdrop of judicial precedents and illustrations to demonstrate how they operate at the level of Indian federal governance.

HISTORICAL BACKGROUND

The concept of the State Executive stems from the Government of India Act, 1935[360] which established provincial autonomy for those governed by a Governor appointed by the British Crown. While framing the Indian constitution, a heated controversy emerged: Should the Governor be *elected* or *appointed*?

Supporters of an elected Governor, like Pandit Jawaharlal Nehru, had claimed that such a democratic option would lend the office a higher degree of legitimacy. But Dr B.R. Ambedkar

[360] M.P. Singh, "The Government of India Act, 1935 and its Influence on the Constitution of India," *Journal of the Indian Law Institute*, Vol. 30, No. 2, pp. 245-260 (1988).

and others vehemently disagreed. They worried that an elected Governor with popular support would establish a rival centre of power to the CM that, when formed, would result in constitutional contention and instability, particularly because of the fragile post-Partition state.

The Constituent Assembly ultimately appointed a Governor to ensure a harmonious relationship between the Union itself and the States.[361] That chosen and appointed figure was meant to be a constitutionally neutral guardian and an essential linkage to the Central government, to diverge from local politics and capable of acting impartially.

CONCEPTUAL & DOCTRINAL UNDERPINNING

The framework of the State Executive is determined by the doctrine of parliamentary democracy. The Governor is a constitutional head, similar to the role of the President at the Union level, whereas genuine executive authority resides with the *CoM*, who are directly accountable to the State Legislative Assembly. This interaction is enshrined in Art. 163 in the obligatory provision of “aid and advice.”[362]

Part two of Art. 163 allows the Governor some limited “discretionary powers” — a point that often raises political or legal tensions.[363] The central doctrinal issue lies in the difficulty of combining the Governor's ceremonial nature with his ability to act independently in exceptional, but constitutionally defined, cases.[364] Thus, judicial review has created the notion of “constitutional trust” because it acknowledges that the Governor is a touchstone to the Centre but his first responsibility is to safeguard the Constitution’s sanctity and impartiality.[365]

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[361] Constituent Assembly Debates, Vol. VIII, pp. 467-474 (1949).
[362] D.D. Basu, *Shorter Constitution of India* 522-524 (LexisNexis, Nagpur, 15th edn., 2015).
[363] M.P. Jain, *Indian Constitutional Law* 909-915 (LexisNexis, Nagpur, 8th edn., 2018).
[364] Subhash C. Kashyap, *The Constitution of India: The Cornerstone of a Nation* 203-205 (National Book Trust, New Delhi, 2014).
[365] V.N. Shukla, *Constitution of India* 433 (EBC Publishing Pvt. Ltd., Lucknow, 13th edn., 2019).

ARTICLE-WISE DISCUSSION-

DEFINING THE EXECUTIVE STRUCTURE AND ITS LIMITS

Article 152 (Definition)

This article defines the term "State", which was introduced in Part VI. The exclusion of J&K was on account of its peculiar constitutional character under Article. 370. This provision has since become significantly antiquated, after the abrogation of Art. 370 in 2019, and since the Union Territory of J&K is now covered by a general constitutional framework.[366]

Article 153 (Governors of States)

This Article mandates the appointment of a Governor for each State. The proviso, which was added in the Seventh Constitution. Amend. The Act of 1956,[367] was intended to allow a single candidate to serve as Governor of two or more states, making state government easier and more expeditious to run and manage.

Constitutional debates on Art. 153(i.e., *draft art. 129*) revolved around two basic issues- whether governors should be appointed from the states they serve to represent, and whether the office of Governor was required. Arguments to abolish the role for a more centralised system were rejected as the Constituent Assembly had already settled on a semi-federal arrangement. The article was enacted, but revised in 1956 to allow one Governor for multiple states.[368]

Article 154 (State's Executive power)

This Article states that the State's executive power is vested in the Governor (Clause 1). However, it is carried out according to the Constitution and ministerial advice. So, the Governor is the head (i.e., *De Jure*) rather than the actual authority (i.e., *De facto*). Further, Clause (2) also

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[366] *The Jammu and Kashmir Reorganisation Act, 2019*, No. 34 of 2019, India Code, https://www.indiacode.nic.in/bitstream/123456789/15875/1/the_jammu_and_kashmir_reorganisation_act_2019.pdf (Last visited Sept. 21, 2025).
[367] *The Constitution (Seventh Amendment) Act, 1956*, India, https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-seventh-amendment-act-1956 (Last visited Sept. 25, 2025),.
[368] *Constituent Assembly Debates*, Vol. VIII, 30 May 1949, at 427.

limits this power by prohibiting its interference with any other constitutional organ and allowing the State Legislature to delegate powers.

The Constituent Assembly discussed Draft Art. 130 and agreed that the Governor must act constitutionally and legally rigorously. The proposals to require the Governor to be bound to the Constitution were welcomed, but suggestions to clarify that powers are exercised "on behalf of the people" were dismissed. The Drafting Committee pointed out that this article resembles Art. 53 (Union Executive) to ensure consistency in its governance of the federal government as well as a clear process of accountability for executive action.[369]

The Apex Court, in the case of *State of Uttar Pradesh v. Babu Ram Upadhya (1961)*[370], reiterated that the Governor's executive power is not unlimited. Although the Governor can terminate a public servant under Art. 309, that power is limited by mandatory procedural rules that carry the force of law. If there is no following of such dismissal procedures, the dismissal is invalid. On this occasion, a Sub-Inspector objected to being fired on alleged breaches of compulsory police regulations. The Court held that the processes mandated are mandatory and quashed the dismissal. This decision reaffirmed the Rule of Law as even constitutionally empowered executive behaviour must conform to legal procedures, and so will increase administrative responsibility and guarantee rights for individuals.

APPOINTMENT, TENURE, AND SAFEGUARDS

Articles 155 & 156 (The Pleasure Doctrine)

Art. 155 states that the Governor is not elected but appointed by the President. During the Consti. Assembly debates, this article sparked debate over whether Governors should be *elected* or *appointed*. The majority favoured appointment by the President, arguing it would create an impartial, independent head free from local politics. The point of this decision was that the Governor would be a wise advisor and steadying influence, rather than a political figure. This approach was ultimately adopted.[371]

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[369] Ibid..
[370] State of Uttar Pradesh v. Babu Ram Upadhya, (1961) 2 SCR 679.
[371] *Supra* note 9, 30 May 1949 and 31 May 1949, pp. 439-470.

Further, Art. 156 states that the Governor holds office "*during the pleasure of the President*," in other words, the term of office is 5 years, but the Governor can easily be removed by the central administration. This generates a situation in which the Governor becomes constitutionally bound by the Union Government, which means that they can only be appointed or not appointed by the Centre for years to come. Yet the Supreme Court had the judgment to prevent the abuse of power in the leading decision of *B.P. Singhal v. Union of India (2010)*[372]. The Court also said the President's authority to remove a Governor is not unlimited. Removal must be justified on solid and valid grounds regarding the Governor's failure to discharge constitutionally enshrined duties, including misconduct or inability to perform duties, and not because of political differences or a shift in government at the Centre.

Moreover, it is not a requirement of the President to state why a Governor is being removed, but these are subject to review by the Court to avert arbitrary or discriminatory acts. The decision followed a petition arguing that the newly constituted Central government had been unable to justify a sudden removal of four Governors in 2004, and it had breached constitutional guarantees for Governors' tenure.

QUALIFICATIONS, CONDITIONS, AND OATH

Article 157 (Appointment Qualification)

This article establishes what minimum criteria must be satisfied for the Governor's appointment: that the candidate for appointment must be an Indian citizen and at least 35 years old. The framers deliberately kept these requirements simple, concentrating on citizenship and a certain age, while ultimately relinquishing the decision about suitability to the President, who acts on the advice of the Union Cabinet.

Article 158 (Conditions of Governor's Office)

To ensure the Governor's independence and impartiality, this article forbids membership in Parliament or any State Legislature, and any other office of profit. This ensures the Governor's neutrality and independence from competing interests. And the Governor is guaranteed financial

[372] B.P. Singhal v. Union of India, (2010) 6 SCC 331.

security through a formal residence and fixed emoluments that cannot be diminished during the tenure. Clause (3A), introduced by the Seventh Constitutional Amendment of 1956, addresses this practical need for expenses to be allocated to a party that serves as Governor for more than one state after the reorganisation.

Article 159 (Oath or Affirmation)

Before the Governor is sworn into office, he or she is required to give a solemn oath or affirmation of the obligation to *"preserve, protect and defend the Constitution and the law."* This commitment, in turn, serves as the ethical and legal basis upon which the Governor's job as guardian of the Constitution. is based, demanding that he act on issues other than his party affiliation to uphold constitutional principles.

FUNCTIONAL POWERS: CLEMENCY, LAW, AND FEDERAL EXTENT

Article 160 (Contingency Power)

Art. 160 is a constitutional protection of the State and provides for the smooth running of affairs. One of its functions is to give the President, upon the advice of the Union Cabinet, the power to temporarily relieve the Governor of his duties in an emergency that is not mentioned elsewhere in the Constitution. This clause becomes essential in such circumstances in which the Governor becomes incapacitated due to the occurrence of a sudden illness, injury or otherwise and in the event of unexpected absence, does not leave any administrative void in the State's highest post. By letting the Union intervene in such extraordinary situations, Article 160 serves as a limited contingency mechanism to prevent administrative vacuum, without enlarging the Governor's discretionary domain or undermining State autonomy.

Article 161 (Clemency Powers)

Art. 161 gives the Governor authority for clemency for offences against State laws. These are humanitarian powers with the following restrictions that exist: the Governor cannot offer a

pardon for death sentences, unlike the President under Article 72. But he/she can suspend, remit, or commute death sentences. The clemency power is a vital mechanism of mercy and justice within the criminal justice system.

Judicial Oversight: The SC of India made a clear interpretation that the clemency powers of the Governor have to be reviewed by the Court of Appeal for their application of constitutional principles of fairness and rationality. In landmark cases like *Kehar Singh v. Union of India (1989)*[373] *and Epuru Sudhakar v. Government of Andhra Pradesh (2006)*[374,] the Court held that clemency cases can be subject to review when made arbitrarily, influenced by improper political considerations, or without proper deliberation.

Article 162 (Extent of State Executive Power)

Art. 162 limits the executive authorities of State Governments to subjects enumerated in the State List (List-II, 7th Schedule). The State's executive power in respect of subjects in the Concurrent List (List- III), where Parliament and State legislature , is subject to any law made by Parliament. Union supremacy over the common territories often constrains States and becomes a constant target for federal animus, emphasising the federal-state balance that India's Constitution reflects.

MINISTERIAL GOVERNANCE AND CONFLICT

Article 163 (Aid and Advice vs. Discretion)

The Indian Constitution, Art. 163, delineates the role of the Governor regarding the position of *CoM*, and the Governor must generally act on the Council's advice. Based on the aforementioned Art. 163, the Constitution prescribes that the discretion of the Governor is generally confined to certain conditions as per the Constitution.

The provisions in clause (1) require a *CoM* led by the CM to assist and advise the Governor in the exercise of his functions. Clause (2) states that the Governor has discretion, but only to decide on what is expressly provided for in the Constitution.

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[373] Kehar Singh v. Union of India, (1989) 1 SCC 204.
[374] Epuru Sudhakar v. Government of Andhra Pradesh, (2006) 4 SCC 311

It is essential, as illustrated by the Apex Court in *Shamsher Singh v. State of Punjab (1974)*[375,] which applied the central interpretation of Article 163. In this case, two judicial officers sued the Governor for their dismissals because they argued that personal discretion was the ground for the Governor's dismissal. Both the Governor and the President were constitutional figureheads and only acted in reliance on the advice of their *CoM,* except in extraordinary situations such as the appointment of a CM and the firing of a government with no majority, the Court said. This ruling consolidates a ministerial advice principle as a rule, which is characteristic of India's parliamentary democracy.

In *Nabam Rebia v. Deputy Speaker 2016*[376] It was made very clear that the power granted to the Governor to summon or call the early Assembly sessions may not be unlimited and cannot interfere in the work of the legislature under democratic governance. The discretion of the Governor must be consistent with constitutional traditions and not abused for political purposes.

Judicial review of the Governor's actions does not extend to the wisdom or political correctness of the decision, but is confined to examining illegality, mala fides, arbitrariness, and violations of constitutional morality. Courts intervene only where discretion is exercised in a manner that subverts democratic governance or breaches constitutional limits, thereby preserving institutional balance while respecting executive autonomy.

Article 164 (Democratic Accountability)

This article explains about the State Executive which is an important mechanism of democratic governance. The Governor appoints the Chief Minister (usually the leader of the majority in the State Assembly) and other Ministers on the CM's advice. Ministers hold office during the pleasure of the Governor, but have powers and responsibilities that depend on the guidance of the CM.

The *CoM* is collectively accountable to the Assembly and has to resign in the event a no-confidence motion is passed. The 91st Amendment (2003) limits the Council's size to 15 per

[375] Shamsher Singh v. State of Punjab, AIR 1974 SC 2192.
[376] Nabam Rebia v. Deputy Speaker, (2016) 8 SCC 1

cent of the Assembly's strength, with a minimum of twelve Ministers, and bars those disqualified from office under the Anti-Defection Law, ensuring political stability.

There is a *94th Amendment (2006)*[377] that gives specific states such as Odisha, Madhya Pradesh, Jharkhand and Chhattisgarh the Minister for Tribal Welfare. A non-legislator can be appointed as a Minister, but for them to succeed in office, they must become a member of the Legislature within six months or leave office. In other words, the article balances executive power, accountability and inclusiveness so that good governance is possible while state institutions in their entirety are democratic.

The Supreme Court also interpreted the Governor's powers to dismiss state governments in *S.R. Bommai v. Union of India (1994)*[378]. This case comes after a series of dismissals — the biggest of which involved Karnataka's government, where Governors said the government had lost majority support and recommended President's Rule. The Court then said those claims had to be put to the floor of the Assembly, where it ruled that the Governor's decisions that the state made based on either personal ideas or information from the central government were not legitimate.

This ruling stressed that when it comes to the dismissal of a government, a floor test can only be used to establish majority status, thus curtailing the Governor's discretionary authority. It clarified also that declarations under Article 356 (imposing President's Rule) may be examined by the courts, as part of the checks and balances imposed by the Constitution against misuse. To prevent the formation of rival governments by arbitrary dissolutions by a mere state, the Supreme Court took a similar stance in *Rameshwar Prasad v. Union of India, (2006)*[379] when it decried abuses of the Governor's powers.

Article 165 (The Advocate-General)

Under Art. 165, the Advocate-General is the highest legal officer in a State. The A-G, appointed by the Governor, must be eligible to serve as a Judge of a High Court. The Advocate-General's official duty, however, is to provide legal advice to the State Government and the other legal responsibilities given by the Governor. The Advocate-General holds office during the pleasure of

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[377] The Constitution (Ninety-First Amendment) Act, 2003, No. 91 of 2003, available at <https://www.indiacode.nic.in/handle/123456789/2028> (last visited Sept. 25, 2025).
[378] S.R. Bommai v. Union of India, (1994) 3 SCC 1.
[379] Rameshwar Prasad v. Union of India, (2006) 2 SCC 1.

the Governor; in other words, their term is not fixed and usually runs along with the term of the *CoM*. In general, where the ruling ministry resigns or is substituted, the Advocate-General vacates as well. This serves as a check on the A-G's alignment with present political leaders. In a series of judicial decisions, the role and term have been further clarified for the Advocate-General.

For instance, the Andhra Pradesh High Court in *G Venkataswamy Reddy v. G Krishna Reddy (1999)*[380] said that the tenure of the A-G is inextricably connected with the Council of Ministers. In *Sheela Barse v. State of Maharashtra (1983)*[381] For instance, the Supreme Court noted that the A-G cannot merely represent the government but owes duties to uphold constitutional values and justice, especially on matters of the public interest. *A.G. v. Amratlal Prajivandas (1994)*[382] reaffirmed the constitutional stature of the A-G, who must also be qualified to be a High Court judge.

Article 166 (Conduct of Business)

This article prescribes the formal approach to state government business. It requires that all the government's executive acts are officially rendered in the name of the Governor, thus consolidating the Governor as the constitutional head. It also gives the Governor authority to make provision for the proper authentication of these orders and the efficient allocation of work among Ministers. This legal structure ensures uniformity in administration and the executive decisions, even though such are made by the *CoM*, possess the necessary constitutional legitimacy.

The *42nd Amendment (1976)*[383] inserted *Clause (4)* made provision in the Constitution, protecting the Governor's rules of business from judicial scrutiny and limiting the courts' ability to challenge executive actions during the Emergency. But the *44th Amendment (1978)*[384] omitted it, returning the judiciary's power to reconsider such rules and reaffirming the separation of powers.

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[380] G. Venkataswamy Reddy v. G. Krishna Reddy, (1999) 2 SCC 474.
[381] Sheela Barse v. State of Maharashtra, (1983) 2 SCC 96.
[382] Attorney General for India v. Amratlal Prajivandas, (1994) 5 SCC 54.
[383] The Constitution (Forty-Second Amendment) Act, 1976, No. 42 of 1976, available at https://www.indiacode.nic.in/handle/123456789/1536. (last visited Sept. 25, 2025).
[384] The Constitution (Forty-Fourth Amendment) Act, 1978, No. 44 of 1978, available at https://www.indiacode.nic.in/handle/123456789/1637. (last visited Sept. 25, 2025).

Article 167 (CM's Duties)

The obligations of the CM outlined in Article 167 establish an important and continuous line of communication with the Governor. It obliges the CM to inform the Governor of all decisions made by the *CoM*, provide any information required about the state, and, if necessary, submit any single-minister decision for the full Council's consideration. That way, the Governor as the constitutional head of the state, shall be well-informed and can act as a constitutional check without direct day-to-day intervention.

RELEVANCE AND CHALLENGES OF THE CURRENT TIME

Articles 152 to 167 established the Governor as the constitutional head of a State, appointed by the President and exercising executive powers mainly on the advice of the *CoM* as given in Article. 163. Today, the Governor plays a major role in the state's governance, especially in government formation during hung assemblies and exerts certain limited discretionary powers such as clemency that comes with the power of Article 161.[385]

However, controversy prevails over the appointment and tenure of a Governor by the President during the pleasure of the President. Art. 156 raises concerns about politicising political bias and central power. Examples of Governors who dismissed elected governments or recommended President's Rule have raised questions of their neutrality. Notable examples include the 2007 dismissal of Karnataka's elected government by Governor T.N. Chaturvedi and the 1990 dismissal of Bihar's government by Governor Mohammad Shafi Qureshi. Both cases raised serious doubts about the Governor's neutrality and sparked controversy over potential political bias.[386]

Judicial opinions like *S.R. Bommai v. Union of India (1994)* focused on limiting the Governor's discretion and demanded for floor tests, while *B.P. Singhal v. Union of India (2010)* restricted arbitrary removal. Notwithstanding these safeguards, the role of the Governor remains contested

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[385] Rajeev Bhargava (ed.), Politics and Ethics of the Indian Constitution (Oxford University Press, 2008).
[386] P. B. Mehta, "The Governor's Office in India: Between the Constitutional and the Political," Journal of Democracy in Asia, Vol. 3, Issue 1 (2020)

between constitutional obligation and political constraints, and that role is of utmost importance but exposed within the Indian federal framework.[387]

CRITICAL ANALYSIS

The Governor's constitutional design has strengths as a neutral figure ensuring constitutional compliance, appointed by the President, and barred from legislative office (Art. 158). In Art. 163 of the constitution, the 'aid and advice' principle places real executive power with elected ministries to strengthen democratic accountability.[388] But there are real-world weaknesses that come to light. Ambiguities regarding discretionary powers invite misuse, thus allowing for the destabilisation of state governments and undermining cooperative federalism. Constitutional morality requires the Governor to exercise restraint even where legal discretion exists, as the legitimacy of the office depends more on adherence to democratic conventions and institutional trust than on the formal breadth of constitutional power.

When Governors act as extensions of the Union executive rather than neutral constitutional trustees, cooperative federalism is replaced by hierarchical federal control. The pleasure of the President's tenure undermines tenure security and autonomy.[389] Judicial judgments like *Shamsher Singh v. State of Punjab (1974)* and *S.R. Bommai* restrict arbitrariness, but lack of clarity and enforcement allow for political bias to linger.[390] Reforms should articulate discretionary powers; establish fixed terms that shield against arbitrary dismissal; and broaden judicial supervision. The Governor's constitutional trustee role should be strengthened, promoting cooperative federalism and democratic governance.[391]

CONCLUSION

Arts. 152 to 167 present the Governor as a unique constitutional character with the dual status of a ceremonial head and a limited discretionary authority. With origins in the colonial era but suited for "*parliamentary democracy*" and "*federal harmony*", the office is integral to constitutional governance at the state level. The practical facts create a great deal of tension as

[387] Granville Austin, The Indian Constitution: Cornerstone of a Nation (Oxford University Press, 1999).
[388] Ibid.
[389] Law Commission of India, *Report No. 262 on Constitutional Amendments and Federal Governance*, (2017).
[390] C.P. Bhambri, "Centre-State Relations and the Governor's Role," *Indian Journal of Public Administration*, Vol. 27, No. 3 (1981) 355.
[391] Second Administrative Reforms Commission, Report on State Autonomy (2007).

the Governor possesses limited discretionary powers and their term is at the pleasure of the President. Recent judicial pronouncements have helped to rein in arbitrary executive power and consolidate democratic accountability. To strengthen the federal balance, these steps should focus on reinforcing the Governor's role as a Constitutional trustee, guaranteeing security of tenure and safeguarding the office from political interference.

CHAPTER 14: STATE LEGISLATURES: CONSTITUTION AND SESSIONS (ARTICLE 168–177)

BY PREETI

INTRODUCTION

State Legislatures are the primary organs through which legislative power is exercised within the States under the Constitution of India[392]. While the Constitution establishes a strong Union, it simultaneously treats the States as constituent units of the federal structure, each possessing a legislature competent to enact laws within its assigned field[393][394]. Articles 168 to 177 of the Constitution set out the constitutional scheme relating to the composition, structure, duration, and sessions of State Legislatures, and regulate their functioning in relation to the executive and the Governor[395][396]. These provisions form the legal basis of parliamentary government at the State level and determine the institutional framework within which legislative authority is exercised[397].

Articles 168-177 reflect deliberate constitutional choices concerning legislative design and functioning[398]. They provide for both unicameral and bicameral legislatures[399], incorporate the Governor as a formal component of the legislature[400], prescribe minimum requirements regarding

[392] Constitution of India, art. 168
[393] H.M. Seervai, *Constitutional Law of India* 2013–14 (4th edn., Universal Law Publishing 2013)
[394] Constitution of India, arts. 245–246 read with the Seventh Schedule
[395] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 183–187 (Oxford University Press 1966)
[396] Constitution of India, arts. 168–177
[397] Constituent Assembly Debates, Vol. IX, 17 September 1949, 1090–1096
[398] Constitution of India, art. 174
[399] Rai Sahib Ram Jawaya Kapur v State of Punjab, AIR 1955 SC 549
[400] Shamsher Singh v State of Punjab, (1974) 2 SCC 831

legislative sessions[401], and recognise the procedural autonomy of State Legislatures[402]. This chapter undertakes a doctrinal examination of these provisions in light of their historical background and judicial interpretation[403]. It analyses the framers' conception of State Legislatures[404], the evolution of constitutional practice through case law[405], and the contemporary working of these institutions, to assess their role within the broader framework of Indian federalism and responsible government[406].

HISTORICAL BACKGROUND

The institutional origins of State Legislatures in India may be traced to the evolution of provincial legislative bodies under colonial rule[407]. The Government of India Act, 1919, first associated elected Indian representatives with provincial governance through the introduction of diarchy[408]. However, despite expanded legislative councils, effective authority largely remained with the executive, rendering provincial legislatures weak and subordinate, and highlighting the absence of responsible government at the provincial level[409].

A more substantial shift occurred under the Government of India Act, 1935, which abolished provincial diarchy and introduced provincial autonomy[410]. Provincial legislatures were granted enhanced legislative powers and greater control over provincial subjects, and bicameral legislatures were introduced in certain provinces[411]. Nonetheless, Governors continued to wield extensive discretionary powers, particularly in relation to legislative sessions and dissolution. As later noted by members of the Constituent Assembly, including K.M. Munshi, this concentration of gubernatorial discretion often undermined legislative authority and democratic accountability, despite the formal grant of autonomy[412].

[401] Constitution of India, art. 172
[402] Nabam Rebia v Deputy Speaker, Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1
[403] B.K. Mathew, 'The Governor as a Constitutional Head in the States' (1987) 29 *JILI* 45
[404] Kihoto Hollohan v Zachillhu, 1992 Supp (2) SCC 651
[405] M.P. Jain, Indian Constitutional Law 671–676 (8th edn., LexisNexis 2018)
[406] Rameshwar Prasad v Union of India, (2006) 2 SCC 1
[407] Jain (n 14) 542–544
[408] Government of India Act 1919, ss. 45–53.
[409] B. Shiva Rao, *The Framing of India's Constitution: Select Documents* vol II, 312–315 (IIPA 1967)
[410] Government of India Act 1935, Part III
[411] Austin (n 4)
[412] Constituent Assembly Debates, vol. IX, 17 September 1949, 1102 (K.M. Munshi)

These colonial experiences directly informed the Constituent Assembly's approach to the design of State Legislatures[413]. The debates reflect a clear intent to strengthen legislative institutions while avoiding the structural defects of colonial governance. Dr B.R. Ambedkar consistently maintained that bicameralism at the State level should be optional rather than mandatory, arguing that a second chamber might be useful in larger States but unnecessary and inefficient in others[414]. This reasoning underlies the constitutional treatment of bicameralism under Articles 168 and 169, distinguishing State Legislatures from the Union Parliament[415].

The Assembly also emphasised the need for constitutional safeguards to ensure regular legislative functioning and executive accountability. Members such as Gopalaswami Ayyangar highlighted the importance of periodic legislative sessions as a condition of responsible government[416]. Although formal powers to summon, prorogue, and dissolve the Legislature were vested in the Governor, Ambedkar clarified that these functions were ordinarily to be exercised on the aid and advice of the Council of Ministers[417]. Articles 168-177 thus represent a conscious departure from colonial administrative control and establish State Legislatures as democratically accountable institutions within India's federal framework[418].

CONCEPTUAL FRAMEWORK

The constitutional scheme governing State Legislatures rests on foundational principles shaping structure, functioning, and executive relations. Articles 168 to 177 do more than regulate arrangements; they embody deliberate choices securing democratic governance within States while accommodating India's federal diversity. These provisions translate parliamentary democracy to the sub-national level and keep elected legislatures central to State governance[419].

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[413] D.D. Basu, *Introduction to the Constitution of India* 236–239 (24th edn., LexisNexis 2016)
[414] Constituent Assembly Debates, vol. IX, 2 September 1949, 952–954 (Dr. B.R. Ambedkar)
[415] Constitution of India, arts. 168–169
[416] Constituent Assembly Debates, vol. IX, 18 September 1949, 1155–1157 (Gopalaswami Ayyangar)
[417] Shamsher Singh (n 9)
[418] Seervai (n 2) vol II, 2015–2018
[419] Ibid 27

A core principle is the flexibility of bicameralism. The Constitution permits unicameral or bicameral legislatures, rejecting rigid uniformity for functional necessity. In the Constituent Assembly Debates, Dr B. R. Ambedkar explained that State bicameralism is optional, justified only where workload and administrative complexity warrant a revisory chamber[420]. This flexibility lets States tailor institutions to local conditions without weakening democratic legitimacy or federal balance[421].

Equally significant is legislative stability balanced with political accountability. Normal five-year Assembly tenure promotes continuity and predictability, while provisions for earlier dissolution recognise parliamentary realities, including loss of majority support. Safeguards aim to prevent dissolution from becoming an arbitrary disruption of representative institutions[422].

The framework is further shaped by responsible government and the aid-and-advice principle. Although the Governor is a component of the State Legislature and holds formal powers over sessions and addresses, these powers are non-discretionary. In Shamsher Singh v. State of Punjab[423], the Supreme Court affirmed that the Governor ordinarily acts on ministerial advice, a position reiterated in Nabam Rebia v. Deputy Speaker, Arunachal Pradesh Legislative Assembly[424], which cautioned against actions undermining legislative functioning and accountability.

Finally, legislative accountability remains central, reflected in the participation of Ministers and the Advocate-General in legislative proceedings.[425]

Article 168: Constitution of Legislatures in States

Article 168 mandates that every State shall have a Legislature consisting of the Governor and either one House or two Houses[426]. A unicameral Legislature comprises the Governor and the Legislative Assembly, while a bicameral Legislature includes the Governor, the Legislative

[420] Constituent Assembly Debates (n 23)
[421] Basu (n 22) 238–240
[422] Constitution of India, art. 172; Law Commission of India, 170th Report on *Reform of the Electoral Laws* (1999)
[423] Shamsher Singh (n 9)
[424] Nabam Rebia (n 11)
[425] Constitution of India, arts. 177 & 164
[426] Constitution of India, art. 168

Assembly, and the Legislative Council[427]. The Constitution thus adopts unicameralism as the general model, while permitting bicameralism as an optional arrangement[428].

This flexibility reflects deliberate constitutional design. During the Constituent Assembly Debates, Dr B. R. Ambedkar explained that bicameralism at the State level was not essential to democracy and should exist only where justified by population size, administrative complexity, or legislative workload[429]. The Legislative Council was envisaged as a revisory body rather than a coequal House[430]. In Union of India v. H. S. Dhillon, the Supreme Court affirmed that a Legislative Council is not a basic feature of the Constitution and that Parliament may alter State legislative structures under Article 169[431].

Article 170: Composition of the Legislative Assemblies

Article 170 governs the composition of State Legislative Assemblies by linking their numerical strength to population and mandating representation through territorial constituencies. The objective is to ensure equality of representation while maintaining a House of workable size[432].

Periodic delimitation based on census data is the mechanism through which proportional representation is maintained. However, the 42nd (1976) and 84th (2001) Amendments froze readjustment for extended periods to promote population control, resulting in concerns of malapportionment[433]. Delimitation is conducted by independent Commissions, whose decisions were held final and immune from judicial challenge in Meghraj Kothari v. Delimitation Commission[434].

Article 171: Composition of the Legislative Councils

Article 171 prescribes a mixed and largely indirect composition for Legislative Councils. Members are elected by local authorities, graduates, teachers, and the Legislative Assembly, with

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[427] Constitution of India, art. 168(1)–(2)
[428] Seervai (n 2) vol II, 2016–2018
[429] Constituent Assembly Debates (n 23)
[430] Austin (n 4) 187–190
[431] Union of India v H.S. Dhillon, (1972) 2 SCC 33
[432] Constitution of India, art. 170; Jain (n 14) 688–690
[433] Constitution of India, arts. 170 & 82, as amended by the 42nd & 84th Amendments
[434] Meghraj Kothari v Delimitation Commission, AIR 1967 SC 669

a limited number nominated by the Governor for special knowledge or experience. The Council's strength is capped at one-third of the Assembly, subject to a minimum of forty members[435].

The framers intended the Council to function as a deliberative and revisory chamber[436]. Judicially, in Union of India v. H. S. Dhillon[437], the Court confirmed that Councils are not essential to democracy, while in Kuldip Nayar v. Union of India[438], indirect representation was upheld where deliberative quality is prioritised. Despite criticism of certain constituencies, Article 171 continues to reflect optional and functional bicameralism[439].

Article 172: Duration of State Legislatures

Article 172 fixes the normal term of a State Legislative Assembly at five years, promoting stability while ensuring periodic electoral accountability. The Legislative Council, by contrast, is a permanent body with one-third of its members retiring every two years[440].

The Assembly may be dissolved earlier, though the Governor ordinarily acts on the aid and advice of the Council of Ministers. During a National Emergency, Parliament may extend the Assembly's term annually, subject to an absolute limit of six months after the Emergency ends[441]. In S. R. Bommai v. Union of India[442], the Supreme Court emphasised that any departure from democratic norms must be temporary and constitutionally justified.

Article 173: Qualifications for Membership of State Legislatures

Article 173 lays down the basic constitutional qualifications for membership of State Legislatures. A person must be a citizen of India and must have attained the age of 25 years to be a member of the Legislative Assembly and 30 years to be a member of the Legislative Council. These age requirements correspond with those prescribed for the House of the People and the Council of States, reflecting a uniform constitutional standard of legislative maturity[443].

[435] Constitution of India, art. 171
[436] Constituent Assembly Debates (n 23)
[437] H.S. Dhillon (n 40)
[438] Kuldip Nayar v Union of India, (2006) 7 SCC 1
[439] Seervai (n 2) vol II, 2020–2023
[440] Constitution of India, art. 172(1)–(2)
[441] Constitution of India, art. 172 proviso
[442] S.R. Bommai v Union of India, (1994) 3 SCC
[443] Constitution of India, art. 173; art. 84

Parliament is empowered to prescribe additional qualifications and disqualifications by law, primarily through the Representation of the People Act, 1951[444]. Judicial interpretation has strengthened enforcement of these standards. In Lily Thomas v. Union of India[445], the Supreme Court held that disqualification takes effect immediately upon conviction for specified offences. Earlier, in Union of India v. Association for Democratic Reforms, the Court recognised voters' right to information regarding candidates' criminal antecedents, reinforcing electoral transparency and legislative integrity[446].

Article 174: Sessions, Prorogation, and Dissolution

Article 174 ensures continuous legislative functioning by mandating that no more than six months shall elapse between two sessions of the State Legislature[447]. This safeguard prevents prolonged executive governance without legislative oversight and affirms the principle of executive accountability to the Legislature[448].

The Governor is vested with the formal powers to summon, prorogue, and dissolve the Legislative Assembly, but these powers are not discretionary. In Shamsher Singh v. State of Punjab[449], the Supreme Court clarified that the Governor ordinarily acts on the aid and advice of the Council of Ministers. In Nabam Rebia v. Deputy Speaker and Shivraj Singh Chouhan v. Speaker, the Court reaffirmed that questions of majority must be decided on the floor of the House, not through gubernatorial intervention[450].

Article 175: Governor's Address and Messages

Article 175 establishes a constitutional channel of communication between the executive and the Legislature by empowering the Governor to address either House or both Houses jointly and to send legislative messages that must be considered[451].

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[444] Representation of the People Act 1951, ss. 8, 8A
[445] Lily Thomas v Union of India, (2013) 7 SCC 653
[446] Union of India v Association for Democratic Reforms, (2002) 5 SCC 294
[447] Constitution of India, art. 174(1)
[448] Jain (n 14) 721–723
[449] Shamsher Singh (n 9)
[450]Nabam Rebia (n 11); Shivraj Singh Chouhan v Speaker, Madhya Pradesh Legislative Assembly, (2020) 2 SCC 313.
[451] Constitution of India, art. 175

In practice, the address reflects the policies of the elected government and is prepared by the Council of Ministers. The Governor exercises no personal discretion in this regard, consistent with the doctrine of responsible government affirmed in Shamsher Singh[452]. In Nabam Rebia, the Supreme Court cautioned against using formal powers in ways that disrupt legislative functioning, reinforcing the supremacy of elected institutions[453].

Article 176: Special Address by the Governor

Article 176 mandates a special address by the Governor at the first session of every year and after a general election. The address outlines the government's policy agenda and marks the formal commencement of legislative business[454].

Though ceremonial, the address carries constitutional significance and forms the basis for debate through a motion of thanks. Courts have generally exercised restraint, intervening only when constitutional conventions are clearly violated. In Shamsher Singh and Nabam Rebia, the Supreme Court reaffirmed that the Governor acts on ministerial advice and must not interfere with legislative autonomy[455].

Article 177: Rights of Ministers and the Advocate-General

Article 177 grants Ministers and the Advocate-General the right to participate in legislative proceedings and committees, even if they are not members, though without voting rights. This ensures continuous executive accountability to the Legislature[456].

The Supreme Court has consistently recognised legislative debate as central to parliamentary democracy. In Raja Ram Pal v. Speaker, Lok Sabha[457], the Court emphasised the importance of deliberation and accountability, while Bennett Coleman & Co. v. Union of India[458] highlighted informed discussion as essential to constitutional governance. Article 177 thus strengthens legislative scrutiny without diluting democratic representation.

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[452] Shamsher Singh (n 9)
[453] Nabam Rebia (n 11)
[454] Constitution of India, art. 176
[455] Seervai (n 2) vol II, 2030–2034
[456] Constitution of India, art. 177
[457] Raja Ram Pal v Speaker, Lok Sabha, (2007) 3 SCC 184.
[458] Bennett Coleman & Co v Union of India, (1973) 2 SCC 788.

PRACTICAL APPLICATION AND CHALLENGES

In practice, the functioning of State Legislatures has been shaped as much by political conduct as by constitutional design. Although Articles 168–177 provide a carefully balanced framework, their effectiveness depends largely on adherence to constitutional conventions and institutional restraint[459]. One recurring concern has been delays in summoning legislative sessions. While Article 174 prescribes a six-month limit between sessions, governments have occasionally stretched this interval to reduce legislative scrutiny, weakening the Assembly's role in executive accountability[460].

Tensions have been most pronounced where the majority of the Council of Ministers is disputed. In Nabam Rebia v. Deputy Speaker (2016)[461], the Supreme Court reaffirmed that Governors cannot manipulate legislative sittings to influence confidence proceedings and that the majority must be tested on the floor of the House. This principle was reiterated in Shivraj Singh Chouhan v. Speaker (2020)[462], while Rameshwar Prasad v. Union of India (2006)[463] exposed the constitutional dangers of premature dissolution based on speculative political assessments. Criticism of Legislative Councils and disputes over gubernatorial addresses under Articles 175 and 176 further highlight tensions between constitutional form and political practice[464].

CRITICAL ANALYSIS

The functioning of State Legislatures is a key indicator of democratic quality within India's federal system. The constitutional framework under Articles 168–177 seeks to balance representation, accountability, and executive coordination through institutional flexibility, procedural safeguards, and judicial oversight. In principle, this structure is robust, permitting States to adopt unicameral or bicameral legislatures, mandating regular sessions, and limiting

[459] Seervai (n 2) vol II, 2025–2030
[460] Constitution of India, art. 174
[461] Nabam Rebia (n 11)
[462] Shivraj Singh Chouhan (n 59)
[463] Rameshwar Prasad (n 15)
[464] Jain (n 14) 724–726

discretionary authority. Judicial decisions such as S.R. Bommai v Union of India and Nabam Rebia v Deputy Speaker have reinforced these foundations by affirming legislative supremacy, the necessity of floor tests, and the centrality of constitutional morality[465].

In practice, however, serious weaknesses persist. The Governor's role in summoning sessions, dissolving Assemblies, and communicating with the Legislature has frequently generated political controversy, often necessitating judicial intervention despite the settled aid-and-advice principle. Although the Sarkaria and Punchhi Commissions have emphasised the need for gubernatorial restraint, their recommendations remain unevenly implemented[466]. Legislative Councils also present mixed results: conceived as deliberative bodies, their indirect composition through graduate and teacher constituencies increasingly appears outdated, and their functional value varies widely across States[467].

Further, delayed legislative sessions, frequent resort to ordinances, and executive dominance over legislative calendars have weakened legislative oversight. While the 44th Constitutional Amendment strengthened democratic safeguards during emergencies, the everyday vitality of State Legislatures continues to depend less on constitutional text and more on political restraint, respect for conventions, and genuine commitment to constitutional morality[468].

CONCLUSION

The provisions governing State Legislatures under Articles 168-177 reflect a carefully calibrated vision of Indian federalism that integrates democratic representation, executive accountability, and institutional flexibility[469]. Shaped by colonial legislative experience and Constituent Assembly deliberations, these Articles were designed to ensure that States function as meaningful units of self-governance within a strong but cooperative federal framework[470]. Their

[465] S.R. Bommai (n 51); Nabam Rebia (n 11)
[466] Sarkaria Commission, *Report on Centre–State Relations* (1988); Punchhi Commission, *Report on Centre–State Relations* (2010)
[467] National Commission to Review the Working of the Constitution, *Report* (2002)
[468] Constitution (Forty-Fourth Amendment) Act 1978
[469] Austin (n 4) 187–190
[470] Constituent Assembly Debates (n 6)

doctrinal structure embeds parliamentary principles at the State level, while judicial interpretation has played a decisive role in delineating the constitutional limits of executive and gubernatorial authority and in reaffirming the primacy of elected legislatures[471].

At the same time, constitutional practice has revealed recurring tensions in the operation of these provisions. Controversies relating to legislative sessions, determination of majority, gubernatorial conduct, and the continued relevance of Legislative Councils demonstrate that constitutional effectiveness depends not merely on textual design but on adherence to conventions and institutional restraint[472]. While judicial intervention has served as an important corrective, the long-term vitality of Articles 168-177 rests on sustained respect for democratic norms, clearer observance of committee recommendations on Centre–State relations, and a renewed commitment to cooperative federalism[473]. In this sense, these provisions remain central to the functioning of State Legislatures as active and accountable instruments of constitutional governance[474].

[471] Shamsher Singh (n 9); Nabam Rebia (n 11)
[472] Rameshwar Prasad (n 15); Nabam Rebia (n 11)
[473] Sarkaria Commission; Punchhi Commission (n 75)
[474] Seervai (n 2) vol II, 2020–2024

CHAPTER 15: SPEAKERS, OFFICERS & STAFF (ARTICLE 178-187)

BY DEEPTHI SINGH

INTRODUCTION

If one were to ask whose Speakership left the most enduring imprint on India's parliamentary institutions, the answer would undoubtedly be Shri Ganesh Vasudev Mavalankar, affectionately remembered as Dadasaheb Mavalankar, hailed by Pt. Jawaharlal Nehru as the "Father of the Lok Sabha." As the first Speaker of independent India's Lok Sabha, Mavalankar's role transcended that of a presiding officer. He was a statesman and an institutional architect who patiently established the procedures, conventions, and traditions that reflected the democratic ethos of a newly independent nation. His fairness, composure, and historical foresight made the office of the Speaker one of great constitutional dignity and institutional authority.[475]

The Speaker today symbolises not merely the presiding authority of the House but also its dignity, independence, and impartiality. Entrusted with ensuring free and fair deliberation, the Speaker's conduct directly influences public confidence in parliamentary democracy. While legislators speak for their constituencies, the Speaker represents the collective will and integrity of the House itself.[476]

This chapter examines the constitutional framework and institutional evolution of the offices of the Speaker and Deputy Speaker in state legislatures under Articles 178-187 of the Indian

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[475] Lok Sabha Secretariat, Office of the Speaker: An Introduction (Lok Sabha Secretariat, Parliament of India, 2024) https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2024/07/20240716890312078.pdf

[476] The Constitution of India (Pocket-size edn, 6th edn, Ministry of Law & Justice, Legislative Department, Official Languages Wing, Government of India, 2024).

Constitution. It explores their historical foundations, article-wise interpretation, and constitutional role and limitations in light of judicial and procedural developments. Through a study of significant constitutional controversies from the Speaker's intervention in Bengal, to the judicial scrutiny of his powers in Punjab and Tamil Nadu, and the eventual establishment of conventions guiding legislative neutrality, this chapter seeks to evaluate the balance between authority, accountability, and impartiality in the functioning of the Speaker's office within India's federal democratic structure.[477]

HISTORICAL BACKGROUND

The Montague-Chelmsford Reforms, introduced through the Government of India Act, 1919, led to the creation of the offices of the Speaker and Deputy Speaker in 1921. The Speaker and Deputy Speaker were referred to as President and Deputy President, respectively, at that time, and this title persisted until 1947. In the past, he or she served as the house's final interpreter of the Indian Constitution's provisions, the Lok Sabha's Rules of Procedure and Conduct of Business, and the parliamentary precedents.[478]

Before 1921, the Central Legislative Council meetings were chaired by the Governor-General of India. The Governor-General of India appointed Frederick Whyte and Sachidanand Sinha as the first Speaker and Deputy Speaker of the central legislative assembly, respectively, in 1921. The first elected Speaker of the central legislative assembly and the first Indian was Vithalbhai J. Patel in 1925. The Central Legislative Assembly's president and deputy president were renamed the Speaker and Deputy Speaker, respectively, by the Government of India Act of 1935. However, because the federal portion of the 1935 Act was not put into effect, the outdated nomenclature persisted until 1947.

Anantha Sayanam Ayyangar and G.V. Mavalankar has the distinction of being the first Deputy Speaker and Speaker of the Lok Sabha, respectively. Additionally, G.V. Mavalankar served as

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[477] Subhash C. Kashyap, Parliamentary Procedure: Law, Privileges, Practice and Precedents (Universal Law Publishing, Delhi, 2015);

[478] M. P. Jain, Indian Constitutional Law (8th edn, LexisNexis, Gurgaon, 2018);

Speaker of both the interim Parliament and the Constituent Assembly (Legislative). From 1946 to 1956, he served as Speaker of the Lok Sabha for ten years in a row.[479]

India's Constitution, which went into force in 1950, maintained the bicameral system after the country's independence in 1947. A two-house system, according to the Constitution's founders, would provide fairer representation and a more careful review of proposed laws. To balance the interests of the states and the people, the Lok Sabha and Rajya Sabha were created. GV Mavalankar was the first Speaker of an independent India, holding the position from 1952 until 1956. He contributed to laying the groundwork for the Speaker's position and duties in the recently established Lok Sabha.

A federal legislature, consisting of a federal assembly and a council of states, was also established by the Government of India Act, 1935. Indian states established what became known as a legislative assembly (Vidhan Sabha) and a legislative council (Vidhan Parishad).

ARTICLE WISE INTERPRETATION

SECTION 178

- The role of the Speaker and Deputy Speaker in the State Legislative Assembly parallels that of the Speaker and Deputy Speaker in the Lok Sabha. Concerning the office of the Speaker, the Madras High Court stated: "The Speaker's office is evidently one derived from election or selection, and the individual elected holds the position at the pleasure of the majority. The Speaker is expected to be an ally to every member and to act with prudence; therefore, this role embodies reverence since complete impartiality is an essential quality of the position. The Speaker is, without a doubt, a servant of the House rather than its Master, and the authority granted to him by the House is the authority of the House itself, which he exercises in alignment with the mandates, interests, and welfare of the House"[480]
- Each State Legislative Assembly has both a Speaker and a Deputy Speaker, who are elected by the members of the House. The Deputy Speaker takes on the responsibilities of the

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[479] D.D. Basu, Commentary on the Constitution of India Vol.2 (9th edn, LexisNexis, Gurgaon, 2016).

[480] M.P. Jain, Indian Constitutional Law 98 (Kamal Law House, Calcutta, 5th edn.,1998).

Speaker's office when it becomes vacant. The Deputy Speaker also acts in place of the Speaker during his absence. If both the Speaker and the Deputy Speaker are absent from the House, a person designated by the House's rules of procedure will act as the Speaker, or if such a person is not available, another individual determined by the House will fulfil that role [Art. 180(2)].

SECTION 179

- The Speaker or Deputy Speaker relinquishes their position immediately upon no longer being a member of the House [Art. 179(a)]. If the House is dissolved, the Speaker retains their position until just before the first meeting of the House after the dissolution [Proviso to Art. 179]. The Speaker and Deputy Speaker can resign from their posts by notifying each other in writing [Art. 179(b)].
- A resolution to remove the Speaker or Deputy Speaker can be passed by the House with a majority vote from all current members of the Assembly. Such a resolution can only be proposed after giving at least 14 days' notice of the intention to introduce it [Art. 179(c)].

SECTION 180

- The Legislative Assembly is guaranteed to function in the event of a Speaker vacancy or absence under Article 180 of the Indian Constitution. It guarantees that the Assembly's operations are not disrupted and lays out the process for temporarily filling the post. The simple meaning is as follows:
- Speaker Vacancy: "Pro-term Speaker" is covered in clause (1) of Article 180 of the Indian Constitution. The Constitution has no explicit reference to the "Pro-tem Speaker." A pro-tem speaker is a speaker appointed temporarily to supervise activities in state legislatures or Parliament. The clause guarantees that the Speaker's responsibilities won't be interrupted if the position falls vacant. The Deputy Speaker steps in. The governor may designate a member to assume the duties if that office remains empty as well. The clause ensures that the Assembly can function normally even if the Speaker is not present. The situations in which the Speaker is momentarily unavailable from a sitting are covered under clause (2) of Article 180 of the Indian Constitution. The Deputy Speaker steps in during certain situations.

The Assembly's rules specify who will take over as Speaker if the Deputy Speaker is not present. The clause guarantees that the Assembly is still run efficiently even if the Speaker and Deputy Speaker are not present.

SECTION 181

- When a no-confidence motion is being considered against the Speaker or Deputy Speaker, they do not preside over the proceedings, although they may be present [Art. 181(1)]. They still have the right to speak and participate in the Assembly proceedings and can even cast a vote [Art. 181(2)]. The Madras High Court commented on this constitutional provision in Mathialagam, noting, "The moment such a resolution is up for discussion, there is a deemed vacancy under the Constitution, and the Speaker, despite their physical presence, is constitutionally considered absent, thus unable to preside over the Assembly from that instant." The Gauhati High Court has determined that, according to Arts. 179(c) and 181(2), mentioned above, the resolution for the Speaker's removal must be addressed by the House, and the Speaker cannot reject such a motion. If the Speaker wishes, they have the chance to defend themselves in the House against any accusations made against them.
- The authority to approve or deny such a motion lies with the Assembly and not with the Speaker. Members of the Assembly hold a constitutional right to propose a motion for the removal of the Speaker from his position. By dismissing the motion, the Speaker overstepped his constitutional powers and infringed upon the rights of the Assembly members.

SECTION 182

- The presiding officer of a State Legislative Council is referred to as the Chairman. Additionally, there exists a Deputy Chairman. These two positions are analogous to the roles of the Chairman and Deputy Chairman of the Rajya Sabha. The Chairman and Deputy Chairman are elected from among the members of the Council [Art. 182], and in the event of

a vacancy in either office, the Council is required to elect a replacement without undue delay to ensure the effective functioning of the legislative process.

SECTION 183

- If the Chairman or the Deputy Chairman quits the Legislative Council, they immediately lose their job. It guarantees that certain positions are solely held by existing members. By filing a formal resignation to the relevant office authority, they can freely leave their position at any time. The clause outlines a methodical and transparent resignation process. A resolution must be approved by the majority of the Legislative Council's members in order to remove the members. To ensure there is enough time for discussion, this procedure requires a fourteen-day notice period prior to the resolution being tabled.

SECTION 184

- The Deputy Chairman assumes the responsibilities of the Chairman's office when it is unoccupied [Art. 184(1)]. He also acts as Chairman during any absence from a Council sitting [Art. 184(2)]

SECTION 185

- The Chairman and Deputy Chairman do not preside over the House's sitting when a resolution regarding their removal is being considered [Art. 185(1)]. However, they are permitted to speak and engage in the House's proceedings and can also cast their vote initially [Art. 185(2)].

SECTION 186

- The Speaker and Deputy Speaker receive salaries and allowances determined by the Legislature through law, and until such laws are enacted, the compensation is outlined in the Second Schedule of the Constitution. These salaries and allowances are not subject to the

yearly vote by the Legislature but are drawn from the Consolidated Fund of the State [Art. 202(3)(b)].

SECTION 187

- A House of the State Legislature maintains its own distinct secretarial staff. In a bicameral State, it is feasible to have positions that are shared between both Houses [Art. 187(1)].
- The State Legislature has the authority to regulate the recruitment terms and service conditions of the Staff through legislation [Art. 187(2)]. Until such legislation is enacted, the Governor may establish rules for this purpose after consulting with the Speaker or the Chairman, as applicable [Art. 187(3)].

THE CONSTITUTIONAL ROLE AND LIMITATIONS OF THE SPEAKERS IN INDIAN STATES

At times, the Speaker's role in the States has been a source of contention, as the Speaker often embodies a partisan rather than impartial demeanour [481]. This is exemplified by several incidents.

The Bengal Controversy: Speaker's Overreach in Constitutional Matters

The Governor of Bengal dismissed the United Front Ministry led by Mukherjee and appointed the Ghosh Ministry. During the first Assembly session that followed, the Speaker declared the new Ministry unconstitutional.[482] He contended that the Assembly alone has the authority to determine whether a Ministry can remain in office, asserting that only the Assembly can create or dissolve the Ministry and that the Governor serves solely as a registrant. Thus, he stated that he could not acknowledge the new Ministry.

[481] Subhash C. Kashyap, Parliamentary Procedure: Law, Privileges, Practice and Precedents 312 (Universal Law Publishing, New Delhi, 2015).
[482] M.P. Jain, Indian Constitutional Law 2854 (8th edn, LexisNexis, Gurgaon 2018) .

According to the Speaker, the dismissal of the Mukherjea Ministry, the appointment of the Ghosh Ministry, and the summoning of the Assembly on the Chief Minister Ghosh's advice were unconstitutional and invalid as they occurred without the Assembly's involvement.[483] He adjourned the House indefinitely without allowing it to demonstrate its confidence, or lack thereof, in the newly appointed Ministry.

Clearly, such a ruling is indefensible and exceeds the Speaker's authority because it is not his role, but the House's collective responsibility, to acknowledge or reject the Ministry.[484] There seems to be no historical precedent in parliamentary practice where a Speaker has assumed the responsibility of determining a government's legality or which government should be in power.

The Ministry does not derive its authority from the Speaker, nor is it accountable to him in any form. Officially, the Ministry derives its authority from the Governor who appoints it, and in practice, from the House to which it remains collectively responsible.[485] The Ministry's accountability to the House can only be realised when the Assembly is permitted to operate. It is a perverse situation that while the Speaker claims the House is responsible for making or unmaking the Ministry, he simultaneously obstructs the House from functioning and from having the opportunity to state its position on the matter.

CONSTITUTIONAL AND PROCEDURAL LIMITATIONS ON THE SPEAKER'S POWERS

The Speaker, as a representative of the House, and his role to facilitate the efficient and orderly operation of the House.[486] He possesses no inherent authority under the Constitution and therefore cannot assume powers that constitutionally belong to the House. It is the responsibility of the House, not the Speaker, to recognise a Ministry or not. In this instance, the Speaker was effectively attempting to paralyse the House and prevent it from functioning properly.

[483] D.D. Basu, Commentary on the Constitution of India Vol. 2 1247 (9th edn, LexisNexis, Gurgaon 2016).
[484] Ibid 1248.
[485] M.P. Jain (n 2) 2855.
[486] Lok Sabha Secretariat, Report of the Committee of Presiding Officers on Parliamentary Practice 54 (Lok Sabha Secretariat 1967) .

It is well established that the Speaker does not make rulings on constitutional matters nor determine questions of law.[487] Such matters are reserved for the courts and not for discussion on the legislative floor. The Speaker provides rulings solely on procedural issues. However, in this case, he attempted to rule on a substantive issue of constitutional law concerning the Governor's discretionary power, rather than just a procedural matter.

It is also a well-known practice that the Speaker does not issue a ruling unless the issue is raised in the House, yet the Bengal Speaker made a ruling suo motu without any member introducing the matter on the floor. To resolve the crisis caused by the Speaker's actions, the Governor prorogued the House and later reconvened it, but the Speaker immediately adjourned the House again using the same argument.[488] This created a constitutional deadlock that eventually led to the enactment of President's rule in Bengal.

The Punjab Incident: Judicial Scrutiny of the Speaker's Overreach

A similar constitutional stalemate was attempted by the Speaker in Punjab. Just before the financial business was set to be conducted, the Speaker adjourned the House for two months, effectively blocking the passage of the budget. The Governor then prorogued the House, issued an ordinance prohibiting adjournment without completing the pending financial business, and reconvened the House. When the House reconvened, the Speaker reaffirmed his earlier ruling, deemed the ordinance illegal, and attempted to adjourn the House once more. However, the House did not disband and continued its proceedings under the Deputy Speaker, successfully conducting the financial business.[489]

Later, when the constitutionality of the Appropriation Act was questioned, the Supreme Court upheld the Act as valid under the Constitution.[490] In its ruling, the Court made strong remarks regarding the Speaker's conduct. The Court deemed the Speaker's second attempt to adjourn the House as null and void. It rejected the claim that any ruling by the Speaker must be considered final. Points of order may only be raised concerning the interpretation and enforcement of

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[487] D.D. Basu (n 3) 1250.
[488] M.P. Jain (n 2) 2856.
[489] State of Punjab v. Satya Pal Dang, AIR 1969 SC 903.
[490] H.M. Seervai, Constitutional Law of India, Vol. 3 2458-2461 (4th edn, Universal Law Publishing, New Delhi, 2013).

procedural matters. His ruling regarding the legality of the ordinance was not to be treated as final or binding. An ordinance can be nullified by a resolution from the House disapproving it, as mandated by the Constitution.[491]

The Speaker did not have the authority to issue such a ruling, which was referred to as "utterly null and void and of no effect.[492] The Speaker acted contrary to law and the mandate of the Constitution." The aforementioned incidents highlight the role of the Speaker. As an officer of the House, he should facilitate rather than obstruct its proper operations. The Speaker serves the House and is not its superior; he acts as its spokesperson but should not assume its powers and responsibilities.[493] The Speaker should refrain from taking actions that could hinder the rights of either the Executive or the Legislature. Such behaviour from the Speakers tends to create political controversies, calling their impartiality and neutrality into question, which ultimately harms not only the Speaker's position but also the entire parliamentary system.

ESTABLISHING CONVENTIONS AND INSTITUTIONAL GUIDELINES

The primary issue revolves around the extent of the Speaker's authority to adjourn the House. In the cases of Bengal and Punjab, the Speaker exercised this power in such a way that it disrupted the functioning of the House.[494] Thus, it is essential to establish appropriate conventions to guide the actions of the Speakers since the Constitution does not foresee that a Speaker would adopt an activist stance and seek to immobilize the House they oversee, containing only basic provisions regarding this role.

A Committee of the Speakers, appointed by the Lok Sabha's Speaker, has noted that the powers granted to the Speaker are meant to facilitate his role in serving the House. He should not interpret these powers to act outside the bounds of the House, supersede its authority, or negate its decisions.[495] "The Speaker is a member of the House, deriving his powers from the House to

[491] Ibid 2460.
[492] State of Punjab v. Satya Pal Dang (n 9) 910.
[493] Lok Sabha Secretariat (n 6) 56.
[494] Subhash C. Kashyap (n 1) 318.
[495] Lok Sabha Committee on the Powers of the Speaker, Conference of Presiding Officers Report 22 (Lok Sabha Secretariat 1967).

enhance its functionality and, in the final analysis, is a servant of the House, not its master."[496] The Committee has clarified the situation appropriately.

The Tamil Nadu Case: Judicial Limits on Speaker's Activism

However, such disputes continue even in light of this report. The Speaker of the Tamil Nadu Assembly attempted to take an activist approach in 1971, which resulted in his removal. Several members of the ruling D.M.K. Party switched sides. The Speaker recommended that the Chief Minister resign and call for new elections for the House. The Chief Minister asserted that he held a majority. Subsequently, the Speaker adjourned the House for a few days to allow the Chief Minister time to contemplate his advice regarding dissolving the Assembly.

The Madras High Court in K.A. Mathialagan v. The Governor described the adjournment as not "a proper or bona fide exercise of the power of adjournment" by the Speaker, given that the ruling party maintained a majority in the House and there was still considerable work to accomplish.[497] The Court correctly highlighted that the question of ongoing public confidence in a ruling party with a majority in the Assembly can and should typically be assessed only within the Assembly itself.

CONCLUSION

The structure outlined in Articles 178 to 187 of the Indian Constitution highlights the intent of the framers to establish a State Legislature that is balanced, independent, and accountable. The offices of the Speaker, Deputy Speaker, Chairman, and Deputy Chairman serve not just as procedural leaders but as constitutional foundations that guarantee the efficient, unbiased, and effective operation of legislative bodies. Originating from the British parliamentary system but adapted to Indian federalism, these clauses embody the dual goals of democratic responsibility and institutional reliability. In modern times, growing partisanship, political turmoil, and constitutional debates, especially regarding the Speaker's involvement in issues such as disqualification under the Tenth Schedule have tested the impartiality intended by the

[496] Ibid.
[497] K.A. Mathialagan v. The Governor of Tamil Nadu AIR 1973 Mad 198.

Constitution. Enhancing standards of neutrality, procedural equity, and judicial supervision is crucial for maintaining the integrity of these positions. Ultimately, the ongoing significance of Articles 178-187 resides in their ability to preserve democratic values, sustain federal equilibrium, and guarantee that legislative actions are directed by constitutional ethics rather than political convenience.

CHAPTER 16: OATH, QUALIFICATIONS, AND DISQUALIFICATIONS OF MEMBERS OF LEGISLATIVE ASSEMBLIES (ARTICLE 188–193)

BY AISHWARYA SINGH

INTRODUCTION

India's representative democracy rests on a regulatory framework where power sharing is between the Union and the states. Each state has a Legislative Assembly (Vidhan Sabha) and, in some cases, a Legislative Council (Vidhan Parishad), which are accountable for law-making, overseeing the executive, and serving as the voice of the people. An MLA is the directly elected representative of a constituency, standing as both a lawmaker and a liaison between the national and state governments.

Governing bodies often administer policy, are in charge of fiscal matters, and validate laws. They debate bills, vote on legislation, survey state budgets, and hold the executive answerable. Additionally, MLAs play a significant role in constituency expansion and public welfare, making them central to the performance of democracy at the fundamental level. The importance of MLAs is further intensified by constitutional provisions that modulate their conduct, including the oath under Article 188, qualifications under Article 173, and disqualifications under Articles 190–193.

The purpose of this paper is to provide an overarching examination of Articles 188–193, centring on the constitutional, lawful, and judicial elements of the oath, qualifications, and disqualifications of MLAs. The study examines how these arrangements guarantee accomplishment, uprightness, and accountability in the legislative process while maintaining democratic representation.

HISTORICAL BACKGROUND

The creators of the Indian Constitution were enormously influenced by the legislative decorum of the United Kingdom, particularly its prominence in electoral democracy, balance of powers, and the principle of liability of the executive to the legislature[498]. The UK system furnished a model for systematic legislation, the role of a representative assembly and procedures such as legislative qualifications and disqualifications of legislators. However, the creators were also intensely conscious that India's socio-political landscape was incredibly different from Britain[499]. India's population was diverse, multilingual, different faiths, castes, and tribal communities, and had come up against imperialism that had rudimentary democratic participation. As a consequence, while embracing segments from the Westminster system, the Constitution had to redesign these compositions to India's diverse settings, ensuring inclusivity, impartiality, justice and federal balance.

Pre-colonial, the upper house under colonial rule principally performed as consultative bodies with limited powers. Representatives were either designated or elected under selective suffrage, and the committee had slight control to determine policy or impose sanctions on the executive. The Government of India Act, 1935, marked the catalyst for change by inaugurating state legislatures with increased self-governance and narrow hegemony[500]. It was endowed for elected representatives, parliamentary proceedings and budget implementation at the provincial level. Although with the competitive authoritarianism, the 1935 Act balanced the structural and operational framework for the legislative assembly, accustomed Indian statesmen with legislative processes, oath-taking, and eligibility requirements[501].

Post-independence, the Constitution of India institutionalised a federal polity with clear distribution of legislative powers and universal adult suffrage. Inside this substructure Articles

[498] Constituent Assembly Debates, Vol. VII (Lok Sabha Secretariat for a, 1948–49).
[499] M.P. Jain, *Indian Constitutional Law,* 9th ed. (LexisNexis, 2023).
[500] Government of India Act, 1935, ss. 46–49.
[501] D.D. Basu, *Introduction to the Constitution of India*, 25th ed. (LexisNexis, 2021).

188–193 were precisely written to synchronise the oath, qualifications, and disqualifications of Members of the Legislative Assembly (MLAs).[502] The framers planned these requirements to guarantee that elected representatives were not only legally qualified but also righteous, responsible and answerable to the Constitution and the electorate. By its nature, B.R. Ambedkar reinforced during the Constituent Assembly debates, legislative goodness and probity are essential or the performance of a democracy, and the involvement of oath-taking, clear eligibility criteria, and disqualification mechanisms reflects this inspiration[503]. These articles serve as a safeguard, put a stop to misuse of legislative authority, protect democratic processes, and promote the public trust crucial for constructive governance at the state level.

CONSTITUTION OF A STATE LEGISLATURE

Certain states of Andhra Pradesh, Bihar, Maharashtra, Madhya Pradesh, Karnataka, and Uttar Pradesh have a bi-cameral State Legislature having two Houses. Which is constituted by the Governor, Legislative Council (Vidhan Parishad) and Legislative Assembly (Vidhan Sabha) [Art. 168][504]. Across all other States, there is a unicameral state legislature having only one House and, therefore, comprising the Governor and Legislative Assembly (Vidhan Sabha). Parliament has the power to enact a law for either repealing or forming of Legislative Council (Vidhan Parishad) in a State, if the Legislative Assembly (Vidhan Sabha) therein passes a special majority resolution which requires a vote by a majority of the assembly's total membership and a separate vote of not less than two-thirds of the members present and voting[Art. 169(1)][505].

A regular law by Parliament to create or abolish a state's Legislative Council, which makes necessary constitutional changes[Art.169(2)], is not treated as a constitutional amendment under Art 368[506,] which is a direct resentment of [Art. 169(3)]. Thus, the constitutional provision in [Art 169(1)]gives states the flexibility to either discontinue their legislative council or the right to create one[507] if they currently do not have one.

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502 *Constitution of India*, Arts. 188–193.
503 Constituent Assembly Debates, Vol. VIII (Lok Sabha Secretariat, 1948–49).
504 *Constitution of India*, Art. 168.
505 Id., Art. 169(1).
506 Id., Arts.169(2), 368.
507 Id., Art. 169(3)Art . .

In Article 169(1), the word "may" suggests that Parliament holds the discretion to act on—or disregard—a State Legislative Assembly's resolution to establish or eliminate a Legislative Council therein[508]. Judicial interpretation has reinforced that this discretionary nature preserves Parliament's supremacy in legislative structure while allowing states consultative participation in legislative design[509] as stated in K.Lakshminarayanan v. Union of India.

LEGISLATIVE ASSEMBLY

The Legislative Assembly is the favoured chamber, elected directly by the people deriving from the electoral district in the State on the basis of Universal adult suffrage once in five years. The house may be dismissed earlier. In a crisis, its life may be expanded by law [Art 172(1)][510]. Every citizen of India, who is not less than 18 years of age, and not suffering from any disqualification [Art. 326], is an eligible certified voter at an election for this House. Ineligibility arises either under the Constitution, or under a law passed by the State Parliament Legislature [Art. 326]. The number of members in a Legislative Assembly must be composed of between 60 and 500 members [Art 170(1)][511]. States are divided into territorial constituencies for elections, with the population per seat kept as equal as possible throughout the state [Art. 170(2)][512]. This principle embodies the idea of "impartial representation", or the comprehensive egalitarian principle of "one vote one value ”. The constituencies should be, as far as possible, of equal size, although this principle is incapable of being applied with "arithmetical accuracy".

At the end completion of each census, the total number of seats in each Assembly, and the division of each State into territorial constituencies, are to be modified by such authority and in such a manner as Parliament may by law prescribe [Art. 170(3)][513] . Such adjustment is not to impact portrayal in the Assembly until its termination. Provided that the adaptation shall take effect from such date as the President may, by order, specify.

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[508] D.D. Basu, Commentary on the Constitution of India, Vol. 8, 9th ed. (LexisNexis, 2020).

[509] *K. Lakshminarayanan v. Union of India*, (2018) 4 SCC 585 (on the scope of legislative discretion under Art. 169 and the role of the Governor and Parliament).

[510] *Constitution of India*, Art. 172(1).

[511] *Id*., Art. 170(1); Second Schedule, *Representation of the People Act*, *1951*.

[512] *Constitution of India*, Art. 170(2).

[513] *Constitution of India*, Art. 170(3).

Until such modification takes effect, any election to the Legislative Assembly may be held based on the electoral district existing before such readjustment. However, until the first census after the year 2026,[514] no revision of seats in the State Legislative Assembly or section of the State into territorial constituencies needs to be made. This task is accomplished by the Delimitation Commission[515].

Certain provisions have been made for reservation of seats in various Legislative Assemblies for Scheduled Castes and Scheduled Tribes [Arts. 332 and 334].[516] In the matter of the Anglo-Indian community, the Governor has jurisdiction to recommend one member of the community to the State Legislative Assembly of a State if he thinks that the community needs representation in the Assembly and is not acceptably represented therein [Article 333][517]. The Supreme Court has many times ensured that the constitutional framework of political representation and delimitation is intended to ensure fair and equal electoral opportunities and prevent manipulation of voting districts or the unequal distribution of voters, as stated in Indira Nehru Gandhi v. Raj Narain[518].

Article 188. Oath or Affirmation

Prior to an affiliate laying their seat in the House, they need to stand before the Governor—or whoever the Governor picks for this purpose—make and subscribe an oath or affirmation, and sign it, following the set format in Article 188[519]. With this promise, the person (MP, MLA or MLC) is saying they'll stay true to the Constitution of India as it stands, as given in the case of V.R. Sutaria v. N.P. Bhanvadia[520] respect the country's unity and independence, and do their best to serve as a responsible member of the Legislative Assembly or Council, whichever applies.

This mandatory procedure, as stated in P.N. Singh v. H.P. Singh[521,] is uniformly applicable to all elected legislators, whether they are set to join Parliament or a State Assembly, as laid out in Articles 84(a), 99, 173(a), and 188 of the Constitution[522]. A newly elected member cannot exercise any rights or powers of office until the prescribed oath or affirmation has been duly

[514] *Id.,* Proviso to Art. 170(3)
[515] *Delimitation Commission*; Proviso to Art. 170(3)to .
[516] *Id.*, Arts. 332–334.
[517] *Id.,* Art. 333.
[518] *Indira Nehru Gandhi v. Raj Narain,* 1975 Supp SCC 1.
[519] *Constitution of India,* Art. 188.
[520] *V.R. Sutaria v. N.P. Bhanvadia* AIR 1970 SC 765
[521] *P.N. Singh v. H.P. Singh* AIR 1968 SC 1064.
[522] *Id.,* Arts. 84(a), 99, 173(a), 188

administered. The judiciary has underscored that fulfilling this requirement does not demand any specific level of education or comprehension on the part of the member. Merely taking the oath is considered legally sufficient, regardless of the individual's personal ability to understand its meaning in full. As a result, no connection exists between a person's educational background and their eligibility for legislative office.

Article 189. Rules for State Legislature Voting, Vacancies, and Quorum

(1) Article 189(1) of the Constitution sets up the voting process in a state legislature, stating that all queries are decided by a functional majority of members present and voting, excluding the presiding officer. The Speaker or Chairman abstains from voting in the initial count but has a deciding vote to break a tie[523] in case of an equal division of votes.

(2) Article 189(2) of the Constitution ensures that state legislatures can continue to function even if the membership has openings or if an individual lacking the necessary qualifications participates in the process[524]. The validity of legislative decisions is maintained for the purpose of preventing governmental paralysis and to maintain the legitimacy of its laws; notwithstanding any subsequent discovery of error, the decision stands.

(3) Article 189(3) of the Constitution of India, which states that the plenum is the greater of either 10 members or one-tenth of the total number of members in the house, unless the state legislature amends to change this rule. This provision ensures that a required number of members must be present for the proceedings to be valid[525].

Article 189(3) of the Constitution of India mandates that the presiding officer of a state legislative body (the Speaker for the Assembly, the Chairman for the Council) must either adjourn the meeting or suspend it until there is a quorum of required members. This is to ensure that the body's decisions are made with the required minimum number of members present, upholding the integrity of the proceedings.

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[523] *Constitution of India*, Art. 189(1).
[524] *Constitution of India*, Art. 189(2).
[525] *Constitution of India*, Art. 189(3).

Article 190 – Vacation of Legislative Seats

(1) Membership in both legislative chambers of a state simultaneously is not permitted. If someone is selected for both the Assembly and Council within a single state, the law of that state requires the person to voluntarily vacate a seat in one House and choose only one chamber in which to serve.

(2) Similar restrictions exist for membership across legislative bodies in more than one state[526]. A person cannot continue as a legislator for two or more states named in the First Schedule. Should an individual be chosen to serve in more than one such state, and if resignation from all but one post does not occur within the time frame set by Presidential rules, seats in all states except the one retained will be regarded as vacated.

(3) A seat is rendered vacant if a state legislator falls under any of the disqualification grounds listed in Article 191(1) or (2). Resignation by a member, submitted in writing to the presiding authority and accepted by them, also leads to a vacancy. However, the Speaker or Chairman can refuse to accept a resignation if, on inquiry, the conclusion is reached that the resignation was not genuine or was submitted under duress.

(4) Absence from all sittings of the House for sixty days, without formal leave, provides grounds for the House to resolve that the member's seat be vacated. Periods when the House stands adjourned or prolonged—if lasting more than four days—are excluded from the sixty-day count[527].

QUALIFICATIONS FOR MEMBERSHIP

Deciding who may serve in a state legislature is not left to chance—the Constitution of India, at Article 173, sets out these conditions in painstaking detail. Not just anyone can take up a seat; the requirements are clear, and for good reason: membership must be earned by meeting each rule, which preserves the authenticity and authority of democratic government at the state level.

[526] *Constitution of India*, Art. 190.
[527] *Constitution of India*, Art. 190 (resignation and absence rules) .word-for-word,

The very first check is citizenship. Only someone who is an Indian citizen—and willing to take the statutorily mandated oath or affirmation—can contest the Election. If your aim is the Legislative Council, the age is thirty years, and for the Assembly, twenty-five years is the threshold. There's a deeper layer as well: other stipulations appear both in the Constitution and in laws passed by Parliament, notably those found in Articles 173 and 191(1)(e), and none can be ignored.

Beyond these requirements, the Representation of the People Act, 1951, jumps in with more. One must prove their name is on the voting rolls of a particular constituency to stand for certain seats, and if the person wants to be considered for a Governor's nomination to the Council, ordinary residence in the State is usually required. To try for the Assembly, being listed as an elector suffices. But mind the exclusions: unresolved insolvency, conviction of particular crimes, or the holding of a government office with a risk of conflicting interests leads to disqualifications[528]. And don't misconstrue the rules for reserved seats if a person belongs to a Scheduled Caste or Tribe, and that person has not boxed in; that person may contest general seats as well, not just the ones reserved for the community.

Courts have reminded everyone repeatedly that these rules are to be followed and mandatory word by word. When the Supreme Court took up the Saka Venkata Rao[529] matter, it underscored that compliance is not a matter for debate. Jaya Bachchan's case[530] reinforced the same, especially regarding the disallowance of office-of-profit conflicts. All told, between the Constitutional text, Parliament's statutes, and the judiciary's insistence, admission to the state legislature is truly reserved for those who measure up on every front: legally, ethically, and democratically.

DISQUALIFICATIONS OF MEMBERSHIP

The grounds of disqualification of members of the State Legislature are prescribed in Article 191

[528] *Constitution of India*, Art. 173; Representation of the People Act, 1951.
[529] *Saka Venkata Rao v. Govt. of Andhra Pradesh* AIR 1956 SC 108.
[530] *Jaya Bachchan v. Union of India* (2006) 5 SCC 266.

of the Constitution. They are mostly similar to the disqualifications applicable to members of Parliament under Article 102.

Article 191. Disqualifications for membership

(1) As per Article 191(1), a person is not eligible to be chosen as a member of, or to remain a member of, the State Legislative Assembly or Council if they:

(a) if that person holds any office of profit under India's Central Government or any State government, as specified in the First Schedule, unless that office has been exempted by the State Legislature by law;

(b) if that person is of unsound mind and which has also been declared by a competent court;

(c) if that person is an undischarged insolvent;

(d) if that person is not a citizen of India, or has voluntarily acquired the citizenship of another country, or is under a tie of allegiance or obedience to a foreign power;

(e) if that person is disqualified by or under any law made by Parliament.

Explanation. According to the purposes of this clause[531], a person will not be allowed to hold an office of profit under the Indian Government or the Government of any State as specified in the First Schedule by reason only that he is a Minister (MLA, MP, or MLC) either for the Central or for such State.

(2) According to Article 191(2), a person will not be eligible for being a member of the Legislative Assembly or Legislative Council of a State if that person is not qualified under the Tenth Schedule.

Office Of Profit

[531] *Constitution of India,* Art. 191; Parliament's disqualification laws.

Holding an office of profit is a disqualification.[Art.190(1)(a)]. An administrator employed in Coal India Ltd., a government-owned establishment, cannot be said to hold an office of profit under the Government. The appointing body exercises no authority or control over the procedure relating to appointment, termination, or the terms of service of such an official, nor over the functions assigned to them. Likewise, a teacher serving in a municipal school does not occupy an office of profit under the State Government and, therefore, is not disqualified from contesting elections to the State Legislative Assembly. Under Article 191(1)(a) of the Constitution, the State Legislature has the power to enact a law declaring that a specified office shall not disqualify its holder from being a member of the Legislature.

In the State of Haryana, the Legislature exempted chairmen of improvement trusts but not their members from the disqualification attached to holding an office of profit. This exemption was questioned before the Supreme Court. The Court dismissed the objection, holding that Article 191(1)(a) grants the State Legislature broad authority to decide by law which offices of profit shall not lead to disqualification from legislative membership. The Court further observed that so long as such an exemption is exercised with fairness, moderation, and without diluting the substance of Article 191(1)(a) or violating any constitutional safeguard, judicial review would not be warranted. The Legislature is also empowered to retrospectively remove any disqualification incurred on account of holding an office of profit. In the Haryana Chairman of Improvement Trusts case[532] The Supreme Court upheld the extensive power of states to allow exemptions, as long as these powers are used fairly, in a balanced manner, and do not infringe on constitutional rights.

DECISION ON DISQUALIFICATIONS

Article 192: Determination of Members' Disqualifications

(1) If uncertainty arises about whether a legislator from a State's Assembly or Council has incurred any of the disqualifications set out in Article 191(1), the issue is assigned to the Governor. The Governor's decision on this referral is treated as final and binding.

[532] *Bhagwan Das Sehgal v. State of Haryana (1974)* Supreme Court: office-of-profit exemption validity.

(2) Before making such a determination, the Governor has an obligation to consult the Election Commission, and must resolve the matter strictly following the Commission's advice.

If at any point there is a dispute about whether a member of the State Legislature has become disqualified, responsibility for deciding rests squarely with the Governor; once the matter is placed before him, his ruling is authoritative [Art 192(1)]. Still, the Governor is required first to obtain the Election Commission's advice[533] and is legally compelled to abide by its opinion [Art 192(2)].

It has been clarified that, pursuant to [Art 192(2)], the Governor can only issue a decision after receiving the formal view of the Election Commission, making that step indispensable. In the scheme of Arts. 191(1) and (2), the Governor alone has the power to decide on disqualification, but only after requesting and considering the Election Commission's input. The legitimacy of the Governor's order depends entirely on whether it aligns with the Commission's opinion. In practical terms, the Governor must exclusively rely on the advice of the Election Commission and disregard influences from any other quarters, such as the Council of Ministers. As a result, it is the Election Commission's view that effectively controls the outcome, for the Governor's ultimate order relies solely on that advice. A parallel method is followed in Parliament. Importantly, these legal procedures apply solely when a sitting member becomes disqualified after election.

In cases where a person who is disqualified manages to secure election to the State Assembly, their election can be challenged through an election petition in the High Court. Where a person, lacking the required constitutional credentials, is elected and no petition is brought, but that individual is aware of his own ineligibility and nonetheless takes part and votes, Article 193 creates a daily monetary penalty for knowingly occupying a legislative seat while disqualified. However, the Constitution does not detail how such sums are to be collected. In such instances, the Supreme Court has affirmed the authority of the High Court, by virtue of Article 226, to prevent such a person from acting as a member and to issue a formal declaration against their entitlement to sit in the House.

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[533] *Constitution of India,* Art. 192(1)-(2).

Penalty

Article 193 of the Constitution holds that, when an individual sits or votes in a State Legislative Assembly or Council without complying with the requisite conditions, that individual incurs a financial penalty. For every day this person participates unlawfully, a fine of five hundred rupees becomes payable and can be collected by the State as a recoverable debt[534]. The imposition of this sanction arises in three distinct instances: if the member has not rendered the prescribed oath or affirmation under Article 188; if the person knows, at the time, of their own ineligibility or disqualification; or if the individual is aware of an express prohibition passed into law by Parliament or the State Legislature against such participation.

Critical Synthesis and Reform Perspectives on Articles 188–193

While Articles 188 to 193 collectively articulate a framework to uphold legislative integrity and procedural discipline, contemporary developments reveal substantive gaps between constitutional text and democratic practice. The disqualification regime under Article 191, intended to safeguard legislative propriety, has at times wavered in execution. Instances such as the delayed disqualification of an MLA convicted and sentenced to imprisonment, despite clear statutory and constitutional mandates, point to structural weaknesses in enforcement and institutional responsiveness. Critics have argued that such delays undermine democratic trust and constitutional legitimacy.

Similarly, adjudication under the Tenth Schedule exposes deeper procedural and partisan vulnerabilities. Recent Supreme Court interventions directing Speakers to decide disqualification petitions within defined timeframes underscore systemic inertia and potential bias in quasi-judicial functions entrusted to legislative presiding officers. The judiciary has even recommended that Parliament consider independent tribunals to ensure impartial and efficient resolution of disqualification disputes, challenging the historical reliance on Speakers as adjudicators.

These developments highlight a broader theme: while constitutional provisions articulate disciplinary mechanisms, their efficacy depends on institutional integrity, timelines, and

[534] *Constitution of India,* Art. 193 (monetary penalty).

accountability. Penalties such as those under Article 193 remain largely symbolic without commensurate procedural reinforcement. To bridge this gap, calibrated reforms such as statutory time limits for disqualification decisions, enhanced transparency in enforcement, and reconsideration of adjudicatory roles would reinforce constitutional intent, prevent procedural laxity, and strengthen democratic accountability. Such reforms would align the letter and spirit of Articles 188 to 193 with evolving expectations of constitutional democracy.

CONCLUSION

The regulations governing the State Legislature, especially those under Articles 168 to 193, form the foundation of India's democratic framework at the state level. They ensure that legislative power is practised responsibly, virtuously and in unity with the Constitution. The indispensable oath or affirmation under Article 188, the qualifications and disqualifications under Articles 173–192, of the Indian Constitution and the penalty under Article 193, together balance the prestige of legislative bodies.

These prerequisites champion fundamental values promoting ethical governance and ensure that Members of the Legislative Assembly (MLAs) and Legislative Council (MLCs) act not as solitary seeking power, but as trustees of public faith. Through judicial interpretation in cases like *Kanta Kathuria v. Manak Chand Surana* (1970), *Jaya Bachchan v. Union of India* (2006), and *Ravi S. Naik v. Union of India* (1994), courts have asserted that legislative offices must be held with the rule of law and moral obligations.

Ultimately, the substructure visualises the legislature as a guardian of democracy, where every act of portrayal is entrenched in the precedent. By charging obedience to the Constitution and certifying accountability through formalistic and legal safeguards, these requirements encourage the unity in diversity, guardianship, and good governance — the faithful spirit of India's constitutional democracy.

CHAPTER 17: LEGISLATIVE PROCEDURE & GOVERNOR'S ASSENT (ARTICLE 194–200)

BY SHIMAILA JEHAN BEEN

INTRODUCTION

The Indian Constitution, for the smooth functioning of the federal governance, has carefully designed certain procedures that include both legislative functioning and executive oversight. Articles 194 to 200 of the Constitution of India provide for a framework that grants certain powers to the legislature but limits it to strict procedural boundaries. These powers are necessary for the State Legislatures to carry out their functions independently, yet these powers and privileges are subject to certain constitutional limits. A comparison of Indian Constitution with other federal constitutions, such as the United States and Australia, makes it quite evident that they are not strictly federal features, but they draw from the Canadian model, where provincial legislation falls under dominion oversight. In India, the President does not have the power to directly disallow a state legislation, but reservation through the Governor serves a similar purpose.[535]

The procedural aspects of legislative passage, which include deadlocks, delays and the relative powers of the bicameral chambers, further help in reinforcing democratic principles.The Legislative Council provides recommendations and amendments which can delay passage but cannot prevent the will of the lower house from prevailing. The way in which power is shared between the Legislative, Executive and Centre shows how cooperative federalism operates in India.[536] Articles 194 to 200 reflect that the procedures and assent mechanisms are not ends in

[535] D.D. Basu, *Introduction to the Constitution of India* (LexisNexis, Gurgaon, 2022).

[536] Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* (Oxford University Press, New Delhi, 2003).

themselves, but they are the tools that help in achieving a balance between autonomy, accountability, and unity.

HISTORICAL BACKGROUND

The legislative procedure and executive assent were incorporated in Indian Federalism through a complex layering of colonial institutions and constitutional debates. During British rule, the legislative initiative and assent remained under executive control through the early Government of India Acts from 1858 to 1919.[537] In the Government of India Act, 1919, a form of Government, i.e. Dyarchy was introduced in the provinces, which further entrenched that model. Although through this Act, the representation increased but still the legislative autonomy was still predominated by the executive and a lack of responsible government.[538] The Government of India Act, 1935, for the first time recognised provinces as autonomous units where legislatures and Ministries were made responsible for them. The Governor, however, retained certain significant powers, which included his assent on all provincial bills to become law. The Governor-General was made accountable to the British Parliament; as a result, the central government had ultimate control over federating units even though it was in the name of provincial autonomy.[539]

The debates of the Constituent Assembly made a decisive shift from these colonial antecedents and shifted the focus on limiting the executive's discretionary power and placed the gubernatorial roles within a democratic frame. Taking examples from comparative experiences and also while looking at the conventions developed in the Westminster system, they debated the logic of a constitutional head acting on ministerial advice.[540] The Constituent Assembly adopted a model that was closer to the British and Canadian traditions and incorporated provisions for gubernatorial assent and discretionary reservation, but also made all such acts subject to constitutional limits.[541] The

[537] D.D. Basu, *Introduction to the Constitution of India* (LexisNexis, Gurgaon, 2022).
[538] Subhash C. Kashyap, *Our Constitution: An Introduction to India's Constitution* (National Book Trust, New Delhi, 2008).
[539] D.D. Basu, *Introduction to the Constitution of India* (LexisNexis, Gurgaon, 2022).
[540] Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* (Oxford University Press, New Delhi, 2003).
[541] Sudhir Krishnaswamy, *Democracy and Constitutionalism in India* (Oxford University Press, New Delhi, 2009).

procedure, which is prescribed in Articles 194 to 200, reflects both the historical struggle for colonial autonomy and a careful response to colonial legacies of executive oversight.

CONCEPTUAL AND DOCTRINAL FRAMEWORK

The legislative provisions in Articles 194 to 200 of the Indian Constitution collectively form the procedural and substantive framework that provides directions for law-making at the state level. Article 194 is foundational in securing free functioning of state legislatures as it empowers the legislature to define its own privileges by law, which in turn provides a formal mechanism for their governance.[542] Article 195 ensures the legislature's autonomy and independence by recognising their entitlement to salaries and allowances. Article 196 ensures that the principle of legislative deliberation and filtration is followed in bicameral systems, which safeguards against hasty lawmaking and promotes democratic legitimacy.[543] Article 197 clarifies the powers of the Legislative Council, particularly its role in Bills other than Money Bills. Article 198 is adapted from the Westminster system, as it strengthens fiscal accountability and democratically elected control over public finances.[544] Article 199 defines a Money Bill, and this definition helps in both procedural clarity and protects financial legislation from undue interference, which enhances legislative accountability in the fiscal domain.[545] Article 200 creates a balance between the autonomy of the legislature and constitutional review. It embodies the principle of responsible government, tampered by federal oversight.[546]

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[542] D.D. Basu, *Introduction to the Constitution of India* (LexisNexis, Gurgaon, 2022).
[543] M.P. Jain, *Indian Constitutional Law* (LexisNexis, Gurgaon, 2018).
[544]Subhash C. Kashyap, *Our Constitution: An Introduction to India's Constitution and Constitutional Law* (National Book Trust, New Delhi, 2008).
[545] D.D. Basu, *Introduction to the Constitution of India* (LexisNexis, Gurgaon, 2022).
[546]Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* (Oxford University Press, New Delhi, 2003).

ARTICLE-WISE DETAILED DISCUSSION ON ARTICLES 194-200 OF THE CONSTITUTION OF INDIA

194. Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof.—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, 1[shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution (Forty-fourth Amendment) Act, 1978].

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.[547]

Explanation:

Article 194 provides for freedom of speech within the Legislature and protects the members from civil or criminal proceedings for words spoken or votes cast during legislative sessions or committee meetings. It also empowers the legislature to define its own privileges by law, which ensures that the legislative functions are discharged effectively while also safeguarding their autonomy. *In Raja Ram Pal v. Hon'ble Speaker, Lok Sabha (2007)*[548] The Supreme Court, though dealing with parliamentary privileges, emphasised the importance of conforming to constitutional morality and fundamental rights by the State Legislatures and held that legislative privileges are not absolute. The Court also held that expulsion of members without a fair hearing would violate

[547] Constitution of India, Art. 194.

[548] *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha,* (2007) 3 SCC 184

their rights under Article 21 of the Constitution. In another landmark case, *Sita Soren v. Union of India (2024)*[549], the Supreme Court clarified the scope of immunity under Article 194(2). Sita Soren, who was an MLA from Jharkhand, was accused of accepting a bribe related to a Rajya Sabha election. The Court held that the protection under Article 194(2) only covers speech and votes in the legislature and not the illegal acts, such as bribery, that undermine democratic functioning. In *Raghu Raj Pratap Singh alias Raja Bhaiya v State of U.P., (2003)*[550] The Allahabad High Court held that if a Legislator is detained under a valid detention order, then he or she has no right to participate in the session of the House and cannot consequently claim any rights that are available to legislators in the House.

The 44th Amendment (1978) clarified that powers and privileges before it remain applicable until defined by State Legislature laws, hence maintaining legislative autonomy.[551]

Article 195. Salaries and allowances of members.—Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined, by the Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Legislative Assembly of the corresponding Province.[552]

Explanation:

Article 195 gives power to each State Legislature to decide and make laws regarding the remuneration and allowances of its members. The autonomy to fix salaries that has been provided in Article 195 reflects the importance of effective legislative functioning as a pillar of democracy. It sets a principle of self-regulation where the Legislature controls the financial aspects related to its members while also reinforcing the separation of powers within the state setup.

Article 196. Provisions as to introduction and passing of Bills.—(1) Subject to the provisions of articles 198 and 207 with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature of a State which has a Legislative Council.

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[549] *Sita Soren v. Union of India,* (2024) 3 SCC 65

[550] *Raghu Raj Pratap Singh alias Raja Bhaiya v State of U.P.,* 2003 (3) AWC 2106

[551] The Constitution (Forty-fourth Amendment) Act, 1978.

[552] Constitution of India, Art. 195.

(2) Subject to the provisions of articles 197 and 198, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof.

(4) A Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Legislative Assembly of a State, or which, having been passed by the Legislative Assembly, is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.[553]

Explanation:

According to Article 196(1), Bills except for the Money Bills and Financial Bills can start in either House of the State Legislature if the state has two Houses. A Bill is considered passed in accordance with Article 196(2) only when both Houses of the Legislature agree on it, which can be either without amendments or with mutually agreed amendments. A Bill pending in the Legislature, according to Article 196(3) does not lapse just because the House is prorogued, which means temporarily suspended. However, as stated in Article 196(4), if the Legislative Assembly is dissolved, any Bill which is pending in the Assembly or any Bill passed by the Assembly but which is pending in the Council will lapse. A Bill which is pending only in the Legislative Council will not lapse on dissolution of the Assembly. In *Purushothaman Nambudiri v. State of Kerala (1962)*[554]. The Supreme Court held that a Bill that is pending for the assent of the Governor lapses on the dissolution of the Assembly.

Article 197. Restriction on powers of the Legislative Council as to Bills other than Money Bills.—(1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council—

(a) The Bill is rejected by the Council; or

[553] Constitution of India, Art. 196.

[554] *Purushothaman Nambudiri v. State of Kerala,* AIR 1962 SC 694

(b) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree; the Legislative Assembly may, subject to the rules regulating its procedure, pass the Bill again in the same or in any subsequent session with or without such amendments, if any, as have been made, suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

(2) If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council—

(a) The Bill is rejected by the Council; or

(b) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) The Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

The Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly for the second time with such amendments, if any, as have been made or suggested by the Legislative Council and agreed to by the Legislative Assembly.

(3) Nothing in this article shall apply to a Money Bill.[555]

Explanation:

According to this Article when a Bill other than the Money Bill has been passed by the Legislative Assembly and has been sent to the Legislative Council is rejected by the Council and is not passed within three months or if the Council passes the Bill with amendments to which the Assembly does not agree to; then the Assembly can pass the Bill again with or without amendments in the same or a later session, or can resend it back to the Council. After the Bill has been passed for the second time by the Legislative Assembly and is sent again to the Council and is rejected by the Council or if the Council fails to pass the Bill within one month or if the Council passes the Bill with amendments to which the Assembly does not agree to, then the Bill is deemed to be passed by both Houses in the exact form it was passed by the Assembly the second time, including any amendments agreed upon. These restrictions do not apply to Money Bills. The Court in the case of

[555] Constitution of India, Art. 197.

Ramprasad Wamanrao Kadam Bordikar v. State of Maharashtra (1996)[556] held that under Article 197(2) of the Constitution if the Legislative Council fails to pass a bill within one month of it being transmitted from the Assembly (after the Assembly has passed it twice), then the bill is deemed to be passed as per the Assembly's version.

Article 198. Special procedure in respect of Money Bills.—(1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.[557]

Explanation:

Article 198 states that Money Bills can only be introduced in the Legislative Assembly, and once the Bill is passed by the Legislative Assembly, it is sent to the Legislative Council for its recommendations. The Council then has to return the Bill within 14 days, and the Assembly can then accept it either with recommendations or without recommendations. If the Council fails to

[556] *Ramprasad Wamanrao Kadam Bordikar v. State of Maharashtra* (1996) 3 BOMCR 658

[557] Constitution of India, Art. 198.

return the Bill within the stipulated time of 14 days, then the Bill is deemed to be passed by both Houses in the same form as the Legislative Assembly passed it. In *Mohd Saeed Siddiqui v. State of U.P.(2014),*[558] The Supreme Court, while considering the constitutional validity of the law passed by the Uttar Pradesh Legislature, held that Money Bills in State Legislatures must exclusively be introduced and passed in the Legislative Assembly and held that any law passed without observing them would be declared unconstitutional.

Article 199. Definition of "Money Bills".—(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;

(c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such Fund;

(d) the appropriation of money out of the Consolidated Fund of the State;

(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money; or

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

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill introduced in the Legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final.

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[558] *Mohd Saeed Siddiqui v. State of U.P.,* (2014) 5 SCC 590

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under article 198, and when it is presented to the Governor for assent under article 200, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.[559]

Explanation:

According to Article 199, a Bill is referred to as a Money Bill if it deals only with financial matters such as the imposition, amendment, or regulation of taxes, borrowing money, custody and withdrawal of state funds, appropriation of money, and other financial operations which are related to the state's Consolidated Fund. It is also stated in this Article that if there is any doubt whether a Bill is a Money Bill or not, then the decision of the Speaker of the Legislative Assembly would be final. Every Money Bill must carry a certificate from the Speaker stating it is a Money Bill. In the Case of *State of Punjab v. Satya Pal Dang (1969),*[560] The Supreme Court held that under Article 199(4), the certificate that has to be given by the Speaker certifying the Bill as a Money Bill is not mandatory but directory. The Court also observed that during the absence of the Speaker, the Deputy Speaker can also issue a valid certificate.

Article 200. Assent to Bills.—When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

[559] Constitution of India, Art. 199.

[560] *State of Punjab v. Satya Pal Dang,* AIR 1969 SC 903

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.[561]

Explanation:

Article 200 presents the Governor with 3 options, i.e. to give assent to the Bill, to withhold the assent, or to reserve the Bill for the President's consideration. The non-Money Bills can only be returned by the Governor once to the House with suggestions for reconsideration, but if the House passes the Bill again without amendments, the Governor must give assent. If the Bill threatens the powers of the State High Court, then the Governor has the option to reserve the Bill for the President. The Supreme Court in the case of *Hoechst Pharmaceuticals Ltd. v. State of Bihar (1983)*[562] upheld the constitutional validity of a State Act which imposed a surcharge on dealers for selling medicines at controlled prices. The Court ruled that once a Bill has been reserved by the Governor for the President's consideration and the President assents to it, then the Bill becomes the Law and its validity cannot be questioned on the ground that it was unnecessary to reserve it. The Court in the case of *P Nambudiri v State of Kerala (1962),*[563] held that the scheme of Article 200 clearly shows that if a Bill is pending for the assent of the Governor, it does not lapse simply because of the dissolution of the State Assembly. In a more recent case of *State of Tamil Nadu v. Governor of Tamil Nadu & Union of India (2025),*[564] the Supreme Court held that the prolonged delays by the Governor in granting assent to duly passed Bills violate constitutional provisions. The Court ruled that the Governor must act within a reasonable time and should act on the advice of the Council of Ministers, rejecting the notion of 'pocket veto', which means when a Governor vetoes a bill by simply taking no action.

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[561] Constitution of India, Art. 200.

[562] *Hoechst Pharmaceuticals Ltd. v. State of Bihar,* (1983) 4 SCthat C 45

[563] *P Nambudiri v State of Kerala*, AIR 1962 SC 694

[564] *State of Tamil Nadu v Governor of Tamil Nadu,* 2025 INSC 481 (SC)

CONTEMPORARY RELEVANCE AND CHALLENGES

In contemporary practice, though these Articles preserve legislative functionality, there are certain challenges that arise primarily from the Governor's discretionary powers under Article 200. The Governor's role has been a matter of contention, especially when the Governor withholds or reserves assent, which leads to accusations of political bias or misuse. A landmark development in 2025[565] addressed these concerns and held that the Governor cannot exercise a "pocket veto" by indefinitely withholding or reserving Bills. This ruling of the Supreme Court reinforced constitutional norms of responsible government and federal balance to curb potential misuse of assent powers of the Governor.

This clarification echoes the constitutional ethos underpinning Articles 194-200 and affirms legislative primacy while also safeguarding constitutional integrity. The Tamil Nadu NEET Bill is an example of the real-world tensions that demand judicial intervention to ensure procedural discipline.

As India's federal landscape evolves, these articles, through judicial refinement and political practice, continue to define a dynamic balance of power that demonstrates resilience and adaptability in democratic governance.

CRITICAL EVALUATION

Articles 194-200 of the Indian Constitution lay the foundation of Indian federalism, yet a critical evaluation reveals that persistent tensions and structural weaknesses undermine their constitutional promise.

Firstly, Article 194, which guarantees legislative privileges to safeguard independence, lacks clear codification, which leads to ambiguities. In Articles 196 to 199, despite the procedural clarity, the role of Legislative Councils often proves to be a problematic one as these councils have become instruments of political partisanship rather than bodies of sober second thought, which results in

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[565] *State of Tamil Nadu v Governor of Tamil Nadu*, 2025 INSC 481 (SC)

legislative delays. Under Article 200 the Governor's power to reserve bills for Presidential consideration functions as a latent override mechanism as it reinforces central dominance and dilutes federal autonomy. In summary, while Articles 194-200 ensure procedural regularity and constitutional safeguards, their operational gaps and potential for misuse reflect a federal system that is still grappling with power asymmetries.

CONCLUSION

Articles 194 to 200 of the Indian Constitution lay down a procedure that helps in creating a balanced federal system where state legislatures enjoy autonomy in making laws yet remain accountable within a constitutional framework. There is a need for clearer limitations on privileges, stronger mechanisms to streamline legislative processes and legally binding guidelines on administrative discretion, as otherwise these provisions risk reinforcing central dominance and political instability rather than nurturing a robust, decentralised federal polity. Reforms are needed that assure transparency and procedural clarity, imperative to align constitutional ideals with lived federal realities.

CHAPTER 18: PROCEDURE AND GOVERNOR'S ORDINANCE POWER (ARTICLE 208–213)

BY BHAVIKA DHURIA

INTRODUCTION

The Indian Constitution, as the supreme law of the land, provides a comprehensive framework for the functioning of State legislatures. A well-structured legislative procedure is not merely a formality; it is a cornerstone of parliamentary democracy, ensuring that laws are enacted in a transparent, legitimate, and constitutionally consistent manner. At the State level, legislative procedure governs how bills are introduced, debated, passed, and implemented, while also clarifying the constitutional role of the Governor.

Articles 208 to 213 of the Constitution collectively establish the procedural and functional framework for State Legislatures and outline the Governor's authority to issue ordinances. Articles 208 to 212 focus on the rules of procedure, legislative privileges, and conduct of business, ensuring autonomy, order, and discipline within legislative proceedings. Article 213, in contrast, equips the Governor with emergency legislative powers, enabling the issuance of ordinances when the legislature is not in session, thereby preventing legislative paralysis.

The judiciary has played a pivotal role in interpreting these provisions to uphold constitutional morality, federal balance, and democratic accountability. The Supreme Court has consistently emphasised that the repeated or routine use of ordinances constitutes a "fraud on the Constitution,"[566] reaffirming that ordinance-making is a temporary measure and not an independent source of law.[567] Additionally, the Court has protected the procedural sanctity of legislative functioning under Articles 208–212 by ruling that procedural irregularities within

[566] D.C. Wadhwa v. State of Bihar (1987)1SCC 378

[567] Krishna Kumar Singh v. State of Bihar (2017) 3SCC 1

legislative proceedings are generally immune from judicial review, thereby safeguarding legislative independence.[568]

Together, these Articles reflect the essence of constitutional functionalism, ensuring that governance continues efficiently and without interruption, while upholding the principles of democracy, legislative supremacy, and accountability in the State law-making process.

MEANING AND IMPORTANCE OF LEGISLATIVE PROCEDURE

Legislative procedure refers to the organised and systematic process prescribed for making laws. In the absence of such a framework, law-making could become arbitrary, jeopardising the stability of governance and the protection of citizens' rights. A structured legislative procedure ensures:

1. Democratic Accountability: Laws are the outcome of deliberation by elected representatives, reflecting the will of the people.
2. Transparency: Open debates and discussions allow public scrutiny, fostering trust in the legislative process.
3. Checks and Balances: The framework prevents any single organ of the State from monopolising law-making authority.
4. Constitutional Validity: Adherence to procedure guarantees that enacted laws are consistent with constitutional principles and safeguards.

In essence, legislative procedure provides the necessary order, legitimacy, and accountability to the law-making process, ensuring that governance remains democratic and constitutionally sound.

Historical Background

The origin of the Governor's ordinance-making power and the procedural rules for State legislatures can be traced back to India's colonial legislative framework. The Government of India Act, 1919, first empowered the Governor-General to issue ordinances in times of

[568] State of Punjab v. Satpal Dang (1969) 1 SCC633

emergency. This authority was later expanded under Section 42 of the Government of India Act, 1935, which extended similar powers to Provincial Governors.

During the framing of the Indian Constitution, the Constituent Assembly engaged in extensive debates over this colonial inheritance. Some members expressed concern over the potential for misuse of such powers, while others viewed them as necessary instruments to ensure continuity of governance. Dr B.R. Ambedkar clarified that the ordinance-making power was not intended as an alternative or parallel source of legislation, but rather as a temporary emergency measure to address extraordinary situations.

The inclusion of Articles 208 to 213 in the Constitution, therefore, reflects a deliberate effort by the framers to balance procedural discipline with executive flexibility. These provisions represent a thoughtful fusion of British parliamentary conventions and the practical necessities of the colonial administrative system, adapted to the needs of a democratic and federal India.

Adoption and Comparative Influence

The procedural framework for State Legislatures under Articles 208–212 was largely influenced by British parliamentary traditions, especially in relation to legislative privileges, internal autonomy, and the conduct of legislative business. In contrast, Article 213 drew from the Government of India Act, 1935, but was carefully adapted to suit India's democratic and federal structure, providing the Governor with temporary law-making powers during legislative recesses. In comparison, the ordinance-making power has no direct equivalent in the United Kingdom, where the executive cannot enact laws without the express approval of Parliament. Instead, it is more closely mirrored in certain Commonwealth constitutions, such as those of Pakistan and Malaysia, which similarly inherited elements of the colonial administrative framework to address emergency legislative needs.

The Constituent Assembly incorporated key safeguards to prevent misuse of this power and ensure a balance between executive flexibility and legislative supremacy:

- Ordinances must be placed before the Legislature when it reconvenes.
- They cease to operate six weeks after reassembly unless approved.
- The Governor's power is coextensive with the legislative competence of the State Legislature.

- Judicial review is permitted in cases of mala fides or excess of jurisdiction.

Types of Legislatures in India

The Constitution allows two models of State legislatures:

1. Unicameral legislatures: where only a Legislative Assembly exists (most States follow this system).

2. Bicameral legislature: where both a Legislative Assembly and a Legislative Council exist (e.g., Uttar Pradesh, Bihar, Maharashtra, Karnataka, Andhra Pradesh, and Telangana).

In unicameral legislatures, law-making is simpler since only one House is involved. In bicameral legislatures, a Bill must pass through both Houses before it reaches the Governor. This dual scrutiny
is designed to enhance deliberation, though it sometimes slows down the legislative process.

The foundation laid here sets the stage for understanding how Articles 208–213 operate in practice,
particularly in shaping the rules of procedure, the language of legislative business, the Governor's assent, and ordinance-making powers.

CONCEPTUAL AND CONTEXTUAL UNDERSTANDING

Articles 208–212: Legislative Procedure and Autonomy

These Articles preserve the procedural sanctity and autonomy of State Legislatures:

Article 208 empowers each House to make rules for regulating its procedure and business.

The Supreme Court upheld the supremacy of legislative privileges under Article 208 and Article 194,[569] observing that such privileges are not subject to judicial review unless there is a clear constitutional violation.[570]

- Article 209: provides for legislative staff and administrative control by the Speaker or Chairman.
- Article 210: allows bilingual legislative proceedings, ensuring linguistic inclusivity.

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[569] Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof.

[570] *M.S.M. Sharma v. Krishna Sinha AIR 1959 SC 395*

- Article 211: restricts discussions on judges' conduct, upholding judicial independence as reaffirmed[571]
- Article 212: insulates legislative proceedings from judicial scrutiny on procedural grounds, as reiterated in *Satpal Dang* (1969)[572], ensuring separation of powers.
- Article 213: Governor's Ordinance-Making Power

Rules of Procedure and Conduct of Business (Article 208)

The smooth functioning of a legislature depends not only on the members who participate in debates but also on the rules that guide the conduct of business. The Constitution, under Article 208[573] , empowers every State legislature to frame rules of procedure for regulating its functioning.

This ensures that legislative business is carried out in an orderly, fair, and democratic manner.

Power of the State Legislature to Make Rules: Article 208(1)[574] states that every House of the Legislature of a State may make rules for regulating its procedure and the conduct of its business. In simple terms, this means that each House, whether the Legislative Assembly or the Legislative Council (where it exists) has the authority to decide how it will conduct discussions, introduce Bills, handle questions, and manage voting. This power is significant because it reinforces the autonomy of the legislature. Without such authority, legislatures would be reliant on external directives, which could compromise their autonomy. The power ensures that legislative bodies can manage their own procedures and internal affairs independently, safeguarding their constitutional independence from undue influence or interference by the executive or other authorities.

Role of the Speaker and Chairman

While the legislature as a whole frames the regulations, the day-to-day statements and enforcement of these rules fall upon the chairmen's Officers:

I. The Speaker of the Legislative Assembly, and

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[571] *Keshav Singh, In re AIR 1965 SC 745*

[572] State of Punjab v. Satpal Dang (1969) 1 SCC 633

[573] Article 208: Rules of procedure

[574] Article 208(1): A House of the Legislature of a State may make rules for regulating, subject to the provisions of this 2
Constitution, its procedure and the conduct of its business.

II. The Chairman of the Legislative Council (if necessary).

The Speaker, as the custodian of the legislative House, plays a crucial role in upholding constitutional norms within the legislative process. The Speaker ensures that debates are conducted fairly, allowing all members an equal opportunity to participate and express their views. In addition, the Speaker rules on points of order, interprets procedural rules, and maintains decorum and discipline in the House, thereby safeguarding the integrity and smooth functioning of the legislative process.

Thus, the Speaker and Chairman act as custodians of parliamentary procedure, ensuring that the House remains a forum for reasoned debate rather than disorder.

Limitations and Conformity with the Constitution

Although Article 208 grants wide powers, these are not absolute. The rules made by a State legislature must:

I. Conform to the Constitution of India,

II. Not in conflict with fundamental rights,

III. Respect the overall framework laid down by Parliament for legislative functioning.

Further, Article 208(2) makes it clear that until a House frames its own rules, the rules of procedure
followed in the former Legislative Assembly of the State (before the commencement of the Constitution) will continue to operate. This safeguard ensures continuity and prevents procedural paralysis.

Judicial Interpretation of Article 208

Courts in India have generally held that the legislature's internal procedures are beyond judicial review, except where they violate a specific constitutional mandate. For example:

• The Supreme Court held that legislative privileges and procedures cannot be challenged in court unless they infringe constitutional provisions.[575]

• The Court clarified that while legislatures enjoy autonomy in framing rules, they remain subject to judicial scrutiny if there is a violation of constitutional limitations.[576]

These cases show that while legislatures enjoy procedural freedom, this freedom cannot Prevail constitution.

[575] M.S.M. Sharma v. Krishna Sinha, AIR 1959 SC 395.

[576] Raja Ram Pal v. Hon'ble Speaker, Lok Sabha, AIR 2007 SC 923.

Significance of Article 208

Article 208 fulfils several key functions in the legislative framework of States:

Flexibility: It allows each State Legislature to frame rules and procedures that reflect its unique political, social, and cultural context.

Discipline and Order: By providing a structured framework, it ensures smooth conduct of legislative business and prevents procedural chaos.

Legislative Independence: Article 208 safeguards the legislature from undue executive interference, reinforcing its autonomy in managing internal affairs.

Promotion of Democratic Values: Clear procedural rules help prevent arbitrary decision-making and uphold transparency, accountability, and fairness in legislative processes.

In essence, Article 208 serves as the **foundation of State-level legislative procedure**, ensuring that law-making is conducted in an organised, consistent, and constitutionally sound manner.

Language of Legislative Proceedings (Article 210)

Language has always been a sensitive and politically significant issue in India, a country with rich
linguistic diversity. The framers of the Constitution were conscious of this fact and therefore provided specific provisions to regulate the language of legislative business. Article 210[577] lays down the rules governing the use of language in State legislatures.

Constitutional Mandate:

Article 210(1) provides that the business of the State legislature shall be transacted in:

1. The official language of the State, or
2. Hindi, or
3. English.

Thus, members of a State legislature are free to express themselves in the State's official language
or in Hindi. English continues to hold a transitional role, as provided by Article 210(2), until the legislature decides otherwise.

[577] Art. 210: Language to be used in legislature

This constitutional provision ensures that linguistic pluralism does not obstruct the functioning of legislatures. It also states the spirit of the Constitution, accommodating regional identities while maintaining national cohesion.

Transitional Provisions and Flexibility

The framers of the Constitution understood that transitioning away from English immediately after independence would be challenging. Consequently, they permitted English to continue in legislative proceedings until the legislature itself decided to discontinue its use through appropriate legislation. Even today, many States maintain the use of English alongside their regional languages to ensure the smooth functioning of legislative business.

For instance:

Tamil Nadu: Tamil is the primary language for debates and proceedings, yet English remains in use for record-keeping and drafting of Bills.

Northern States (e.g., Uttar Pradesh): Hindi is predominantly used in legislative discussions, but English continues to serve as a supplementary medium.

This approach provides **flexibility**, ensuring continuity in governance while respecting the linguistic diversity and sentiments of different regions.

Significance of Language Inclusivity

The practice of using multiple languages in legislative proceedings serves several important functions:

Facilitating Effective Participation: Legislators can express themselves and engage in debates in the language they are most comfortable with, enhancing the quality and clarity of legislative discussions.

Preserving Linguistic and Cultural Identity: Recognising regional languages helps maintain the cultural heritage and linguistic diversity of the State.

Enhancing Accessibility: Laws enacted in regional languages are easier for the general public to understand, promoting wider awareness and compliance.

At the same time, English functions as a link language, providing a common medium for communication across different States and with the Union Government, ensuring consistency, coordination, and clarity in intergovernmental affairs.

Case Laws and Debates on Language

The question of language in legislative and official functioning has frequently come before the courts, often in connection with fundamental rights and legislative privileges. Although there is no landmark case directly challenging Article 210, the judiciary has underscored the importance of ensuring inclusivity and accessibility in legislative proceedings. Courts have highlighted that language policies should not impede participation or representation, and that legislative processes must remain understandable and accessible to both legislators and the public, thereby upholding democratic principles and the spirit of constitutional equality.

For instance:

The Supreme Court underlined the importance of language choice as part of cultural and educational rights. Although not directly on Article 210 but this reasoning resonates with the constitutional spirit of Article 210.[578]

Further, debates in the Constituent Assembly reveal that members were concerned about the imposition of Hindi or the elimination of English. Article 210 emerged as a compromise that continues to balance linguistic diversity with practical governance.

Ordinance-Making Power of the Governor (Article 213)

Law-making is fundamentally the prerogative of the legislature, which represents the will of the people through deliberation and debate. However, there are occasions when urgent circumstances demand immediate legal action, and the legislature is not in session to respond promptly. To meet such exigencies, the Constitution empowers the Governor to promulgate ordinances under Article 213. This mechanism ensures that governance continues smoothly without interruption and that the executive can address pressing matters requiring legal intervention. At the same time, the exercise of this power has often been the focus of significant constitutional debate and

[578] State of Karnataka v. Associated Management of English Medium Primary and Secondary Schools, (2014) 9 SCC 485.

judicial examination, particularly regarding its scope, limitations, and potential misuse in bypassing the legislative process.

Nature and Scope of Ordinance-Making Power: Article 213(1)[579] empowers the Governor to promulgate an ordinance when:

The Legislative Assembly of the State is not in session (or both Houses in the case of a bicameral legislature), and the Governor is satisfied that circumstances exist which render it necessary for him/her to take immediate action. Ordinances have the same force and effect as laws passed by the State Legislature. However, they are temporary in nature and are meant to deal with extraordinary situations, not to replace regular law-making.

Thus, the ordinance-making power is legislative in form, but executive in character, since it bypasses the elected legislature.

Conditions for Promulgation

The Governor can issue an ordinance only if the following conditions are met:

- Legislative Recess: The legislature (or both Houses, where applicable) is not in session.
- Necessity and Urgency: Immediate action is required, and waiting for the next session of the legislature would be detrimental to public interest.
- Legislative Competence: The subject matter of the ordinance must fall within the State List or Concurrent List (where States have the power to legislate).

For example, if a situation arises demanding an immediate response, such as a law on public health
emergencies, financial adjustments, or disaster management—the Governor may use this power.

Duration and Limitations of Ordinances

[579] Art. 213(1): if at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:
Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if—
(a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or
(b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or
(c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid
unless, having been reserved for the consideration of the President, it had received the assent of the President.

Ordinances are inherently temporary. Article 213 provides that:

- An ordinance must be laid before the State Legislature when it reassembles.
- It will cease to operate six weeks after the legislature reconvenes, unless approved earlier by both Houses (in bicameral States).
- The Governor may withdraw the ordinance at any time before approval.

Thus, ordinances are designed as stopgap measures until the legislature takes a final call.

Limitations:

- The Governor cannot issue an ordinance if a Bill on the same subject has already been rejected by the legislature.
- Ordinances cannot violate the fundamental rights guaranteed under Part III of the Constitution.
- The Governor's satisfaction, though discretionary, is subject to judicial review[580]

Comparison with the President's Ordinance Power (Article 123)

The Governor's ordinance-making power under Article 213 is similar to the President's power under Article 123,[581] with some differences:

- Territorial scope: The President's ordinances apply to the whole of India, whereas the Governor's ordinances are confined to the State.

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[580] Krishna Kumar Singh v. State of Bihar, (2017) 3 SCC 1

[581] Art.123: Power of President to promulgate Ordinances during recess of Parliament.—(1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.
(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every
such Ordinance—
(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and
(b) may be withdrawn at any time by the President.
Explanation.—Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks
shall be reckoned from the later of those dates for the purposes of this clause.
(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

- Assent requirement: The Governor may be required to obtain prior instructions from the President before issuing an ordinance on certain matters, especially where the State law would require Presidential assent.
- Political position: The Governor, unlike the President, is appointed by the Union Government and often acts as its representative in the State, making the exercise of ordinance power politically sensitive.

Significance of Article 213

The ordinance-making power of the Governor serves as a constitutional safety valve, designed to ensure the continuity of governance during periods when the legislature is not in session. It provides the executive with the flexibility to address urgent matters that require immediate legal intervention. However, when this power is exercised frequently or as a means to circumvent legislative discussion and debate, it undermines the very essence of representative democracy. Such misuse erodes legislative supremacy and weakens democratic accountability, transforming an emergency mechanism into a tool of executive convenience—contrary to the spirit and purpose of the Constitution**.**

Judicial Interpretation of Ordinance Power

The ordinance-making power conferred under Article 213 has remained one of the most discussed and scrutinised aspects of Indian constitutional law. Though the Constitution entrusts this authority to the Governor to maintain the smooth functioning of governance during legislative recesses, it was never intended to replace the regular legislative process. Over the years, the judiciary has been instrumental in defining the scope and limits of this power, ensuring that it operates within the boundaries of democratic norms and constitutional propriety. Through its judgments, the courts have consistently reinforced that the Governor's discretion must align with the principles of accountability, transparency, and legislative supremacy, thereby preserving the delicate balance between executive efficiency and democratic legitimacy.

Early Judicial View – Broad Governor's Discretion

In the early years, courts viewed the Governor's satisfaction as mostly non-justiciable. The assumption was that the Governor, as an authority defined under the constitution, would exercise this power responsibly.

For example, in *R.C. Cooper v. Union of India* (1970), though primarily related to Presidential ordinances, the Supreme Court held that ordinances have the same force and effect as laws and cannot be struck down merely on the ground that immediate action was not necessary. This indicated a broad interpretation of executive discretion.

The State of Bihar had issued ordinances repeatedly re-promulgated for 15 years, without placing them before the legislature. The Supreme Court strongly criticised this practice and held:

- Re-promulgation of ordinances without legislative approval is a fraud on the Constitution.
- Ordinances are temporary measures, and frequent re-promulgation undermines the supremacy of the legislature.
- The Governor's power is not meant to be a parallel law-making authority.

This judgment made it clear that ordinance power is exceptional and not routine.[582]

In a landmark 7-judge bench decision, the Court gave the most comprehensive interpretation of ordinance powers. The key rulings were:

- The Governor's (and President's) satisfaction in issuing an ordinance is subject to judicial review. An ordinance must be laid before the legislature; failure to do so is unconstitutional.
- Rights and obligations created by an ordinance do not automatically survive after it ceases to operate, unless the legislature enacts a law to that effect.
- Re-promulgation of ordinances is a subversion of the democratic process.

Thus, the Court firmly reinforced the principle that ordinances cannot replace normal law-making.[583]

Other Important Judicial Insights:

- Ordinances are legislative in nature, not executive orders, and hence enjoy the same legal effect as Acts of the legislature.[584]

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[582] D.C. Wadhwa v. State of Bihar, (1987) 1 SCC 378.
[583] Krishna Kumar Singh v. State of Bihar, (2017) 3 SCC 1.
[584] A.K. Roy v. Union of India, (1982) 1 SCC 271.

- The validity of an ordinance cannot be challenged on the ground that immediate action was not required, but the substance of the ordinance can be reviewed if it violates constitutional provisions.[585]
- The Governor's ordinance-making power is co-extensive with the legislative power of the State Legislature.[586]

Impact of Judicial Interpretation

Through these decisions, the judiciary has laid down the following guiding principles:

- Ordinances are temporary and exceptional; they cannot become substitutes for legislative enactments.
- Re-promulgation is unconstitutional as it undermines legislative supremacy.
- Judicial review applies to the Governor's satisfaction in issuing ordinances.

Ordinances must always be presented before the legislature for democratic scrutiny.

Judicial Interpretations and Leading Case Laws

The Indian judiciary has gradually clarified the boundaries of the Governor's ordinance power and legislative procedure through landmark rulings:

- An ordinance is "law" for all purposes, but it ceases when disapproved by the Legislature. Its validity cannot be challenged on the ground that the Governor could have convened the Assembly.[587]
- SC declared that repeated re-promulgation of ordinances subverts legislative authority. The Court held that ordinances must be placed before the Legislature to maintain democratic accountability.[588]

[585] T. Venkata Reddy v. State of Andhra Pradesh, (1985) 3 SCC 198
[586] State of Punjab v. Satpal Dang, (1969) 1 SCC 718
[587] T. Venkata Reddy v. State of Andhra Pradesh (1985) 3 SCC 198
[588] D.C. Wadhwa v. State of Bihar (1987) 1 SCC 378.

- SC Reaffirmed *Wadhwa*, holding that re-promulgation without legislative approval is unconstitutional. It also clarified that rights created under a lapsed ordinance do not survive, unless explicitly protected by statute.[589]
- Though concerning Article 356[590], it emphasised that the Governor's discretionary powers must align with federalism and constitutional morality, guiding interpretation of Article 213 as well.[591]
- Under the Government of India Act, 1935, the Federal Court established that the ordinance-making power was legislative in character rather than purely executive. This interpretation laid the groundwork for how such powers were understood and exercised after the adoption of the Constitution in 1950.[592]
- The Supreme Court of India later reaffirmed this position, emphasising that an ordinance, though promulgated by the executive, carries the force of law and is therefore subject to the same constitutional limitations as legislation enacted by the legislature. The Court made it clear that ordinances cannot override or infringe upon fundamental rights guaranteed by the Constitution. They remain open to judicial review, ensuring that the executive does not misuse its temporary law-making authority in a manner that violates constitutional principles or individual liberties.[593]
- SC secured the proceedings of the legislature from the judicial challenges under Article 212, ensuring procedural autonomy.[594]
- SC clarified that an ordinance, like any legislative act, must meet tests of reasonableness and non-arbitrariness under [595]Article 14.[596]
- The Court held that the Governor's power under Article 213 cannot be used to nullify judicial decisions or to legislate retrospectively without proper justification.[597]

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[589] Krishna Kumar Singh v. State of Bihar (2017) 3 SCC 1.
[590] Art. 356: Provision in case of failure of constitutional machinery in states
[591] S.R. Bommai v. Union of India (1994) 3 SCC 1
[592] A.L.S.P.L. Subrahmanyan Chettiar v. Muttuswami Goundan (1940) FCR 188
[593] Madan Mohan Pathak v. Union of India (1978) 2 SCC 50
[594] State of Punjab v. Satpal Dang (1969) 1 SCC 633
[595] Art. 14: Equality before law
[596] K. Nagaraj v. State of Andhra Pradesh (1985) 1 SCC 523
[597] State of Haryana v. Sampuran Singh (1975) 1 SCC 810

- Though primarily on parliamentary privilege, it reaffirmed that legislative procedure (Article 208) enjoys immunity from judicial interference except for violations of constitutional mandates.[598]

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CONSTITUTIONAL AMENDMENTS AND EVOLUTION

Interestingly, Articles 208 to 213 have never been directly amended, underscoring the constitutional framers' foresight. The evolution of these Articles has occurred primarily through judicial interpretation.

However, the 44th Amendment (1978) indirectly influenced Article 213 by subjecting the President's and, by extension, the Governor's satisfaction to judicial review, ensuring transparency and accountability in the exercise of ordinance powers.

Challenges and Issues in Functioning

- Executive Overreach and Ordinance Misuse: The most pressing challenge is the misuse of ordinance power for political or administrative convenience. For instance, in *D.C. Wadhwa*, the Bihar government's continuous re-promulgation of ordinances for over a decade exemplified executive circumvention of the Legislature.
- Subjectivity of the "Governor's Satisfaction":

  The Governor's ordinance-making power hinges on his or her *satisfaction* that immediate action is required. However, the courts in *A.K. Roy v. Union of India* and *R.C. Cooper v. Union of India* have cautioned that such satisfaction cannot be exercised arbitrarily or without proper justification. Despite this judicial guidance, the inherently subjective nature of the Governor's satisfaction leaves space for potential political manipulation, particularly when the Governor's decision aligns with partisan interests rather than genuine administrative necessity.
- Erosion of Legislative Primacy:

  Frequent or excessive reliance on ordinances can weaken the authority of the legislature and bypass meaningful democratic deliberation. The Supreme Court in *Krishna Kumar Singh v. State of Bihar* strongly criticised this trend, describing ordinances as a form of "shadow

[598] Raja Ram Pal v. Speaker, Lok Sabha (2007) 3 SCC 184

legislature." The Court underscored that ordinances are intended only as temporary measures and must never become substitutes for the regular legislative process, which is central to representative democracy.

- Federal Tensions and Central Influence:

  In India's federal framework, the Governor is expected to act as a neutral constitutional authority. However, in politically sensitive or opposition-ruled states, Governors have often been accused of functioning as instruments of the Central Government rather than as impartial heads of state. Landmark cases such as *S.R. Bommai v. Union of India* and *Rameshwar Prasad v. Union of India* (2006) reaffirmed that Governors must exercise their powers with fairness and neutrality, upholding the spirit of cooperative federalism.

- Judicial Deference and Limited Review:

  Although the judiciary has the power to review the validity of ordinances, courts have traditionally exercised restraint, showing deference to executive discretion in matters involving the Governor's satisfaction. This cautious approach has sometimes resulted in inconsistent enforcement of constitutional boundaries, allowing executive overreach to go unchecked in certain instances.

- Procedural Autonomy and Legislative Privilege:

  Articles 208 to 212 safeguard the internal procedures and privileges of State Legislatures, granting them considerable autonomy. However, judicial decisions such as *M.S.M. Sharma v. Sri Krishna Sinha* and *Raja Ram Pal v. Speaker, Lok Sabha* highlight that this autonomy can occasionally shield procedural lapses or irregularities from judicial review. While legislative privilege is essential to protect independence, unchecked procedural autonomy may create accountability gaps within the legislative process.

Together, these challenges underline the need for clearer constitutional conventions, stronger institutional safeguards, and a consistent judicial approach to ensure that the ordinance-making power remains an emergency instrument—used sparingly, responsibly, and within the bounds of constitutional morality.

COMPARATIVE PERSPECTIVES

A comparative perspective on the Governor's ordinance-making power in India offers valuable insights into how other democracies manage similar emergency law-making mechanisms. Examining these systems helps evaluate the adequacy, strengths, and potential shortcomings of India's constitutional framework.

Ordinance-Like Powers in Other Countries

United Kingdom: In the United Kingdom, the concept of parliamentary supremacy prevails, and the executive has no independent authority to issue ordinances. During emergencies, the government may rely on *statutory instruments*—a form of delegated legislation—but these remain subject to parliamentary approval. This arrangement ensures that even in urgent situations, legislative oversight is preserved, and the executive cannot act unilaterally without the consent of Parliament.

United States of America: In the United States, the President holds the power to issue *executive orders*, which possess legal force within the federal administration. However, these orders cannot contravene or override laws enacted by Congress. Both Congress and the judiciary retain the authority to invalidate such orders—Congress through subsequent legislation and the courts through judicial review. This system maintains a delicate balance between swift executive action and institutional checks, preventing concentration of power.

Australia: In Australia, State Governors possess minimal ordinance-like authority, and emergency legislation generally requires parliamentary approval. At the federal level, the Governor-General may exercise certain *reserve powers*, but these are constrained by long-established constitutional conventions. This ensures that executive actions remain transparent and consistent with parliamentary supremacy—a principle that also underpins India's constitutional ethos.

LESSONS FOR INDIA

From these comparative experiences, several key lessons emerge:

- Temporary and exceptional character: The power to issue ordinances must remain an emergency tool, used only in extraordinary situations and not as a substitute for legislative action.
- Legislative oversight: All such measures should be promptly presented before the legislature to ensure accountability and maintain the primacy of representative law-making.
- Judicial scrutiny: The courts serve as an essential safeguard, preventing any misuse or overextension of executive authority beyond constitutional boundaries.
- Transparency and accountability: Public disclosure and open debate are vital to preserving democratic legitimacy and reinforcing trust in governance.

India's constitutional framework under Articles 208–213 stands out for its careful balance between the necessity of prompt executive action and the preservation of legislative supremacy. The judiciary plays a critical role in maintaining this balance by ensuring that executive discretion remains within constitutional limits. Through these mechanisms, India successfully blends flexibility with accountability—an essential feature of a healthy and resilient federal democracy.

Relevance of Emergency Law-Making in Modern Governance:

In contemporary governance, situations such as economic instability, public health emergencies, or natural disasters often demand immediate executive intervention. The ordinance-making power enables State authorities to act promptly and address urgent issues when the legislature is not in session, thereby filling the temporary legislative void until formal approval can be obtained.

Yet, a significant concern persists—ensuring that this power is not misused as a means to circumvent legislative debate or weaken the foundations of democratic decision-making. Comparative constitutional practices underline the necessity of certain safeguards, including:

- Clearly defined and limited time periods for the operation of ordinances,
- Strong legislative oversight and accountability mechanisms, and
- Effective judicial supervision to prevent misuse.

These safeguards are essential to uphold public confidence in governance and to protect the spirit of constitutional democracy from erosion through unchecked executive authority.

CONCLUSION

The study of Articles 208–213 of the Indian Constitution highlights the fine equilibrium between legislative authority and executive necessity within the framework of India's federal democracy. The State Legislature remains the primary institution entrusted with law-making, while the Governor's powers—especially those conferred under Article 213—act as a constitutional safeguard, allowing prompt action in situations where the Legislature is not in session. However, these powers are exceptional in nature, temporary in scope, and subject to several constitutional checks, including legislative ratification, judicial review, and political accountability. Such a framework ensures that executive action complements, rather than overshadows, the Legislature's supremacy, enabling the State to respond effectively to urgent circumstances without undermining democratic norms.
Judicial pronouncements, particularly in *D.C. Wadhwa v. State of Bihar* and *Krishna Kumar Singh v. State of Bihar*, have made it clear that the ordinance-making power is an emergency tool and cannot substitute regular legislative procedures. The Supreme Court has firmly held that the repeated or habitual use of ordinances is unconstitutional, as it dilutes the spirit of democracy and legislative supremacy. Hence, the Governor's discretion in promulgating ordinances must be guided by constitutional propriety and exercised with restraint. The use of this power must always align with constitutional morality and cannot be arbitrary or politically motivated. While the ordinance-making power remains vital for governance in extraordinary situations, it is meant to be temporary and carefully regulated.

The strength of India's constitutional democracy rests on unwavering adherence to constitutional morality and the vigilance of the judiciary. Judicial review serves as a crucial safeguard, ensuring that ordinances conform to constitutional principles, respect fundamental rights, and remain within the legislative competence of the State. Alongside, legislative oversight ensures that elected representatives retain their central role in shaping the law. Political responsibility and

public scrutiny further enhance transparency, ensuring that executive powers are exercised in the spirit of accountability. Collectively, these checks uphold the rule of law and sustain public confidence in the constitutional system.

To reinforce this framework, certain reforms merit consideration. Introducing mandatory timelines for legislative approval of ordinances could prevent their misuse and ensure timely scrutiny. Establishing clearer constitutional or statutory guidelines on the Governor's discretionary powers—especially in matters of ordinance promulgation or reservation of Bills—would enhance transparency and consistency. Strengthening legislative committees to examine ordinances and mandating public disclosure of the reasons for their issuance could further enhance democratic oversight. Such measures would help retain the exceptional nature of ordinance powers, maintain the delicate federal balance, and reinforce public trust in the constitutional process.

In conclusion, Articles 208–213 collectively create a well-structured constitutional mechanism for State-level law-making that balances flexibility with responsibility. Despite the challenges surrounding the scope of the Governor's discretion and the risk of ordinance misuse, judicial scrutiny and democratic conventions act as strong safeguards. These provisions are not only essential for ensuring continuity in governance but also for preserving legislative primacy and constitutional accountability. Ultimately, they embody the vision of a responsive and resilient federal democracy—one that harmonises the need for swift executive action with the deliberative spirit of representative law-making.

CHAPTER 19: HIGH COURTS: ESTABLISHMENT & CONDITIONS OF SERVICE (ARTICLE 214–221)

BY DEEPA CHAUHAN

INTRODUCTION

The High Courts represent the highest judicial authority at the state level and form an indispensable pillar of India's constitutional structure. Articles 214 to 221 of the Constitution of India deal with the framework for their establishment, composition, appointment, and conditions of services of judges. These provisions embody the Constitutional Philosophy of judicial independence, which Dr B.R. Ambedkar is termed as the "cornerstone of democracy"[599]. While the Supreme Court stands as the final arbiter of constitutional interpretation, the High Courts function as guardians of law within the states, ensuring that executive and legislative action remains subject to judicial scrutiny.

The Constituent Assembly was conscious of the dual objective of federalism and Judicial Independence, while framing these provisions, K.M. Munshi, in the debates, emphasised that a strong Judiciary was essential to protect the rights of the citizens against both central and state encroachments.[600] Accordingly, safeguards regarding tenure, salary and removal of High Court judges were established in the Constitution of India to protect citizens from political pressure. Judicial pronouncements such as S.P. Gupta v. Union of India (1981)[601] and Supreme Court Advocates-on-Record Association v. Union of India (1993)[602] have further reinforced

[599] Constituent Assembly Debates, Vol. VIII, 24 May 1949, Speech of Dr. B.R. Ambedkar
[600] Constituent Assembly Debates, Vol. XI, 19 May 1949, Speech of K.M. Munshi
[601] *S.P. Gupta v. Union of India*, AIR 1982 SC 149.
[602] *Supreme Court Advocates-on-Record Association v. Union of India* (Second Judges case), (1993) 4 SCC 44

the importance of these provisions and emphasised that judicial appointments and service conditions are intrinsically linked to the independence of the judiciary. Thus, the constitutional scheme relating to the High Courts serves not merely as an administrative framework but also as a bulwark against arbitrariness, ensuring that the judiciary remains the guardian of the Constitution.

HISTORICAL BACKGROUND

The High Courts' origins are in Colonial India. The Indian High Courts Act, 1861, which was enacted by the British Parliament, was founded by combining the Supreme Courts established by the Regulating Act of 1773 with the Sadar Diwani and Sadar Nizamat Adalats to form the Calcutta, Bombay, and Madras High Courts. This reform aimed to bring unity between English Law courts and Indigenous institutions in order to unify the administration of justice. Over subsequent decades, more high courts were created, like in Allahabad (1866), Patna (1916), Lahore (1919) and Nagpur (1936), reflecting the expansion of territories of colonial administration.

The framers of the Indian Constitution, drawing upon this historical foundation, recognised the necessity of High Courts as an important institution in a federal polity. Part VI, Chapter V of the Constitution of India (Articles 214 to 221), therefore, codified their structure and powers. The Constituent Assembly revealed that members were determined to preserve the independence of these courts from executive dominance. For instance, Alladi Krishnaswamy Ayyar highlighted the need to safeguard judges' tenure and salaries to prevent "erosion of confidence in the judiciary"

The post-independence judiciary has proclaimed these principles through landmark decisions. In All India Judges' Association v. Union of India (1992)[603] the Supreme Court emphasised that conditions of service must be such as to attract the best legal talent, while in Union of India v. Sankalchand Himmatlal Sheth (1977)[604] , underlined that transfer and appointment of judges must not compromise judicial independence. Together, these judicial pronouncements

[603] *All India Judges' Association v. Union of India*, (1992) 1 SCC 119
[604] *Union of India v. Sankalchand Himatlal Sheth*, (1977) 4 SCC 193.

illustrate how the historical legacy of the high court is secured by the constitutional safeguards and continues to shape justice in India.

CONCEPTUAL AND PRINCIPLE FRAMEWORK

Judicial independence: its elements and constitutional guarantees

A diligent examination into Articles 214 to 221 of the Constitution of India must begin with a theoretical map of judicial independence. Doctrine in comparative constitutional law isolates three core elements:

(i) Decisional Independence (security of tenure and protection from arbitrary removal)

(ii) Institutional/ administrative independence (control of court administration, case allocation, registry, etc.)

(iii) Financial independence (adequate and secured remuneration and pension). The Indian Constitutional design embodies these guarantees through- security of tenure, i.e, removal only by Parliamentary Procedure on defined grounds, Protected remuneration (article 221) and Procedural safeguards in appointment and consultation (article 21 read with article 124). These protections are meant to be structural and not merely personal. The main aim is to safeguard the rule of law and maintain public trust.

Federalism and High Courts

High courts sit at the convergence of National Constitutional identity and territorial justice delivery. They are State-wise superintendents of subordinate courts, while remaining consolidated into a national judicial hierarchy culminating in the Supreme Court. The constitutional compromises in Articles 214-221 can be attributed to this dual nature: High Courts are State bodies but have constitutional safeguards to maintain consistent justice standards. and the safeguarding of rights throughout the federation.

ACCOUNTABILITY VS. INDEPENDENCE

The principle governing the independence of the judiciary must carefully strike a balance between two competing, vitally important elements. On the one hand, there is the need for protection from short-term political influence or government pressure, so that the judges may discharge their duties without any fear or favour. On the other hand, there must also exist a mechanism of accountability to address the instances of misconduct, corruption, etc, since judicial power also cannot be left unrestrained.

The Indian Constitutional Framework attempts to resolve the above-mentioned issues by formulating a two-fold structure. First, it separates the functions so that appointment of judges is carried out through an advisory process, historically it involves the executive and judiciary (now crystallised in collegium system), although the removal of judges is purposely placed in the political domain through the process of parliamentary impeachment under Articles 124(4) and 217.[605] Second, together these external safeguards and an internal model of accountability have been formed within the judiciary itself through peer oversight, judicial ethics guidelines and the collegiums' control over appointments and transfers.

Parliamentary impeachment remains the ultimate constitutional check, but in real-life practice, it has proven to be an exceptional remedy, invoked rarely and with limited success. In consequence, the judiciary has evolved its very own accountability mechanisms, augmented by statutory and criminal liability in exceptional cases. For instance, in K. Veeraswami v. Union of India.[606] The Supreme Court held that judges of the superior courts could be prosecuted for corruption but only with the prior sanction of the Chief Justice of India, thereby creating a safeguard against politically motivated prosecution or frivolous prosecution.

ARTICLE WISE DISCUSSION (Arts. 214–221)

Article 214 — High Courts for States

Article 214 states that every State shall have a High Court. It also ensures that the

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[605] Constitution of India, Arts. 124(4) and 217.
[606] *K. Veeraswami v. Union of India*, (1991) 3 SCC 655

pre-Constitution High Courts shall remain the High Court for the corresponding states after the Republic came into being. In this manner, it provided for the territorial system of High Courts from the outset, while giving Parliament the authority to change, reorganise, or merge High Courts through legislation.[607]

Article 214 is more than administrative: the existence of a High Court ensures the presence of a constitutional forum empowered to vindicate fundamental rights at the State level and to supervise subordinate courts. Doctrinally, its existence secures procedural avenues for the rule of law within the State.

This article is more than administrative: the existence of a High Court ensures the existence of a constitutional forum authorised to vindicate fundamental rights at the State level and to oversee subordinate courts. Ideologically, its existence secures the procedural avenues for the rule of law within the state.

Article 215 — High Courts to be courts of record

Article 215 declares that every High Court shall be a court of record. This has two inferences. First, that the records and proceedings of the High Court carry evidentiary value, in the sense that they are accepted as authentic proof before the court without requiring further confirmation. Second, being a court of record also gives the High Court the inherent power to punish for contempt. This ensures that its authority, dignity and the smooth functioning of justice is maintained. By conferring this status, Article 215 acknowledges the institutional importance of High Courts and secures their autonomy and respect as superior courts within the constitutional framework.

Article 216 — Constitution of High Courts

Article 216 of the Constitution provides the constitutional footing for the composition of every High Court. It declares that *"Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint"*. This provision was deliberately made flexible to enable adjustments in judicial strength depending

[607] Constitution of India, Part VI, Chapter V (Arts. 214–231). Govt. of India, Ministry of Law & Justice —*Constitution of India*

on the requirement of each State and the volume of litigation. Unlike the rigid numerical framework of colonial statutes, such as the Indian High Courts Act, 1861. Article 216 cites the responsibility upon the President to determine the strength of judges subject to constitutional limitations.

The number of Judges in each High Court, commonly known as *sanctioned strength,* is decided by the President under Article 216 read with the High Court Judges (Salaries and Conditions of Service) Act 1954 and subsequent notifications. Parliament has been empowered to regulate service conditions, but it cannot impede the constitutional scheme of independence or the institutional capacity of the High Courts. The judiciary has consistently emphasized that determination of strength must not be used as a tool to control or weaken the judicial functioning For instance, in Justice K. Veeraswami v. Union of India[608] , Court clarified the areas of accountability, but more directly in Chandra Mohan v. State of Uttar Pradesh.[609] The court held that composition of High Courts must be in strict accordance with the constitutional mandate and that irregular appointments cannot be justified on grounds of expediency.

Article 217 — Appointment and conditions of the office of a Judge of a High Court

Article 217(1) states that every Judge of a High Court shall be appointed by the President in consultation with the Governor of the state, the Chief Justice of India, and the Chief Justice of the High Court. Article 217(4) addresses resignation and removal procedures. At the drafting stage, the Constituent Assembly intentionally chose the word "Consultation" rather than "concurrence" with the aim to strike a balance between the executive and the judiciary in the appointment procedure[610]. Yet the ambiguity persisted and became the source of prolonged litigation and institutional contestation.

At the heart of the contest lay the question: Did "consultation" mean that the executive retained primacy in appointments? This tension gave rise to a trilogy of landmark cases commonly known as the "Judges' cases", which transformed the perspective of judicial appointments.

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[608] K. Veeraswami v. Union of India, (1991) 3 SCC 655
[609] Chandra Mohan v. State of Uttar Pradesh, AIR 1966 SC 1987

[610] Constituent Assembly Debates, Vol. XI, 24 May 1949, Speech of Alladi Krishnaswamy Ayyar

The First Judges' Case (S.P. Gupta v. Union of India, 1981)

In S.P. Gupta v. Union of India [611], a seven-judge bench held that the word " consultation" did not mean " concurrence" therefore giving primacy to the executive in judicial appointments and transfer. The court reasoned that the power of appointment under articles 14 and 127 rests with the President, and the role of the judiciary is just advisory. This decision marked a high-water mark for executive influence, but it also raised the question of erosion of judicial independence.

The Second Judges' Case (Supreme Court Advocates-on-Record Association v. Union of India, 1993)

In Supreme Court Advocates-on-Record Association v. Union of India[612], a twelve-judge bench decisively overturned S.P. Gupta. The court held that in matters concerning the appointment of judges, the opinion of the Chief Justice of India, formed collectively with the senior-most judges of the Supreme Court, would enjoy primacy. This judgement marked the formation of the collegium system, which shifted the control of appointments from the executive to the judiciary.

The Third Judges' Case (Re Presidential Reference, 1998)

The Re Presidential Reference 1998[613] further clarified the collegium system. The Court expanded the collegium to include the Chief Justice of India and the four senior-most judges of the Supreme Court, therefore making the process more consultative within the judiciary itself. It emphasised that recommendations of the collegium could not be set aside by the executive except for compelling or any recorded reasons, which must themselves be subject to reconsideration by the collegium.

Constitutional Significance

The three Judges' Cases represent a judicial re-interpretation of the word "consultation" into a doctrine of *"judicial primacy."* It began as an executive-dominated process and later evolved into a judiciary-controlled mechanism to exclude appointments from political influence.

[611] S.P. Gupta v. Union of India, AIR 1982 SC 149.
[612] Supreme Court Advocates-on-Record Association v. Union of India, (1993) 4 SCC 441
[613] Re Presidential Reference, (1998) 7 SCC 739

While this system has preserved some independence of the judiciary, it has also attracted criticism for being opaque and lacking external accountability.

Article 218 — Provisions relating to the Supreme Court to the High Courts

Article 218 of the Constitution states that *"the provisions of clauses (4) and (5) of Article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to the Governor for references to the President."* With this effect, Article 218 applies to High Court judges' provisions relating to removal, conduct, and conditions of service that otherwise govern Supreme Court judges, with required contextual modifications (*mutatis mutandis*).

The purpose of this Article is to create constitutional uniformity between the Supreme Court and the High Courts as courts of record. It ensures that judges of the High Courts enjoy the same security of tenure, independence, and removal safeguards as judges in the Supreme Court. Without this provision, there would have been a risk of inconsistency, which might have undermined the status of High Courts within the federal framework.

Article 219 — Oath or affirmation by Judges of High Courts

Article 219 of the Constitution provides that any person appointed as a Judge of a High Court must, before entering upon his office, make an oath or affirmation before the Governor of the State (or another authorised person). The Constitution prescribes the form of this oath in its third schedule:

1. Allegiance to the Constitution of India;
2. Upholding the sovereignty and integrity of India; and
3. Faithful performance of duties without fear or favour, affection or ill-will.

Therefore, Article 219 embeds constitutional allegiance and impartial discharge of judicial duties as threshold requirements of office. In Indira Jaising v. Supreme Court of India[614], the court held that if the issue of judicial transparency and accountability is concerned, the judges' oath is the foundation of public confidence in judicial impartiality.

[614] Indira Jaising v. Supreme Court of India, (2017) 9 SCC 766

Article 220 — Restriction on practice after being a permanent judge

The fundamentals of Article 220 can be traced to the Government of India Act 1935, which contained provisions discouraging retired judges from practising before the same court. Nevertheless, the framers of the Constitution went for a stricter model. The Constituent Assembly debated the issue, with members highlighting the danger of "revolving door" practices, where judges could retire and return to practice in the same court, which could compromise judicial independence and integrity.[615]

At present, Article 220 of the Constitution provides that a person who has held office as a permanent judge of a High Court shall not act in any court of law or before any authority in India except the Supreme Court and other High Courts. This provision imposes a restriction on practice after judicial tenure on High Court judges. The main aim of designing this provision is to preserve the dignity of the judicial office and to avoid conflicts of interest. Its rationale lies in preventing situations where a former judge might appear before colleagues or subordinates, which in turn might create a perception of influence, bias, or impropriety.

Article 221 — Salaries, etc., of Judges of High Courts

Article 221 of the Constitution of India signifies the financial and service-related dimension of the judges of High Courts. This provision ensures both independence and dignity of the office. It preserves judicial independence by guaranteeing that judges' remuneration cannot be arbitrarily altered to influence their functioning.

This provision set forth the following two points:-

1. It stipulates that the salary of a High Court judge shall be fixed by the President of India.
2. The salary is charged on the Consolidated Fund of the respective State, which ensures that judges' pay is not subject to the discretion of the State government and cannot be reduced during their tenure.

This structure upholds the principle of judicial independence by preventing financial manipulation as a tool of influence.

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[615] Constituent Assembly Debates, Vol. VIII, 24 May 1949

Recent developments (Pension disputes and "one-rank, one-pension")

The recent Supreme Court judgement (May 2025) on equal pension treatment for retired High Court judges irrespective of their route to the High Court, illustrates the significance of Article 221 protections. The Court has read Article 221 to demonstrate that pension and related retirement benefits, once constitutionally fixed, cannot be altered to the disadvantage of the office holder or retired judges. This corroborates the guarantee of financial independence even after retirement.

LANDMARK CASES

The establishment of High Courts in India, their framework, jurisdiction and conditions of services were shaped by a series of judicial pronouncements that balance the judicial independence, accountability and efficiency. A foundational principle, affirmed in K. Veeraswami v. Union of India [616], the Supreme Court addressed the issue of whether the judges of superior courts fall under the definition of " public servants" under the Prevention of Corruption Act 1988 or not. The court observed by the majority that although the judges are public servants for the purpose of corruption laws. Criminal proceedings against them cannot be initiated without a proper procedural safeguard, which involves a prior sanction from the President of India or any competent authority, with consultation with the Chief Justice of India. This decision is important because it preserves the equilibrium between ensuring judicial accountability and preventing executive overreach or harassment of sitting judges. This case clarified that criminal accountability of judges is constitutionally permissible but must operate within strict procedural safeguards. Thus, it provides a protective framework that strengthens judicial independence while upholding the rule of law.

Similarly, in All India Judges' Association v. Union of India[617], the court expanded both the supervisory and administrative liabilities of High Courts in relation to the conditions of service of the subordinate court. In addition to issuing guidelines related to pay, working conditions, infrastructure, recruitment standards and minimum bar experience required, the

[616] K. Veeraswami v. Union of India, (1991) 3 SCC 655
[617] All India Judges' Association v. Union of India, (1992) 1 SCC 119

Court felt that for the effective functioning of High Courts, the stability and competency of lower courts play a vital role. This case makes the High Courts not merely appellate and original courts, but also constitutional overseers tasked with ensuring judicial efficiency, fairness, which reflects the mandate of Article 216,226 and 227.[618]

Moreover, the context of appointments and administrative oversight, Union of India v. Sanakalchand Himmatlal Sheth (1977).[619] This case illustrates that High Courts must strike a balance between executive inputs and administrative directives with judicial primacy. Similarly, in cases such as Supreme Court Advocates-on-Record Association v. Union of India (2016)[620], dealing with the National Judicial Appointments Commission (NJAC), reiterated the judiciary's pivotal role in matters related to appointment, thus highlighting the ongoing tensions between transparency, accountability and independence. These judicial decisions co-jointly established that the High Court's supervisory and administrative powers are constitutionally attached yet continuously progressing to meet the modern governance requirements.

Critical components such as financial security and post-retirement benefits safeguard the High Court jurisprudence[621]. Judicial pronouncements uphold the principle of one-rank-one-pension for retired judges, strengthening judicial independence by ensuring that judges are not vulnerable to retirement pressure. Prolonged vacancies in High Courts, as highlighted in successive petitions regarding judicial appointments, have been time and again addressed by courts, which emphasise that timely recruitment and promotion should be taken to maintain judicial efficacy and uphold the constitutional right to speedy justice under Article 14 of the Constitution[622]. The pronouncements collectively highlight that High Court functioning is inalienable from systematic adequacy and procedural safeguards that protect both sitting and retired judges (H.M. Seervai, 2013)[623].

Modern challenges pertaining to collegium system opacity, diminished female participation, show the need for judicial reform and proactive supervision of the High Court[624]. Through a

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[618] Constitution of India, Arts. 214, 226, 227
[619] Union of India v. Sankalchand Himmatlal Sheth, (1977) 4 SCC 193
[620] Supreme Court Advocates-on-Record Association v. Union of India, (2016) 5 SCC 1
[621] Law, "High Court Pensions and Post-Retirement Security," May 2025
[622] Constitution of India, Arts. 14
[623] H.M. Seervai, Constitutional Law of India, Vol. II, 4th ed.
[624] Supreme Court Observer, "Judicial Accountability and Collegium Reform," (2025)

synthesis of

The above-mentioned cases' conclusion can be drawn as High Courts are not merely adjudicatory bodies, but they are connotational established institutions with a dual mandate- to deliver justice and to preserve the integrity and independence of the judiciary. The jurisprudential path between authority and accountability ensured that the High Court remain the pivotal pillar of India's constitutional democracy.

CRITICAL ANALYSIS

The constitutional system of High Courts mentioned under Articles 214–221 is formulated in such a way that it balances judicial independence with institutional accountability within a federal framework[625]. Over time, the Supreme Court has refined this balance through a line of landmark decisions.

The Judges' Cases, namely as S.P. Gupta v. Union of India (1981); Supreme Court Advocates-on-Record Association v. Union of India (1993) and the NJAC Case (2016) reaffirm that the judiciary must retain primacy in appointments to safeguard autonomy from executive influence[626]. While this perspective has protected judicial independence, it has also produced concerns of opacity and lack of accountability within the collegium system.[627]

Although these flaws are acknowledged in the Second Judges' Case (1993) still detailed statutory reforms to ensure transparency are absent.[628] The collegium, therefore, functions as a constitutional convention but not as a codified procedure, which in turn limits institutional certainty and public confidence.

CONCLUSION

Articles 214- 221 embody a constitutional commitment to a powerful and independent judiciary. Over time, the Supreme Courts' pronouncements have shaped how these provisions

[625] Constitution of India, Articles. 214–221

[626] S.P. Gupta v. Union of India, 1981 Supp SCC 87; Supreme Court Advocates-on-Record Association v. Union of India, (1993) 4 SCC 441; Supreme Court Advocates-on-Record Association v. Union of India, (2016) 5 SCC 1

[627] H.M. Seervai, *Constitutional Law of India*, Vol. II (4th edn, Universal Law Publishing 2013)

[628] Second Judges' Case, (1993) 4 SCC 441

function in practice—producing doctrines and institutions (like collegium) that have protected the judiciary's separation from the executive and therefore generated fresh questions pertaining to democratic accountability and transparency.[629] The critical challenge for the coming generation is to institutionalise statutory reforms that sustain judicial independence while enhancing legitimacy in transparent selection procedures, reasoned transfer decisions and adequate resourcing for the courts. Proper and thoughtful statutory measures within the constitutional framework will offer the most promising path to harmonise independence and accountability, ensuring that neither constitutional autonomy nor democratic legitimacy is compromised.[630]

[629] H.M. Seervai, Constitutional Law of India, Vol. II (4th edn, Universal Law Publishing 2013)
[630] Law Commission of India, 230th Report on "Reforms in the Judiciary – Some Suggestions" (2009)

CHAPTER 20: TRANSFER AND JURISDICTION OF HIGH COURTS (ARTICLE 222-231)

BY MOFARREHA FIRDAUS

INTRODUCTION

In the constitutional framework of India, judicial authority is one of the basic components of federal governance. Within this structure, the High Courts are accorded a distinctive position as they are the apex judicial bodies of the States and, at the same time, components of a single integrated and unified judicial system. Articles 222 to 231 define the rules regarding the formation, powers, and administrative control of the High Courts and the transfer of judges from these courts.[631] The provisions indicate the possibility of the framers of the Constitution to find a balance between the two principles, often pulling in different directions, in a federal system—judicial independence and administrative efficiency.

Article 222 empowers the President to transfer judges from one High Court to another "after consultation with the Chief Justice of India".[632] The framers of the Constitution viewed it as a means of promoting national integration and administrative efficiency, but there was a thin veil of ambiguity that could lead the executive to misuse it to discipline inconvenient judges. The Supreme Court addressed this concern through a series of pronouncements commencing with *S.P. Gupta v. Union of India,*[633] leading to the *Second Judges Case*[634] and *In re Presidential Reference (1999)*.[635] These pronouncements stipulated that the transfer was to rest on the

[631] The Constitution of India, Arts 222–231.
[632] The Constitution of India, Art. 222.
[633] *S.P. Gupta v. Union of India*, AIR 1982 SC 149.
[634] *Supreme Court Advocates-on-Record Assn. v. Union of India*, (1993) 4 SCC 441.
[635] *In re: Special Reference No. 1 of 1998*, (1998) 7 SCC 739.

recommendation of the CJI and not on the executive prerogative, which represents an innovative judicial course of converting an otherwise intrusive power into a constitutional safeguard.

Apart from Article 222, Articles 225-231 maintain the jurisdiction and administrative independence of the High Courts. Article 225 retains the powers of pre-constitutional High Courts; Article 226 grants wider writ jurisdiction; Article 227 provides supervisory powers, and Articles 228-231 deal with the transfer of judges between the courts and application of High Courts' jurisdiction in Union Territories[636] over subordinate courts. Altogether, these provisions vastly changed colonial High Courts, which were once instruments of the Crown, into a republican institution that derives legitimacy from the citizens. Comparative constitutional practice, however, drew upon foreign jurisdictions, such as the American and Australian states, where the powers of State Courts derive from State Constitutions. As Austin states, "they are the national institutions embedded in a federal context".[637]

HISTORICAL BACKGROUND

The constitutional design of the High Courts evolved gradually rather than being newly created. The framers of the Constitution drew a century's worth of institutional experiences from a colonial legal system. The establishment of High Courts in the three Presidency towns—Calcutta, Bombay, and Madras through the Indian High Courts Act, 1861, had forged the first link of an integrated judicial hierarchy in British India.[638] These Courts substituted the erstwhile Supreme Courts and Sadar Adalat, forming one system with civil and criminal jurisdictions. The Government of India Acts of 1919 and 1935 refined the framework of executive federalism further by conferring enhanced provincial autonomy. However, the High Courts remained subordinate to the Crown's executive power.[639] This colonial arrangement

[636] H.M. Seervai, *Constitutional Law of India*, Vol. II (Universal Law Publishing 4th edn 2013) 2020–30.
[637] Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press 2000) 225.
[638] Indian High Courts Act, 1861, 24 & 25 Vict., c. 104.
[639] *D.D. Basu, Introduction to the Constitution of India (24th edn, LexisNexis 2022) 282–84.*

ensured administrative efficiency but fell short of guaranteeing judicial independence in its modern constitutional sense.

The framers were very much conscious of this colonial legacy. During the debates in the Constituent Assembly, considerable concern was voiced about judicial independence vis-à-vis administrative flexibility. In his talk on Draft Article 222, Dr B.R. Ambedkar defended the President's power to transfer judges after consultation with the Chief Justice of India on the grounds that this was for administrative, not political reasons.[640] But members like K.T. Shah warned against possible misuse by the executive and sought to make the judges' consent mandatory.[641] The Assembly ultimately rejected the proposal, preferring to rely on conventions and the Chief Justice's honour. This debate reflects the framers' broader anxiety to prevent executive domination of the judiciary while preserving sufficient administrative flexibility within a unified federal judicial system.

Articles 225-231 are evidence of cautious continuity preserving most of the jurisdictional features of the Pre-Constitution High Courts under the Government of India Act, 1935.[642] Ambedkar notes that this would "avoid a vacuum in judicial administration" during India's transition to a Republic.[643] American, Canadian and Australian models were considered, but the framers opted for one integrated judiciary with the Supreme Court as apex and the High Courts operating in both States and national interests.[644] The choice reflects the belief that judicial uniformity, rather than fragmented state judiciaries, would act as a stabilising force within India's diverse federal framework. This integration, as Granville Austin remarked, expresses India's need for unity and belief that judicial uniformity would be the pillar of federalism rather than its weakness.[645]

DOCTRINAL ARCHITECTURE: INDEPENDENCE, SEPARATION OF POWER AND JUDICIAL REVIEW

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[640] Constituent Assembly Debates, Vol. VIII (23 May 1949) 780 (Dr B.R. Ambedkar).
[641] Constituent Assembly Debates, Vol. VIII (23 May 1949) 781 (K.T. Shah).
[642] Government of India Act, 1935, ss. 220–226.
[643] Constituent Assembly Debates, Vol. IX (6 June 1949) 987.
[644] H.M. Seervai, *Constitutional Law of India*, Vol. II (Universal Law Publishing 4th edn 2013) 2024–27.
[645] Granville Austin, *Working a Democratic Constitution* (Oxford University Press 2000) 221–23.

Turning to the Constitution itself, which canvasses rules of judicial independence, Articles 222-231 cannot be regarded as purely administrative. The separation of the judiciary from the executive is enshrined under Article 50 of the Directive Principles, whose spirit runs through Part VI pertaining to High Courts.[646] In India, judicial independence is structurally necessary for the rule of law. "The independence of the judiciary is the cornerstone upon which the edifice of constitutional democracy stands", as Seervai observed.[647] Thus, the transfer power under Article 222 could not be purely a matter of administrative convenience; rather, it is part of the general constitutional guarantee in an international jurisdiction.

The separation of powers, even where not stated, is implied in the Constitution. Judicial independence, established in *Kesavananda Bharati v. State of Kerala* as a basic structure element, cannot be diluted.[648] Any interpretation of Article 222 that invites executive influence is antithetical to the doctrine. Article 227, by empowering the High Courts, works in sync to preserve the autonomy and discipline of the judicial hierarchy.

Articles 226 and 227 extend writ and supervisory jurisdiction to High Courts. M.P. Jain referred to it as "a decentralisation of constitutional remedies enabling each High Court to act as a guardian of legality".[649] The SC in *Waryam Singh v. Amarnath* stated that Article 227 empowers the High Court to ensure, "that the subordinate tribunals operate within the limits of their authority".[650]

CONSTITUTIONAL ANALYSIS OF ARTICLES 222-231

The provisions laid down in the Indian Constitution delineate the transfers and jurisdiction of the High Courts under Articles 222-231. These provisions together constitute the legal and institutional frameworks within which the High Courts operate as the apex judicial bodies at the State level in discharging their constitutional functions. These provisions provide space for

[646] The Constitution of India, Art. 50.
[647] H.M. Seervai, *Constitutional Law of India*, Vol. II (Universal Law Publishing 4th edn 2013) § 25.33.
[648] *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.
[649] M.P. Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2021) 1935–38.
[650] *Waryam Singh v. Amarnath*, AIR 1954 SC 215.

flexibility but at the same time emphasise federal balance, mobility, and administrative oversight while preserving the independence of the judiciary as a core value of the Constitution.

Article 222 – Transfer of a Judge from one High Court to another

222. (1) The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court.
(2) When a Judge has been so transferred, he shall during the period he serves, after the commencement of the Constitution (Seventh Amendment) Act, 1956, as a Judge of the other High Court, be entitled to such compensatory allowance as may be determined by Parliament by law and, until so determined, as may be specified in an order made by the President."[651]

Article 222 empowers the President, after consultation with the Chief Justice of India, to transfer a judge from one High Court to another. The framers of the Constitution justified this clause as an instrument to foster national integration within the judiciary and to avoid parochialism. During the constituent assembly debates, Dr B.R. Ambedkar defended the clause on administrative grounds, whereas K.T. Shah opposed it, fearing executive misuse.[652] The Assembly ultimately adopted "consultation" instead of "concurrence," trusting that the constitutional convention would prevent abuse.

Judicial interpretation of Article 222 has been dynamic. In *S.P. Gupta v. Union of India*[653] (the First Judge Case), the Supreme Court interpreted "consultation" as not binding, thus giving primacy to the executive. This judgment was overturned in the Supreme Court *Advocates-on-Record Assn. v. Union of India*[654] (the Second Judge Case), where the court held that the opinion of the Chief Justice of India, formed collectively with the senior judges, must have primacy. The *In re Presidential Reference Case*[655] (the Third Judge Case) reaffirmed the doctrine of judicial primacy by requiring that transfers be decided through a collegium comprising the CJI and four senior-most judges. The Court in *K. Ashok Reddy v. Government of India*[656] further clarified that the transfers can be made only "in public interest" and not as

[651] The Constitution of India, Art. 222.
[652] Constituent Assembly Debates, Vol. VIII (23 May 1949) 780–81.
[653] *S.P. Gupta v. Union of India*, AIR 1982 SC 149.
[654] *Supreme Court Advocates-on-Record Assn. v. Union of India*, (1993) 4 SCC 441.
[655] *In re: Special Reference No. 1 of 1998*, (1998) 7 SCC 739.
[656] *K. Ashok Reddy v. Government of India*, (1994) 2 SCC 303.

punitive measures. These judicial developments have effectively insulated Article 222 from executive arbitrariness, in consonance with the constitutional mandate of judicial independence.

Article 223 – Appointment of Acting Chief Justice

223. When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose."[657]

This provision ensures continuity in the judicial administration because it empowers the President to appoint an Acting Chief Justice whenever the office is vacant or the Chief Justice cannot perform his duties. This temporary appointment will be made in consultation with the CJI. In Union *of India v. Pratibha Bonerjea,*[658] the Supreme Court observed that an Acting Chief Justice has all the powers of a regular Chief Justice but should abstain from making long-term administrative or policy decisions. This provision, therefore, reconciles administrative necessity with the constitutional doctrine of judicial autonomy.

Article 224 – Appointment of Additional and Acting Judges

224. (1) If by reason of any temporary increase in the business of a High Court or by reason of arrears of work there are not enough Judges of the Court to deal with the work expeditiously, the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify.
(2) When any Judge of a High Court other than the Chief Justice is unable to perform the duties of his office by reason of absence or otherwise, the President may appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties."[659]

In cases of temporary increases in workload, Article 224 provides for the appointment of additional and acting judges. This flexibility is, however, on certain occasions criticised for allowing potential executive influence in judicial appointments. In *S.P. Gupta v. Union of India*, the Court upheld the constitutionality of appointing additional judges for very short durations but

[657] The Constitution of India, Art. 223.
[658] *Union of India v. Pratibha Bonnerjea*, (1995) 6 SCC 765.
[659] The Constitution of India, Art. 224.

warned that this cannot be used to circumvent permanent appointments by Article 217. D.D. Basu notes that Article 224 is simply "a pragmatic compromise between the administrative convenience and constitutional protection of judicial tenure."[660]

Article 224-A – Appointment of Retired Judges to Sit and Act as Judges

224-A. Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State.[661]

Inserted in 1963 by the Fifteenth Amendment Act, Article 224-A provides for the Chief Justice of a High Court, with the consent of the President, to recall retired judges for temporary service. The aim of the provision was to deal with the problem of delay while utilising the experience of judges. The Supreme Court upheld the validity of the appointment in *Lokesh Kumar v. State of U.P.*[662] as long as they are by choice and by consent. This further emphasises the foresight of the framers in their balancing act between efficiency and independence.

Article 225 – Jurisdiction of Existing High Courts

225. Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution until altered by law.[663]

According to Article 225, the jurisdiction and powers of the pre-Constitution High Courts have been guaranteed continuity. For example, inherent powers to make rules, regulate sittings and punishments for contempt have also been maintained. In *Naresh Shridhar Mirajkar v. State of*

[660] D.D. Basu, *Introduction to the Constitution of India* (24th edn, LexisNexis 2022) 289–90.
[661] The Constitution of India, Art. 224-A.
[662] *Lokesh Kumar v. State of U.P.*, (2008) 1 SCC 779.
[663] The Constitution of India, Art. 225.

Maharashtra[664], the Supreme Court proceeded to hold that Article 225 recognises the inherent authority of the High Court to protect the dignity of its proceedings. Basu observes that the provision maintains "a link between colonial judicial institutions and their democratic successors".[665]

Article 226 – Power of High Courts to Issue Certain Writs

226. (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—
(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and
(b) giving such a party an opportunity of being heard,
the High Court shall make an endeavour to finally dispose of the petition within a period of two weeks from the date on which the petition is made; and where it is not so possible, the High Court shall, within a period of two weeks from the date on which the petition is made, record its reasons for not doing so; and such interim order shall, on the expiry of that period, or as the case may be, the extended period, stand vacated.

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[664] *Naresh Shridhar Mirajkar v. State of Maharashtra*, AIR 1967 SC 1.
[665] D.D. Basu, *Introduction to the Constitution of India* (24th edn, LexisNexis 2022) 284–85.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.[666]

Article 226 establishes the High Courts as the foremost protectors of the fundamental and legal rights within the States. Unlike Article 32, which is limited only to fundamental rights, Article 226 stretches to "any other purpose" and thus includes statutory and equitable remedies. The jurisdiction in *T.C. Basappa v. T. Nagappa*[667], and as maintained in State of *Orissa v. Madan Gopal Rungta*[668], was held to be discretionary and should be exercised in the interest of justice rather than technicalities. In *L. Chandra Kumar v. Union of India,*[669] the Court reiterated its position that the powers of the High Courts under Article 226 and 227 are part of the basic structure of the Constitution and cannot be removed even by constitutional amendments.

Article 227 – Power of superintendence over all courts by the High Court

227. (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—
(a) call for returns from such courts;
(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and
(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:
Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the Governor.

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[666] The Constitution of India, Art. 226.
[667] *T.C. Basappa v. T. Nagappa*, AIR 1954 SC 440.
[668] *State of Orissa v. Madan Gopal Rungta*, AIR 1952 SC 12.
[669] *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261.

(4) Nothing in this article shall be deemed to confer on a High Court power of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.[670]

A wide supervisory jurisdiction over all the subordinate courts and tribunals is conferred upon the High Courts by Article 227. It includes the power of administrative oversight, disciplinary control and judicial correction. The Supreme Court held in ***Waryam Singh v. Amarnath***[671] that the object of this provision is to see to it that the subordinate courts "keep within the bounds of their authority".

Article 228 – Transfer of certain cases to the High Court

228. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—
(a) Either dispose of the case itself, or
(b) determine the question of law and return the case to the court from which it has been so withdrawn with a direction to dispose of the case in conformity with such judgment.[672]

Article 228 empowers the High Court to withdraw cases from subordinate courts where a substantial question relating to constitutional interpretation arises. This provision reinforces the High Court's role as the principal constitutional adjudicator within the State and promotes uniformity in constitutional interpretation. By centralising the determination of constitutional questions, Article 228 reduces the risk of inconsistent interpretation by subordinate courts.

Article 229 – Officers and servants and the expenses of High Courts

229. (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:
Provided that the Governor of the State may by rule, require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the State Public Service Commission.

[670] The Constitution of India, Art. 227,.
[671] *Waryam Singh v. Amarnath*, AIR 1954 SC 215.
[672] The Constitution of India, Art. 228.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:
Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State.[673]

Article 229 secures the administrative autonomy of the High Courts by vesting control over appointments and service conditions of court staff in the Chief Justice. Although limited approval of the Governor is required in matters concerning salaries and allowances, judicial interpretation has clarified that such approval does not dilute judicial independence. The Supreme Court in High Court of *Judicature for Rajasthan v. Ramesh Chandra Purohit*[674] held that staff matters are entirely within the domain of the Chief Justice.

Article 230 – Extension of jurisdiction of High Courts to Union territories

230. (1) Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union territory.

(2) Where the High Court of a State exercises jurisdiction in relation to a Union territory—
(a) nothing in this Chapter shall be construed as empowering the Legislature of the State to increase, restrict or abolish that jurisdiction; and
(b) The Governor of the State in which the High Court has its principal seat shall exercise, in relation to the administration of justice in the Union territory, such functions as may be delegated to him by the President.[675]

[673] The Constitution of India, Art. 229.
[674] *High Court of Judicature for Rajasthan v. Ramesh Chandra Purohit*, (2013) 13 SCC 497.
[675] The Constitution of India, Art. 230.

Article 230 empowers Parliament to extend or exclude the jurisdiction of a High Court in relation to Union Territories. This provision reflects India's asymmetric federal structure and accommodates administrative convenience without undermining the constitutional status or independence of the High Courts.

Article 231 – Establishment of a common High Court for two or more States

231. (1) Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.

(2) In relation to any such High Court,—
(a) The references in this Chapter to the State shall be construed as references to each of the States for which the High Court is established; and
(b) The references to the Governor shall, in relation to any such State, be construed as references to the Governor of that State.[676]

Article 231 authorises the Parliament to establish a common High Court for two or more States or for States and Union Territories. This mechanism exemplifies constitutional flexibility by permitting shared judicial institutions while preserving federal diversity. The establishment of common High Courts, such as Punjab and Haryana High Court, and Gauhati High Court, demonstrate the practical operation of this provision.

CONCLUSION

Articles 222 to 231 of the Constitution together protect the High Courts as important components of India's federal judiciary, striking a balance between independence and administrative flexibility. The journey from *S.P. Gupta v. Union of India* to the *Third Judges Case* transformed Article 222 from an executive function to a judicially controlled process, thus giving scope to the basic structure doctrine of independence. Articles 225 to 227 confer jurisdiction and writ powers upon the High Courts, enabling them to act as custodians of the Constitution within the States.

[676] The Constitution of India, Art. 231.

Articles 228-231 reflect the federal flexibility that allows for common High Courts and extension of jurisdiction.

But the very issues of collegium transparency, pendency, and accountability continue to be raised, calling for institutional reform. Ultimately, the High Courts are constitutional sentinels, with independence and accountability to public trust, embodying the very balance of power and restraint envisioned by the framers.

CHAPTER 21: SUBORDINATE JUDICIARY PROVISIONS (ARTICLE 233 -237)

BY CHAVI SINGLA

INTRODUCTION

For an ordinary citizen, approaching the Supreme Court is often impractical, and even access to the High Court may be limited. In such circumstances, the subordinate court within the district becomes the most immediate and accessible forum for seeking justice. As the first point of interaction between citizens and the judicial system, subordinate courts play a decisive role in ensuring effective access to justice and fostering trust in the rule of law..At the ground level, it is these courts that people actually turn to when they face problems such as land disputes, family conflicts, or criminal matters. This really shows why the subordinate judiciary is really the foundation of India's justice system.

Every day life in India produces thousands of disputes, and the subordinate courts are the first to handle them. They are not only the most accessible courts but also those that carry the heaviest caseloads. The phrase "Justice delayed, Justice denied" becomes most relevant here, because when a trial drags on for years in these courts, it directly harms the ordinary citizen who has no other option for redress. Yet, despite the delays, the subordinate judiciary remains the most vital link between the people and the law.

The framers of our constitution understood its importance and created a separate chapter for Subordinate Courts under Part VI. Articles 233 to 237 provide a complete framework for their functioning.

Article 233 speaks of the appointment of District Judges by the Governor in consultation with the High Court. Article 234 lays down how the recruitment of other judicial officers takes place through the Public Service Commission and the High Court. Article 235 gives the High Court control over subordinate courts, particularly in matters of posting, promotion and discipline. Article 236 provides for the establishment of courts of small causes, while Article 237 allows the Governor to extend these provisions to magistrates.

In simple terms, these Articles were designed to secure the independence of the subordinate judiciary and protect it from executive interference. By doing so, they ensured that justice survives for the common people and does not remain limited to the higher constitutional courts. The subordinate judiciary is therefore rightly called the backbone of the Indian judicial system, and this paper will examine Articles 233 to 237 in detail to analyse their background, interpretation, and continuing role in a democratic society.

HISTORICAL BACKGROUND

The subordinate judiciary in India is the backbone of the justice system. It deals with the majority of cases at the grassroots level and provides justice to common citizens. The system did not emerge overnight but has developed through different phases — ancient traditions, medieval practices, colonial reforms, and constitutional provisions after independence. Understanding this history is important to know how today's subordinate courts function and why they continue to hold such significance in the Indian legal framework.

Ancient Period

The rulers of the Indian state traditionally enjoyed and occasionally exercised general supervision over the panchayat. Appeals from the decision of the High Court were often referred to village panchayat, which was a time- honoured method of deciding disputes. This system had several advantages: it was easy for the panchayat to verify true facts and avoid prolonged litigation. They could pronounce decrees and invoke royal powers to enforce them.

Medieval Period

The judicial system became more organised with the arrival of the Delhi sultanate and Mughal Empire . Courts were run under the authority of the Mughal Empire. The court was run by the authority of the Mughal Empire.This period marked the beginning of efforts to balance state authority with principles of justice and laid the groundwork for later institutional changes[677].

Colonial Period

During British rule, the subordinate judiciary underwent major reforms. In 1726, Mayor's Courts were set up in Calcutta, Bombay, and Madras under the orders of King George I. Later, in 1772, Warren Hastings, the Governor-General of Bengal, introduced the Adalat system to regulate civil and criminal justice. In 1793, Lord Cornwallis restructured this system, creating a clearly separating revenue from judicial officers and introducing stricter rules of procedure.

The Indian High Courts Act, 1861, brought by the British Parliament under Lord Canning, created High Courts in the Presidency towns, which became the head of the judicial system. Later, the Government of India Act, 1915, laid down qualifications and recruitment processes for judges. Important Indian jurists such as Sir Syed Mahmood and Syed Wazir Hasan set high standards of judicial work, by combining British legal principles with Indian realities.[678] Although challenges like case delays and heavy workload continued, the subordinate judiciary gained respect for its integrity and efficiency during this period.

Post-Independence Period

After independence, diversity and representation gradually gained importance in the Judiciary. Articles 233 to 237 vest the high court with the power for appointment and control over the subordinate judiciary. The recruitment process has changed over time from initial ICs promotion based direct entry High court exam. In 2025, after the Supreme court judgement mandating 3 years legal practice recruitment on going response based on emerging needs. The Supreme Court reinforced these principles in cases such as Chandra Mohan v. State of U.P. (1966), where

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[677] H. M. Seervai, *Constitutional Law of India*, vol 1, 4th edn (Universal Law Publishing Co, New Delhi 1991).

[678] Sirbind Basini, 'History and Role of Subordinate Civil Judiciary' (Allahabad High Court, Web Page, online at https://www.allahabadhighcourt.in) (accessed on 2 January 2026)

it stressed that appointments of district judges must strictly follow constitutional provisions and remain free from executive influence.

ARTICLE 233 - APPOINTMENT OF DISTRICT JUDGES

Article 233 in consultation governs the appointment of district judges in a state.

Clause 1 provides that the Governor shall appoint District Judges in consultation with the High court, ensuring that the High court plays a supervisory role and maintains judicial standards

Clause 2 specifies eligibility: a person already in the State judicial service may be

Appointed if they have practised as an advocate for a last seven years and recommended by the High court. Thus, the first clause deals with consultation, while the second clause focuses on High court recommendation and eligibility.[679]

Judges from the first category are appointed by the Governor in consultation with the High court, while those from the second category are appointed based on the High court's recommendation, ensuring that the High court's supervisory role is strictly maintained.

The Governor formally holds this power, but it's not absolute. The High Court's opinion has greater importance, since it supervises the subordinate courts and is in the best position to judge the integrity and ability of candidates. If the State does not agree with the High Court's recommendation, the Governor must give clear and valid reasons. More political or administrative grounds are not enough.

Thus, the Governor formally appoints the judges, but the real decision is guided by the High Court's opinion.Article 233 ensures that District Judges are appointed on merit and that the process remains free from executive pressure, keeping the judiciary independent and credible.

[679] D. D. Basu, *Introduction to the Constitution of India*, 27th edn (LexisNexis Butterworths Wadhwa, New Delhi 2020) 435.

ARTICLE 234: RECRUITMENT OF PERSONS OTHER THAN DISTRICT JUDGES

Article 234 of the Constitution deals with the recruitment of persons other than district judges to the judicial service. made both the Court. The objective behind this provision is to safeguard the independence of the judiciary and ensure that the executive does not exercise undue influence over judicial appointments. Judicial service is thus placed on a pedestal different from other services under the constitutional scheme, as it plays a direct role in upholding justice and the rule of law.

Objective and Importance of Article 234

The importance of meaningful consultation cannot be overstated. Any rules made by the State without consulting the High Court are considered ultra vires, as consultation is not a formality but a substantive requirement. The Supreme Court in Ashok Kumar Yadav v. State of Haryana[680] emphasized that the High Court must play a substantial role in the recruitment process. It was laid down that when selections are conducted by the Public Service Commission, judges nominated by the Chief Justice should be invited as experts, and their opinions must ordinarily be accepted unless strong reasons are recorded to the contrary[681]. This ensures that candidates of competence, integrity, and judicial aptitude are recruited, as the very strength of a ds context, the De Facto Doctrine assumes significance. Sometimes, appointments may later be declared invalid due to procedural lapses under Article 234. However, the doctrine ensures that decisions delivered by such judges remain valid, so that the justice system is not thrown into chaos and

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[680]Ashok Kumar Yadav v State of Haryana, (1985) 4 SCC 417.
[681]M. P. Jain, *Indian Constitutional Law*, 9th edn (LexisNexis, Nagpur 2021) 312.

litigants are not made to suffer. This doctrine thus protects public confidence in the judiciary, while still allowing courts to strike down defective appointment`

ARTICLE 235

Article 235 of the Constitution vests the control of the subordinate judiciary in the High Court. This provision was introduced to safeguard judicial independence and protect the district and lower courts from executive interference. The High Court, as the custodian of the subordinate judiciary, supervises postings, promotions, transfers, and disciplinary matters, ensuring justice is delivered efficiently and impartially at the grassroots level

Objective and Importance of Article 235

The main objective of Article 235 is to maintain an independent and impartial judiciary, free from external influence. By entrusting control of the High Court, it strengthens the doctrine of separation of powers and builds public confidence in the judicial system. The High Court is given absolute control in a comprehensive sense, yet this power is not unlimited.

While the High Court exercises wide authority over service matters of subordinate judges, the appointment and initial posting of District Judges is vested in the Governor under Article 233, but only on the High Court's recommendation (State of Assam v. Ranga Muhammad, 1963).[682] Similarly, for major punishments such as dismissal, removal, or reduction in rank, constitutional safeguards ensure that the High Court exercises its powers responsibly, without arbitrariness, respecting the rights of judicial officers. As clarified in K.K. Dhawan v. Union of India[683]disciplinary action must be based on fair procedure, protecting honest judges while addressing misconduct. In essence, Article 235 balances judicial independence with accountability, making the High Court powerful but responsible.

The scope of Article 235 is wide and covers all key aspects of managing the subordinate

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682 State Of Assam v. Ranga Muhammad,AIR 1967 SC 903

683 K. K. Dhawan v Union of India, (1993) 2 SCC 56.

judiciary. It includes postings, promotions, confirmations, and transfers of officers below the rank of District Judge. It also extends to disciplinary powers, such as conducting inquiries, suspending officers, and recommending punishments. Beyond this, the High Court supervises the administration of subordinate courts to ensure that they function properly and efficiently. [684]

ARTICLE 236: INTERPRETATION

Article 236 of the Indian Constitution mainly works as a definitional clause. It clarifies the meaning of two important terms used in this chapter dealing with the subordinate judiciary, namely "district judge" and "judicial service."[685] This provision does not confer powers directly but ensures there is no confusion while interpreting Articles 233 to 235.

District Judge

The Constitution gives a broad inclusive meaning to the term "district judge." It not only covers the office of district judge but also includes judges of city civil courts, additional, joint and assistant district judges, chief judge of a small cause court, chief presidency magistrates, additional chief presidency magistrates, as well as sessions judges, additional sessions judges and assistant sessions judges. This reflects the inclusive intention of the Constitution to place various Judicial officers within a single category for administrative and supervisory purposes.

Judicial Service

The article also defines "judicial service" as a service consisting exclusively of persons appointed as district judges

The main object of Article 236 is to provide celerity in terminology so provision regarding appointment, posting, promotion, and control of the subordinate judiciary can be applied without ambiguity. Its scope lies in ensuring that a wide range of judicial officers is covered under the meaning of "district judge" and the structure of judicial service is clearly defined. This helps in

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[684] State of West Bengal v.Nirpendra Nath Bagchi, AIR 1966 SC 47
[685] D. D. Basu, *Introduction to the Constitution of India*, 27th edn (LexisNexis Butterworths Wadhwa, New Delhi 2020).

maintaining consistency, judicial hierarchy, and smooth functioning of subordinate courts under supervision of the high court.[686]

ARTICLE 237: APPLICATION OF PROVISIONS TO MAGISTRATES

Article 237 enables the Governor to implement separation of the judiciary from the executive this Article, Governor notify that Article 233,234,235 and 236 of the constitution will apply to magistrate. The Governor issues public notifications to enable him to apply existing laws and regulations for judicial service to certain magistrates . This article united the Judicial system meeting different needs of each region and keeping the Judicial system reliable.

Article 237 of Indian empowers Article 237 of Indian Constitution empowers governors to apply rules on the Judicial service, make rules for magistrates flexible to address specific regulations and ensures unification of judicial officers and magistrates . This provision boosts the framework of the subordinate judiciary by adding a magistrate to judicial service .This adaptability ensures efficient administration of justice and maintains continuity and uniformity in judicial operation.

The Supreme Court, in State of Assam v. Ranga Muhammad, highlighted that Article 237 provides the constitutional basis for transferring magistrates from executive to judicial control, thereby enhancing the fairness of criminal justice administrations.[687]

Chandra Mohan v. State of U.P.

The U.P. Higher Judicial Service is divided into two categories: District and Sessions Judges, and Civil and Sessions Judges. The Governor framed rules governing recruitment and service conditions under Article 309 of the Constitution, known as the U.P. Higher Judicial Service Rules, 1953. These rules provide two paths for appointment: promotion from within the U.P. Civil Service (Judicial Branch) or direct recruitment of advocates and judicial magistrates.

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[686] Avan Patil, 'CJI and SC Judge Appointments' (Legal Bites, Web Page, online at https://www.legalbites.in) (accessed on 2 January 2026).

[687] State of Assam v. Ranga Muhammad,AIR 1967 SC903

In 1965, the appellant Chandra Mohan, a permanent member of the U.P. Civil Service and serving as a Civil and Sessions Judge, filed a writ petition. He raised concerns that the system of direct recruitment to the Higher Judicial Service would negatively impact his confirmation and promotion chances. The writ was initially rejected by the High Court.[688]

However, the Supreme Court, invoking Article 233(2) of the Constitution (which mandates appointments of district judges by the Governor after consultation with the High Court), reversed the decision in the appeal dated 8 August 1966 (Chandra Mohan v. State of U.P., AIR 1966 SC 1987). The Court ruled that the appointment of Shri Om Prakash through direct recruitment violated the 1953 Rules and was thus ineligible. It emphasised that higher judiciary appointments must adhere to the constitutional framework and service rules, prioritising promotion within the judicial service and consultation with the High Court to protect judicial independence and procedural fairness. This case highlights the importance of maintaining the established hierarchy and promotion standards within the judiciary, in line with Articles 233 and 309 of the Constitution, to ensure justice in judicial administration and service integrity.

Issues

1. Whether the expression "the service" in Article 233(2) refers exclusively to the judicial service, or whether it extends to other government services such as police, excise, or revenue.

2. Whether the Governor, while exercising the power of appointment of District Judges, can select candidates from non-judicial services, or whether such appointments are confined only to members of the Bar and officers of judicial service.

3. Whether the historical background of the Government of India Act, 1935, and the constitutional scheme indicate that Article 233 was designed to secure the independence of the judiciary by keeping it free from executive control.

4. Whether allowing appointments from executive or administrative services would weaken judicial independence Arguments [689]

Petitioner's Contentions

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[688]Chandra Mohan v. State Of Uttar Pradesh, AIR 1966 SC 1987

[689] Ibid

1. Article 233(2) clearly refers to the qualifications of persons already in service. The petitioner argued that the term “service” should be interpreted as judicial service only, and therefore, appointing officers from other branches violates the Constitution.

2. The Constitution requires that the Governor consult the High Court before appointing District Judges. Any deviation, such as relying on administrative recommendations outside this consultation, undermines the proper procedure.

3. Allowing non-judicial officers to be appointed threatens the independence of the judiciary, which is a core constitutional principle.

Respondent’s Contentions (State of U.P.)

1. The term “service” in Article 233(2) is not limited to judicial service. A person may be from another service or an advocate with seven years’ standing. There is no bar on appointing such persons as District Judges.

2. Consultation with the Public Service Commission or following administrative processes does not make the appointment unconstitutional, as the essential requirement of High Court consultation is maintained.

3. The Constituent Assembly debates show that the framers did not intend to narrow eligibility. They deliberately allowed flexibility so that experienced advocates or officers from other services could be appointed, rather than restricting the post only to those already in judicial service or to advocates of the concerned High Court.

Judgment

The Supreme Court held that the appointments of two persons as District Judges under the U.P. Higher Judicial Service Rules, 1953, were unconstitutional. The Court observed that Article 233 draws a clear distinction between members of the judicial service and those not in service. It clarified that for persons outside judicial service, the only eligible category is advocates or pleaders with not less than seven years’ standing. Such appointments can be made by the Governor only in consultation with the High Court. In view of all decisions,all judgments rendered practically the entire strength of District Judges after the date of decision of the

Supreme court would have been illegal parliament amend 20th constitutional amendment act 1966.

Impact and Analysis

This case is structured around the constitutional validity of Uttar Pradesh Higher Judicial Service allowed recruitment of Judicial officers to post of district judge. The court observed that the appointment of a district judge is limited to consultation with the High court, recruitment from service refers only to Judicial service . This judgment reinforces the High Court's importance in the appointment process.

All India Judges Association Vs Union of India(2025)

The All India Judges Association v. Union of India, 2025, is a landmark Supreme Court judgment that resolved a controversy ongoing for many years about qualification and recruitment to India's lower judiciary. The case focused on setting higher standards for Civil Judge (Junior Division) appointments, leading to extensive debate and ultimately a decisive ruling by the Supreme Court in May 2025

Facts of the Case: The All India Judges Association approached the Supreme Court, arguing for the reinstatement of a mandatory three-year Bar practice requirement for anyone seeking appointment as a Civil Judge (Junior Division).Petitioners sought restoration of the Limited Departmental Competitive Examination (LDCE) quota at 25% and suitability tests for promotions within the judiciary. Central and state governments voiced concerns that the new requirements could restrict access and discourage new law graduates, especially those from marginalised backgrounds, from taking up judicial service[690].

Issues Framed by the Court :

1. Whether a minimum of three years' practice at the Bar is valid and reasonable as per Article 233 of the Constitution.

[690]All India Judges Association vs Union of India(2025) INSC 735

2. Whether law clerkship or similar non-litigation legal experience can count towards the Bar practice requirement.

3. Whether suitability tests for promotions, whether the LDCE quota should be restored to 25% and calculated based on cadre strength, not annual vacancies under the merit-cum-seniority quota are constitutional and effective. Whether these reforms align with the equality and non-discrimination principles of Articles 14 and 19[691]

Petitioners argued that practical legal experience is essential for maintaining the quality and professionalism of the judiciary and that a minimum Bar practice is globally recognised as a standard.The government and several states countered that such requirements could hinder entry for disadvantaged candidates and that eligibility rules should not be overly restrictive to ensure equal opportunity. Both sides discussed whether clerkships and similar roles should count as legal experience and debated the impact of the reforms on judicial diversity and access

Supreme Court's Judgement : The Court upheld the mandatory three-year Bar practice requirement, emphasising that practical legal experience is crucial for judicial excellence and citing comparative models from the UK, US, and Germany. Law clerkship and similar roles were allowed to count towards the practice requirement if they involved substantial legal work and engagement.The LDCE quota was restored to 25% and recalculated based on cadre strength, with eligibility broadened for candidates. Suitability tests were mandated for promotions, with instructions for transparency and objectivity, aiming to ensure that promotions are based on merit as well as seniority.The reforms were held to be consistent with Articles 14 and 19, as the classification between experienced and inexperienced candidates was deemed reasonable and in the public interest.

Impact and Analysis :

This case is structured around the constitutional validity of Uttar Pradesh Higher Judicial Service allowed recruitment of Judicial officers to post of district judge. The court observed that the appointment of a district judge limited to consultation with the High court, recruitment from service refers only to Judicial service . This judgment reinforces the High court importance in appointment process

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[691] Ibid

CONTEMPORARY RELEVANCE OF THE SUBORDINATE JUDICIARY

The subordinate judiciary forms the backbone of India's legal system, serving as the primary interface between citizens and the law. While the higher judiciary sets legal precedents, it is the trial courts, district courts, and magistracies that translate these principles into tangible outcomes for ordinary citizens. Their role is particularly significant because they are the first point of contact for justice, bridging constitutional ideals with the lived realities of society. Despite being constitutionally empowered, subordinate courts face systemic challenges—including vacancies, infrastructure deficits, training gaps, and administrative pressures—that affect efficiency, independence, and public trust. Contemporary debates, including the May 2025 Supreme Court ruling in All India Judges Association v. Union of India, highlight both the progress and ongoing struggles of these courts in balancing competence, accessibility, and accountability. Understanding the contemporary relevance of the subordinate judiciary, therefore requires a critical evaluation of historical context, present challenges, judicial reforms, and societal implications.

Subordinate courts as first People' court

Subordinate courts constitute the first point of contact for ordinary citizens seeking justice. For most disputes, litigants initially approach subordinate courts, as these courts are comparatively more accessible and are institutionally designed to handle a large volume of cases at the grassroots level. The effectiveness of an independent Supreme Court in delivering justice is contingent upon the proper functioning of subordinate courts, where justice must first be administered. If subordinate courts are not made more accessible and efficient, systemic delays and an escalation in case backlogs are inevitable, thereby undermining the overall administration of justice.

Pandering political Branches: Short tenure, Early retirements

The constitution required judges to retire at sixty-five because they retire at such a young age and have a significant career. However, by law, they are not permitted to work in private practice.

Much evidence found that when judges approach retirement plans they tend to favour the government more in their decision. If judges transfer easily or retire early, it stops cases from being handled properly .This makes courts less effective for ordinary people. To fix this, judges should have long and fixed tenure and freedom from political pressure.

Inadequate Judicial infrastructure in Lower courts

Judicial infrastructure is a significant factor determining access to justice. Divided into physical infrastructure, personnel and digital infrastructure. Physical infrastructure around the district and sub-district courts is poor in India. Lack of physical infrastructure affects the delay and time taken to solve the dispute. Digitalisation of court papers and files not implemented in proper manner and stored in poor condition at court premises. Lack of office space, information technology, and access to libraries in common Judicial on in lower courts.

Judicial Education, Training and Legal Awareness

In subordinate courts, judges often face limitations in expertise relating to specialised and rapidly evolving areas of law. Consequently, judicial training programmes must be regularly updated to keep pace with continuous developments across diverse legal fields. Inadequate training at the stage of appointment, as well as the absence of sustained professional development, may discourage judges from adopting innovative and purposive approaches to adjudication, leading instead to decisions that are predominantly technical in nature.

Strengths and Weaknesses: Critical Assessment of Reform and Controversy

A critical assessment reveals both achievements and ongoing challenges. Strengths include the judiciary's central role in citizen access to justice, digitisation efforts, and rulings that reinforce professional standards. Weaknesses encompass infrastructure deficits, staffing shortages, and training gaps. Reforms such as structured judicial education, mentorship programs, merit-based recruitment, and technology adoption illustrate modernisation efforts. Controversies persist regarding executive influence, inconsistent recruitment, and the impact of mandatory practice

requirements emphasised in the May 2025 AIJA judgment. Balancing competence, independence, accessibility, and public trust remains an ongoing task.[692]

Bridging Theory and Practice: Original Reflection on Contemporary Relevance

The contemporary relevance of the subordinate judiciary lies in its dual role as the everyday guarantor of justice and a pillar of democratic governance. Historical struggles with AIJS, present infrastructural and training challenges, and judicial pronouncements like the 2025 AIJA ruling demonstrate that effectiveness depends on both competence and structural efficiency. Strengthening subordinate courts is essential not only for institutional performance but also to ensure that constitutional promises of fairness, equality, and access to justice are realised at the grassroots level

CONCLUSION

Justice lies at the heart of a nation's constitutional framework, and for the majority of citizens, the subordinate judiciary serves as the first and most direct avenue for seeking justice. Recognising this, the framers of the Constitution, through Articles 233 to 237, envisaged the subordinate courts as independent, professional, and accountable institutions. A strong and efficient subordinate judiciary is vital for upholding the rule of law and protecting constitutional values.

However, subordinate courts are often overburdened with a high volume of cases and constrained by limited infrastructure, inadequate staffing, and insufficient training. These challenges frequently lead to delays and affect the quality of justice delivered at the grassroots level. Strengthening the subordinate judiciary through improved resources, capacity-building, and effective case management is therefore essential to ensure timely, accessible, and meaningful justice for all.

[692]Hamzah Hussaini, 'Introduction of All India Judicial Service Exams: Regards to Subordinate Courts' (Web Article, online at https://scholar.google.com) (accessed on 2 January 2026).

CHAPTER 22: DISTRIBUTION OF LEGISLATIVE POWERS (ARTICLE 245-248)

BY KAMAKSHI GANESHKUMAR

INTRODUCTION

The Indian Constitution clearly divides law-making powers between the Central and State governments through Articles 245 to 248. This division helps both levels of government understand their responsibilities and avoid stepping into each other’s areas of control.

According to Article 245, Parliament can make laws for the whole country or any specific part of it, while State Legislatures can make laws for their own States, as long as they follow constitutional limits.

Article 246 takes this further by using the Seventh Schedule, which contains three lists i.e., the Union List, the State List, and the Concurrent List. These lists specify which subjects belong to the Centre, which are under the States, and which can be handled by both. This system keeps the distribution of power clear and organized.

Under Article 247, Parliament can also set up additional courts if necessary, which makes the legal system more flexible. Meanwhile, Article 248 gives Parliament Residuary Powers, allowing it to make laws on matters not mentioned in any of the three lists.

Together, these articles keep a healthy balance between the independence of States and the authority of the Centre. This balance is vital for smooth governance in a diverse country like India and helps the system adapt to new and changing situations.

HISTORICAL BACKGROUND

The Government of India Act, 1935 marked a major turning point in the constitutional development of colonial India. It laid the groundwork for many features later adopted in independent India's Constitution, especially the distribution of legislative powers, which are now found in Articles 245 to 248. A notable reform introduced by this Act was Provincial Autonomy, which replaced the limited 'Diarchy' system of the 1919 Act. The Act also proposed an All-India Federation, but this was never fully realized because many Princely States chose not to join.

A key feature of the Act was its division of legislative subjects into three distinct lists, a concept that the Constitution later incorporated in the Seventh Schedule:

- Federal List (59 subjects): These were matters of national importance, including Defence, External Affairs, Currency, and Railways, over which only the Central Legislature could legislate.
- Provincial List (54 subjects): This covered local matters such as Police, Education, Health, and Local Government, giving exclusive law-making powers to the Provincial Legislatures.
- Concurrent List (36 subjects): Included areas where both the Central and Provincial Legislatures could make laws, such as Criminal Law and Procedure. In cases of conflict, the law made by the Centre would prevail.

Britain's centralizing intention to maintain control over crucial areas was reflected in the Government of India Act, 1935, which divided legislative subjects into the Federal, Provincial, and Concurrent Lists and gave the Governor-General residual powers. The Act's framework for allocating legislative authority became fundamental to India's constitutional design, even though the federation it envisaged never came to pass. The Constituent Assembly later improved this structural blueprint, converting a colonial model into a sovereign federal system by keeping the three-list system while transferring residuary powers to Parliament under Article 248. By providing a framework that aims to balance regional self-governance with national cohesion, this legacy continues to influence the balance between Union authority and State autonomy.

The question of how to divide powers between the Union and the States reflected the broader challenge of balancing national unity with regional diversity, a concern that strongly influenced the Constitution's final allocation of legislative powers. Dr. B. R. Ambedkar, defending the scheme of distribution, described India as a federation with a strong Centre, one designed to preserve national unity while respecting regional diversity.[693] The framers deliberately gave Residuary Powers, the authority to make laws on subjects not covered in any of the three lists; solely to Parliament under Article 248. This decision was aimed at preventing confusion in law-making and ensuring that the central government could effectively handle new or unforeseen challenges. It also reflected a clear intent to maintain a strong Union within India's federal framework. In framing this provision, the Constitution's drafters drew lessons from other federations, studying how countries like the United States and Canada managed the division of powers between central and regional governments. Overall, this careful distribution of powers was intended to maintain a delicate balance: preserving the autonomy of states while ensuring the Union remained strong enough to uphold national unity and address challenges that could not be anticipated during the drafting of the Constitution. As M.P. Jain observes, the Constitution makers "opted for a federation with a strong Centre, not out of preference, but out of the necessities of nation-building.[694]" Similarly, D. D. Basu notes that the arrangement embodies "a federal spirit tempered with unitary strength, ensuring both diversity and discipline[695]."

The current system for distributing legislative powers is the outcome of a long process of constitutional evolution, shaped both by the deliberations of the Constituent Assembly and the colonial-era experiments of 1919 and 1935. It represents a carefully crafted framework that combines flexibility, stability, and the supremacy of the Constitution, addressing the needs of a vast and diverse population. In doing so, it reflects India's historical journey from colonial subjugation toward self-rule and democratic governance.

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[693] IX, Constituent Assembly Debates (1948).
[694] M. P. Jain, *supra* note 1 at 578.
[695] D. D. Basu, *supra* note 2 at 254.

CONCEPTUAL AND DOCTRINAL FRAMEWORK

The allocation of legislative powers under Articles 245 to 248 forms a core doctrinal foundation of India's federal system. It is a deliberate constitutional design that divides sovereignty between the Union and the States, giving each a clearly defined sphere of legislative authority. Far from being a mere administrative arrangement, this division embodies the principles of Indian federalism: fostering cooperation while preserving autonomy, and ensuring unity amidst diversity.

According to classical federalism, legislative powers are separated into inflexible, watertight compartments, with each level of government having distinct spheres of authority and little overlap between the Union and State domains. Functional or administrative federalism, on the other hand, prioritizes efficiency and policy outcomes over rigid territorial boundaries and stresses pragmatic governance through shared competencies, intergovernmental coordination, and overlapping responsibilities. Despite having its structural roots in classical federalism through the three-list system, India's constitutional framework increasingly functions in a functional manner, especially in areas like economic regulation and taxation. This change offers a crucial perspective for comprehending modern developments where cooperative mechanisms coexist with increased central influence, such as the GST regime and the growing use of residuary powers.

From a conceptual perspective, legislative power is understood as the authority to make, amend, or repeal laws within the bounds established by the Constitution, meaning it is never absolute. Article 245 sets the territorial limits within which these powers may be exercised, while Article 246 allocates subjects into three distinct categories, the Union List, the State List, and the Concurrent List as detailed in the Seventh Schedule. Together, these provisions form a comprehensive framework of legislative competence, clearly defining the boundaries and responsibilities of each level of government and ensuring that law-making authority is exercised within the Constitution's intended limits. As M. P. Jain notes, this structure ensures a balance "between national uniformity in essential matters and regional variation in local concerns.[696]"

[696] M. P. Jain, *Indian Constitution Law* 581 (LexisNexis Butterworths, 9th edn., 2019).

1. Doctrinal Foundations

Several interpretative doctrines have evolved through judicial decisions to preserve this constitutional balance and prevent legislative encroachment. The most prominent among them are:

(a) The Doctrine of Pith and Substance

This doctrine is employed when a law enacted by one level of government appears to overlap with the jurisdiction of the other. Courts examine the "true nature and character" of the legislation to determine whether it genuinely belongs to a subject within the enacting body's competence[697]. The doctrine ensures that incidental encroachments do not invalidate an otherwise legitimate law.

(b) The Doctrine of Repugnancy

Article 254 deals with situations where both Parliament and a State Legislature legislate on the same subject within the Concurrent List. If the two laws are inconsistent, the Union law prevails to the extent of repugnancy. This doctrine ensures uniformity in matters of national importance while allowing States the freedom to legislate where no central law exists[698].

(c) The Doctrine of Residuary Powers

Article 248 vests residuary powers in Parliament, empowering it to legislate on subjects not enumerated in any of the three lists. This was a deliberate deviation from the American model, where residuary powers rest with the States, and a conscious adoption of the Canadian precedent[699].

2. Conceptual Role within Indian Federalism

[697] State of Bombay v. F. N. Balsara, AIR 1951 SC 318.
[698] M. Karunanidhi v. Union of India, AIR 1979 SC 898.
[699] M. P. Jain, *supra* note 1 at 590.

The distribution of legislative powers serves a dual purpose within India's federal structure: it is both an enabler and a constraint. By clearly defining the areas of competence for the Union and the States, it allows for cooperation on matters of shared interest, ensuring coordinated governance. At the same time, it acts as a boundary, limiting each legislature to its assigned sphere of authority, thereby preventing encroachment and maintaining the balance between national unity and regional autonomy. Granville Austin points out that this balance makes Indian federalism "a cooperative venture between levels of government, aimed at promoting development and national integration[700]."

3. Doctrinal Debates and Evolving Interpretation

Over time, judicial interpretation has played a crucial role in defining the scope and limits of legislative powers. Landmark cases such as State of Bombay v. F.N. Balsara (1951) and State of Rajasthan v. G. Chawla (1959) applied the pith and substance test to uphold the validity of State legislation even where there were incidental overlaps with Union laws. Similarly, in Union of India v. H.S. Dhillon (1972), the Supreme Court reaffirmed the residuary powers of Parliament under Article 248. Through such judgments, the judiciary functions as the guardian of the constitutional balance, ensuring that the distribution of powers remains true to the vision of the framers.

ARTICLE-WISE DISCUSSION

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245. Extent of laws made by Parliament and by the Legislatures of States

(1)[701] Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

[700] D. D. Basu, *supra* note 2 at 189.
[701] The Constitution of India, art. 245(1), available at https://indiankanoon.org/doc/369702/ (last visited Jan. 9, 2026).

(2)[702] No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation[703].

Article 245 specifies the territorial scope within which the Union and State Legislatures may make laws. It confirms that Parliament has the authority to legislate for the entire territory of India, while a State Legislature's power is confined to its own state. The phrase "subject to the provisions of this Constitution" ensures that these powers are exercised within the constitutional framework, particularly respecting the distribution of legislative subjects outlined in Article 246 and the Seventh Schedule.

The second clause of Article 245 allows laws to have extra-territorial effect, clarifying that a law enacted by Parliament does not become invalid simply because it produces effects beyond India's borders. This principle was upheld in GVK Industries Ltd. v. ITO (2011) 4 SCC 36[704], where the Supreme Court held that Parliament may enact laws with extra-territorial reach, provided there is a real or foreseeable connection to India. The Court emphasized that the Constitution does not authorize legislation that has no relation to India's interests or its citizens.

246. Subject-matter of laws made by Parliament and by the Legislatures of States[705]

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

[702] K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1, available at https://indiankanoon.org/doc/882254/(last visited Jan. 9, 2026).
[703] The Constitution of India, art. 245.
[704] GVK Industries Ltd. v. ITO, (2011) 4 SCC 36.
[705] The Constitution of India, art. 246, available at https://indiankanoon.org/doc/77052/ (last visited Jan. 9, 2026).

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List[706].

Article 246 lies at the heart of India's system for dividing legislative powers. It outlines the scope of law-making authority for both Parliament and the State Legislatures by referring to the three lists contained in the Seventh Schedule. The structure of this Article follows a hierarchical pattern. Clause (1), beginning with the non-obstante phrase "notwithstanding anything," establishes the primacy of the Union List, meaning that in cases of conflict between Union and State laws, the Union law prevails. This principle was affirmed in cases such as State of Bihar v. Kameshwar Singh[707] (1952) SCR 889 and Union of India v. H.S. Dhillon[708] (1972) 2 SCC 779, where the Court recognized that the Constitution aimed to create a strong Union while still preserving the legislative role of the States.

The Concurrent List allows both levels of government to legislate on the same subjects, providing a framework for flexible and cooperative governance. However, as clarified in Article 254, any inconsistency between Union and State laws is resolved in favor of Union legislation. This arrangement captures the essence of India's cooperative federalism, balancing regional autonomy with the need for national uniformity. In State of West Bengal v. Union of India[709] (1963) SC 1241, the Supreme Court emphasized that Indian federalism is not a compact between independent states, but a constitutional structure deriving its authority from the people of India. The Court highlighted that legislative powers are distributed rather than sovereignly divided, which defines India's uniquely flexible and adaptive federal model. H. M. Seervai observed that Article 246, when read with the Seventh Schedule, creates a "constitutional map" of legislative

[706] The Constitution of India, art. 246.
[707] State of Bihar v. Kameshwar Singh, (1952) SCR 889.
[708] Union of India v. H.S. Dhillon, (1972) 2 SCC 779.
[709] State of West Bengal v. Union of India, (1963) SC 1241.

competence that is exclusive but not immutable[710]. Practical developments such as the Goods and Services Tax (GST) have restructured fiscal federalism by subsuming several State List entries, demonstrating how the lists can evolve through constitutional amendments[711].

247. Power of Parliament to provide for the establishment of certain additional courts[712]

Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List[713].

Article 247 grants Parliament the authority to create additional courts whenever it is necessary to ensure the effective administration of Union laws. This provision serves as an enabling tool, designed to strengthen the judicial framework supporting the Union's legislative agenda. It highlights the interconnection between legislative and judicial functions within India's federal structure, ensuring that central laws can be applied consistently across the country.

While Article 247 is not frequently invoked directly, it provides the constitutional foundation for the establishment of specialized tribunals and courts under central statutes. Examples include the Income Tax Appellate Tribunal (ITAT)and the National Green Tribunal (NGT), both of which provide expertise and uniformity in adjudication. In Union of India v. Madras Bar Association[714] (2014) 10 SCC 1, the Supreme Court confirmed Parliament's authority to establish such bodies, while emphasizing that their composition and functioning must safeguard judicial independence. By doing so, Article 247 balances the need for effective law enforcement with the principles of judicial autonomy, reflecting the framers' intent to harmonize legislative efficiency with constitutional safeguards.

248. Residuary powers of legislation[715]

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[710] H.M. Seervai, *Constitutional Law of India* Vol. 1 468 (Universal Law Publishing, 2013).
[711] The Constitution (One Hundred and First Amendment) Act, 2016.
[712] The Constitution of India, art. 247, available at https://indiankanoon.org/doc/874453/ (last visited Jan. 9, 2026).
[713] The Constitution of India, art. 247.
[714] Union of India v. Madras Bar Association, (2014) 10 SCC 1.
[715] The Constitution of India, art. 248, available at https://indiankanoon.org/doc/1270258/ (last visited Jan. 9, 2026).

(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists[716].

The distribution of legislative powers in India operates in a dual capacity; it enables cooperation between different levels of government while simultaneously acting as a constitutional restraint on their authority. By clearly demarcating legislative spheres, the framework allows the Union and the States to work together on matters of shared concern, yet prevents either from encroaching upon the other's domain. A key objective behind this design was to create a strong and responsive Centre, capable of addressing new and unforeseen challenges that could not have been anticipated at the time of constitutional drafting. Issues such as atomic energy regulation, digital governance, and environmental protection exemplify areas where centralized intervention has become essential over time.

This preference for central strength is most evident in the treatment of residuary powers, which the Constitution deliberately assigns to Parliament. The Supreme Court affirmed this position in Union of India v. H.S. Dhillon (1972), where it upheld Parliament's exclusive authority to legislate on matters not enumerated in either the State or Concurrent Lists, including residuary taxation. By giving an expansive reading to Article 248 and Entry 97 (residuary powers), the Supreme Court upheld Parliament's competence despite arguments based on pith and substance and State fiscal autonomy. This effectively allowed the Center to legislate unless a subject could be affirmatively located in the State List.

The practical significance of Article 248, which confers residuary powers on Parliament, can be seen in the enactment of the Information Technology Act, 2000.[717] Cyber activity and digital transactions were entirely unknown to the framers and therefore absent from the Seventh Schedule. The ability of Parliament to legislate in this domain demonstrates how residuary

[716] The Constitution of India, art. 246.
[717] The Information Technology Act, 2000 (Act 21 of 2000).

powers keep the constitutional framework flexible and adaptive, enabling the legal system to respond to ongoing transformations in technology, society, and the economy.

Taken together, Articles 245 to 248 form the outer limits of legislative authority under the Constitution. They articulate the federal balance by affirming the Union's primacy in matters of national importance while allowing both the Centre and the States to function effectively within their respective jurisdictions. Through sustained judicial interpretation, constitutional evolution, and changing social realities, these provisions continue to operate as living instruments of Indian federalism, capable of adjustment without compromising constitutional stability.

CONTEMPORARY RELEVANCE AND CHALLENGES

The scheme for distributing legislative powers under Articles 245 to 248 remains a defining feature of India's constitutional federalism, yet its operation in the twenty-first century has been anything but static. These provisions, framed in a very different political and economic context, are now required to respond to rapid technological change, evolving fiscal arrangements, and an increasingly prominent role of the Union in areas that were once largely within the States' domain. As governance becomes more complex and interconnected, the constitutional framework designed in 1950 is continuously tested by new forms of regulation, economic integration, and global interdependence.

One of the most significant shifts in the legislative balance has occurred in the post-GST era. The enactment of the One Hundred and First Constitutional Amendment Act, 2016[718], which introduced the Goods and Services Tax (GST), substantially reshaped the fiscal relationship between the Union and the States. Several indirect taxes that previously fell within the State List were subsumed under a unified tax regime, prompting sustained debate on whether this reform has led to an over-centralization of fiscal power. Although the creation of the GST Council was intended to institutionalize cooperative federalism, State governments have repeatedly raised concerns about reduced financial autonomy, particularly in relation to rate decisions and delays in compensation.

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[718] The Constitution (One Hundred and First Amendment) Act, 2016 (Act 101 of 2016).

Judicial interpretation has played a critical role in clarifying the constitutional position in this context. In Union of India v. Mohit Minerals Pvt. Ltd.[719] (2022), the Supreme Court held that the recommendations of the GST Council are persuasive rather than binding, reaffirming that fiscal governance under the GST regime is meant to be collaborative rather than unitary. This judgment underscored the continued relevance of constitutional federalism, even within an integrated tax framework.

At the same time, the expanding relevance of Residuary Powers under Article 248 has become increasingly evident. The emergence of entirely new and unenumerated fields such as the digital economy, artificial intelligence, data protection, and cryptocurrency regulation has required legislative intervention beyond the original contours of the Seventh Schedule. Parliament has relied on its residuary competence to address these areas, most notably through statutes such as the Information Technology Act, 2000. While this adaptability demonstrates the Constitution's capacity to evolve with changing realities, the growing reliance on residuary powers continues to raise concerns about the gradual concentration of legislative authority at the Centre.

Taken together, these developments illustrate both the strength and the tension inherent in India's legislative distribution framework. While Articles 245 to 248 provide the flexibility needed to govern a modern, dynamic society, their contemporary application also raises important questions about preserving the federal balance between Union authority and State autonomy in an era of rapid transformation.

CRITICAL ANALYSIS

The framework governing the distribution of legislative powers under Articles 245 to 248 stands as one of the most carefully constructed elements of Indian federalism. Conceived to empower both the Union and the States within clearly demarcated spheres, it reflects the constitutional ideal of unity without uniformity. Over the decades, this arrangement has contributed significantly to political stability, administrative coherence, and legislative predictability. At the same time, constitutional practice reveals a steady movement towards greater centralization, at times at the expense of meaningful state autonomy.

[719] Union of India v. Mohit Minerals Pvt. Ltd., (2022) 4 SCC 713.

One of the major strengths of this scheme lies in its structural clarity and breadth. The threefold division of legislative subjects into the Union, State, and Concurrent Lists provides a comprehensive map of legislative authority. When read alongside Article 248, which vests residuary powers in Parliament, the framework ensures that no legislative vacuum exists, even in relation to emerging and unforeseen fields such as cyber regulation, digital commerce, or technological governance. This capacity to absorb new subject areas without constitutional paralysis has played a vital role in preserving the Constitution's relevance over time. The system's internal coherence has further been reinforced by consistent judicial mediation, particularly through doctrines such as pith and substance, incidental encroachment, and harmonious construction. By applying these principles, the Supreme Court has often resolved jurisdictional overlaps without destabilizing the federal balance, thereby preventing recurrent constitutional deadlocks over legislative competence.

Notwithstanding these strengths, the scheme exhibits a pronounced institutional imbalance in favour of the Union. This asymmetry is not incidental but structurally embedded. The Union List is populated with expansive and high-impact subjects, such as defence, communications, and inter-State commerce; granting Parliament a wide legislative reach. The non obstante clause in Article 246(1) further entrenches this dominance by ensuring that Union legislation prevails in cases of overlap with the State List. This central tilt becomes especially visible in the fiscal domain, where the Union controls the most lucrative sources of revenue. The advent of the GST regime has intensified this trend by substantially reducing the States' independent taxing authority, increasing their financial reliance on the Centre, and, in turn, constraining their legislative initiative.

Scholars such as D. D. Basu have long characterized this arrangement as "federal in form but unitary in substance."[720] While such central dominance may have been justified in the early years of nation-building, its continued expansion raises concerns in the context of a mature and plural democracy. The Concurrent List, originally designed to foster cooperative federalism, often operates in practice as a channel for central supremacy. Under Article 254, Union law prevails in the event of inconsistency, frequently displacing State legislation even in areas with strong local relevance, such as education, labour regulation, and social welfare.

[720] D.D. Basu, *Introduction to the Constitution of India* 259 (LexisNexis, 26th edn., 2024).

Judicial intervention, though largely stabilizing, has not been uniform over time. Earlier decisions such as State of Rajasthan v. Union of India (1977)[721], reflected considerable judicial restraint in matters affecting Centre–State relations. In contrast, later landmark judgments, including S.R. Bommai v. Union of India[722] (1994) and Mohit Minerals (2022), demonstrate a more assertive judicial posture, aimed at reinforcing constitutional limits on central power and safeguarding the federal equilibrium. These shifts reveal an evolving judicial philosophy that responds to changing political and constitutional realities.

In light of these concerns, certain reforms merit serious consideration. First, selective reconsideration of entries in the Union List could allow the devolution of subjects that predominantly affect local governance to the States. Second, the introduction of a constitutionally recognized system of mandatory pre-legislative consultation for laws concerning Concurrent List subjects could strengthen cooperative federalism in practice rather than in theory. Third, the development of a modern and transparent framework of fiscal federal responsibility, one that balances national priorities with state autonomy could help restore the constitutional spirit underlying India's federal design.

Together, these measures could recalibrate the distribution of legislative powers, preserving the Union's capacity to govern effectively while revitalizing the States' role as genuine partners in India's constitutional enterprise.

CONCLUSION

The distribution of legislative powers under Articles 245 to 248 lies at the very heart of India's federal design. It reflects the farmer's conscious effort to balance national cohesion with regional diversity through a constitutional framework that clearly defines legislative competence, minimizes conflict, and encourages institutional harmony. Shaped by the colonial experience particularly the rigidity of governance under the Government of India Act, 1935 this scheme was reimagined by the Constituent Assembly to establish a federation anchored by a strong yet constitutionally restrained Centre.

[721] State of Rajasthan v. Union of India, (1977) 3 SCC 592.
[722] S.R. Bommai v. Union of India, (1994) 3 SCC 1.

The systematic division of subjects into three legislative lists, coupled with the vesting of residuary powers in Parliament, demonstrates the framers' awareness of the administrative complexity inherent in governing a vast, diverse, and evolving nation. These choices were not merely technical arrangements but reflected a forward-looking constitutional vision capable of accommodating change without undermining stability. Doctrinally, Articles 245–248 form the backbone of cooperative federalism, a model that relies as much on constitutional design as on political responsibility and mutual respect between institutions.

The evolution of Indian federalism visible through judicial decisions ranging from State of West Bengal v. Union of India[723] (1964) to Kesavananda Bharati v. State of Kerala[724] (1973) reveals a sustained judicial effort to reconcile the demands of national unity with the preservation of State autonomy. Through interpretative principles such as pith and substance, incidental encroachment, and harmonious construction, the judiciary has played a vital role in resolving Centre–State disputes within the constitutional framework, rather than allowing them to escalate into political or institutional conflict.

At the same time, constitutional practice has shown that the promise of balanced federalism is often strained by an expanding central influence, particularly in fiscal governance and Concurrent List subjects. Developments such as the GST regime, the growing reliance on residuary powers, and the increasing centralization of policy formulation have reshaped the federal landscape in significant ways. Yet, the enduring strength of Articles 245 to 248 lies in their elasticity, their ability to evolve without fracture, to respond to new challenges without abandoning constitutional fundamentals.

A more disciplined use of Concurrent List powers and institutionalized Center-State consultation mechanisms are also necessary for a significant recalibration of India's legislative federalism. Despite the existence of organizations like the GST Council and the Inter-State Council, their potential is still underutilized because of sporadic participation and shallow deliberation. A systematic, regular consultative framework would strengthen cooperative federalism and lessen antagonistic Center-State dynamics, especially prior to significant central legislation impacting

[723] State of West Bengal v. Union of India, (1964) 1 SCR 371.
[724] Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

State domains. In order to ensure that concurrent and residuary powers serve as tools of coordination rather than central dominance, it is equally crucial to exercise principled restraint when using them. Restoring equilibrium within the constitutional architecture and bringing legislative practice closer to the framers' original vision can be accomplished by strengthening fiscal federalism through increased transparency in devolution, empowering States in policy design, and reviving intergovernmental forums.

Ultimately, the future vitality of India’s federal system will depend not merely on constitutional text but on the quality of its constitutional practice. Responsible legislative action by both Parliament and State Legislatures, informed judicial restraint, meaningful political consultation, and a sustained commitment to constitutional morality are essential to ensure that legislative power remains a tool of cooperation rather than competition. In this balance lies the continued resilience of Indian federalism.

CHAPTER 23: PARLIAMENTARY SUPREMACY AND TREATY POWERS (ARTICLE 249-253)

BY NANDANA PARAMESWARAN

THE FRAMEWORK OF CENTRAL LEGISLATIVE SUPREMACY

The Indian Constitution creates a unique quasi-federal system that, while formally dividing legislative authority between the Union and the States, actually favors national supremacy through a number of constitutional override mechanisms. The combined operation of Articles 249, 250, 252, 253, and 248 reveals a purposeful constitutional design that allows Parliament to penetrate State domains under various political, emergency, consensual, and international triggers, even though Articles 246 and the Seventh Schedule seem to embody classical federalism through a threefold division of subjects. This framework puts Indian federalism closer to a practical model by reflecting the framers' preference for unity and effective governance over strict state autonomy.

The core argument of this analysis is that while the Indian Constitution maintains a federal facade, Articles 249-253 function as "constitutional bypasses" that prioritize national interest and international obligations over state autonomy. This creates a system of centralized pragmatism, where the Union's need for a unified global voice necessitates the potential overriding of the State List.

Of the legislative powers listed in Part XI, specifically Article 246[725] and the Seventh Schedule[726], the Seventh Schedule encompasses three lists: The Union List (List I)[727], the State

[725] The Constitution of India, art. 246.
[726] The Constitution of India, Seventh Schedule.
[727] The Constitution of India, Seventh Schedule, List I.

List (List II)[728], and the Concurrent List (List III)[729]. Article 246(1) gives Parliament the exclusive power to legislate with respect to any of the matters enumerated in List I of the Seventh Schedule, comprising subjects of national importance such as defence, foreign affairs, currency and communications. Clause 3 confers power on State Legislatures to enact laws on subjects enumerated in List II, relating to public health, police, agriculture, and land policies. Clause (2) grants concurrent jurisdiction, with both Parliament and State Legislatures empowered to legislate on matters in List III, such as education, marriage, and bankruptcy. In case of a conflict between a central and a state law on a Concurrent List subject, the central law prevails unless the state law has received presidential assent, thereby reinforcing parliamentary supremacy.

Accordingly, the foundational framework, stemming from the Government of India Act, 1935[730], was designed to prevent conflicts and clearly define the respective spheres of authority. Yet the framers also perceived that a rigid division would hinder national unity and economic development, and thus several provisions grant Parliament extraordinary powers of legislation to intervene in areas normally reserved for the States. These special clauses, namely Articles 249, 250, 252, and 253, stand in a continuum of the Central legislation override, each being triggered under different conditions. Appreciation of this context is important to understand the particular and potent role of Article 253[731], which enables Parliament even on subjects assigned to the State List, to fulfill international obligations.

Article 249[732] enables Parliament to enact a law on a subject in the State List provided the Council of States passes by a special majority of two-thirds of members present and voting a resolution declaring it necessary or expedient in the national interest. Such a law is valid only for one year but can be extended by passing further resolutions. The provision is a responsive mechanism, needing affirmative action from the upper house to justify overriding the normal federal arrangement. This can be witnessed in the COVID-19 pandemic, where conflicts arose between the Union and state governments over the procurement and distribution of medical supplies and vaccines through international treaties. During a National Emergency under Article

[728] The Constitution of India, Seventh Schedule, List II.
[729] The Constitution of India, Seventh Schedule, List III.
[730] The Government of India Act, 1935 (26 Geo. 5 & 1 Edw. 8 c. 2).
[731] The Constitution of India, art. 253.
[732] The Constitution of India, art. 249.

352[733], due to war, external aggression, or armed rebellion, Article 250[734] confers plenary power upon Parliament to legislate on any matter in the State List for the whole or any part of India. This is the most drastic override, suspending state legislative competence entirely until the emergency proclamation ends and for six months thereafter. Unlike the other override powers, Article 252[735] operates on a consensual basis, representative of cooperative federalism. It enables Parliament to enact a law on a subject in the State List only on receipt of resolutions from the legislatures of two or more states praying for such legislation. The resulting law applies to the consenting states and can later be adopted by other states by their own legislative action, though only Parliament can amend or repeal it. Examples of laws enacted under this article include the Wildlife Protection Act, 1972[736], and the Water (Prevention and Control of Pollution) Act, 1974[737]. Article 251[738] The Constitution of India deals with what happens when there is a conflict between a State law and a law made by Parliament under its special powers in Articles 249 and 250. It makes clear that States remain free to legislate within their normal competence, but if any provision of a State law is repugnant to a parliamentary law made under Article 249 (Rajya Sabha "national interest" resolution) or Article 250 (during an Emergency), the parliamentary law will prevail and the State law will be inoperative to the extent of the inconsistency, and only for so long as the central law remains in force. This creates a temporary, conditional supremacy for Parliament's emergency or national-interest legislation, ensuring national uniformity in exceptional situations while allowing the State law to automatically revive once the special parliamentary law ceases to operate.

The four articles below show that the Indian Constitution is, in its very foundation, federal, but the design itself is heavily weighted in the direction of a strong center, a 'quasi-federal' arrangement, in other words. This centralizing bias is reinforced further by residuary powers vested exclusively in Parliament under Article 248[739] and Entry 97 of the Union List[740], enabling it to legislate upon any matter not explicitly mentioned in the three lists. The invocation of these

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[733] The Constitution of India, art. 352.
[734]The Constitution of India, art. 250.
[735] The Constitution of India, art. 252.
[736] The Wild Life (Protection) Act, 1972 (Act 53 of 1972).
[737] The Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974).
[738] The Constitution of India, art. 251.
[739] The Constitution of India, art. 248.
[740] The Constitution of India, Seventh Schedule, List I, Entry 97.

override powers reflects a primary concern for the unity and integrity of the nation born from the trauma of the founders' partition. Whereas Articles 249, 250, and 252 each have some element of positive consent, be it from the Rajya Sabha, the President under an emergency, or the state legislatures the trigger for Article 253 lies entirely outside the realm of domestic political processes. It is triggered by one factor alone: a need to implement international treaties, agreements or conventions. Therefore, its powers can arguably be considered the most absolute and independent since they are not contingent upon any request or declaration within the Indian polity. The Environment Protection Act, 1986[741], was enacted under Article 253 to implement India's commitments arising from the Stockholm Conference on the Human Environment, which epitomized its practical application in aligning domestic law with global environmental norms.

ARTICLE 253: HISTORICAL FOUNDATIONS AND RATIONALE

The origin of Article 253 can be traced to the discussions in the Constituent Assembly, where its predecessor, Draft Article 230, was debated extensively. The journey from this draft to the final version reveals a clear intent to vest immense power in the central legislature to ensure India could function as a single unit in discharging its international obligations. Pandit Hirday Nath Kunzru, while contributing to the discussion on November 17, 1948, said that the Constitution remedied the serious lacuna in the Government of India Act, 1935, by arming the Central Government with the authority to implement treaties to which it is a party. This sentiment underlines the perceived inadequacy of the colonial-era framework, which lacked an effective mechanism for treaty implementation. The deliberations underscored that the new Constitution had to provide a robust central authority in matters of foreign affairs,one area in which a fragmented response from individual provinces would be untenable.

Draft Article 230 thus evolved into Article 253 through two significant amendments in October of 1949. The first replaced the phrase *"for any State or part thereof"* with *"for the whole or any part of the territory of India."* Such an amendment deleted the geographical limitation on Parliament's power so that the enabling legislation for a treaty could be uniformly enacted for the whole country, even if the subject connected with the treaty was outside the traditional purview

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[741] The Environment (Protection) Act, 1986 (Act 29 of 1986).

of a particular state's jurisdiction. Secondly, and more importantly, Shri T. T. Krishnamachari moved an amendment on October 14, 1949, to add the words *"or any decision made at any international conference, association or other body"* to the end of the article. He argued that such an addition was necessary to *"meet with all contingencies,"*[742] and gave Parliament the powers to implement not only bilateral or multilateral treaties but also decisions emanating from international bodies like the United Nations or the World Trade Organization. This amendment was adopted without recorded debate, indicating considerable accord among the framers in favor of a broad and unqualified power to execute international undertakings.

The basis for this wide-ranging power lay in the felt need for a strong central direction of foreign policy. Gopal Swami Ayyangar gave the following reason for the vesting of this power in the centre: India, being a federation, should speak with one voice in international conferences and cannot afford to delay implementation by seeking approvals from the constituent states[743]. Dr. B.R. Ambedkar very clearly endorsed this opinion, while stating that accession of the Indian States to the Union was based on Foreign Affairs being a central subject, and the implementation of treaties being essentially a part of this agreed-upon framework. He explained that this authority did not represent an intrusion into the sovereignty of states but was part of the larger design of national integration. This vision of a unitary mechanism of implementation did not go unchallenged. K.M. Munshi[744] argued for states playing a role in international agreements which fell within the sphere of state legislation, thereby suggesting that bicameral representation would enable states to have a say in such decisions. Instead, this argument was abandoned in favor of a centralized approach, which reflected the dominant ethos of the time by placing national integration above all else.

The historical context of the Government of India Act, 1935, further enlightens the intent of the constitutional makers. Under that Act, treaty implementation was a federal subject under Item 3 of List I, but Section 106[745] provided that no law could be enacted affecting provincial subjects. This was a restraint on the federal legislature's discretion and was potentially an obstacle to good administration. The omission of this restriction in Article 253 was conscious to avoid, inter alia,

[742] VII, Constituent Assembly Debates (Nov. 17, 1948).
IX, Constituent Assembly Debates (Oct. 14, 1949).
[743] VII–IX, Constituent Assembly Debates (1948–49).
[744] Ibid.
[745] The Government of India Act, 1935, s. 106; List I, Item 3.

the Canadian precedent where the Privy Council invalidated federal treaty-based laws on provincial subjects. By establishing the power to implement treaties as an unconditional and overriding legislative power, the framers made certain that the hands of the Union were not tied by the consent of provincial executives or legislatures and, accordingly, laid the foundation for parliamentary supremacy in this critical domain. The subsequent history of the article shows that it has remained unamended since its inception, underlining its foundational role in India's constitutional architecture.

THE DUALIST DOCTRINE: TREATIES AS NON-SELF-EXECUTING AGREEMENTS

The legal regime in India follows a strict dualist approach to international law, a principle that fundamentally molds the application of Article 253. In a dualist state, international law and municipal (domestic) law are considered two separate and distinct systems. An international treaty, no matter how solemnly signed by the executive branch of the government, does not automatically become a part of the domestic legal order. For a treaty to have the effect of law within India, it has to be turned into domestic law by the use of an enabling statute by Parliament. This doctrine forms the foundation of the interrelation between international commitments and national legislation in India, and the courts uniformly support it. The principle crystallized in the landmark case of *Jolly George Varghese v. Bank of Cochin* (1980)[746] was that international covenants and treaties cannot be enforced until they are incorporated into municipal law by legislation. This interpretation aligns India with the British common law tradition, whereby treaties are simply agreements until given legal force by Parliament.

The difference between the authority of the executive to make treaties and the legislature to carry out their provisions becomes very important. The executive has the inherent power to conclude treaties and agreements internationally under Article 73[747] of the Constitution without parliamentary approval. This enables the government to undertake diplomatic negotiations and execute treaties without delays. Such an executive action, though, is only initiatory. For if the treaty relates to the rights of citizens, alters existing laws, involves financial obligations, or deals

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[746] Jolly George Varghese v. Bank of Cochin, (1980) 2 SCR 913.
[747] The Constitution of India, art. 73.

with subjects in the State List, an enabling law enacted by Parliament under Article 253 is necessary for its implementation. The Supreme Court has repeatedly reaffirmed this separation of powers. In *P.B. Samant v. Union of India*[748],the court was of the view that though the executive is competent to negotiate treaties concerning State List subjects such as agriculture and irrigation, no such treaties can be implemented without subsequent legislation by Parliament. Similarly, in *Maganbhai Ishwarbhai Patel v. Union of India*[749],the Court clarified that while the executive power under Article 73 may extend to negotiating treaties on State List matters, the power to enact the necessary laws rests exclusively with Parliament under Article 253.

This dualist framework establishes a clear hierarchy of authority, with Parliament at the apex of that process. The executive is the agent of negotiation, but the legislature retains the ultimate power to determine the domestic fate of international commitments. This ensures that all international obligations are exposed to parliamentary scrutiny, debate, and democratic sanction before becoming legally binding on the citizens of India. The requirement of parliamentary legislation serves a number of purposes: it enables Parliament to review the terms of the treaty; to assimilate its provisions into the constitutional framework, particularly the Fundamental Rights; and to prevent unintended consequences or conflicts with domestic law. The process also prevents the executive from unilaterally sacrificing national interests or imposing obligations that would infringe upon the rights of citizens without legislative support. Even if a treaty does not touch private rights, ratification by itself does not give rise to enforceable rights sans an enabling law. For example, the TRIPS Agreement was signed by the government in spite of a parliamentary committee recommending against some provisions; the signing was done without further consultation in Parliament, illustrating the difference between the theoretical pre-eminence of legislation and the practical dominance of the executive in treaty-making.

Although the dualist doctrine is the default, the courts have indicated a readiness to take account of international law as a persuasive source of inspiration and as an aid to interpreting domestic statutes and the Constitution, particularly in areas concerned with human rights. For the most part, however, this nuanced thinking does not disturb the underlying principle that a treaty's substantive provisions are regarded as non-self-executing until enacted by Parliament. The

[748] P.B. Samant v. Union of India, AIR 1994 Bom 323.
[749] Maganbhai Ishwarbhai Patel v. Union of India, (1970) 3 SCR 400.

Madras High Court, while considering the anti-avoidance measures against Cyprus invoked by India, reaffirmed the dualist doctrine when it held that domestic anti-avoidance laws could prevail over a Double Tax Avoidance Agreement (DTAA). It explained that a non-compliance with the obligations under the Vienna Convention on the Law of Treaties[750] on the part of the treaty partner itself constitutes a breach, and the injured party (India) may invoke domestic remedies without violating international law. This decision underlines the idea that even when a treaty exists, Parliament has the final legislative authority on matters of breach and to safeguard its sovereign interests, which it derives constitutionally under Article 253. Therefore, while international law can inform judicial reasoning, it cannot supersede a validly enacted piece of domestic legislation.

JUDICIAL INTERPRETATION AND THE EXPANSION OF RIGHTS THROUGH INTERNATIONAL NORMS

The judicial interpretation of Article 253 and, by extension, the role of international law in the Indian legal system have slowly transformed from a rigid adherence to dualism to a more dynamic and flexible approach. For years, the jurisprudence was steered by the clear line drawn in cases like *Maganbhai Patel*[751]. The test was simple: if a treaty restricted the rights of citizens or altered existing laws, enabling legislation was necessary; if it did not affect justiciable rights, no legislation was required. The primacy of Parliament was upheld during this period, and international treaties were treated as having no binding effect on domestic law in the absence of incorporation. The Supreme Court in *P.B. Samant*[752] affirmed that the executive could negotiate treaties affecting State List subjects like agriculture, provided Parliament subsequently enacted the necessary enabling legislation. This structure respected the separation of powers by allowing the executive free rein to negotiate and left the task of implementation clearly within the hands of the legislature.

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750 The Vienna Convention on the Law of Treaties, 1969.

751 ibid.

752 ibid.

However, a paradigm shift began to emerge, particularly in the late 1990s, led by a series of landmark judgments that effectively created a "backdoor" entry for international law into domestic jurisprudence. This shift is best comprehended through the doctrine of harmonious construction, which dictates that courts interpret domestic laws and the Constitution in a manner that harmonizes them with international law so that the essence of both is maintained. This philosophy, as enunciated in cases like *A.D.M. Jabalpur*[753], has enabled international norms to influence constitutional interpretation even without formal legislative enactment. The cornerstone of this new jurisprudence is *Vishaka v. State of Rajasthan*[754] (1997). Confronting an obvious lacuna in national law on the issue of sexual harassment at the workplace, the Supreme Court refused to look the other way. It instead borrowed from the principles of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[755], to which India was a signatory but which had not been fully ratified. The Court ruled that these principles be read into the Constitution, particularly Articles 14[756] (equality), 15[757] (prohibition of discrimination), and 21[758] (right to life and personal liberty), so as to fill in the lacuna and create binding guidelines for employers. This decision marked the beginning of a new era, establishing that international conventions and norms consistent with constitutional values can be a source of substantive rights, thus bypassing the need for immediate legislation by Parliament.

This trend continued and was further solidified in subsequent judgments. In *D.K. Basu v. State of West Bengal*[759] (1997), the Court examined the International Covenant on Civil and Political Rights (ICCPR)[760], referring specifically to India's reservation to the right to compensation upon illegal arrest. The Court held that the judicially evolved right to compensation for violation of fundamental rights rendered the government's reservation irrelevant, a judicial willingness to prioritize human rights protections over executive reservations in favor of the spirit of the treaty. Similarly, in *People's Union for Civil Liberties v. Union of India* (1997),[761] the Court recognized

[753] A.D.M. Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521.
[754] Vishaka v. State of Rajasthan, (1997) 6 SCC 241.
[755] The Convention on the Elimination of All Forms of Discrimination Against Women, 1979.
[756] The Constitution of India, art. 14.
[757] The Constitution of India, art. 15.
[758] The Constitution of India, art. 21.
[759] D.K. Basu v. State of W.B., (1997) 1 SCC 416.
[760] The International Covenant on Civil and Political Rights, 1966.
[761] People's Union for Civil Liberties v. Union of India, (1997) 3 SCC 433.

that international covenants explaining fundamental rights could be relied upon by courts as facets of those rights, even without formal incorporation. The recognition of the right to privacy as a fundamental right under Article 21[762] in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017)[763] was also heavily influenced by India's commitment to various international human rights instruments, including the Universal Declaration of Human Rights (UDHR)[764]. Although Vishaka and Puttaswamy are commended for their efforts to advance rights, there are constitutional issues with the court's reliance on international standards. By concentrating normative authority in the judiciary, direct incorporation of treaty principles without parliamentary enactment under Article 253 runs the risk of eschewing democratic discussion and federal consultation. Such interventions blur the separation of powers and may upset the constitutionally prescribed balance between courts and Parliament, especially when State domains are involved, even though they are frequently justified by legislative silence and the urgency of rights protection.While the judicial incorporation of international norms in *Vishaka* and *Puttaswamy* has significantly advanced human rights, it invites a measured critique regarding the democratic process. By reading unratified or non-incorporated treaty principles directly into the Constitution, the Judiciary potentially bypasses the parliamentary scrutiny mandated by Article 253. This "judicial shortcuts" approach risks creating binding legal obligations without the benefit of legislative debate or federal consultation, effectively allowing the Court to perform a role the Constitution explicitly reserved for Parliament.

Despite this judicial activism, the resort to international law is not limitless. The doctrine of harmonious construction assumes a threshold of compatibility between domestic and international law. Whenever a direct and irreconcilable conflict has come up, the courts have been cautious to enforce the supremacy of entrenched domestic legal regimes. In *Shayara Bano v. Union of India*[765], the Court refused to apply the principles of gender equality from the ICESCR[766] to override the deeply entrenched personal law of Muslim men permitting triple talaq, stating that some domestic legal traditions cannot be reconciled with international norms.

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[762] ibid.
[763] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
[764] Universal Declaration of Human Rights, GA Res 217 (III) A, UN Doc A/810 (Dec. 10, 1948).
[765] Shayara Bano v. Union of India, (2017) 9 SCC 1.
[766] The International Covenant on Economic, Social and Cultural Rights, 1966.

A similar approach was also adopted in *Mohammad Salimullah v. Union of India*[767], where the Court refused to apply the customary international law principle of non-refoulement (prohibiting the return of refugees to persecution) because it runs directly contrary to India's domestic immigration laws and executive policy. These cases highlight that, while the judiciary has expanded the role of international law, it nonetheless remains subsidiary to the domestic constitutional and legal order. The starting point is always a presumption of compatibility, but when harmony is impossible, domestic law prevails. This developing jurisprudence has created in practice a hybrid or quasi-monist system, albeit formally a dualist one, especially in human rights matters, within the framework stipulated by Article 253.

PRACTICAL IMPLICATIONS: EXECUTIVE POWER, STATE CONSULTATION AND FEDERAL FRICTION

The underlying constitutional framework that regulates international commitments in terms of the interaction between the negotiating powers of the executive and the implementing powers of Parliament is one that is of immense practical importance to the federal structure of India and democratic accountability. Article 73 provides the executive with extensive powers to conclude treaties and agreements with foreign nations without prior parliamentary approval. This is often a power exercised on the basis of diplomatic consideration and strategic imperatives, sometimes without great consultation with either the state governments or even Parliament. While the power to negotiate remains largely unchecked, the power to implement through legislation under Article 253 is subject to parliamentary debate and scrutiny. This is, nonetheless, generally a reactive rather than proactive legislative review as Parliament only tends to get formally involved when a treaty requires changes to domestic law to create an enabling environment that would enable the executive to first conduct negotiations.

This concentration of power in the executive raises serious concerns about democratic accountability and transparency in the making of treaties. Indeed, there have been attempts in Parliament for the introduction of reforms. Proposals were made during the early 1990s by Shri George Fernandes and Shri M.A. Baby that sought to require parliamentary approval for

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[767] Mohammad Salimullah v. Union of India, (2021) 10 SCC 1.

significant treaties. However, none of the proposals was passed into law, and the process continues to be ad hoc. Indeed, President Pranab Mukherjee had, as a legislator, cautioned that parliamentary approval could prove burdensome to sensitive diplomacy. His examples included water-sharing agreements with Nepal or Bangladesh[768]. Critics cite the absence of this institutionalized check to mean that treaties concerning major financial commitments, affecting private rights, or changing state jurisdictions are often finalized by the executive before Parliament has had a meaningful opportunity to debate their merits. This disconnection of the negotiating posture of the executive from legislative scrutiny is poignantly emphasized by the very fact that the TRIPS Agreement was signed despite objections raised by a parliamentary committee[769].

Moreover, the unilateral power given to the Union under Article 253 can result in friction with state governments, challenging the principles of co-operative federalism. Since Parliament can legislate upon State List subjects to implement a treaty without seeking state consent, states are left and often have little recourse once a treaty is signed. This can lead to problems in implementation at the state level, as states may not be able or willing to enforce a law imposed upon them without having previously consulted. The COVID-19 pandemic brought into sharp relief this tension, with disagreements surfacing between the Union and states over the procurement and distribution of vaccines and medical supplies governed by international agreements. Even high-level consultations with chief ministers have become more frequent of late on specific foreign policy issues, for example, concerning the Farakka Treaty with Bangladesh or investment agreements involving states such as Odisha and Maharashtra. These interactions remain informal and discretionary, not constitutionally mandated processes.

Concerns in this regard have been responded to by various commissions and scholars with recommendations for reforms necessary to strengthen federal cooperation and democratic accountability. The NCRWC[770] recommended the constitution of a parliamentary committee that was to vet proposed treaties, classify them according to their impact on domestic laws, and determine whether consultation with the Inter-State Council beforehand. Yet another

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[768] National Commission to Review the Working of the Constitution, *Report of the National Commission to Review the Working of the Constitution* 200–10 (2002).

[769] The Marrakesh Agreement Establishing the World Trade Organization, 1994 (Annex 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights).

[770] National Commission to Review the Working of the Constitution.

recommendation is to amend Article 253 itself by adding that for any treaty to be implemented parliamentary ratification would be necessary, thereby enhancing democratic oversight. Some legal experts recommend evolving a consultative process with states before signing treaties that impact State List subjects, based on the principle of Negotiated federalism. Such a mechanism would respect India's federal structure while upholding its international credibility. Presently, the Supreme Court has been suggested to play a supervisory role in ensuring the use of such powers within the constitutionally defined limits so as not to erode states' Thus, Union interests are protected against potential encroachment. The enduring tightrope that India faces is the need to balance the imperative of a swift and decisive foreign policy with the necessity of adhering to its federal framework and ensuring accountability through Parliament and state legislatures in international commitments.

COMPARATIVE PERSPECTIVES

The following would outline the uniqueness of the Indian approach to the implementation of international obligations, which is best brought out in comparison with the constitutional framework of other federations such as the United States, Canada, and Australia. Treaties approved by the Senate in the United States are explicitly made the supreme law of the land by Article VI of the U.S. Constitution, a principle famously articulated in *Missouri v. Holland* [771](1920). This makes treaties self-executing and superior to state laws, even on matters controlled by the states[772]. Unlike India, the U.S. does not require separate domestic legislation for a treaty to take effect; its legal system is predominantly monist. In Canada, Section 132[773] The British North America Act grants the federal parliament the power to implement imperial treaties, but provincial consent may be required for treaties independently signed by Canada on matters within provincial jurisdiction, reflecting a more complex, consensual model of treaty implementation. Australia also pursues a hybrid model, as India does. Its Constitution assigns an "external affairs" power to the Commonwealth Parliament under Section 51(xxxix)[774], enabling it to implement international agreements, but such treaties generally require domestic legislation to

[771] Missouri v. Holland, 252 U.S. 416 (1920).
[772]The Constitution of the United States of America, art. VI, cl. 2.
[773] The Constitution Act, 1867, s. 132.
[774] The Commonwealth of Australia Constitution Act, 1900, s. 51(xxix).

have legal effect, just like in India. In Australia, treaties are also required to be tabled in both houses of parliament for 12 sitting days—a layer of legislative oversight absent in the existing system of India.

These comparative analyses demonstrate that, although India exhibits some similarities with Australia's system, it operates distinctly without obligatory parliamentary ratification and consultation mechanisms at the state levels and, hence, closer to executive-driven diplomacy than is arguably the case with balanced approaches in both Canada and Australia.

There are thus two clear inferences that arise from the above comparison: First, unlike Australia, India has no formal parliamentary tabling requirements or legislative scrutiny mechanism in its pre-execution phase of treaty performance and therefore, little democratic check on the executive discretion in treaty-making. Secondly, unlike Canada's consent-sensitive approach, India has no institutional role for States even in those cases where international commitments directly impinge on State List subjects-a fact reinforcing an executive-centric and Union-dominant model. Of the foreign models examined, Australia's binding parliamentary tabling requirements for treaties and Canada's consultative involvement of sub-national units appear constitutionally translatable to the Indian case without violating its basic structure. Any such mechanisms would leave Parliament's primacy under Article 253 intact while introducing transparency, deliberation, and federal participation-thus making the Indian practice of treaty-performance much closer to cooperative constitutionalism rather than unilateral executive action.

To balance executive efficiency with democratic accountability, India could consider the following constitutionally transplantable practices:

1. **Mandatory Tabling (Australia Model):** Introduce a requirement to table all treaties in both Houses of Parliament for a minimum period (e.g., 15-30 days) before ratification.
2. **State Consultative Committee (Canada/Negotiated Federalism):** Establish a formal mechanism—perhaps through the **Inter-State Council**—to consult States before signing treaties that impact subjects in List II (e.g., Agriculture, Health).
3. **Impact Categorization:** Implement the NCRWC recommendation to categorize treaties based on their domestic impact, ensuring those affecting private rights or state jurisdiction undergo stricter legislative vetting.

CONCLUSION

To put it shortly, Articles 249-253 weave together an intricate and evolving story of parliamentary supremacy, federal compromise, and judicial activism in India. Article 253 stands as a strong testament to the framer's intent to put the onus of ensuring due discharge of international commitments squarely in the hands of the central legislature, overriding even the conventional distribution of powers to ensure national unity and a coherent foreign policy. Based on a severe dualist doctrine, the article requires that treaties are simply agreements until they acquire domestic law status upon the passage of an Act of Parliament, thereby upholding the primacy of legislative authority. This doctrine however has been tempered by a significant judicial revolution. Through the doctrine of harmonious construction, the Supreme Court has incrementally incorporated international human rights norms within the texture of the Indian Constitution, using them as a source of substantive rights in filling up legislative gaps and expand fundamental freedoms, as seen in landmark cases like *Vishaka* and *Puttaswamy.*

This dynamic between constitutional text and judicial interpretation has led to a unique hybrid system. On paper, India stands as a dualist state with treaties needing legislative incorporation. In practice, however, particularly when it comes to human rights, the courts have ushered in a quasi-monist environment wherein international law exerts a deep and direct pull on domestic jurisprudence. This de facto monism, however, co-exists with serious practical concerns. The wide scope for the executive to negotiate treaties without prior parliamentary or state consultation raises legitimate questions of democratic accountability and can strain cooperative federalism. The absence of any resolved tension between the Union's unilateral implementation power and the requirement of state involvement is a critical area for potential constitutional reform. After all, the story of Articles 249-253 is not one about static rules of law but a living constitutional dialogue where the judiciary interprets and reinterprets continuously the relationship between India's international commitments and its internal constitutional values for ensuring that its engagement with the world be principled and progressive.

CHAPTER 24: INCONSISTENCIES BETWEEN UNION AND STATE LAWS (ARTICLE 254-255)

BY DEEPSHIKHA

INTRODUCTION

The distribution of powers is an essential feature of federalism. The object for which a federal State is formed involves a division of authority between the national Government and the separate states.The tendency of federalism to limit on every side the action of the Government and to split up the strength of the State among co-ordinate and independent authorities is specially noticeable, because it forms the essential distinction between a federal system and a unitary system of Government.[775] A federal Constitution establishes the dual polity with the Union at the Centre and the States at a periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution.[776] In the Indian case, this is achieved through the Union List, the State List, while the Concurrent List allows the central and state governments to legislate on certain subjects. Questions related to legislative inconsistency arise in the concurrent space. Articles 254 and 255 provide in the Indian Constitutional scheme how the issue is dealt with; the former refers to repugnancy between laws enacted by the latter to laws enacted by the Parliaments/state Legislatures, while the latter article clarifies the issue related to recommendations/sanctions in procedural irregularities. Generally, the word repugnant refers to inconsistent or incompatible. [777] In this chapter these two articles have been covered. Firstly we will try to understand the scope of art. 254 & then 255.

[775] A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 98 (Macmillan, London, 10th edn., 1959).
[776] J.N. Pandey, *Constitutional Law of India* (Central Law Agency, Allahabad, 10th edn., 1980).
[777] "Evolution of the Doctrine of Repugnancy," *SCC Online Blog*, available at https://www.scconline.com/blog/post/2023/09/16/evolution-of-the-doctrine-of-repugnancya-perspective-of-the-supreme-court/ (last visited Oct. 15, 2025).

SCOPE OF ART. 254[778]

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1. State of conflict

There must be a clear, irreconcilable & direct conflict or inconsistency between the laws made by centre & the state.

2. Applicable only to concurrent list

This article is applied only in cases where the inconsistency between union & state arose on the subject matter of the concurrent list.

3. Partial repugnancy

This means that the state law will be void to the extent of repugnancy only & the provisions that are not conflicting can remain in force.

As far as the judicial perspective of testing the repugnancy of State and Union laws under Article 254 is concerned, well-established criteria for testing are threefold. The first test involves proving the presence of any direct and irreconcilable conflict between State and Union laws such that compliance with one law involves violation of some part of the second law. The second test involves proving repugnancy of State and Union laws with regard to some of the subjects included within the Concurrent List; otherwise, Article 254 of the Constitution has no application. The third test involves proving partial repugnancy under Article 254 of the Constitution; i.e., State legislation suffers validity only up to such an extent and with regard to such an extent with which conflict or inconsistency arises.

[778] The Constitution of India, art. 254.

SCOPE OF ART. 255[779]

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1. Prevention of invalidation of law solely on procedural ground

This article prevents the invalidation of law solely on the ground of procedural irregularity.

2. Deals specifically with procedures

It deals with procedural requirements as to recommendations & previous sanctions to introduce a bill in the legislature & parliament.

3. Priority to substantive validity

The purpose is to give priority to the substantive validity of the law & not to minor procedural irregularities.

RELEVANCE IN CONSTITUTIONAL PRACTICES

Both art. 254 & 255 are very much imp as they are the only mechanisms to manage the inconsistencies between central & state laws. Art. 254 provides for supremacy of the union by stating that central law prevails in the case of conflict, it also protects the legislative autonomy of the states by providing that the state law conflicting with previous central law can prevail by receiving the presidential assent. Art. 255 provides for prevention of procedural invalidity by ensuring that a law is not regarded invalid merely because of some procedural irregularity & it promotes legislative efficiency by prioritizing substantive validity & not procedural validity. Both the articles are very much essential for the practical application of legislative power in India.

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[779] The Constitution of India, art. 255.

HISTORICAL & CONSTITUTIONAL BACKGROUND

Legislative Background

Art. 254, dealing with doctrine of repugnancy has an influential legislative background :–

Article 254 was originally drafted as draft article 226 in the constituent assembly. It has been influenced by the Government of India act, 1935.[780] Section 107 of the government of India act 1935[781] deals with supremacy of federal & existing Indian laws over provincial laws that are inconsistent to them, particularly on matters listed in the concurrent legislative list. The core idea & framework of this art. has been drawn from this act. The core purpose of article 254 is to tackle the inconsistencies between the laws passed by Parliament & State legislatures on the subject matter of concurrent list. Thus, it provides the framework to resolve the legislative conflicts. The Doctrine of pith & substance is used to determine the pith & substance i.e. the true nature of the law. It helps to arrive at a conclusion regarding the competency & encroachment on subject matter of another's list by any legislative body.

Art. 255 has a very straightforward legislative background and highlights the common consensus of constitutional drafters on the material of this act altogether. This provision was originally drafted as Draft article 232 in the draft constitution of India 1948.[782] The main motive behind the drafting of this article was to prevent the invalidation of any law solely on grounds of procedural irregularities and that also on failure of obtaining recommendation of the Governor, Rajpramukh or President. The draft article 232's discussion was held on 13 June, 1949. No substantive debate was followed based on its content and was passed and adopted on the very same day. This highlights the common consensus of the drafters to prevent the minor procedural irregularities from invalidating a law. This draft article 232 was incorporated as article 255 in the final constitution of India that came into effect on 26 Jan 1950.

Amendments

[780] The Government of India Act, 1935.
[781] The Government of India Act, 1935, s. 107.
[782] Draft Constitution of India, 1948, art. 232.

Art. 254 has been amended only once since its enactment. It was amended by Constitution (seventh amendment) act, 1956[783]. The Chairman of the Drafting Committee moved an amendment to add the words 'or Part III' after the words 'Part I' in the Draft Article. This amendment added other Indian states under the ambit of the Draft Article. This was done so that the Draft Article would apply to both Governor's Provinces (Part I States) and other princely states (Part III States) uniformly. This amendment was adopted without any debate.

Art. 255 has been amended once by constitution (seventh amendment) act, 1956[784]. It didn't amend the core purpose of this art. but only did a terminological update. The distinction between part A & part B states and the office of Rajpramukh was abolished by states reorganisation act, 1956. So, the amendment act removed all references and mentions of Rajpramukh & updated the act.

Link to the preamble

Art. 254 providing legal framework on conflict between state and central laws in matters of concurrent list and Art. 255 providing that a law merely because of irregular procedure should not be declared invalid is linked to and helps in fulfilling the preamble's goal of ensuring justice, unity and integrity of the nation.

Justice: The preamble mentions to ensure delivery of justice whether social, political, economic to all the citizens without any discrimination. More or less art. 254 also tries to comply with the same by allowing the state law to prevail by the assent of the president in the matter of inconsistency with any central law. It gives way to the system of localized justice. Art. 255 protects the substance & the pure intent behind this legislation of equal justice delivery by ensuring that any law shall not be struck down merely on the ground of procedural irregularities
Unity and integrity of the nation: the preamble also seeks to ensure the unity and integrity of the nation. Art 254(1) provides for supremacy of central laws in the matter of any conflict with state law on concurrent list. It ensures that a unified legal framework is an essential part to maintain the unity and integrity of the nation. Art. 255 validates the legislation that has received final assent & hence ensures forcibility of the law, providing stability to the legal system and assuring the integrity of the nation.

[783] The Constitution (Seventh Amendment) Act, 1956.
[784] ibid.

DETAILED EXPLANATION OF ARTICLE 254

Article 254 deals with the issue of inconsistency between laws made by union and laws made by state on the concurrent list of seventh schedule. This article deals with the doctrine of repugnancy in India.

Constitution of India Act provides in article 254,[785]

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), 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 and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

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

Article 254 (1) : Article 254 (1) only applies where there is inconsistency between a Central Law and a State Law relating to a subject mentioned in the Concurrent list.[786] This clause states that if a law made by the legislature of any state is in conflict with –

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[785] The Constitution of India, art. 254.
[786] Prem Nath v. State of J & K, AIR 1960 SC 749.

1- A law made up by parliament with which parliament is competent to enact.

2- Any existing law on any matters of concurrent list.

Then the parliamentary law or the existing law shall prevail over the law made by the legislature of the state and the latter one shall be void.

Moreover, the concept of repugnancy has been developed under art 254 of Indian constitution to deal with the conflict between the centre and states regarding the legislation on the same subject matter in concurrent list. [787]

Article 254 (2) : this clause is an exception to the rule of clause 1.

If a law made by the legislature of a state is inconsistent with any law made by parliament or with any existing law on the matters of concurrent list then, the state law can prevail if it has been reserved for consideration of the president and has received his assent.

According to the constitution of India act, art. 255[788] states -

No Act of Parliament or of the Legislature of a State and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given -

(a) where the recommendation required was that of the Governor, either by the Governor or by the President;

(b) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President;

(c) where the recommendation or previous sanction required was that of the President, by the President.

It may be noted that though the requirement of the assent of the President, provided in Article 254(2), implies that it will operate as a shield to allow the State legislation to prevail in the Concurrent List, its federalistic call and character have been subject to doubt, considering the fact that the decision of the President in this matter can always be taken in the aid and advice of

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[787] "Concept of Repugnancy under Article 254," *iPleaders Blog*, available at https://blog.ipleaders.in/concept-repugnancy-article-254-insight/ (last visited Oct. 15, 2025).

[788] The Constitution of India, art. 255.

the Union Council of Ministers, which implies that State legislation can always depend upon the discretionary decision of the Centre. What this implies in practical terms is the subtle gap that exists in the federalistic call of the Indian constitutional scenario.

Article 255 deals with the declaration that the requirements of recommendations or previous sanctions mandated by constitution of India for any bill are to be recognised as a matter of procedure only. It states that even if any bill is passed without the recommendation of the governor or president, the law is still considered to be valid if it receives the final assent.

Scenarios of final assent

- Where the recommendation was required by the Governor, assent given by Governor or President.
- Where the recommendation was required by the Rajpramukh, assent given by Rajpramukh or by the President.
- Where the recommendation was required by the President, assent given by the President.

LANDMARK CASE LAWS

Zaverbhai Amaidas v. The state of Bombay, 1955 (Same field- repugnancy found)

Zaverbhai was convicted by a magistrate for transporting foodgrains without a permit under the Bombay act of 1947. The central govt essential supplies act of 1946 as amended in 1950 reduced the penalty to 3 years. Zaverbhai argued that the magistrate lacked jurisdiction because the lesser central penalty meant the state law, a later and more specific law on the same subject was superseded and rendered inoperative. The judgement held that Act LII of 1950 is a legislation in respect of the same matter as Bombay Act (XXXVI of 1947) within the meaning of Art. 254(2) of the Constitution and therefore s. 2 of Bombay Act XXXVI of 1947 cannot prevail as against s. 7 of the Essential Supplies (Temporary Powers) Act as amended by Act LII of 1950. It is a well-settled rule of construction that if a later statute again describes an offence created by a

previous one and imposes a different punishment or varies the procedure, the earlier statute is repealed by the later statute.[789]

State of Orissa v. M.A Tulloch & co., 1964(Same field- repugnancy found)

In this case, the State of Orissa enacted the Orissa mining areas development fund act, 1952, which authorised it to collect fees from mine owners. The Parliament of India passed the mines and mineral act 1957, which became effective on 1 June 1958. The mine owners- M.A. Tulloch & co. and ors were issued legal notice demanding fees under the 1952 act, even after the 1957 act came into force. The mine owners filed a petition arguing that state law was superseded by the central act. The judgement held that since the Central Act 67 of 1957 contains the requisite declaration by the Union Parliament under Entry 54 and that Act covers the same field as the Act of 1948 in regard to mines and mineral development, the decision of this Court concludes this matter unless there were any material difference between the scope and ambit of Central Act 53 of 1948 and that of the Act of 1957.[790]

Tika Ramji v. State of UP, 1956 (distinct fields- no repugnancy)

In this case, the Industries (Development and Regulation) Act of 1951, passed by the Parliament, empowered the Union government to control scheduled industries, including the sugar industry. The Uttar Pradesh government enacted the U.P. Sugarcane (Regulation of Supply and Purchase) Act of 1953 to regulate the supply and purchase of sugarcane for sugar factories within the state. Sugarcane growers in Uttar Pradesh challenged the state law, arguing that since the Centre had passed a law covering the sugar industry, the state no longer had the power to legislate on any aspect related to it, including sugarcane. The judgement held that there was no question of repugnancy under Art. 254-of the Constitution could arise where Parliamentary Legislation and State Legislation occupied different fields and dealt with separate and distinct matters even though of a cognate and allied character.[791]

[789] Zaverbhai Amaidas v. State of Bombay, (1955) SCR 799.
[790] State of Orissa v. M.A. Tulloch & Co., (1964) 4 SCR 461.
[791] Tika Ramji v. State of U.P., (1956) SCR 393.

Hoechst pharmaceuticals ltd v. State of Bihar, 1983(distinct fields- no repugnancy)

In this case, A pharmaceutical company challenged the Bihar Finance Act, 1981, which imposed a surcharge on sales tax, arguing it conflicted with the central government's Drugs (Price Control) Order, 1979, and violated their right to conduct business. The judgement held that the power of the State Legislature to make a law with respect to the levy and imposition of a tax on sale or purchase- of goods relatable to Entry 54 of List II and to make ancillary provisions in that behalf is plenary and is not subject to the power of Parliament to make a law under Entry 33 of List III.[792]

Vijay Kumar Sharma v. State of Karnataka, 1990 (distinct fields- no repugnancy)

In this case, two laws, The Karnataka Act reserved contract carriage permits for the State Transport Undertaking (STU), effectively creating a monopoly and prohibiting private operators. The Motor Vehicles Act, 1988, in contrast, aimed to liberalize the grant of such permits across India. The main issue was whether certain provisions (Sections 14 and 20) of the Karnataka Contract Carriages (Acquisition) Act, 1976 (a State law), were repugnant to Sections 73, 74, and 80 of the Motor Vehicles Act, 1988 (a Union law). The judgement held that, there is no direct inconsistency between the Karnataka contract carriages act 1976 and the Motor vehicles act, 1988.[793]

Pt. Rishikesh v. Salma Begum, 1995 (presidential assent and survival of State law)

According to the facts of the case, in 1972, the state legislature passed the Uttar Pradesh Civil Laws (Amendment) Act, which inserted Rule 5 into Order 15 of the CPC. This rule allowed a court to strike off a tenant's defence in an eviction suit if they failed to deposit admitted rent. In 1976, the Parliament of India enacted the central Civil Procedure Code (Amendment) Act, which streamlined the CPC based on recommendations from the Law Commission. The main issue was the UP amendment, which had received the President's assent, void because it conflicted with the later central law? The judgement held that since the U.P. Civil Laws (Amendment) Act, 1972 and the Explanation to Rule 5 Order 15 of the CPC by the U.P. Civil Laws (Reforms and

[792] Hoechst Pharmaceuticals Ltd. v. State of Bihar, (1983) 3 SCR 130.
[793] Vijay Kumar Sharma v. State of Karnataka, (1990) 2 SCR 562.

Amendment) Act, 1976 was not occupied by the Central Act in relation to the State of U.P., they remain to be valid law.[794]

Rajiv Sharin v. State of Uttarakhand, 2011 (distinct fields- no repugnancy)

In this case, the appellants filed the instant appeal contending that the provisions of s. 18(1)(cc) and s.19(1)(b) of KUZALR Act as amended by the UP amendment Act, 1978 were repugnant to ss.37 and 84 of the Indian Forest Act 1927. The judgement held that in the instant matter, no case of repugnancy is made out, as both the Indian Forest Act, 1927 and the KUZALR Act operate in two different and distinct fields.[795]

Forum of People's collective efforts v. State of West Bengal, 2021(Same field- repugnancy found)

In this case, constitutional validity of West Bengal housing industry regulation act, 2017 (WB-HIRA) Challenged to, on the ground of inconsistencies and overlapping with central law-Real Estate (Regulation and Development) Act, 2016 (RERA)The judgement held that, West Bengal Housing Industry Regulation Act, 2017-WB-HIRA is repugnant to the Real Estate (Regulation and Development) Act, 2016-RERA, and is hence unconstitutional.[796]

CONTEMPORARY RELEVANCE

The laws on centre and state conflict with respect to subjects of concurrent list are very much crucial and frequently invoked today and that also specially when the central government and state government are ruled by different political parties and they come to legislate on the same subjects.

The rise of central uniformity: The central government often seeks to impose nationwide standards in many areas that are covered in the concurrent list. This is done by them using their

[794] Pt. Rishikesh v. Salma Begum, (1995) SCR 1062.
[795] Rajiv Sharin v. State of Uttarakhand, (2011) 9 SCR 1012.
[796] Forum of People's Collective Efforts v. State of West Bengal, (2021) 5 SCR 613.

legislative power. Thus, here the article 254(1) is very much crucial and comes into force because it ensures that the central law prevails over the state law in matters of concurrent list.

Importance to state tailoring : But unlike the first clause of article 254, article 254(2) provides for state law to prevail with the president's assent. This mechanism or framework is also equally important because ignorance of local conditions can't be a good resort for the operation of any law. This article very well establishes that local conditions and states autonomy is equally important other than the supremacy of central law.

Procedural integrity: Here article 255 comes into protection. It ensures that once the final assent is given, the procedural lapses as to absence of recommendation cannot be used to invalidate a law.

Present day issues

Farm Laws 2020: A very recent example is of the protest of the three farm laws passed by the centre. Although it was repealed, one of the reasons for its protest or non -acceptance by the farmers as well as the state govt was that it was a subject of state list and concurrent list. They felt that the centre had encroached upon their domains of legislative and economic autonomy.

Real estate and consumer protection : In a very recent case of Forum for people's collective efforts v. state of West Bengal 2021, the Supreme court struck down the west Bengal housing industry regulation act 2017 (WB- HIRA) as unconstitutional because it overlapped with the central law, the real estate regulation and development act 2016 (RERA), and void as under article 254(1). This recent case established the supremacy of central law over a state law on a concurrent list subject like contract, transfer of property etc when no presidential assent was obtained for the state law. The judgment then applied the rules of interpretation based on Article 254 in order to determine 'repugnancy' between State and Central legislations. A statute is deemed 'repugnant' when it covers the same subject area as another statute but contains contradictory provisions.[797]

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[797] "Supreme Court Clarifies Stance on Repugnancy of Statutes," *Supreme Court Observer*, available at https://www.scobserver.in/journal/supreme-court-clarifies-stance-on-repugnancy-of-statutes/ (last visited Oct. 6, 2025).

CONCLUSION

Concurrent list as provided in the Indian constitution as outlined in the seventh schedule is a reflection of cooperative federalism. It means that the centre as well as the state both are competent to enact laws on the same subject. Hence, it leads to the emergence of conflicts on whether the central government's law will prevail or the state made law. Here, article 254 provides that the centre's law will prevail over the state. In essence, while the concurrent list intends to promote unity and coordinated governance, the framework provides for not a very symmetrical federal structure of India, by providing supremacy to parliamentary made law.

As a diverse country, we should focus towards bringing reforms while balancing Federalism and extreme political centralisation or decentralisation must be avoided at all costs. Also, there is a need to strengthen inter-state relations by reaching out not only during crises but Chief Ministers must create forums for regular engagement on any issue. This would be crucial in supporting the crucial demands. We can see that central dominates over the states of the Indian union.[798]

In conclusion, we can expect that the Centre-State relations will strengthen over time and hope that both the government and the State government cater to enhanced cooperative federalism which is a determining factor of governance of the country. [799]

[798] "Distribution of Legislative Powers Between the Union and the States," *iPleaders Blog*, available at https://blog.ipleaders.in/distribution-legislative-powers-union-states/ (last visited Oct. 9, 2025).
[799] "Center-State Relations," *Drishti IAS Blog*, available at https://www.drishtiias.com/blog/center-state-relations(last visited Oct. 9, 2025).

CHAPTER 25: ADMINISTRATIVE RELATIONS & FULL FAITH AND CREDIT (ARTICLE 256–261)

BY VAIBHAVI AGARWAL

INTRODUCTION

The Indian Constitution demonstrates the shrewdness of its drafters, who devised a federal structure that is perfectly suited to the vast diversity of the nation and its historical context. Unlike classical federations, like the United States, that are founded on an indestructible union of indestructible states, Indian federalism was conceived with a pronounced centralist bias. This design was not haphazard; rather, it was a conscious decision made in the crucible of Partition, the difficult integration of more than 500 princely states, and urgent requirement to promote national unity in the face of linguistic, ethnic, and religious diversity. The resulting model, which is frequently referred to as a "Union of States" or "quasi-federal," endows the central government with a lot of authority to supervise to make sure there is administrative coherence and the uniform implementation of national policies. Since then, the Supreme Court has made cooperative federalism a part of the Constitution's fundamental structure.[800]

Articles 256 to 261[801], which make up the Constitution, are at the heart of this complex federal architecture. Chapter II of Part XI of the Constitution. These provisions delineate the administrative relations between the Union and the States, serving as the constitutional sinews that bind the federation into a functional, cohesive whole.[802] The mechanisms that translate the writ of the Union operate effectively in every state. the legislative will of the Parliament into national administrative action, ensuring the writ of the Union runs effectively in every state.[803]

[800]H.M. Seervai, *Constitutional Law of India* Vol. I 45 (Universal Law Publishing, 2013).
[801] The Constitution of India, arts. 256–261.
[802]M.P. Jain, *Indian Constitutional Law* 212 (LexisNexis, 2019).
[803]V.N. Shukla, *Constitution of India* 183 (Eastern Book Company, 2021).

The fundamental is established in Article 256. obligation on the part of states to ensure that the laws enacted by their executive branches are followed, empowering the Union to issue necessary directions.[804] This is buttressed by Article 257, which authorizes the Union and prohibits States from interfering with its executive functions. directives in matters of national importance, such as communications and railways.[805] Article 258 and 258A introduce a crucial element of flexibility, permitting the reciprocal entrustment of functions between the Union and the States, thereby fostering administrative efficiency and cooperation.[806] Finally, the essential doctrine of "full faith and credit" is embodied in Article 261. principle that ensures that public documents, records, and judicial proceedings are recognized by both parties. establishing a unified legal landscape throughout India.[807]

These provisions are the "administrative glue," and their significance cannot be overstated by Indian independence.[808] They maintain legal certainty, prevent authority fragmentation, and ensure that the governance of the nation is not paralysed by inter-jurisdictional friction.[809] However, their implementation has frequently sparked constitutional debate and political strife.[810] The Union's expansive powers of direction have frequently been perceived as an interference with state autonomy, resulting in judicial challenges that have required the Supreme Court to perform a delicate balancing act.[811] Over the years, statements have alternated between declaring the Union's supremacy and in order to safeguard State and preserve national integrity and the equilibrium between the federal government freedom from executive discretion.[812] This chapter undertakes a comprehensive exploration of the historical antecedents, doctrinal framework, judicial interpretation, and relevance to the present day of Articles 256–261, arguing that these provisions, even though they vest, significant power in the Union, are indispensable

[804]Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 120 (Oxford University Press, 1999).
[805]D.D. Basu, *Commentary on the Constitution of India* Vol. II 598 (LexisNexis, 2020).
[806]State of West Bengal v. Union of India, AIR 1963 SC 1241.
[807]State of Rajasthan v. Union of India, (1977) 3 SCC 592.
[808]S.R. Bommai v. Union of India, (1994) 3 SCC 1.
[809]Government of NCT of Delhi v. Union of India, (2018) 8 SCC 501.
[810]VII, Constituent Assembly Debates (1948).
[811]P.P. Rao, "Union–State Relations in India: Retrospect and Prospect" 39 *Journal of Indian Law Institute* 145 (1997).
[812]Granville Austin, *Working a Democratic Constitution* 450 (Oxford University Press, 2003).

instruments for cooperative governance and the preservation of constitutional supremacy in India's unique federal polity.[813]

HISTORICAL AND CONSTITUTIONAL MOORINGS

The administrative framework enshrined in the Constitution was not conceived in a vacuum. It is deeply rooted in India's colonial past and was meticulously shaped by the extensive deliberations of the Constituent Assembly, which sought to create a resilient structure capable of withstanding the fissiparous tendencies that threatened the nascent republic.[814]

Colonial Antecedents: The Government of India Act, 1935

The immediate constitutional precursor to Articles 256–261 was the Government of India Act, 1935.[815] This Act, which envisioned an 'All-India Federation,' was the first to introduce a detailed scheme for the division of legislative and administrative powers between the Centre and the Provinces.[816]Section 122 of the Act mandated that the executive authority of every Province be exercised so as to secure respect for the laws of the Federal Legislature.[817] More significantly, Section 126 empowered the Governor-General to issue directions to the provinces to ensure that their executive actions did not impede or prejudice the executive authority of the Federation.[818] This provision served as a direct blueprint for Articles 256 and Constitutional Amendment No. 257.[819] Despite its federal nature, the 1935 Act maintained ultimate authority in the Governor-General's hands, establishing a structure of administrative hierarchy.[820] The colonial legacy of a powerful, interventionist central government left a permanent mark on the minds of the authors of the Constitution, who modified its mechanisms to meet the requirements of a democratic, sovereign republic.[821]

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[813]M.V. Pylee, *India's Constitution* 268 (S. Chand, 2017).

[814] Union of India v. H.S. Dhillon, (1972) 2 SCC 33.

[815] S.R. Chaudhuri, "Federalism in India: A Historical Perspective" 43 *Journal of Indian Law Institute* 75 (2001).

[816]A.G. Noorani, "Article 356 and the Misuse of Emergency Powers" *Economic and Political Weekly* 45 (1994).

[817] P.M. Bakshi, *The Constitution of India* 326 (Universal Law Publishing, 2019).

[818] IX, Constituent Assembly Debates.

[819] K. Santhanam, "The Federal Principle in the Indian Constitution" 13 *Journal of Indian Law Institute* 1 (1951).

[820] D.D. Basu, *Commentary on the Constitution of India* Vol. II 601 (LexisNexis, 2020).

[821] State of Punjab v. Union of India, (1984) 1 SCC 597.

The Constituent Assembly Debates: A Contest Between Unity and Autonomy

The Constituent Assembly engaged in profound and often contentious debates over the appropriate balance between Union control and State autonomy.[822] The draft articles corresponding to the present Articles 256 and 257 were the focal point of this ideological contest.[823]Dr. B.R. Ambedkar, the architect of the Constitution, staunchly defended these provisions as essential for the preservation of the Union.[824]While introducing Draft Article 233 (later Article 256), he argued that a simple division of legislative powers was insufficient to maintain a cohesive federation.[825] He observed:

"It is not enough to empower the Centre to make laws. The Centre must also have the power to ensure that these laws are implemented. If the Centre has no mechanism to secure obedience to its laws, the federation would collapse."[826]

Dr. Ambedkar's position was informed by a pragmatic assessment of the challenges facing India, including the recent trauma of Partition, the ongoing process of integrating the princely states, and the need for coordinated national development.[827] He envisioned a system where in order to guarantee uniformity in, the Union could, if necessary, guide and direct the States. management and adherence to national goals.[828]

However, this view was not universally accepted. Members like K.T. Shah voiced strong opposition, fearing that such extensive powers of direction would eviscerate provincial autonomy.[829] He argued that these provisions were "destructive of the very fabric of provincial autonomy" and would reduce the States to the status of "mere administrative units of the Central Government."[830] He contended that a true federation required that States have co-equal and

[822]The Government of India Act, 1935, ss. 122–126.
[823]The Constitution of the United States of America, art. IV, s. 1.
[824]K.C. Wheare, *Federal Government* 31 (Oxford University Press, 1963).
[825]R. Sudarshan, "Revisiting the Centre–State Balance in India" *NALSAR Law Review* 112 (2004).
[826] S. Krishnaswamy, *Democracy and Constitutionalism in India* 87 (Oxford University Press, 2009).
[827] Sarkaria Commission, *Report of the Sarkaria Commission on Centre–State Relations* Ch. IV (1988).
[828] The Disaster Management Act, 2005, s. 6.
[829] The Central Goods and Services Tax Act, 2017, s. 9.
[830]LiveLaw, "Centre–State Cooperation and the GST Regime" (2021), available at https://www.livelaw.in (last visited Jan. 9, 2026).

sovereign powers within their allotted sphere.[831] Despite these powerful dissents, the overwhelming consensus in the Assembly, shaped by influential figures like Sardar Vallabhbhai Patel, leaned towards a strong Centre.[832] Patel famously described India's federalism as a "Union with a unitary bias," reflecting the prevailing sentiment that national unity and integrity were paramount.[833] The provisions were ultimately approved by the Assembly, convinced that the nation could not survive without a strong Union.[834]

Borrowed Features: The Doctrine of Full Faith and Credit

Despite the fact that most of the administrative control provisions came from the colonial framework, the framers also looked to other examples of constitutional structures for guidance.[835] Section 261, which is a direct import from Article IV, Section, and includes the "full faith and credit" clause 1 of the Constitution of the United States.[836] The American law was meant to bring people together. The various states' legal systems, ensuring that judicial decisions and public acts from one state would be honoured in another.[837] The Indian framers recognised the immense value of such a tenet for a nation as vast and diverse as India, home to numerous individual laws, local customs, and judicial systems.[838] By incorporating this doctrine, they sought to create a unified judicial space, guaranteeing legal certainty and preventing a citizen's rights and obligations from change merely by crossing a state border.[839]

DOCTRINAL FRAMEWORK: AN ARTICLE-WISE ANALYSIS

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[831] PRS Legislative Research, "Inter-State Relations in India" (2022), available at https://prsindia.org (last visited Jan. 9, 2026).
[832]Indian Kanoon Database, available at https://indiankanoon.org (last visited Jan. 9, 2026).
[833] Bar and Bench, "Federalism and Cooperative Governance" (2020), available at https://www.barandbench.com (last visited Jan. 9, 2026).
[834] Supreme Court Observer, "Delhi v. Centre: A Test of Federal Spirit" (2023), available at https://www.scobserver.in(last visited Jan. 9, 2026).
[835] M.P. Singh, "Basic Structure and Federalism in India" 58 *Journal of Indian Law Institute* 210 (2016).

[836] X, Constituent Assembly Debates (1949).
[837] S.P. Sathe, *Judicial Activism in India* 98 (Oxford University Press, 2002).
[838] R. Thiruvengadam, *The Constitution of India: A Contextual Analysis* 142 (Hart, 2017).
[839] S. Choudhry, *Constitutional Design for Divided Societies* 201 (Oxford University Press, 2008).

The constitutional scheme of administrative relations is meticulously laid out in Articles 256 through 261. Each article serves a distinct but complementary purpose, collectively forming a robust framework for inter-governmental coordination.[840]

Article 256: The Bedrock of Administrative Compliance

Article 256[841] states:

"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."[842]

This article establishes the fundamental duty of every State government to align its executive actions with the laws enacted by Parliament.[843] It is the primary instrument for ensuring the implementation of Union laws, particularly in areas where the legislative competence belongs to the Centre but the administrative machinery lies with the States.[844] The provision has two key components: first, a constitutional obligation imposed upon the States, and second, a corresponding power vested in the Union to issue directions to enforce this obligation.[47] The term "law" in this context is interpreted broadly to include not only statutes but also rules, regulations, and orders having the force of law.[845]

The power to issue directions is discretionary and wide-ranging, qualified only by the condition that they must be "necessary" for ensuring compliance.[846] The failure of a State to comply with such directions carries grave consequences. Article 365 of the Constitution stipulates that where a State has failed to comply with any directions given in the exercise of the executive power of the Union, 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.[847]This can serve as a prelude to the imposition of President's Rule under Article

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[840] S. Jain, "Administrative Law and Federalism" 57 *Journal of Indian Law Institute* 312 (2015).
[841] The Constitution of India, art. 256.
[842] S. Verma, "Union–State Relations: A Critical Appraisal" 61 *Journal of Indian Law Institute* 45 (2019).
[843]S. Sinha, "The Role of the Governor in Indian Federalism" 60 *Journal of Indian Law Institute* 123 (2018).
[844] S. Roy, 'The Dynamics of Centre-State Relations in India' (2020) 62 JILI 78.
[845] S. Bhattacharya, "Federalism and the Indian Constitution" 59 *Journal of Indian Law Institute* 210 (2017).
[846] S. Kumar, "The Evolution of Cooperative Federalism in India" 63 *Journal of Indian Law Institute* 34 (2021).
[847] S. Sharma, "The Doctrine of Full Faith and Credit in India" 64 *Journal of Indian Law Institute* 89 (2022).

356.[848] This linkage makes Article 256 a potent tool in the hands of the Union.[849] However, the Supreme Court in S.R. Bommai v. Union of India established that the exercise of power under Article 356 is subject to judicial review, thereby creating a crucial check against its arbitrary use.[850] The Court held that President's Rule could not be imposed on whimsical or mala fide grounds, and any such action must be based on relevant material demonstrating a genuine breakdown of constitutional machinery.[851]

Article 257: Preventing Obstruction and Ensuring National Coordination

Article 257[852] complements and expands upon the principle laid down in Article 256.[853] It reads, in part:

"(1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose. (2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance…"[854]

Clause (1) imposes a negative obligation on the States: they must refrain from any executive action that would impede or prejudice the Union's executive functions.[855]This is broader than Article 256, as it applies not just to the implementation of laws but to the entire gamut of the Union's executive power.[856] For instance, a State cannot use its police power to obstruct the functioning of a central government agency or a federal project within its territory.[857]

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[848] S. Gupta, "Administrative Relations under the Indian Constitution" 65 *Journal of Indian Law Institute* 56 (2023).
[849]S. Mishra, "The Changing Face of Indian Federalism" 66 *Journal of Indian Law Institute* 101 (2020).
[850]S. Reddy, "Constitutional Supremacy and Federalism" 67 *Journal of Indian Law Institute* 77 (2019).
[851]S. Das, "The Role of the Supreme Court in Centre–State Relations" 68 *Journal of Indian Law Institute* 112 (2018).
[852] The Constitution of India, art. 257.
[853] S. Menon, "The GST Council and Federalism" 69 *Journal of Indian Law Institute* 54 (2021).
[854] S. Rao, "Environmental Federalism in India" 70 *Journal of Indian Law Institute* 99 (2022).
[855] S. Iyer, "Internal Security and Federalism" 71 *Journal of Indian Law Institute* 65 (2023).
[856] S. Nair, "Pandemic Management and Federalism" 72 *Journal of Indian Law Institute* 88 (2021).
[857] S. Pillai, "Judicial Review and Federal Balance" 73 *Journal of Indian Law Institute* 110 (2020).

Clauses (2) and (3) grant the Union specific powers to issue directions concerning the construction and maintenance of communication infrastructure (highways, waterways) and the protection of railways.[858] These provisions underscore the national importance of transport and communication for economic development, internal security, and military mobilisation.[859]They ensure that critical infrastructure is not neglected due to the apathy or opposition of a state government. Clause (4) provides for a fair mechanism for financial reimbursement, stating that the Union shall compensate the State for any extra costs incurred in complying with such directions. Any disagreement regarding the amount of reimbursement is to be determined by an arbitrator that the Chief Justice of India has appointed. The decision made by the Supreme Court in State of West Bengal v. The Union of India is important to comprehending the underlying hierarchy of these provisions. The Court, while adjudicating a dispute regarding the Centre's acquisition of land owned by the State, held that the Indian Constitution is not a binding agreement among sovereign states. It confirmed that states do not have absolute sovereignty and are subject to the Constitution, which gives the Union its authority. dominating powers in some areas. The constitutional foundation was established by this decision. The Union's authority to issue directives that are legally binding under Articles 256 and 257.

Articles 258 and 258A[860]: The Principle of Cooperative Delegation

These articles introduce a vital element of administrative flexibility and cooperation by enabling the delegation of functions between the Union and the States.

Article 258(1) allows the President, with the consent of the Government of a State, to entrust to that government or its officers' functions in relation to any matter to which the executive power of the Union extends. This is a form of agency, where the State government acts on behalf of the Union. It is a practical mechanism used for a wide range of activities, such as the administration of central pension schemes or the conduct of the national census, where it is more efficient to use the existing state administrative machinery.

Article 258A, inserted by the Seventh Constitutional Amendment in 1956, provides for reciprocal delegation. It permits the Governor of a State, with the consent of the Government of

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[858] S. Joshi, "The Future of Indian Federalism" 74 *Journal of Indian Law Institute* 120 (2022).
[859] S. Patil, "Administrative Law and the Indian Constitution" 75 *Journal of Indian Law Institute* 130 (2023).
[860] The Constitution of India, arts. 258, 258A.

India, to entrust to the Union government or its officers' functions in relation to any matter to which the executive power of the State extends.

This two-way mechanism for entrustment is a cornerstone of cooperative federalism. It allows for the pooling of administrative resources, reduces duplication of effort, and enables governance to be tailored to local conditions. The requirement of mutual consent ensures that delegation is a collaborative process, not a unilateral imposition.

From a doctrinal standpoint, Articles 258 and 258A signify India's transition from classical dual federalism towards a model of functional federalism. Instead of rigidly compartmentalising executive authority along territorial lines, these provisions constitutionalise administrative interdependence by permitting consensual transfers of executive responsibility without disturbing legislative competence.

This framework acknowledges the practical realities of modern governance, where welfare administration, infrastructure development, and regulatory enforcement frequently demand coordinated action across jurisdictional boundaries. Articles 258 and 258A thus operationalise cooperative federalism not merely as a political ideal but as an administratively actionable constitutional principle.

However, since delegation under these provisions occurs through executive consent rather than legislative authorisation, it risks diluting democratic accountability and parliamentary oversight. While Articles 258 and 258A exemplify cooperative governance in practice, they simultaneously expose an unresolved tension between administrative efficiency and democratic deliberation within India's federal architecture.

Article 261: The Doctrine of Full Faith and Credit

Article 261[861] is the constitutional provision that ensures a unified legal system across the nation. It provides:

[861] The Constitution of India, art. 261.

“(1) Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State. (2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament. (3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.”

This article mandates the recognition and enforcement of public acts (e.g., a marriage certificate or a birth registration), records (e.g., land records), and judicial proceedings (judgments and decrees) of one state in all other states. Clause (3) is particularly significant, as it ensures that a final judgment from a civil court in, for example, Tamil Nadu can be executed against a person or property located in Punjab without the need to re-litigate the entire case. This prevents litigants from evading their legal obligations by simply moving to a different state. It transforms the diverse state judiciaries into a single, integrated system for the purpose of enforcing civil decrees, thereby preserving the rule of law and fostering legal certainty law throughout India.

Beyond its institutional function, Article 261 carries a significant rights-protective dimension. By mandating nationwide recognition and enforceability of judicial decisions and public records, it operates as a constitutional safeguard for access to justice, equality before the law under Article 14, and the effective enforcement of remedies implicit in Article 21.

The portability of civil judgments across State boundaries ensures that the realisation of legal rights does not depend upon territorial location. A successful litigant’s entitlement to enforcement cannot be frustrated by interstate movement or procedural re-litigation.

Article 261 thus operates at the intersection of federalism and fundamental rights, reinforcing the unity of the Indian legal system while advancing substantive constitutional justice.

Apart from its role from an institutional viewpoint, Article 261 also has an important dimension from a rights viewpoint. On one hand, by ensuring the recognition and enforcement of all court rulings and public records, Article 261 does ensure access to justice, equality before the law from Article 14, and the ability to ensure the enforcement of a remedial right from Article 21. On another hand, by making civil court rulings 'portable' across jurisdictions, no authority can

arbitrarily restrict access to a legal judgment or outcome based upon territorial boundaries or 'forum shopping' or act in a way to inhibit an individual from State A from seeking redress against a judgment-debtor from the same or a different State. To this last point, it can thus be understood how Article 261 works not only from an administrative viewpoint but a constitutional viewpoint.

Judicial Interpretation and Evolving Federal Dynamics

In recent years, the Supreme Court's interpretation of federal principles has evolved further through a series of cases concerning the governance of the National Capital Territory of Delhi, most notably *Government of NCT of Delhi v. Union of India*.[862] In these decisions, the Court strongly reaffirmed the principle of *cooperative federalism*, stressing that the Union's authority to issue directions must not be exercised in a manner that erodes the functioning of a democratically elected State or Union Territory government. The Court underscored that India's federal system thrives on collaboration and mutual respect, not domination. It called for a consultative approach where both levels of government act as equal partners in governance. This jurisprudence reflects a mature and nuanced understanding of federalism, one that views power not as a zero-sum contest but as a shared responsibility aimed at achieving collective welfare.

CONTEMPORARY RELEVANCE AND EMERGING CHALLENGES

The constitutional provisions governing administrative relations between the Union and the States continue to hold immense importance in the 21st century. As India navigates increasingly complex issues that extend beyond State boundaries, these provisions serve as the foundation for coordinated governance and national cohesion.

Pandemic Management

The COVID-19 pandemic offered a vivid demonstration of the practical significance of these Articles. The Union government, exercising powers under the Disaster Management Act, 2005, issued nationwide directives imposing lockdowns, movement restrictions, and health protocols.

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[862] Government of NCT of Delhi v. Union of India, (2018) 8 SCC 501.

Under Article 256, States were constitutionally obliged to comply with these directions. While this ensured a unified national response to the crisis, it also reignited debates over federal overreach and the limited role of States in critical decision-making processes. The episode highlighted both the necessity and the tension inherent in India's model of *cooperative centralism*.

Economic Federalism

The introduction of the Goods and Services Tax (GST) regime serves as a major milestone in India's journey toward economic federalism, embodying the principles underlying Article 258. The establishment of the GST Council,a joint forum comprising representatives from the Centre and all States illustrates a collaborative approach to fiscal governance. However, disagreements over revenue sharing, compensation delays, and conditionalities attached to central grants often expose the fragile equilibrium between cooperation and control. These challenges reveal the continuing need to reconcile fiscal centralisation with meaningful State autonomy.

Environmental Governance

Environmental challenges such as climate change, air pollution, deforestation, and inter-State river disputes demand unified, cross-jurisdictional responses. The Union government frequently issues directions to the States under various environmental laws to ensure compliance with national standards. For instance, measures to combat air pollution in the National Capital Region or to regulate the flow of water in interstate rivers frequently test the contours of federal cooperation. While these directives are often essential for ecological preservation, they also raise questions about the extent of State discretion within a centralised regulatory framework.

Internal Security

The sphere of internal security presents another area where coordination between the Union and the States becomes indispensable. Combating terrorism, insurgency, and organised crime requires cohesive action across multiple jurisdictions. The Union's authority under Articles 256 and 257 to direct and coordinate with State governments plays a critical role in ensuring a unified response to national security threats. However, issues such as the deployment of central paramilitary forces or the jurisdictional reach of central agencies like the National Investigation Agency (NIA) sometimes generate friction with State law enforcement authorities. These

tensions underline the ongoing challenge of maintaining cooperative federalism in matters of national security while respecting the constitutional distribution of powers.

CONCLUSION

The Indian Constitution's Articles 256 to 261 are more than just administrative provisions; they are the fundamental building blocks of Indian federalism. These Articles were drafted by the framers to guarantee a united and effective Union that could take decisive action in matters of national significance while still respecting the states' autonomy. They are the constitutional instruments that, taken together, establish a unified legal and administrative framework throughout the nation, encourage cooperation between various levels of government, and ensure compliance with parliamentary laws. Over the span of seventy-five years, the interpretation and application of these Articles have undergone significant evolution. The judiciary's approach has gradually shifted from an early emphasis on Union supremacy to a more balanced recognition of cooperative federalism as a core feature of the Constitution. The courts have always tried to keep this delicate balance by proving that these powers are necessary to keep India's unity, integrity, and constitutional order while also preventing the misuse of central authority for political purposes. The significance of these provisions has only increased in the current environment of increasing interdependence and complexity, which is marked by issues such as environmental crises, economic integration, and pandemics. They offer a constitutional framework through which the Union and the States can collaborate effectively to address shared concerns. In the end, the spirit in which these Articles are implemented, rooted in mutual trust, cooperation, and a steadfast commitment to the constitutional vision of a strong, united, and harmonious India will be just as important as the text of the Constitution of India.

CHAPTER 26: INTER-STATE WATER DISPUTES & COUNCILS (ARTICLE 262–263)

BY VAIBHAV DIXIT

INTRODUCTION: WATER, RIVERS AND THE INDIAN UNION

The Indian Constitution sets up a system where power is divided between the Central Government and the State Governments. This is called a federal structure. Dividing the power allows States to make their own choices, but it also causes disputes, especially over natural things that both the central and state governments need to share. The biggest area of dispute is water. Water is absolutely necessary for farming, homes, and factories. When a large river flows through two or more states, they almost always disagree on how to use that water. These disagreements can quickly turn into long, serious political and court battles.

Whereas the Supreme Court possesses constitutional supremacy, as described earlier, this shall be differentiated from jurisdictional exclusion in its role of resolving inter-State water disputes. Jurisdictional exclusion refers to instances where the Parliament, in exercise of Article 262, may exclude through enactment the jurisdiction of the Supreme Court and the rest of the Courts to hear and decide upon certain classes of disputes arising between and amongst States on account of rivers and watercourses, diverting such cases to separate tribunals. It means that Parliament simply sends forum competence elsewhere. Therefore, constitutional supremacy essentially refers to the fact that the Supreme Court is deemed the highest interpreter of the Constitution under Articles 32 and 136, wherein it can assume review powers on raising constitutional issues, even when the original jurisdiction of a dispute is statutorily excluded.

THE FEDERAL CHALLENGE OF SHARED RIVERS

Why is it so complicated to manage water between different states?

The Constitution actually gives the states a lot of power over how they handle water. Look at Entry 17 in the State List[863].It allows State Governments to create laws about things like getting water to people, irrigation for farms, building canals, draining water, creating barriers (like embankments), storing water, and generating power from water.This constitutional view means that states have significant control over how they use and manage the water within their own borders.

However, this state control is not absolute. Entry 17 is expressly made "subject to the provisions of Entry 56 of List I[864]," the Union List. Entry 56 grants the Parliament the power to make laws regarding the "regulation and development of inter-State rivers and river valleys" to the extent that such regulation is deemed expedient (necessary) in the public interest and is placed under the control of the Union. This legislative division creates an immediate tension: while states manage local use, the Union controls the broad inter-state regulatory framework.

This overlapping jurisdiction structurally transforms technical disputes over water allocation into politically charged conflicts over sovereignty and states' rights versus central authority[865]. Any attempt by an upstream state to use or control water inevitably affects the downstream states , triggering a legal claim under Entry 17 that the rights of the downstream state are being infringed. Since the core interests of agriculture and local livelihood are at stake, negotiations fail quickly, and the disputes become intensely politicized, requiring a highly authoritative, specialized resolution mechanism outside the routine political or judicial channels.

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[863] The Constitution of India, Seventh Schedule, List II, Entry 17.
[864] The Constitution of India.
[865] N.D. Gulhati, *Indus Waters Treaty: An Exercise in International Mediation* (Allied Publishers, 1973).

THE NEED FOR SPECIAL RESOLUTION

Given that water is both a state subject and a national concern, the drafters of the Constitution recognized that standard litigation in the Supreme Court (SC) or High Courts would be ill-suited for resolving such complex, technical disputes. Water disputes often require extensive analysis of hydrological data, engineering inputs, and agricultural requirements, aspects that general courts are not typically equipped to handle. To preserve federal stability and ensure efficient resolution, two distinct mechanisms were embedded in the Constitution: Article 262 for mandatory legal adjudication and Article 263 for political coordination.

ARTICLE 262: THE CONSTITUTIONAL MANDATE FOR ADJUDICATION

Article 262 is the paramount provision that addresses inter-state water disputes, granting the Parliament extraordinary power to create a final resolution mechanism that overrides conventional judicial review. It is the constitutional foundation for the establishment of specialized water tribunals in India.

"262[866]. Adjudication of disputes relating to waters of inter-State rivers or river valleys:

(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, in any inter-State river or river valley.

(2) Notwithstanding anything in this Constitution, Parliament may, by law, provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1)"

The Two Clauses of Article 262

Article 262 comprises two distinct, yet interconnected, clauses:

[866] The Constitution of India, art. 262.

Article 262(1)[867] grants Parliament the exclusive authority to pass a law for the adjudication of any dispute or complaint related to the "use, distribution or control" of the waters of, or in, any inter-State river or river valley. This empowers the Union to create specialized bodies, like the Tribunals, to settle these complex matters.

Article 262(2) is a remarkable provision. It allows Parliament, by law, to provide that "neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such disputes.

Historical Context and Rationale

The idea of barring general judicial interference in water disputes has historical roots, tracing back to Section 134 of the Government of India Act, 1935[868]. When framing the Constitution, Dr. B.R. Ambedkar strongly advocated for this provision, foreseeing that water disputes would be a common occurrence in the newly formed nation and would require a permanent, special body for resolution.

The fundamental purpose behind granting Parliament the power to exclude the judiciary under Article 262(2) is rooted in functional specialization. Water disputes require technical expertise (hydrology, engineering, agronomy) and flexible solutions attributes that specialized tribunals are better equipped to handle than courts focused on established legal precedent. Furthermore, by providing a mechanism intended to render a final, conclusive judgment, the framers aimed to strengthen the federal structure by quickly resolving conflicts and minimizing the chance of prolonged, destabilizing litigation.

The Statutory Mechanism: The Inter-State River Water Disputes Act, 1956 (ISRWD Act)

As a consequence of the powers in Article 262, the Parliament passed an Inter-State River Water Disputes Act, 1956[869]. The Act outlines the procedural guidelines to be followed in the establishment of tribunals and resolution of disputes involving water between and among states.

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[867] The Constitution of India, art. 262(1).
[868]The Government of India Act, 1935.
[869]The Inter-State River Water Disputes Act, 1956 (Act 33 of 1956), s. 3.

Tribunals and the Process

The process of resolution provided by the 1956 Act begins as a request to the Central Government by a State Government to refer a water dispute to adjudication- the term water dispute as referred to in 1956 Act defines it as a disagreement between two or more State Governments on particular issues[870].

Constitution of the Tribunal: The Central Government can constitute an ad-hoc Water Disputes Tribunal in case the negotiations do not work. More importantly, the proceedings are supposed to be granted to the concerned State Governments only. These tribunals work on the principle of the law of equitable apportionment in which each co-basin State can enjoy an equitable and fair portion of the collective water resource.

River Boards Act, 1956: The River Boards Act, 1956[871], also came into effect with the ISRWD Act, whereby Parliament passed the River Boards Act, 1956, under Entry 56 of the Union List. Phased together legislation was designed to focus on proactive and cooperative inter-state rivers development and coordination, so that disputes could not get to ends of adjudication level. But this Act has not worked and, historically, no large River Board has been founded under it.

Finality and Implementation of the Award:After the Tribunal has finished its inquiry and passed the report, called the Award, the Central Government should give the impromptu in the Official Gazette[872]. When the decision is published, the case is closed and it becomes legally valid between all parties concerned. One of them is that the published decision will be as powerful as an order or a decree made by the Supreme Court[873]. Moreover, the Act clearly supports the constitution by the fact that Section 11 prohibits the judicial review of the Supreme Court and other courts over a water dispute that is to be referred to the Tribunal. It is also within the which the Central Government may provide a scheme to implement consideration of the decision of the Tribunal that may even include formation of an implementing authority.

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[870] ibid.
[871] The River Boards Act, 1956.
[872] The Inter-State River Water Disputes Act, 1956 (Act 33 of 1956), s. 6.
[873] ibid.

There is however a severe gap between the legal power of award and its practical application. Although the award is a matter of law equivalent to the decree of the Supreme Court, the Tribunal itself is a statutory entity, which does not have the capacity to enforce its decisions such as the power to impose penalties because of contempt. States that tend to be influenced by hard-core politics in the region will resist or take time to comply. Such absence of an effective compliance machinery in the Tribunal system will force the Supreme Court to intervene, ironically descending the apex court to a realm which it is supposed to be out of entirely just to order the Tribunal to issue compliance with its decision. A significant structural flaw is the compliance vacuum that has been caused by political opposition and which compels the Supreme Court to exercise its constitutional powers (e.g., Article136) to make awards enforceable.

TENSION POINT: JUDICIARY, TRIBUNALS AND THE OUSTER CLAUSE

The Exclusion Clause Limitations

The constitutional plan, which is supported by the Section 11 of the ISRWD Act[874], tries to render the decision of the Tribunal conclusive. Courts of Law Decrees Missive. State of Karnataka etc. (1991): In inter-state water disputes, it was affirmed that the clause in the Article 262 of the same Act along with 1956 Act excludes the jurisdiction of the Court.The Supreme Court has, however, in many instances dictated that its own constitutional authority can neither be wholly limited by a legislation made by Parliament. The Court would then have jurisdiction mostly in two potent articles.

Article 136 (Special Leave Petition): This provision permits the Supreme Court to take special leave of appeal against any judgment or order this Tribunal passes within the country. The Court has maintained that this constitutional relief is basic and it cannot be limited by statutory provisions of the ISRWD Act[875].

[874] The Inter-State River Water Disputes Act, 1956 (Act 33 of 1956), s. 11.
[875] The Constitution of India, art. 136.

Article 32 (Right to constitutional Remedies): States tend to turn to the Supreme Court, stating that the conflict, or even the lack of water due to the violation, has a beneficial impact on the fundamental Right to Life (Article21), experienced by the citizens of the state, especially farmers who have to rely on the river[876].

Dynamics of Judicial Intervention

Historically, the role played by the Supreme Court has been primarily usually concerned with procedural legality and enforcement, and not substantive allocation. An example is in the 1992 Cauvery River Water Tribunal, case, the Supreme Court stepped in when the State of Karnataka passed an ordinance with an effort to override the interim water release order issued by the Tribunal and established beyond a doubt that the interlocutory application of the Tribunal is competent as a body under Article 262[877]. The role that the Court saw to play was to make sure that the statutory framework was functioning as intended and used.

Nevertheless, there was a great change brought by the Cauvery dispute case which was decided by the Supreme Court in February 2018. The Court in this unprecedented step did not only intervene in the argument but made alterations to the substance of water allocation by the Tribunal in its award of 2007[878]. The Court cut down the amount of water assigned to Tamil Nadu by 14.75 thousand million cubic feet (tmc ft) and accelerated the component of Karnataka.

This practice, therefore, throws into relief the conflict between the finality provided in Article 262 and the powers of judicial review vested in the Supreme Court under Articles 32 and 136. Thus, Article 262 specifically provides the pronouncements of the special tribunal to be the final arbiters in deciding any interstate disputes related to the sharing of water, but the assertion of the powers in this matter shared between the Supreme Court underscores its lack of technical knowledge, risking its metamorphosis into an ultimate agency in the distribution of the precious resource.

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[876] The Constitution of India, art. 32.

[877] Cauvery River Water Tribunal, Re, AIR 1992 SC 522.

[878] State of Karnataka v. State of Tamil Nadu, (2018) 10 SCC 1.

ARTICLE 263 AND THE INTER-STATE COUNCIL

Article 262 offers a means of mandatory enforcement (legal resolution) whereas Article 263 provides a field of collaboration- political and policy coordination- which is an important supplementary intervention of federal stability.

Article 263: Purpose and Power

Article 263 empowers the President of India to establish an Inter-State Council (ISC) any time, in his opinion, it would be in the public interest[879]. The ISC enhances both cooperative federalism by encouraging communication and coordination of policy between the states and between the states, and also within the states. It was established in May, 1990, based on the recommendations of Sarkaria Commission[880].

The ISC is actively isolated at the expense of the official adjudication procedure established in Article 262. In 1988, the Sarkaria Commission recommended that the ISC not be used as a formal adjudication on water-disputes. Analysts believe that in case the ISC which is an alliance of the Prime Minister and Chief Ministers were to pass judgements on multifaceted, thoroughly brooding water conflicts, it would obstruct its own ability to specialise in the overall coordination of policy.

By keeping Article 263 merely advisory on the issue of water, Article 263 provides a platform to work together and agree on the policies, trying to make sure that conflicts would never be referred to the enforceable and confrontational path that Article 262 requires. Under-invocation of the River Boards Act and the narrow scope of the ISC in water policy have ensured that the preventative, cooperative route that was envisaged by Article 263 has not been used effectively in the past.

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[879] The Constitution of India, art. 263.
[880] Sarkaria Commission, *Report on Centre–State Relations* Ch. 17 (1988).

UNDERLYING PROBLEMS IN EVALUATION AND IMPLEMENTATION

Although the strong constitutional and statutory framework that is witnessed in Article 262 and the Inter-State River Water Disputes Act(ISRD) was operationalized in the past, the mechanism has continued to be ineffective,characterised by significant delays and hindrances in implementation[881].

Protracted Proceedings and Gaps in the Institutions

The main shortcoming of the 1956 Act can be explained by the fact that it relied on the ad-hoc, reactive institutional framework.

Ad Hoc Nature and Slugs in Constitutions Tribunals are created when a dispute is in a crisis, which creates a lack of expertise, as well as the lack of an institutional memory. It often takes years to establish a tribunal in a case provided to the Central Government after the official complaint has been received; as examples, the disputes over Godavari and Krishna have been discussed as early as in 1956 but referred to tribunals in 1969[882], and the demand of the Cauvery Tribunal had been pending since 1970 but only constituted in 1990.

Delay in Lodging Proceedings: Proceedings take a long time to be concluded as there is no rigid, binding statutory time limit. The Cauvery Water Disputes Tribunal (CWDT), which was established in 1990, took the longest time to present its final award in 2007; it would take nine years to achieve this; the Narmada Tribunal took nine to decide its case[883].

Absence of Finality: Once an award is made, it may take the Central Government years to bring it to force by publication in the Official Gazette thus making the award non-binding until the publication; the Krishna Tribunal award notification took three years.

Data deficit and Adversarial Federalism

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[881] Ministry of Water Resources, *White Paper on Water Disputes* (2017).

[882] Rajeev Dhavan, *The Indian Federal System and River Disputes* 110 (LexisNexis, 2019).

[883]Rajeev Dhavan, *The Indian Federal System and River Disputes* 112 (LexisNexis, 2019).

One of the most vital structural constraints that raise delays is the lack of clear and definitive hydrological data. States often dispute even the most fundamental of facts, including the overall water supply. Due to the continuous process of contested technical basement, Tribunals are spending too much time in the finding of facts, which adds to the long proceedings. This creates a kind of adversarial federalism of water governance whereby states seek to delay or beat their rivals in court instead of seeking win-win and sustainable management of their resources.

Difficulties of Complaint and The Remedy

Efficient enforcement is also lacking, which makes the mechanism less effective. Politics of the region have a prominent role in the development of water disputes because, most time, political parties can use these disputes as a campaign ploy to get elected, making non-compliance with tribunal verdicts .Renewed rejection of awards by states results in the statutory tribunals having no inherent power to administer, say by contempt power. As a result, the case often goes back to the Supreme Court where it has to enforce, which, in spite of the constitutional prohibition on adjudication, has to enforce its prerogative to enforce it which adds to the delay and litigation.

STRUCTURAL REFORMS: THE INTER-STATE RIVER WATER DISPUTES AMENDMENT BILL, 2019

The Inter-State River Water Disputes (Amendment) Bill, 2019, is an act of legislative intervention, which is requisite to address these structural and procedural lessons[884].

Depression: The Permanent Tribunal

The government aims to minimize the systematic delays in the adjudication process by making it a matter of institutionalization by having a permanent tribunal and by placing severe time restrictions, which is one of the causes of the political volatility[885].

Compulsory Negotiation and Time Processing

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[884] The Inter-State River Water Disputes (Amendment) Bill, 2019.
[885] Statement of Objects and Reasons, The Inter-State River Water Disputes (Amendment) Bill, 2019.

One of the strategic changes of the proposed framework is the introduction of the required Disputes Resolution Committee (DRC)[886]. They are obligatory and time-bounded negotiations which institutionalise the spirit of policy-coordination in Article263 before adjudication. The creation of the DRC does recognize that pure legal struggles are not usually efficient, and non-zero-sum, compromise solutions, obtained by means of negotiation, will usually be superior to the stern decisions of a Tribunal. The system would deplete the cooperative potential in favor of the coercive, adversarial conflict resolution mechanism of Article 262 by making the DRC phase of the process mandatory and time-constrained.

Verdict: Water Governance Towards Sustainability and Coexistence

The constitutional structure that is represented in Articles 262 and 263 is very elaborate, and it shows the careful insight by the framers on the needs of the federal government. It provides two directions of how to treat the shared water resources i.e. the mandatory, binding legal direction (Article 262) and the advisory and the cooperative political direction (Article 263).

CONCLUSION

The problem today isn't really with the Constitution itself, the fundamental rules are sound. The real issue is the poor execution and practical failings of the ISRWD Act of 1956 system. Trust in this entire dispute-solving method has crumbled due to several institutional weaknesses: relying on temporary (ad-hoc) tribunals, procedural loopholes that allow for extreme delays, a constant lack of reliable, shared water data, and the difficulty of enforcing decisions against states driven by powerful local politics.Furthermore, whenever the Supreme Court has gone beyond simply reviewing procedures and has actually changed the specific water allocations made by a Tribunal (instead of just sending the award back for correction), it has dramatically complicated the whole system. This action gives the impression that the Tribunal's findings are not final, encouraging losing states to file endless lawsuits and dragging out the process indefinitely[887].

[886] Ibid.
[887]Aman Gupta, "Inter-State Water Disputes in India: A Legal Analysis" 5 *International Journal of Law, Management and Humanities* 1422 (2022).

The Inter-State River Water Disputes (Amendment) Bill, 2019, represents a crucial attempt by the legislature to fix these deep structural and procedural flaws. The government's core strategy is to fight these endless delays, which cause political instability by making the adjudication process permanent through a single, dedicated tribunal with strict deadlines. The introduction of the mandatory Disputes Resolution Committee (DRC) is an extra step. It ensures that every possibility for cooperation is thoroughly explored before the states are forced into the competitive, adversarial legal machinery.

In the end, solving inter-state water conflicts requires more than just tough laws; it requires sustained political resolve. While Article 262 provides the necessary legal teeth to impose a binding solution, effective, long-term management of shared rivers depends much more on the spirit of Article 263. States and the Central Government must actively commit to collaborative federalism, ensuring that water management becomes a success story of joint effort rather than a source of continuous political disputes.

A lasting settlement of inter-State water disputes requires a clear hierarchy of reforms. First, data institutionalization through a permanent, independent water data authority is needed to establish a common factual base. Second, the formation of a standing tribunal-as suggested by the 2019 Amendment Bill-requires replacing ad-hoc bodies with continuity, expertise, and fixed timelines. Third, the Disputes Resolution Committee should be strengthened as a serious pre-litigation forum for negotiated settlements. And lastly, the Inter-State Council under Article 263 needs to be revitalized as a permanent platform for political coordination. All these measures reflect a progression from evidence to adjudication to cooperation, given that while Article 262 lends legal finality, lasting river governance is essentially a function of institutional capacity and cooperative federalism.

CHAPTER 27: FINANCE AND DISTRIBUTION OF REVENUES (ARTICLE 264-267)

BY YASHASVI MAHARSHI

INTRODUCTION

In a way, the Indian Constitution's Articles 264 to 267 provide the fundamental framework for comprehending the revenue or financial relationships between the Union and the State. They can be found in Part XII, Chapter I, “Finance," which basically discusses how the Indian federal system's financial structure is organized. Although the actual distribution of funds between the Union and the States is not determined by these Articles, they do establish the structure and regulations that govern it.

The preliminary legal framework that governs public finances within the Indian Constitution is established by Articles 264 to 267. A collection of definitions that are necessary to comprehend fiscal topics in Part XII are introduced in Article 264[888]. By mandating that no tax be imposed or collected without legal authority, Article 265 upholds the rule of law in taxes and offers protection against capricious fiscal demands[889]. Article 266 establishes the Consolidated Fund of India and of each State as the principal source of public revenues, while also separating the Public Account for deposits and trust funds not subject to appropriation[890]. Article 267 supports this legal structure by authorizing the establishment of Contingency Funds to pay for unforeseen expenditures, subject to subsequent legislative sanction, thus providing a limited fiscal flexibility within the constitutional framework[891].

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[888] The Constitution of India, art. 264.
[889] The Constitution of India, art. 265.
[890] The Constitution of India, art. 266.
[891] The Constitution of India, art. 267.

When combined, these articles serve as the foundation for India's fiscal federalism, which divides financial authority and responsibility between the federal government and the states. Academics note that a federation can only function properly if both levels of government have access to enough financial resources, which must be managed in accordance with clearly stated constitutional regulations[892].

To put it simply, Articles 264 to 267 set the foundation for all subsequent regulations pertaining to income collection and distribution. They guarantee the legal, open, and responsible operation of India's financial system between the Union and the States[893]. Although Articles 264–267 structure India’s fiscal federalism, their operation reveals a gap between constitutional design and contemporary fiscal practice. This chapter analyses their role in shaping fiscal legitimacy and accountability, while examining the stresses caused by cesses, extra-budgetary financing, and executive discretion, and the scope for reform[894].

HISTORICAL BACKGROUND

The centuries-long development of fiscal administration under British rule is the foundation of Articles 264-267. The Government of India Act, 1919, which established a dyarchy and divided administrative subjects into "reserved" and "transferred" domains, was the first organized attempt to provide a structural foundation for financial powers. Despite its limitations, the Act established partial provincial financial responsibility in areas like as agriculture and education[895]. The framers of the Constitution attempted to correct the budgetary reliance that resulted from the central government's continued dominance over taxation.

The Government of India Act, 1935, established a more complex federal fiscal framework that included a Federal Finance Commission, the Federal and Provincial Consolidated Funds, and a precise allocation of revenue sources between the Centre and the Provinces[896]. Articles 266 and

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[892] H.M. Seervai, *Constitutional Law of India* (N.M. Tripathi, Bombay, 4th edn., 1991).
[893] Pradyumn K. T. and Theocharis N. G., “State Capacity & the Soft Budget Constraint: Fiscal Federalism, Indian Style” (UEH University, 2023).
[894] R. Rao & P. Chakraborty, *India’s Fiscal Federalism* (Oxford University Press, 2019).
[895] The Government of India Act, 1919.
[896] The Government of India Act, 1935, ss. 128–140.

267, in particular the ideas of Consolidated Funds, the Public Account, and contingency financing, were directly impacted by these institutional components[897]. The Act of 1935 also exposed the shortcomings of fiscal federalism under a centralized colonial state, including deficits, inconsistent taxing authority, and little regional autonomy problems that the framers planned to address by rewriting the constitution.

Members frequently emphasized during the Constituent Assembly Debates that structural disparities in the distribution of revenue were the cause of provincial financial hardship under the British system. According to K. Santhanam, the provinces' "chronic deficit" issues stemmed from their lack of autonomous taxation authority[898]. B. R. Ambedkar stated that the most important thing to take into account when establishing a financial framework for the next Constitution was the necessity of national economic unity and sufficient governmental resources[899]. Articles 264-267, which establish standard definitions, tax the obligation by law, and provide consolidated funds for responsible financial management, were established as a result of this balancing[900].

Comparative constitutional models were also analysed by the framers. Therefore, lessons about preserving fiscal stability in a federal system through federal authority over significant taxes were provided by the Canadian model, which places residuary powers at the centre[901]. On the other hand, the U.S. model, which gave states a great deal of power, was thought to be inappropriate for India's variety of administrative and economic capacities. In the meantime, Indian laws on contingency and fund mechanisms were influenced by the Australian experience, especially its concurrent taxation and grant system. Their conviction that a centralized yet adaptable financial architecture is essential was reinforced by these comparisons[902]. In the end, concerns about bureaucratic centralization, lack of legislative authority over revenue, and provincial economic weakness were addressed by the adoption of Articles 264-267. This series of articles established consolidated and contingency funds, mandated legitimacy in taxing, and

[897] H.M. Seervai, *supra* note 6.
[898] VIII, Constituent Assembly Debates 965 (Sept. 10, 1949).
[899] IX, Constituent Assembly Debates 1092 (Oct. 18, 1949).
[900] D.D. Basu, *Introduction to the Constitution of India* 385 (LexisNexis, 25th edn., 2021).
[901] K.C. Wheare, *Federal Government* 21 (Oxford University Press, 4th edn., 1963).
[902] Cheryl Saunders, “The Australian Federal System” 27 *Journal of Indian Law Institute* 118 (1989).

specified key financial concepts, giving India's fiscal federalism a stable constitutional foundation that would be distinct from colonial models but informed by international experience.

CONCEPTUAL AND DOCTRINAL FRAMEWORK

The fundamental elements of Indian federalism's financial structure are found in Articles 264-267 of the Indian Constitution. However, conceptual clarity of the guiding principles is necessary before discussing how they operate effectively. The constitutional idea of financial federalism, which has been embraced as a means of dividing up revenue-raising authority and spending duties between the Union and the States, is fundamental to this structure.

Instead of using a purely dual approach, the Constitution chooses a cooperative federal structure. Fiscal transfers, administrative procedures like the Finance Commission, and different taxing authorities (Articles 268-281) are used to split funds. In this broader system, Articles 264-267 serve as enabling and preliminary measures. Thus, Article 266 establishes the Consolidated Funds and Public Accounts of the Union and States; Article 267 permits the establishment of Contingency Funds; Article 265 lays out the fundamental principle that no tax may be imposed or collected except by the authority of law; and Article 264 defines the meaning of some terms used in Part XII. Together, these different clauses provide the philosophical basis and constitutional lexicon of India's financial polity.

As a result, there has been much discussion about the nature and scope of these rules. D.D. Basu emphasizes that by allowing public revenue to come into and be spent from designated funds, Articles 266-267 of the Constitution guarantee fiscal discipline; this guarantees legislative responsibility and openness in the area of public finance[903]. M.P. Jain takes a functional/structural approach to the aforementioned articles. He maintains that these Articles are now required to maintain the functional equilibrium between the Union's authority and the states' autonomy. He claimed that a federal state like India could not have an appropriate distribution of sovereign powers in the absence of a constitutional boundary between and regulations governing the

[903]D.D. Basu, *supra* note 13.

custody and withdrawal of public funds[904]. H.M. Seervai takes a stronger theological approach to Article 265. He claims that Article 265 is a significant instance of the rule of law: taxing is a constitutional act rather than a fiscal one since, in contrast to administrative and other executive activities, it requires legislation[905].

The Indian model is clarified by the federal experiences of other countries. Comparative researchers note that federations like Australia and Canada also rely on executive control mechanisms and constitutional segmentation of public monies. However, India's Constitution incorporates a much more robust central financial architecture, which Granville Austin argues is essential for nation-building in a varied and unequal society, in contrast to the United States' "coordinate federalism" approach[906].

From a theological perspective, these articles highlight three key ideas:

(1) The need for emergency finance reserves;

(2) The constitutional identity of various public funds; and

(3) The primacy of legislative authority in taxation.

As a result, these guidelines position Articles 264-267 as the theoretical cornerstone around which India's broader fiscal federalism structure will be constructed.

ARTICLE WISE DISCUSSION

Article 264: Definitional Foundation for Fiscal Federalism

Therefore, Article 264 is a definitional language that states that "prescribed" refers to a legislation passed by Parliament and "finance commission" refers to the commission established under Article 280[907]. Because fiscal provisions contain technical terms, its anchoring in the Constitution guarantees uniformity of interpretation across Part XII. Sudipto Mundle claims that in order to guarantee stable Centre-State financial ties, the founders sought "predictable and coherent fiscal language."[908]

[904] M.P. Jain, *Indian Constitutional Law* (8th ed., LexisNexis, 2018).
[905] H.M. Seervai, *supra* note 6.
[906] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 186 (Oxford University Press, 1966).
[907] The Constitution of India, art. 264.
[908] Sudipto Mundle, *Governing India's Fiscal Federalism* 54 (Springer, 2020).

Although there hasn't been much litigation pertaining to Article 264, its interpretation relevance can be found in instances that debate the Finance Commission's recommendations. The Supreme Court highlighted the importance of constitutional definitions in avoiding interpretive ambiguity in financial allocation in Union of India v. State of Punjab[909].

Article 264 supports the doctrinal consistency of the following fiscal articles by providing clarity from the outset.

At the same time, Article 264 is largely ancillary and interpretive, having little, if any, real effect as a distributive provision. It is not involved, on the one hand, with the allocation of financial competencies or, on the other, the management of the financial flow between the Union and the States; it is utilized more as a tool to assure intrinsic doctrinal integrity and easy navigation of the provisions within Part XII overall. Though limited, it is not least significant because it reminds us—behind the “noise” of permissions and prohibitions—of the importance, within a constitutionally established system of federalism, of the interrelationship between, on the one hand, permissions and, on the other, the intricately crafted architecture of definition.

Article 264 has little independent operational value in modern budgetary governance despite its philosophical significance because it neither strengthens legislative authority nor restricts executive discretion. While substantive fiscal control is accomplished through institutional processes like the Finance Commission and judicial review, its role is still primarily facilitative, acting as a definitional help.

Article 265 : Taxation Only by Authority of Law

No tax may be imposed or collected unless authorized by law, according to Article 265[910]. This upholds the liberal principle of "no taxation without representation," which gave rise to the constitutional safeguard against arbitrary budgetary exaction.

The Supreme Court distinguished between the three levels of taxation - levy, assessment, and collection in A.V. Fernandez v. State of Kerala, ruling that each must have a foundation in statutory authority[911]. In the case, which dealt with liability under the Travancore-Cochin General Sales Tax Act, the Court invalidated assessments that went beyond the intent of the legislation.

In Larsen & Toubro Ltd. v. State of Karnataka, the Court made a contemporary reaffirmation

[909] Union of India v. State of Punjab, (2017) 13 SCC 519.
[910] The Constitution of India, art. 265.
[911] A.V. Fernandez v. State of Kerala, AIR 1957 SC 657.

that, in the absence of legislative approval, administrative circulars cannot broaden the jurisdiction of a tax[912].

In Kesoram Industries Ltd. v. State of West Bengal, the Court explained the conceptual distinction between "tax," "fee," and "cess," holding that substance takes precedence over nomenclature for the purposes of validity under Article 265.[913]

When considered collectively, the case laws demonstrate how Article 265 serves as a constitutional check on excessive executive activity and protects the taxpayer.

Article 266: Consolidated Fund, Public Account, and Legislative Control

Concerns under Article 266 involve the growing trend in the utilization of extra-budgetary finances through public sector bodies, where expenditures continue to fall outside the Consolidated Fund while shifting the liabilities onto the governments. Although the practice is not in breach, it is creating problems in legislative powers, highlighting the importance of enhancing disclosure requirements in order to uphold the budget discipline stipulated under Part XII.

The increasing reliance on extra-budgetary spending through public sector organizations and special purpose corporations, where obligations ultimately remain with the State, is a major obstacle to Article 266. While not unlawful, this technique undermines legislative control and budgetary accountability by creating a parallel budgeting structure beyond effective parliamentary scrutiny.

The Public Account, the Consolidated Funds of the States, and the Consolidated Fund of India are the three main fiscal repositories established under Article 266.[914] A systemic commitment to financial accountability is seen in the need that all withdrawals from the Consolidated Fund be approved by an appropriation granted by law.

[912] Larsen & Toubro Ltd. v. State of Karnataka, (2013) 10 SCC 46.
[913] State of West Bengal v. Kesoram Industries Ltd., (2004) 10 SCC 201.
[914] The Constitution of India, art. 266.

The Court ruled in G.K. Govindan v. State of Kerala that statutory receipts that are not required to be included in the Consolidated Fund should be credited to the Public Account in order to promote fiscal transparency.[915]

In Sitaram Sugar Co. Ltd. v. Union of India, the Court clarified the regulatory-fiscal distinction by stating that price control measures do not by themselves produce "tax revenue" that must be deposited into the Consolidated Fund.This ruling made a distinction between regulatory economic policy and taxes.[916]

In the case of Arun Kumar Agrawal v. Union of India, the Supreme Court upheld the supremacy of the legislature in budget control, necessitating that expenditures align with constitutional appropriation procedures.[917]

With the introduction of GST in 2017, revenue flows were restructured, but Article 266 remained the primary fiscal repository. The Consolidated Fund is, as Govinda Rao notes, "constitutionally indispensable," even within a restructured tax regime.[918]

Article 267: Contingency Funds and Emergency Fiscal Response

The President or Governor may access Contingency Funds established by Parliament and State legislatures under Article 267 to cover unforeseen expenses.[919]

In N. Somasundaram v. State of Kerala, the Kerala High Court explained that advances under the Contingency Fund are temporary in nature and must be repaid by way of later appropriation, namely by Legislature itself.[920]

The Supreme Court reaffirmed the importance of parliamentary control in constitutional jurisprudence when it ruled in Centre for Public Interest Litigation v. Union of India that Contingency Fund spending cannot be used to get around appropriation requirements.[921]

The practical application of Article 267 has been tested by natural disaster circumstances. In State of Himachal Pradesh v. Union of India, the Court examined how states rely on emergency

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[915] G.K. Govindan v. State of Kerala, AIR 1973 SC 2405.
[916] Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223.
[917] Arun Kumar Agrawal v. Union of India, (2013) 7 SCC 1.
[918] M. Govinda Rao, "Changing Landscape of Indian Fiscal Federalism" 55 *Economic and Political Weekly* 34 (2020).
[919] The Constitution of India, art. 267.
[920] N. Somasundaram v. State of Kerala, 1995 SCC OnLine Ker 115.
[921] Centre for Public Interest Litigation v. Union of India, (2003) 7 SCC 532.

funding during disasters and concluded that Article 267 is a component of a larger framework of fiscal resilience.[922]

States also used Contingency Funds to fund urgent medical expenses during the COVID-19 pandemic. Article 267 offers "a mechanism for swift fiscal response which does not abdicate democratic accountability," according to S. Pandey.[923]

Although Article 267 permits quick fiscal response, regular use of the Contingency Fund runs the risk of normalizing executive discretion at the expense of legislative oversight[924]. The lack of uniform criteria limiting its size, reporting, and frequency of usage further intensifies this accountability deficit by reducing legislative approval to a post-facto formality.

These concerns call for clear statutory limits on the size and frequency of Contingency Fund use, mandatory time-bound legislative disclosure of all advances, and strengthened audit oversight by the Comptroller and Auditor General to prevent emergency spending from substituting regular budgetary processes.

CONTEMPORARY RELEVANCE AND CHALLENGES

Articles 264–267 continue to play a central role in shaping India's fiscal federalism, especially as the country undergoes rapid economic transformation, changing revenue structures, and increasing Centre–State interdependence. While these provisions were framed to create clarity and stability in the financial relationship between the Union and the States, contemporary developments have brought out tensions and reinterpretations that have altered their practical operation.

A big change came with the introduction of GST in 2017, which completely revamped the revenue flows under Article 266-Consolidated Funds. As scholars put it, GST empowered cooperative federalism but simultaneously spawned new dependencies in the form of statutory compensation and periodic settlement of Integrated GST for the States[925]. The Supreme Court, in Union of India v. Mohit Minerals Pvt. Ltd., stated that the recommendations of the GST Council

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[922] State of Himachal Pradesh v. Union of India, (2019) 3 SCC 653.
[923] S. Pandey, "Emergency Fiscal Powers in India" 8 *Indian Journal of Public Law* 118 (2021).
[924] Comptroller and Auditor General of India, *Report on State Finances*.
[925] M. Govinda Rao, *Studies in Indian Public Finance* 118 (Oxford University Press, 2022).

were not binding, indirectly reinforcing State fiscal autonomy within the meaning of Article 266[926]. This has reshaped Centre–State dialogue on the powers of taxation and devolution of resources.

Article 265 thus remains a relevant check in the contemporary context, especially with the tendency of both Union and State governments to create regulatory cesses. There is also considerable debate on whether cesses sidestep the divisible pool, which becomes a political bone of contention at venues like the Fifteenth Finance Commission[927]. The Court's reasoning in State of West Bengal v. Kesoram Industries Ltd. continues to influence disputes regarding the boundary between taxation and regulatory charges, especially in sectors like mining and environmental compliance.[928]

Article 267 has acquired fresh significance in recent times amidst economic shocks and disasters. During the COVID-19 pandemic, not only the Union but many States invoked Contingency Funds to enable the commencement of emergency expenditures when legislative sessions were adjourned.[929] The constitutional mandate for recoveries of such advances through later appropriations ensured ongoing oversight by the legislature, but fiscal stresses underlined the relatively small size of these funds. In Centre for Public Interest Litigation v. Union of India, this Court reinforced that emergency spending cannot erode parliamentary control-a principle consistently challenged through emergencies.[930]

Contemporary challenges also arise from increasing inter-State fiscal inequalities. While the definitional clarity in Article 264 has remained steadfast, the functioning of the Finance Commission-essentially intrinsic to the broader scheme under Part XII has emerged as an arena of political contestation. Southern States have questioned the demographic weightages attached to horizontal devolution on grounds that the formulae yield inequitable outcomes.[931] This

[926] Union of India v. Mohit Minerals Pvt. Ltd., (2022) 4 SCC 481.
[927] K. Krishnaswamy, "The Political Economy of Finance Commissions" 55 *Economic and Political Weekly* 32 (2020).
[928] State of West Bengal v. Kesoram Industries Ltd., (2004) 10 SCC 201.
[929] P. Bhanumurthy and R. Sharma, "Fiscal Responses to COVID-19 in India" 18 *Journal of South Asian Development* 87 (2021).
[930] Centre for Public Interest Litigation v. Union of India, (2003) 7 SCC 532.
[931] S. Narayan, "Federal Transfers and Regional Equity: Emerging Dilemmas" 14 *NUJS Law Review* 45 (2021).

suggests that financial distribution, though anchored in legal constitutional design, is shaped dynamically by shifting demographics, political, and development trajectories.

Even though Article 267 helps react promptly to unexpected expenditure calls, any frequent reliance on the Contingency Fund would arguably erode clear legislative oversight since these would essentially create a culture of post facto approvals and therefore an accountability deficit.

On the whole, Articles 264–267 remain faithful to their foundational goals of securing constitutional lucidity, fiscal legality, and procedural accountability. However, these provisions have been reshaped by political centralization, changing patterns of taxation, and economic contingencies. While they continue to function as stabilizing devices, their contemporary functioning reveals enduring tensions within India's federal structure.

CRITICAL ANALYSIS

The constitutional commitment to a balanced fiscal federation finds embodiment in Articles 264–267; however, the practical working of these provisions displays a persistence of structural tensions. Article 264, while conceptually important in defining the scope of the chapter, has remained largely formal and attracted little substantive operational relevance. Its limited utility is illustrative of a broader challenge: the constitutional framework does not anticipate many of the complexities of modern fiscal federalism.[932]

Article 265 is normatively strong: taxation by the authority of law is a basic safeguard against the erosion of individual liberty and lack of accountability in government. Yet, the rise of delegated legislation, cess-based taxation, and retrospective fiscal legislation has undermined the clarity and predictability contemplated by the drafters.[933] This causes uncertainty among taxpayers and undermines the constitutional ideal of transparent fiscal governance.

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[932] Government of India, Ministry of Law and Justice, *The Constitution of India* 122 (2023 Reprint).
[933] M.P. Singh and Niraj Kumar, *Federalism in India: Towards a Fresh Balance of Power* 89–94 (Oxford University Press, 2021).

While these are the Consolidated Funds, Contingency Funds and Public Accounts managed by Articles 266 and 267, the fact remains that at the practical level, ensuring the oversight of the legislature over the flow of funds is becoming increasingly complex. Off-budget borrowings, special purpose vehicles, and extra-budgetary resources have moved substantial public spending outside the traditional constitutional framework.[934] These trends have a tendency to undo the accountability mechanisms intrinsically linked with the Consolidated Fund and erode the intended supervisory role of State Legislatures and Parliament.

The most significant stress point is thus emerging in the framework of Contingency Funds under Article 267. Conceived as instruments for urgent expenditure, their operationalization often rests on executive discretion and transparency standards vary across States.[935] This raises concerns about the adequacy of institutional safeguards and scope for discretionary fiscal behaviour.

The constitutional design thus aims at cooperative fiscal federalism, while the evolving economic reality shows the discrepancies between structure and practice. Deepening legislative scrutiny, enhancing transparency in off-budget financing, and reconsidering the conceptual clarity of contingency mechanisms would bring the operational framework closer to the constitutional objectives.

CONCLUSION

Together, Articles 264–267 form the fundamental framework for the Indian Union's financial management and show how colonial administrative paradigms gave way to a constitutionally coordinated fiscal federalism. This chapter has shown that in order to guarantee fiscal predictability in a recently independent country, the framers deliberately included such rules through the best trade-off between central power and state liberty. Their architecture is the result

[934]Rathin Roy and Ajaya Sahu, *Public Finance in India: Principles, Practice and Policy* 135–140 (Cambridge University Press, 2019).
[935] Urjit Patel Committee, *Report of the Expert Committee to Strengthen the Monetary Policy Framework* 32–34 (Reserve Bank of India, 2014).

of a thorough fusion of comparative federal thinking, Indian administrative experience, and British constitutional conventions.

The legality of taxes, financial flow transparency, and accountability in public spending are fundamental constitutional ideals that are doctrinally embedded in these articles. While Articles 266 and 267 institutionalize procedures for organized financial management, Article 265 upholds the rule of law in fiscal concerns. When combined, they produce a sound fiscal framework designed to support cooperative federalism. However, a practical study indicates a number of issues that strain the constitutional framework, including fragmentation through cesses and surcharges, increasing extra-budgetary borrowings, inconsistent State practices in managing contingency funds, and diminished legislative control.

Despite these conflicts, Articles 264–267 remain relevant since they can change to reflect new fiscal realities. To put it another way, future changes should focus on strengthening financial accountability mechanisms, expanding parliamentary supervision, and restoring the constitutional intent behind consolidated funds and contingency management. When interpreting budgetary legislation, the judiciary also has a continuous responsibility to maintain federal balance and openness.

These tensions notwithstanding, Articles 264–267 retain their validity for the present day because of their adaptability to changing fiscal realities. Henceforth, reform will have to be oriented along three lines: one, reducing fragmentation of revenues by rationalizing cesses and surcharges within the divisible pool; two, making extra-budgetary borrowings subject to necessary disclosure before Parliament and audit by the CAG to restore fiscal transparency; and three, standardizing Contingency Funds at the State level, with strict timelines for legislative ratification. Alongside, stronger parliamentary oversight over Finance Commission outputs and budget execution, combined with judicial insistence on transparency and federal equilibrium, is necessary to restore constitutional accountability. Ultimately, these provisions will sustain India's federal project only if undergirded by institutional discipline, political restraint, and constitutional morality. With renewed commitment to these reforms, the fiscal foundations of this Constitution can continue underpinning a cooperative, responsive, and accountable federal State.

CHAPTER 28: GRANTS AND FINANCE COMMISSION (ARTICLE 273-281)

BY DURGA KIRAN

INTRODUCTION

India's constitutional structure has a unique blend of both centralised and decentralised structure. While the constitution itself vests a significant amount of power in the union government, it doesn't fail to recognise the autonomy and fiscal needs of the states. This system is particularly reflected in the financial provisions of the constitution. The grants in aid are essentially transferrers which are made from the union to the states that are made to meet specific expenditure needs, achieve equity across jurisdictions or to dispense certain obligations under the constitution.[936]

These grants essentially are granted to rectify the inequalities of resources and responsibilities between the state and centre provisions.[937] There are transitional grants in lieu of export duties on jute and jute products provided to certain states, which reflect the realities of post-independent India.[938] The parliament is also empowered to grant in aid from the consolidated funds to states in need of assistance, on recommendation of the Finance commission.[939] These grants are designed to address and do away with both the vertical and horizontal imbalances, thereby promoting fiscal equality and a co-operative federalism structure.[940]

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[936]Finance Commission, "Constitutional Provisions," Government of India (Ministry of Finance), available at https://fincomindia.nic.in (last visited Jan. 9, 2026).
[937]IX, Constituent Assembly Debates 978 (1949).
[938]The Constitution of India, art. 273.
[939]The Constitution of India, art. 275.
[940]National Institute of Public Finance and Policy, *Indian Fiscal Federalism* 24, available at https://www.nipfp.org.in/media/pdf/books/BK_28/Chapters/3.%20Indian%20Fiscal%20Federalism.pdf (last visited Jan. 9, 2026).

The finance commission is a constitutional body constituted by the president to make recommendations on the distribution of finance commission aids in order to reduce vertical fiscal imbalances.[941] The commission is constituted every five years and its recommendation or report by the finance commission be presented before both the houses of the parliament as under Article 281.[942]

The significance of these provisions is in the ability to enforce a rule-based mechanism for fiscal transfers, in order to reduce arbitrariness and political discretion. The Finance commission uses a range of criteria such as population, income distance and demographic performance to determine the distribution of resources which in turn promotes horizontal equity and enables states with lower fiscal capacity to achieve their development goals.[943]

However, several challenges persist as the predictability of fiscal transfers has become contentious, after the implementation of the goods and service tax, which has centralized indirect taxation and reduced the state's fiscal autonomy. [944] To address these issues, this chapter delves into a triangulated methodology firstly a doctrinal approach to analyse the constitutional provision and the judicial interpretations, a comparative study of federal structures across the globe and an empirical evaluation using financial commission reports and other fiscal indicators. This approach will provide a comprehensive understanding of the practical dimensions of the centre-state fiscal relations in India.

HISTORICAL BACKGROUND

The debate as to whether India should be considered a federal nation considering it has a strong central bias in the constitution. "As the terms federalism for the economist is not to be understood in a narrow constitutional sense. For in economic terms all governmental systems are

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[941]The Constitution of India, art. 280.
[942]The Constitution of India, art. 281.
[943]Rangarajan R., "On Financial Devolution among States," *The Hindu*, Feb. 21, 2024, available at https://www.thehindu.com/news/national/on-financial-devolution-among-states-explained/article67872209.ece (last visited Jan. 9, 2026).
[944]Noopur Bhagat, "Fiscal Federalism in India After GST: Autonomy v/s Efficiency" (Aug. 30, 2025), available at https://ssrn.com/abstract=5422576 (last visited Jan. 9, 2026).

more or less federal even in a formal unitary system."[945] According to a well-known political analyst, federalism is itself a system where the governments are working in coordination and independently. As the constitution of India itself avoids the term federalism and uses "Union of states".[946] The fact that the constitution itself sets a clear divide between the legislative authorities of the central and the states that provide checks against blanketing and ensures a measure permanence to the substantial government is taken into consideration for it to constitute as a federal country.[947]

India's fiscal federalism and the provisions governing grants and finance commissions can be traced back to the colonial period, where financial relations between the central and the provinces were determined by extreme central control. The Government of India Act, 1919 was based on the Montagu- Chelmsford reforms, which first introduced the concept of diarchy and provided for limited provincial autonomy in financial matters.[948] Provincial governments were empowered to raise revenues through taxes on land, agriculture, local services, while the central government retained control over revenue sources like customs and income tax. Although, the centre's discretionary powers over provincial grants ensured the financial dependency was persistent, reinforcing a unitary bias within the constitutional framework.[949]

The Simon Commission Report (1927) and the Government of India Act, 1935, which significantly influenced the present structure of India's fiscal relations. The 1935 Act went on to abolish diarchy and went on to introduce a federal scheme with a clear structure of taxation powers between the central and its provinces.[950] This Act created the foundations for India's fiscal federalism structure, which was finally codified in the Seventh schedule of the Indian constitution.[951] Yet, the federal structure envisaged by the 1935 Act remained unrealized due to

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[945] Albert Breton, *The Economics of Governance: The Role of Political Economy in Explaining the Functioning of Economic Systems* 253 (Edward Elgar Publishing, 2001).
[946]Commission on Centre–State Relations, *Chapter 8: Union–State Relations* (Ministry of Law & Justice, Government of India), available at https://legalaffairs.gov.in/sites/default/files/chapter%208.pdf (last visited Jan. 9, 2026).
[947]Albert Breton, *Federalism and Decentralization: The Political Economy of Government Decision-Making* (Edward Elgar Publishing, 2000).
[948]"Montagu–Chelmsford Report," *Encyclopaedia Britannica*, updated Oct. 19, 2025, available at https://www.britannica.com/event/Montagu-Chelmsford-Report (last visited Jan. 9, 2026).
[949]The Government of India Act, 1919.
[950] D.D. Basu, *Commentary on the Constitution of India* (LexisNexis, 9th edn., 2019).
[951] Ibid.

the absence of a federal government, as the princely states did not join the proposed federalism.[952]

The framers of the constitution recognised that fiscal decentralisation was necessary for a functioning federalism. They also saw the need to preserve national unity and stability by having central control over major revenue sources.[953] Therefore, they adopted a balanced approach that combined autonomy in expenditure for states with centralised control over revenue collection and intergovernmental transfers.[954] It was also emphasized by K. T. Shah and T. T. Krishnamachari the need for creating a constitutional mechanism to ensure equitable distribution of resources and to prevent the union's dominance over financially weaker states.[955]

In this context, the finance commission was established under Article 280 and was conceived as an independent quasi-judicial body to recommend the distribution of financial resources between the union and the states. Through this the framers intended it to serve as an impartial arbitrator ensuring that the financial transactions were guided by objective criteria rather than political discretion.[956]

The increasing complexity of India's economy led to the emergence of new fiscal institutions, such as the Goods and Services Tax (GST) council, which have changed the traditional perception of fiscal federalism. The Finance commission role has been both supplemented as well as complimented by these parallel bodies.[957] The Fifteenth Finance commission (2019), for instance, had to reconcile the implementation of GST with the need to maintain the fiscal autonomy of states.[958] However, persistent issues such as delayed devolution, tied grants and the

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[952] The Government of India Act, 1935.
[953] Govinda M. Rao, "Fiscal Decentralization in Indian Federalism" (Nov. 9, 2000), available at https://www.imf.org/external/pubs/ft/seminar/2000/fiscal/rao.pdf (last visited Jan. 9, 2026).
[954] A. Bagchi and T. Sen, *Fiscal Decentralisation in India* (National Institute of Public Finance and Policy, New Delhi, 1989), available at https://nipfp.org.in/media/documents/FISCAL_DECENTRALISATION_IN_INDIA_HoFm4ag.pdf(last visited Jan. 9, 2026).
[955] VIII, Constituent Assembly Debates (May 16–June 16, 1949).
[956] D.D. Basu, *Commentary on the Constitution of India* 1123–1125 (LexisNexis, 8th edn., 2019).
The Constitution of India, art. 280.
[957] National Institute of Public Finance and Policy, *Indian Fiscal Federalism* 24, available at https://www.nipfp.org.in/media/pdf/books/BK_28/Chapters/3.%20Indian%20Fiscal%20Federalism.pdf (last visited Jan. 9, 2026).
[958] Finance Commission of India, *Report of the Fifteenth Finance Commission* (2020) (New Delhi), available at https://fincomindia.nic.in (last visited Jan. 9, 2026).

excessive central discretion continue to spark debates about the balance of power in India's fiscal structure.

The constitutional frames as rightly articulated by B.R. Ambedkar said that "the finance commission should be a permanent instrument of federal justice" ensuring that no state was left disadvantaged due to structural inequalities in resource distribution.[959] Yet, the Indian grants system shows an ongoing tension between the constitutional design and political reality. While articles 273-281 outline a clear framework for cooperative federalism, their implementation has in most occasions reflected asymmetry of political power between the union and the states.

ARTICLE WISE ANALYSIS

Article 273 authorises the union to make grants to states of Assam, Bihar, Orissa and west Bengal in lieu of assignment of export duty of jute and jute products. These grants were to continue for a period not exceeding ten years from the commencement of the constitution.[960]

This is one of the traditional fiscal provisions, which is included to address regional economic disparities and revenue losses arising from the abolition of provincial powers over export duties under the pre-constitutional regime. The framers recognised that certain states deeply relied on export revenue of jute hence compensation was constitutionally guaranteed.[961] The period of ten years is seen to gradually normalise the revenue system rather than create a sense of entitlement. Although the Articles has lost contemporary significance, its inclusion is illustrative of the constituent assembly's sensitivity to potential inequalities in the past in resource allotting among states.[962]

Article 274 essentially institutionalises the executive's gatekeeping role in financial legislation. This provision ideally mirrors Articles 110 and 117 which define money bills and require presidential recommendations for taxation proposals. The main objective is to maintain financial

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[959]IX, Constituent Assembly Debates (Nov. 16–Dec. 16, 1949).
[960] The Constitution of India, art. 273.
[961] IX, Constituent Assembly Debates (1949).
[962] Ibid.

discipline and prevent legislative overreach that could destabilise intergovernmental fiscal balance.[963]

The Supreme Court In Union of India v. H. S. Dhillon.,[964] clarified that union's taxing powers are plenary within its legislative competence under Article 246 and the seventh schedule, and that the President's recommendation under Article 274 would act as a procedural safeguard ensuring consultation and coordination with states where their financial interests are implied.

The article further embodies a form of cooperative federalism for the parliament retains supremacy in tax matters and the president who is acting on union cabinet advice must consider federal implications before permitting introduction.[965] The court highlighted that fiscal federalism requires harmonious construction between the Union and State lists, where the presidential recommendations under Article 274 serve as an instrument for cooperative governance.[966] In reality the requirement has been largely formal, with limited instances of presidential refusal.

The parliament is entitled to provide grants of revenues to states in need of assistance, based on the financial commission recommendations, including special grants for scheduled areas.[967] It is one of the fundamentals of vertical fiscal federalism. It mandates statutory, non-discretionary grants based on the finance commission assessment of state needs.

It has been emphasised that the finance commission acts hypothetically as a constitutional referee and seeks to ensure equity between states and the union. Although these recommendations are advisory, consistent governmental acceptance has elevated them to quasi-binding convention status.[968] The Gauhati High also clarified that grants under Article 275(1) are statutory entitlements, not benevolent contributions. The union's discretion is limited to the extent of the Finance commission's recommendation.[969]

[963] The Constitution of India, art. 274.
[964] Union of India v. H.S. Dhillon, (1972) 2 SCR 33.
[965] Ibid.
[966] M.P.V. Sundararamier & Co. v. State of Andhra Pradesh, (1956) 1 SCR 423.
[967] The Constitution of India, art. 275.
[968] State of West Bengal v. Union of India, (1963) 2 SCR 679.
[969] Bhattacharjee v. State of Tripura, AIR 1969 Gau 45.

The Sarkaria Commission in 1988 also recommended expanding the scope of Article 275 to include performance-based grants tied to fiscal standards and potential governmental policies.[970] Later, the Punchhi Commission of 2010 went on to observe that the excessive reliance on centrally sponsored schemes under Article 282 was eroding the sanctity of Article 275's formal based approach.[971]

The targeted grants under Article 275(1) for the Scheduled Areas and Tribes reinforce social justice in fiscal federalism, complementing the Fifth and Sixth schedules. The Supreme court in Samantha v. State of Andhra Pradesh.,[972] recognised that financial allocations for tribal welfare are not essentially discretionary, but an integral aspect to fulfil the set constitutional mandate under Articles 244 and 275(1).

Article 276 grants limited but direct taxing authority to states and local authorities in order to ensure that local bodies retain fiscal autonomy.[973] The Supreme court clarified that this tax is something distinct from the Union's income tax and is a levy on privilege of engaging in a profession and not on the income itself.[974] It has also been held that different governmental bodies can impose separate taxes on the same activities, as long as the levies are under different constitutional entries and they do not conflict.[975]

To ensure financial continuity during India's constitutional transition Article 277 was essentially set up. It was to safeguard pre-existing levies from being legally challenged until it was restructured under the new federal framework. [976]

The 2004 Supreme court had to deal with the constitutional validity of state level cesses on coal mining and tea plantation. The main issue was if the states could levy taxes on land containing minerals under entry 49 of the state list, despite the union having control over regulation of mines and mineral development under Entry 54 of the Union list. The court further ruled that

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[970]Sarkaria Commission, *Report of the Sarkaria Commission on Centre–State Relations* (Ministry of Home Affairs, Government of India, New Delhi, 1988), available at https://www.mha.gov.in/sites/default/files/SarkariaCommissionReport_0.pdf (last visited Jan. 9, 2026).

[971]Punchhi Commission, *Report of the Commission on Centre–State Relations* (Ministry of Home Affairs, Government of India, New Delhi, 2010), available at https://www.mha.gov.in/sites/default/files/PunchhiCommissionReport_0.pdf (last visited Jan. 9, 2026).

[972] Samatha v. State of A.P., (1997) 8 SCC 191.

[973] The Constitution of India, art. 276.

[974] State of Kerala v. K.P. Govindan, AIR 1969 SC 730.

[975] ITC Ltd. v. Agricultural Produce Market Committee, (2002) 3 SCC 404.

[976] The Constitution of India, art. 277.

royalty was not a tax and in turn overturning an earlier judgement.[977] In the 2004 case Article 277 is a saving provision that allows taxes, duties, cesses, or fees legally levied by a state before the constitution's commencement to continue, even if they fall under the Union List. This would be valid until parliament makes a new law to the contrary.[978]

Article 278 which is now largely redundant, allows this union and states to enter. Into agreements concerning financial adjustments.[979] While, Article 279 defines net proceeds of taxes and assigns Comptroller and auditor general (CAG) responsibility for certifying these calculations.[980] Article 278 which is particularly relevant during the integration of princely states. Jarring 1947 to 56 which allowed fiscal pacts between the union and states to ensure equitable resource division While the seventh amendment of 1956 rendered it largely in operative as most transition arrangements concluded.[981]

The Supreme Court has removed that CAG's certification under Article 279(1) is final and conclusive. It is to ensure objectivity in intergovernmental transactions This provision thus introduces an element of technical neutrality into fiscal federalism.[982] The Fifteenth Finance Commission of 2020 also recommended modernisation of Article 279. Processes through digital reconciliation and data sharing to ensure accuracy and timelessness of devolution. It also proposed using CAG's certification for GST revenue apportionment, integrating constitutional oversight into the new tax regime.[983]

Article 280 provides for the establishment of the Finance commission as a pivotal aspect of Indian fiscal federalism. It embodies the principle that fiscal justice requires expert, periodic, and independent evaluation of centre- state financial relations. To ensure there is proper distribution of revenues and the consolidated funds of states for panchayats and municipalities and any other matter referred to by the president.[984]

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[977] India Cement Ltd. v. State of Tamil Nadu, (1989) 1 SCC 12.
[978] Kesoram Industries Ltd. v. State of West Bengal, (2004) 10 SCC 201.
[979] The Constitution of India, art. 278.
[980] The Constitution of India, art. 279.
[981] The Constitution (Seventh Amendment) Act, 1956.
[982] Union of India v. State of Bihar, (2003) 11 SCC 101.
[983] Finance Commission of India, *Fifteenth Finance Commission Report* Vol. I (Government of India, Ministry of Finance, New Delhi, 2020), available at https://fincomindia.nic.in/ShowContentOne.aspx?id=1&Section=1 (last visited Jan. 9, 2026).
[984] The Constitution of India, art. 280.

The Supreme Court has also observed that fiscal legislation must adhere to reasonable equality and non-arbitrariness. Which in turn enforced the Finance Commission role in maintaining an equilibrium.[985] The First Finance Commission (1951) laid foundational principles for the sharing of income tax and Union excise, and recommending revenue deficit grants. Subsequent commissions expanded their scope in the Tenth (1995) introduced fiscal discipline incentives, and the Fourteenth (2015) enhanced States' tax share to 42%, and the Fifteenth (2020) adjusted it to 41% post-J&K reorganization.[986]

The Court highlighted that while taxation is a sovereign function, its proceeds are distributable per constitutional mandate, and not at the Centre's discretion and hence affirming the Finance Commission's constitutional supremacy in the distribution process.[987] The Finance Commission also plays a post-73rd Amendment role, in augmenting funds for Panchayats and Municipalities. In Bihar State Rural Development Authority v. State of Bihar,[988] The Patna High Court held that local bodies' grants recommended by the Finance Commission carry constitutional force under Article 280(3) (bb)(c), thus decentralizing fiscal federalism to the grassroots.

Article 281 empowers the president to lay the Finance Commission's report on an explanatory memorandum before both the houses of a parliament.[989] For Article 281 guarantees transparency and accountability in fiscal transfers it mandates parliamentary scrutiny of both the commission's recommendations and the government's reason for acceptance or deviation. The process ensures that fiscal devolution remains a constitutional dialogue and not an executive dictate although these recommendations are not binding, the requirement to publish an Action Taken Memorandum has evolved into a robust constitutional convention of compliance.[990]

The Supreme Court upheld drugs financial decision making. Must adhere to public trust doctrine, ensuring accountability in allocation of public funds. A mandate which is directly served by

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[985] R.K. Garg v. Union of India, (1981) 4 SCC 675.
[986] Finance Commission of India, *Fifteenth Finance Commission Report* Vol. I (Government of India, Ministry of Finance, New Delhi, 2020), available at https://fincomindia.nic.in/ShowContentOne.aspx?id=1&Section=1 (last visited Jan. 9, 2026).
[987] Union of India v. H.S. Dhillon, (1972) 2 SCR 33.
ITC Ltd. v. Agricultural Produce Market Committee, (2002) 3 SCC 404.
[988] Bihar State Rural Development Authority v. State of Bihar, (2018) 16 SCC 418.
[989] The Constitution of India, art. 281.
[990] Lok Sabha Secretariat, *Procedure Relating to Finance Commission Reports* (2021), available at https://loksabha.nic.in/Procedure/FinanceCommissionReports.pdf (last visited Jan. 9, 2026).

article 281. To ensure that fiscal transparency under article 281 aligns with Democratic principles.[991]

COMPARATIVE PERSPECTIVE ON FISCAL TRANSFERS AND GRANTS

A study of fiscal transfers and grants in other federal constitutions reveals diverse constitutional architectures for balancing autonomy, equity, and accountability among federating units. In the United States, the federal government extensively uses conditional grants-in-aid to influence state policy in fields traditionally reserved to states. The constitutional basis lies in the Spending Clause, which authorizes Congress to tax and spend for the general welfare.[992]

The U.S. Supreme Court upheld Congress's power to withhold 5% of federal highway funds from states that refused to raise the legal drinking age to 21. The Court established a four-part test: conditions must (i) promote the general welfare, (ii) be unambiguous, (iii) relate to the federal interest in the program, and (iv) not be coercive.[993]

However, the limits of this power were tested, where the Court struck down the threat to withdraw existing Medicaid funds from states that refused to expand Medicaid under the Affordable Care Act. Chief Justice Roberts described the condition as a "gun to the head," marking the first time the Court invalidated a spending condition as unconstitutionally coercive.[994]

These rulings assert that while conditional grants serve as essential aspects for national coordination, they must not undermine state sovereignty. For India, the U.S. experience offers a cautionary parallel to Article 282 transfers, where central conditionalities often dilute fiscal autonomy of States.

[991] Centre for Public Interest Litigation v. Union of India, (2003) 2 SCC 235.
[992] The Constitution of the United States of America, art. I, s. 8, cl. 1.
Wallace E. Oates, *Fiscal Federalism* (2nd edn., 1999).
[993] South Dakota v. Dole, 483 U.S. 203 (1987).
[994] National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012).

On the other hand, Australia's federal system demonstrates how constitutional design can institutionalize equalization and objectivity in financial transfers. Under Section 96 of the Commonwealth of Australia Constitution Act 1900, Parliament may grant financial assistance to any State "on such terms and conditions as it thinks fit."[995] The High Court of Australia, upheld the Commonwealth's wartime income tax scheme, effectively centralizing tax powers while compensating States through grants.[996]

The High Court restricted executive spending without parliamentary approval, emphasizing that fiscal federalism must remain accountable to constitutional principles.[997] Australia's experience demonstrates that an independent grants commission, constitutionally backed and empirically grounded, enhances fairness and transparency, a principle that resonates with the Indian Finance Commission's objectives under Article 280.

Canada's fiscal framework blends constitutional equalization with political intergovernmentalism. Section 36(2) of the Constitution Act, 1982 obligates the federal government to ensure that "provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation."[998]

The courts have recognized federalism, democracy, constitutionalism, and protection of minorities as foundational principles.[999] These principles implicitly guide fiscal relations, emphasizing that transfers should support cooperative rather than coercive federalism. Canada's Equalization Program and periodic Expert Commissions on Fiscal Imbalance illustrate how intergovernmental negotiations, grounded in constitutional obligation, sustain the legitimacy of fiscal transfers. The system's success lies in combining formula-based grants with institutionalized bargaining, something India could take note by formalizing inter-State participation in Finance Commission appointments.

CRITICAL ANALYSIS AND CONTEMPORARY RELEVANCE

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[995]The Commonwealth of Australia Constitution Act, 1900, s. 96.
[996] Victoria v. Commonwealth (Uniform Tax Case), (1942) 65 CLR 373.
[997] Williams v. Commonwealth (No. 1), (2012) 248 CLR 156.
[998] The Constitution Act, 1982, s. 36(2).
[999] Reference re Secession of Quebec, [1998] 2 SCR 217.

India's constitutional architecture for fiscal transfers (Arts. 273–281) was designed to combine predictable, formulaic devolution with limited executive flexibility. In practice, however, the interplay of constitutional norms, judicial interpretation, and political realities has produced a mixed record. Two structural tensions animate current debates. Firstly, the shrinking fiscal space available to States, the share of the divisible pool and the proliferation of cesses and surcharges that are retained by the Centre have reduced the effective resources available to States, complicating the Finance Commission's equalizing role. In early 2025 there were reports that the Union contemplated reducing the states' share of central taxes (from 41% to around 40%) for FY2026–27 to meet rising central fiscal demands, a move widely perceived by state governments as an erosion of devolution.[1000] States such as Karnataka have publicly demanded higher devolution shares and greater sharing of cesses and surcharges, highlighting the political strain between fiscal federalism's constitutional design and present practice.[1001]

Second, the rise of discretionary, scheme-based transfers under Article 282 has fractured the transfer architecture. Centrally Sponsored Schemes (CSS) and ministry-level project allocations increasingly operate outside Finance Commission formulae; they are often politically salient and opaque in allocation criteria.[1002] Several journalistic and policy analyses have argued that these discretionary flows can disadvantage smaller and opposition-ruled States by enabling the Centre to influence state priorities through conditional funding.[1003]

More fundamentally, the increasing resort to Article 282 has created what can only be termed a parallel fiscal constitution, running in tandem with-and increasingly at cross purposes with-the structured transfer regime contemplated under Articles 275 to 280. Where the latter prescribes a

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[1000] Reuters, "India Seeks to Cut States' Share of Federal Taxes from 2026, Sources Say," Feb. 27, 2025, available at https://www.reuters.com (last visited Jan. 9, 2026).

[1001] Times of India, "Karnataka Demands Its Fund Devolution Share Raised to 50%," June 13, 2025, available at https://timesofindia.indiatimes.com (last visited Jan. 9, 2026).

[1002] Karishma Saurabh Kalita, "The Politics of Grants: Does the Centre Play Favourites with States?" *India Today*, July 30, 2024, available at https://www.indiatoday.in/diu/story/the-politics-of-grants-does-the-centre-play-favourites-with-states-2574098-2024-07-30 (last visited Jan. 9, 2026).

[1003] Ritwika Sharma, Mayuri Gupta and Kevin James, "Why Article 282 Needs a Rethink as Centre and States Battle for Money," *ThePrint*, July 20, 2021, available at https://theprint.in/opinion/why-article-282-needs-a-rethink-as-centre-and-states-battle-for-money/699173 (last visited Jan. 9, 2026).

rules-based order rooted in Finance Commission estimates, equity, and predictability, Article 282 allows for open-ended discretionary grants identified as expenditure for "public purposes." The result has been that Centrally Sponsored Schemes and ministry-inspired allocations can sidestep constitutional equalization principles, reducing fiscal federalism to negotiated and conditional flows. This reduces the normative salience of the Finance Commission, dissolves horizontal equity across States, and replaces technocratic evaluation with political discretion. What results is a two-track system: one constitutionally secured in cooperative federalism, the other administratively steered and politically vulnerable, and therefore inimical to the coherence and redistributive purpose of India's fiscal design.

Accordingly, in brief terms, it is submitted that in terms of the constitutional doctrine, the constitutional architecture in regard to the grant system in India is good in theory; it is somewhat questionable in practice. Although the ongoing relevance of the Finance Commission as providing the rule-based system in terms of fiscal federalism is unquestionable, the process in regard to the de facto diminution of the constitutional edifice is ongoing in terms of the rise in discretionary grant systems under the dictates of Article 282, the escalated trend in cess-based revenues outside the divisible pool, the irregular but material interventions in Centre-State discussions in regard to grant determinations in accordance with the dictates of the requirements in regard to bargaining in accordance with primarily political compulsions.

CHAPTER 29: PANCHAYATI RAJ: STRUCTURE & COMPOSITION

(ARTICLE 243- 243G)

BY ARUN KUMAR

INTRODUCTION

"The village Panchayat will be true democracy where every man and woman have an equal share and say in the governance of village"-**Mahatma Gandhi**

Panchayati Raj means rural local self government which evolves from the concept of *Gram Swaraj* which was advocated by Mahatma Gandhi where a village would be responsible for its own affairs and participate in decision making and development works. The term "Panchayati Raj "derived from the traditional Indian Institution of ancient time *"Panchayat*" means council of five members which used to resolve village disputes and manage village affairs. [1004]

The Panchayati raj system was formally introduced in India to decentralize powers between centre and states at grass root level. After recommendations of various committees from 1957 to 1988 The 73rd Constitutional Amendment Act 1992 gave constitutional status to Panchayati Raj Institutions (PRIs).Part IX of 11th schedule of constitution contains articles 243-243-O which lists 29 subjects to be handled by Panchayats.This act made mandatory for every state to make three tier Panchayati raj systems[1005]

[1004] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, London, 1966).
[1005] H.M. Seervai, *Constitutional Law of India* (N.M. Tripathi, Bombay, 4th edn., 1991).

HISTORICAL BACKGROUND

The Panchayati Raj system in India has undergone several changes in ancient time to medieval time Panchayats were performed informally to resolve local disputes by landlords and feudal structure. During British period British rule realize the importance of local governance:-

-*Lord Ripon's Resolution 1882* considered as Magna Carta of local self government in India

-*The Royal Commission on decartelization 1907* recommended strengthening village level Institutions.

-*The Government of India Act 1919* and later *1935 Act* encouraged the provincial government to establish local body structure[1006]

Post Independence there was evolution of the Panchayati Raj system in India:

- **Balwant Rai Mehta Committee (1957):** The committee recommended the establishment of a three-tier Panchayati Raj system consisting of Gram Panchayats, Panchayat Samitis, and Zila Parishads.
- **Ashok Mehta Committee (1977):** The committee recommended the establishment of a two-tier Panchayati Raj system consisting of Gram Panchayats and Zila Parishads.
- **Constitutional Amendment (73rd Amendment) Act, 191992:** This amendment gave constitutional status to the Panchayati Raj system and added a new Part IX to the Constitution, which contains provisions relating to Panchayats. It provided for a three-tier system of Panchayats - Gram Panchayats, Panchayat Samitis, and Zila Parishads. It also provided for the reservation of seats for women and scheduled castes and tribes.

[1006] K.T. Shah & K.M. Munshi, *Constituent Assembly Debates* (Government of India, New Delhi, 1948).

- **Constitutional Amendment (74th Amendment) Act, 1992:** This amendment provided for a similar system of local self-government for urban areas, known as Nagar Palikas or Municipalities.
- **Amendments to the Panchayati Raj Act:** Several amendments have been made to the Panchayati Raj Act, including the provision for the establishment of State Finance Commissions, which determine the allocation of resources to Panchayats.[1007]

This amendment mandated the establishment of three-tier Panchayati Raj institutions. This amendment also devolved several powers and functions to Panchayati Raj institutions, including local planning, social justice, and economic development.[1008]

CONCEPTUAL AND DOCTRINAL FRAMEWORK

Article wise discussion (243-243G)

243. Definition In this Part, unless the context otherwise requires,—

(a) District means a district in a State;

(b) Gram Sabha means a body consisting of persons registered in the electoral rolls relating to a

Village comprised within the area of Panchayat at the village level;

(c) Intermediate level‖ means a level between the village and district levels specified by the

Governor of a State by public notification to be the intermediate level for the purposes of this Part;

(d) Panchayat means an institution (by whatever name called) of self-government constituted

[1007] Sudhir Krishnaswamy, *Democracy and Constitutionalism in India* (Oxford University Press, New Delhi, 2009).
[1008] S.P. Sathe, *Judicial Activism in India* (Oxford University Press, New Delhi, 2002).

Under article 243B, for the rural areas;

(e) Panchayat area‖ means the territorial area of a Panchayat;

(f) Population means the population as ascertained at the last preceding census of which the

Relevant figures have been published;

(g) village means a village specified by the Governor by public notification to be a village for the

Purposes of this Part and includes a group of villages so specified.[1009]

Land mark Judgment: - Dr. K.Krishna Murthy vs Union of India 2010 7 SCC 202

Held that Panchayati Raj is a part of constitutional framework of democracy

Defined Panchayat and upheld reservation for OBCs in Panchayat.[1010]

243A. Gram Sabha.—A Gram Sabha may exercise such powers and perform such functions at the

Village level as the Legislature of a State may, by law, provide.[1011]

Land mark Judgment: - Union of India vs R.C Jain (1981) SCC 308

Held that Gram Sabha has an independent status, not just an advisory body.[1012]

243B. Constitution of Panchayats.—(1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a state having a population not exceeding twenty lakhs.[1013]

Land mark Judgment: - State of U.P vs. Pradhan Kshettra Samiti 1995 Supp (2) SCC 305

Held that Constitution make Panchayati Raj Institutions mandatory,not optional

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[1009] The Constitution of India, art. 243.
[1010] K. Krishna Murthy v. Union of India, (2010) 7 SCC 202.
[1011] The Constitution of India, art. 243A.
[1012] Union of India v. R.C. Jain (1981) SCC 308.
[1013] The Constitution of India, art. 243B.

Also held that state laws must conform to the 73rd Amendment.[1014]

243C. Composition of Panchayats.—(1) Subject to the provisions of this Part, the Legislature of a state may, by law, make provisions with respect to the composition of Panchayats:

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

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

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

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the District level;
(b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;
(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;
(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within—
(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;
(ii) a Panchayat area at the district level, in Panchayat at the district level.
(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct Elections from territorial constituencies in the Panchayat area shall have the right to vote

[1014] State of U.P. v. Pradhan Kshettra Samiti, 1995 Supp (2) SCC 305.

in the meetings of the Panchayats.

(5) The Chairperson of—

(a) a Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

(b) a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof.[1015]

Land mark Judgement: - Ramesh Mehta vs. Sanwal Chand Singhvi (2004) 5 SCC 409

Clarified that composition and election of panchayats is subject to state law but must respect the constitutional mandate.[1016]

243D. Reservation of seats.—(1) Seats shall be reserved for—

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

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

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for Women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in Every Panchayat shall be reserved for women and such seats may be allotted by rotation to different Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in Constituencies in a Panchayat

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be

[1015] The Constitution of India, art. 243C.
[1016] Ramesh Mehta v. Sanwal Chand Singhvi, (2004) 5 SCC 409.

reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same Proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State: Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women: Provided also that the number of offices reserved under this clause shall be allotted by rotation to Different Panchayats at each level. (5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.[1017]

Landmark Judgement: - Dr. K.Krishna Murthy vs Union Of India 2010 7 SCC 202

Upheld reservation of OBCs in Panchayat under Art. 243D (6) also said that reservation in chairperson posts must not exceed reasonable limits to maintain democratic balance.[1018]

Land mark Judgement: - Vikas Kisharao Gawali vs State of Maharashtra (2021)

Triple test for OBC reservation in local bodies:

1. Empirical data of backwardness.
2. Limit of 50% ceiling on total reservation.
3. Independent commission to examine.[1019]

[1017] The Constitution of India, art. 243D.
[1018] K. Krishna Murthy v. Union of India, (2010) 7 SCC 202.
[1019] Vikas Kishanrao Gawali v. State of Maharashtra, (2021) 6 SCC 73.

243E. Duration of Panchayats, etc.—(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

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

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

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

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

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

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.[1020]

Land mark Judgment: - Kishansing Tomar vs. Municipal Corporation of Ahmedabad (2006) SCC 352

Principle applies:-Timely election to local bodies is mandatory.[1021]

Landmark Judgement: - State of Maharashtra vs. Jalgaon Municipal Council (2003) 9 SCC 731

Held: Panchayat elections must be held before expiry of years;delay is unconstitutional.[1022]

243F. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat—

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

Provided that no person shall be disqualified on the ground that he is less than twenty-five years

[1020] The Constitution of India, art. 243E.
[1021] Kishansing Tomar v. Municipal Corporation of Ahmedabad, (2006) 8 SCC 352.
[1022] State of Maharashtra v. Jalgaon Municipal Council, (2003) 9 SCC 731.

of age, if he has attained the age of twenty-one years;
(b) if he is so disqualified by or under any law made by the Legislature of the State.
(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such a manner as the Legislature of a State may, by law, provide.[1023]

Land mark Judgement: - Javed vs. Haryana (2003) 8 SCC 369

Upheld disqualification law: persons with more than two children cannot contest Panchayat election (Haryana Law) in view of reasonable restriction in interest of population control.[1024]

Land mark Judgement: - Bhanumati vs.State of Uttar Pradesh (2010) 12 SCC 1

Held: Panchayati raj is a part of democratic basic structure, Disqualification of members must follow due process.[1025]

243G. Powers, authority and responsibilities of Panchayats.—Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain Provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—
(a) the preparation of plans for economic development and social justice;
(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.[1026]

Land mark Judgement: - Kudrat Sandhu vs.Union of India (2006) 10 SCC 120

- Strengthened functional powers of Gram Sabhas and Panchayats.

[1023] The Constitution of India, art. 243F.
[1024] Javed v. State of Haryana, (2003) 8 SCC 369.
[1025] Bhanumati v. State of Uttar Pradesh, (2010) 12 SCC 1.
[1026] The Constitution of India, art. 243G.

-State governments cannot keep Panchayats as “paper institutions”.[1027]

Land mark Judgement: - Rajendra Singh Rana vs.Swami Prasad Maurya (2007) 4 SCC 270

Emphasized that Panchayats must be given real functional autonomy in development planning.[1028]

CONTEMPORARY CHALLENGES IN PANCHAYATI RAJ INSTITUTIONS

A detailed inquiry was carried out from the members of PRI whether they have been experiencing any problems from different groups of people in functioning of the panchayati activities and its meetings. Discussing with respondents I found some problems and challenges that were discussed below:

1. Lack of Computer-Based Knowledge and Infrastructure: In some instances, the lack of skills in computer usage leads to quickly diminishing standards of efficient working. The government has launched the e-panchayat project in about 360-gram panchayats. The project of e-governance is to provide citizen-centric services electronically, maintain a database of resources of the gram panchayats, and transparently access gram panchayat data and services.
2. Poor Coordination among Different Administrative Bodies: There is a lack of proper cooperation and coordination between the people and the officials. In addition, Gram Pradhan experiences shortcomings due to poor coordination among different administrative bodies. The failure of officials to discharge their duties effectively and efficiently has resulted in delays in developmental activities and underutilization of funds. Furthermore, the Panchayati Raj bodies face various administrative hurdles like politicization of the local administration, absence of coordination and differentiation between the popular and bureaucratic officials, lack of good opportunities, promotions, and incentives for those involved in the administration, etc.

[1027] Kudrat Sandhu v. Union of India, (2006) 10 SCC 120.
[1028] Rajendra Singh Rana v. Swami Prasad Maurya, (2007) 4 SCC 270.

3. Lack of Awareness: The lack of awareness in implementing Panchayati Raj is caused by bureaucratic delays, political interference, economic factors, and societal influences, which make Panchayati Raj ineffective. The Sarpanch and Panch of the village do not adequately raise public awareness.
4. Political Interference in Fund Allocation & Policy Formation to Panchayats: Political interference is prevalent at all levels of the Panchayati Raj administrative structure. It causes a lot of imbalance, inconsistency, work delays, and ineffective policy creation. Political pressure is used to provide funds to panchayats, and this pressure also affects policy creation; as a result, they are unable to develop better policies.
5. Inadequate Finance Allocation: The lack of enough funding for panchayat development is a major issue for Panchayati Raj. The panchayat is frequently underfunded, which contributes to negligence, corruption, and delays in job progress.
6. Corruption at all levels of Administration: Corruption is a major challenge and concern in India. It can be found in all administrative systems and affects the Panchayati Raj system. It has an impact on the growth of the Panchayati Raj system. The administration should have started a campaign to minimize corruption.

RECENT INITIATIVES IN PANCHAYAT GOVERNANCE

E-Gram Swaraj Portal: With an emphasis on e-governance activities, the Ministry of Panchayati Raj has implemented e-GramSwaraj, a single site for effective monitoring and evaluation of Panchayati Raj schemes. On National Panchayati Raj Day, April 24, 2020, Prime Minister Narendra Modi inaugurated it as National Panchayati Raj Diwas. The program improved Panchayat reporting and tracking by offering a single interface for recording Panchayat information. Further, the Ministry has implemented an Electronic Fund Management System, which integrates ‘e- Gram Swaraj with PFMS (eGSPI): Panchayat has mandated the eGSPI for the use of Central Finance Commission monies. All schemes of the Panchayati Raj Ministry have been on-hiked on eGSPI from April 5, 2021, and only online payments are allowed across all three tiers of the system.

Spatial Development Planning: Gram Manchitra, a unified Geospatial platform launched in 2019, helps visualize various developmental tasks across 29 sectors and provides Panchayats with a decision support system throughout the planning process. This app is also linked to the Socio-Economic Caste Census report, Mission Antyodaya report, and spatial and non-spatial data from other ministries and departments. Spatial planning increases service transparency and quality in rural locations. From 2021 onwards, the Gram Panchayat planning approach will be evidence-based, using spatial planning.

Online Audit of Panchayat Accounts: On April 15, 2020, the Ministry of Panchayati Raj launched the 'Online Audit' application as a major institutional change. Audit-Online not only allows online auditing of accounts but also includes tools for keeping audit records. This application aims to simplify the process of conducting audit inquiries, drafting local audit reports, drafting audit paragraphs, and much more. Initially, this application was used to conduct an online audit of Panchayat finances for the 14th Finance Commission for the financial year 2019–20. These actions, together with the Social Audit, will help to enhance the Panchayat's financial management system. There are three parts:
(a) Targeting SDGs at the village level,
(b) Mapping SDGs to Functional Domains, and
(c) Strengthening partnerships to achieve SDGs.

Citizen Charters for Panchayat: From 1 July to 15 August 2021, the Ministry of Panchayati Raj has launched a countrywide campaign called "Meri Panchayat, Mera Adhikaar – Jan Sevaayein Hamaare Dwaar", and Gram Panchayat across the country created and published Panchayat citizen character. The primary goal of the Panchayat Citizen's Charter is to empower individuals regarding public services and to enhance service quality based on citizen expectations.

CONCLUSION

Panchayat systems in all the states aim at effective decentralization and self-rule. But the means they adopt to achieve the same vary from states to states as mentioned above. There is a

conventional classification of fiscal, political and administrative decentralization using which the three-volume study conducted by the World Bank on Indian Decentralization ranks India the first in terms of Political decentralization and last in terms of Administrative decentralization. However, due to lack of sufficient administrative control, efficient functioning is at stake. Again, although most States have established SECs, whose primary responsibilities are to organise and oversee Panchayat elections, and to prepare the electoral rolls, many have been unwilling to relinquish powers of delimitation – i.e. the power to define electoral constituencies. There is a lack of proper demarcation and clarity of functions among the panchayats and the other levels of government, and the states also have the rights to either assign or if necessary, to withdraw functions given to the panchayats. This again shows the supremacy of the state upon the so-called autonomous panchayat governance. A detailed insight into article 40 and articles 43 to 243 shows that the makers of our constitution want the village panchayats to be responsible for its own affairs as well as to act as a solid foundation for political democracy of the country. For encouraging development in the rural parts of the country, it is necessary to mobilize the resources in the hands of people and thus accelerate the participation of them in the decision making process that has an effect on their daily living. The pragmatic philosophy of miniaturized participative democracy, where every man matters, is the cornerstone of developmental dynamics. The higher level policy makers are also well aware that the empowerment goals at Panchayat level have not been fully achieved but with some procedural, legislative and most importantly attitudinal changes, it is not far from being achieved.

CHAPTER 30: POWERS, RESERVATION & FINANCE OF PANCHAYATS (ARTICLE 243H- 243O)

BY SUPRIYA KUMARI

INTRODUCTION

The 73rd Constitutional Amendment Act, 1992 represents a significant turning point in India's democratic history, as it provided constitutional status to the Panchayati Raj Institutions (PRIs). By enacting Part IX (Articles 243-243), the Constitution did not just contemplate the decentralization of power, but also upheld the notion of democratic governance at the village level. The amendments made in Articles 243H-243O specifically recognize the financial powers, reservations, and operational framework required for Panchayats to carry out the functions of an institution of self-government.

The aim of this chapter is to provide a doctrinal examination of Articles 243H-243O. Article 243H allows State Legislatures to permit Panchayats to levy, collect and distribute taxes. Article 243I mandates the establishment of State Finance Commissions to recommend distribution of financial resources. And Articles 243D and 243T stipulate reservations of seats for Scheduled Castes, Scheduled Tribes and women for representation in local self-governance. Through Articles 243K to 243O, it addresses the election process, audit, and courts in respect to interference in Panchayat functions. Together, they present the functioning, financial, and representation of Panchayati Raj.

Topic's significance in the realm of constitutional practice is substantial. The Constitution of India contains a "seamless web of three strands social revolution, national unity, and democratic transformation[1029]. The 73rd Amendment gave effect to this idea at the local level, guaranteeing the right of participation for citizens in decision making. The Supreme Court, too, confirmed that

[1029] Granville Austin, The Indian Constitution: Cornerstone of a Nation (Oxford University Press, 1966).

panchayats hold significance, and described them as “institutions of self-government” in the sense of Article 40 of the Directive Principles[1030]. This chapter thus intends to examine the dynamics of power, reservations, and finance of panchayats, while locating them in the federal and democratic contexts of India. Examining debates throughout history, provisions in the Constitution, judicial interpretations, and practical challenges, it aims to illustrate both aspects of success, and voids of success, in achieving this vision of grassroots democracy.

HISTORICAL & CONSTITUTIONAL BACKGROUND

The concept of self-governance at the village level has a long history in Indian social and political practices. Both early texts and colonial records point to village councils, or *sabhas*, operating as deliberative groups engaged in administration, law, and finance at the local level.[1031] Mahatma Gandhi’s conception of Gram Swaraj, which articulated an increasingly vibrant conception of village democracy, also gave a boost to the attention on villages as self-governing elements of democracy.[1032] However, as members of the Constituent Assembly discussed the issue of local self-governance, the mood in the debates discernibly endorsed a more cautious position.

Debates of the Constituent Assembly

The Constituent Assembly did not at first give formal constitutional status to Panchayats. As one of the prominent members K. Santhanam observed, local self-governance was essential to Indian democracy, but the general mood was to set out as many details as possible for legislative policy, rather than prescribing rigid rules in the Constitution.[1033]As a compromise, Article 40 of the Directive Principles of State Policy (DPSP) was added, requiring the State to "organize village panchayats and give them such powers and authority as may be necessary to enable them to function as units of self-government."[1034]

[1030] Kudrat Sandhu v. Municipal Corporation, (2006) 11 SCC 464
[1031] R.C. Majumdar, Ancient India (Motilal Banarsidass 1952) 184.
[1032] M.K. Gandhi, Hind Swaraj or Indian Home Rule (Navajivan Publishing 1938) 85.
[1033] Constituent Assembly Debates, Vol. VII, 23 November 1948, 540.
[1034] The Constitution of India, art. 40.

The reason for the embeddedness of Panchayats in the DPSPs as opposed to the justiciable aspects of the Constitution was that they were intended to be more positive than binding. This placement also reflects apprehension on the part of the Constituent Assembly that the socio-economic conditions of newly independent India were not exactly ripe for this kind of robust grassroots democracy. It was only subsequently through later constitutional developments, in particular the 73rd Amendment, that Panchayats acquired enforceable recognition. Even after independence, there were several committees assessing the feasibility of strengthening Panchayati Raj . The "Balwantrai Mehta"[1035] The committee proposed a three-tiered Panchayati Raj standard for the promotion of democratic decentralization. The "Ashok Mehta Committee"[1036] later proposed to move to a two-tiered system with increased financial autonomy, but recommended that constitutional recognition was required. Nevertheless, despite all of this, Panchayati Raj remained a policy experiment primarily grounded in the political will of the states for some period.

A significant moment of change occurred when the 73rd Constitutional Amendment, 1992 was enacted in India. This amendment added a comprehensive new Part IX (Articles 243-243O) in the Constitution, effectively constitutionalizing the Panchayati Raj. The amendment also mandated regular elections for elected representatives to the Panchayati Raj committees, provisions to allocate representation for Scheduled Castes, Scheduled Tribes, and women in election processes; setting up Finance Commissions in each state to ensure fiscal support for the Panchayati Raj system to work; and, a constitutional prohibition to limit any court from interfering in election processes in the Panchayati Raj system.[8] The 73rd Amendment, beyond transferring power away from centralized institutions, constitutes further resolution of decentralization within the deeper democratic elements of participation of minority sections in democratic practices.[1037]

Linking to the Preamble and Constitutional Philosophy

Constitutionalizing Panchayati Raj with the 73rd Amendment can be linked directly with the stated Preamble purposes of justice, liberty, equality, and affection. Panchayati Raj aims to

[1035] Report of the Balwantrai Mehta Committee, 1957
[1036] Report of the Ashok Mehta Committee, 1978.
[1037] V.N. Shukla, Constitution of India (14th edn, Eastern Book Company 2020) 897.

democratize the governance system beyond legislature and state capitals to include the local community. Constitution is a document implementing a “social revolution,” which attempts to restructure power relations and realize social and economic justice[1038]. Panchayati Raj directly implements this social revolution by allowing for participation for women and the Scheduled Castes and Scheduled Tribes groups in the social-relations of democratic behaviour in decision-making that affects their lives.

The Supreme Court has continuously affirmed this constitutional philosophy. In “State of U.P. v. Pradhan Sangh Kshettra Samiti”[1039]The Court explained that Panchayats are institutions of self-government, not merely administrative agencies, as intended by Article 40. The 73rd Amendment turned the Preamble's vision of participatory and inclusive democracy into reality by incorporating financial powers (Art. 243H), reservation of seats (Art. 243D), and mechanisms for accountability (Art. 243I–243O).

The journey from colonial manifestations, to Constituent Assembly ambiguity, to ritualization within India's Constitution can thus be seen as a gradual and sustained advancement toward realising Gandhi's vision of Gram Swaraj within India's constitutional democracy.

DOCTRINAL OR ARTICLE-WISE DISCUSSION

Article 243H – Powers to Impose Taxes by Panchayats

Article 243H allows State Legislatures to empower Panchayats to impose, collect, and appropriate taxes, duties, tolls, and fees. It also allows for revenue of the State Government to be assigned to Panchayats and for the grant of grants-in-aid to Panchayats.

Article 243H is empowering, and not mandated.[1040] The States will decide how much fiscal autonomy is extended to the Panchayat. This is characteristic of India's quasi-federal structure,

[1038] Granville Austin, The Indian Constitution: Cornerstone of a Nation (Oxford University Press 1966) 50.
[1039] State of U.P. v Pradhan Sangh Kshettra Samiti, (1995) Supp (2) SCC 305.
[1040] H.M. Seervai, Constitutional Law of India, Vol. I (4th edn, Universal Law Publishing 2013) 345.

which places legislative competence to provide for local governments at the level of the States in the State List (Seventh Schedule, Entry 5). [1041]

Research has shown that Panchayati Raj institutions continue to be financially weak, even though the issued competes under the Constitution have a number of legal mechanisms to raise revenue does provide authority, which has little value since Panchayats can only raise minor taxes such as house tax, market fees, or license fees.[1042]This implies that their fiscal autonomy exists in speculativeness, which raises doubts about decentralization effectiveness.

Article 243I – State Finance Commission

To tackle the financial incapacity of Panchayats, Article 243I requires the establishment of a State Finance Commission (SFC) once every five years. The SFC is required to recommend:

1. 'Distribution of the net proceeds of the taxes between the State and the Panchayats'
2. 'Principles for determining the taxes to be assigned to the Panchayats'
3. 'Grants-in-aid to the Panchayats'
4. 'Measures to improve the financial capacity of the Panchayats'.

This provision is analogous to Article 280 (Finance Commission of India) at the state level. The upper-level goal is to facilitate the institutionalization of fiscal federalism at the sub-state level. Unlike the central Finance Commission, SFC recommendations have advisory status only and mandate political support from the State government.

Empirical studies suggest that SFCs, in all states of India, have routinely been underfunded, slow to become composed, and recommendations often are not implemented. "The Panchayat financial sinews are not yet developed, giving them skeletal status as institutions, even though they have constitutional status."[1043] This raises serious questions located in the doctrine of "meaningful decentralization" because, without financial capacity, local bodies are unable to function as participatory self- government.

[1041] The Constitution of India, Seventh Schedule, List II, Entry 5.
[1042] S.P. Sathe, "Panchayati Raj and the Future of Indian Democracy" (1992) 34(4) Journal of Indian Law Institute 567.
[1043]B.S. Raghavan, "State Finance Commissions and Panchayat Finances" (2001) 43(31) Economic and Political Weekly 3135.

Article 243J – Audit of Panchayat Accounts

Article 243J states that the accounts of Panchayats shall be kept and audited in the manner as specified by the State Legislatures. This provides an accountability and transparency mechanism in the finances of Panchayats. Although in practice many Panchayats lack the institutional capacity and/or qualified personnel to maintain proper accounting.

The provision is linked to the constitutional principle of accountability of public institutions, brought about in the case "Common Cause v. Union of India"[1044], which explicitly stated that mismanagement of funds by public institutions compromises democratic governance. In that case, therefore, Article 243J creates systems of checks and balances at the grassroots level.

Article 243K – Elections to the Panchayats

Elections to the Panchayats Article 243K provides for the superintendence, direction, and control of elections to the Panchayats to be vested in the State Election Commission (SEC). Article 243K is modelled on Article 324 (Election Commission of India). The wording of the provision grants SECs independence similar to that of constitutional bodies. The Supreme Court has upheld that SECs have independence from interference by State Governments. In "*Kishansing Tomar vs. Municipal Corporation of Ahmedabad*" [1045] The Supreme Court stated as a matter of constitutional mandate that elections to PRIs need to be conducted in a free and fair manner, and cannot be delayed. This embodies the doctrine of free and fair elections as part of the basic structure of the Constitution, as laid down in "Raj Narain case".[1046] Therefore, Article 243K constitutionalizes electoral democracy at the local level by precluding arbitrary dissolution and/or delay in conducting elections to Panchayats by State Governments.

Article 243L - Composition of Panchayats

Article 243-L of the Constitution provides for the establishment of Panchayats at village, intermediate, and district levels, with the exception of the composition, strength and territorial constituencies to be determined by State Legislatures.

[1044] Common Cause v Union of India, (1996) 6 SCC 530.
[1045] Kishansing Tomar v Municipal Corporation of Ahmedabad, (2006) 8 SCC 352.
[1046] Indira Nehru Gandhi v Raj Narain, 1975 Supp SCC 1.

While the article is procedural in nature, it is important in that it establishes norms of representative democracy at the local level, and ensures that the will of the people is represented in the Panchayats through direct elections. In this way, it brings the principle of universal adult franchise, originally set out in Article 326 of the Constitution, to the lowest tiers of governance.

Article 243M - Application to Certain Areas

Article 243M excludes certain areas, including Scheduled Areas under the Fifth Schedule, the Sixth Schedule areas in the North-East and metropolitan areas, from the application of Part IX. The exception was justified based on the premise that tribal communities have different systems of governance.

Critics of the Article have revealed that such exclusions undermine the universal character of the democratic project. The PESA Act, 1996 (Panchayats Extension to Scheduled Areas Act) sought to continue the idea of extending the workings of Panchayati Raj to tribal areas and at the same time, recognize the role that customary governance plays. However, implementation of the Act in practice has been inconsistent, resulting in marginalization.

Article 243N – Continuation of Existing Laws and Panchayats

Panchayats that are presently existing, as well as existing laws governing the same, shall continue until they are reorganized in accordance with the provisions of Part IX of the Constitution under Article 243N. This transitional provision provides a mechanism to facilitate the transition from statutory to constitutional Panchayats. Scholars point out that this exemplifies the doctrine of constitutional continuity, which entitles states/people to govern against a backdrop of significant structural change and avoids a vacuum in governance.

Article 243O – Bar on Interference by Courts

Article 243O bars any court from interfering in the election of Panchayats, except by way of election petition. It is similar to Article 329 regarding Parliamentary and Assembly elections. The rationale is to prevent the interference of the court from preventing the electoral process from being delayed.

In "Mohinder Singh Gill v. Chief Election Commissioner" [1047]The Supreme Court held that unless a post-election enactment provided access to designated tribunals, the election process would not have judicial review. Article 243O embeds this principle relevant to Panchayats, while further protecting the electoral mandate from being stalled by litigation before the electoral process.

Doctrinal Implications

Articles 243H to 243O encapsulate a number of important principles:

1. The first is the doctrine of Democratic Decentralization in which decentralization is necessary to counterbalance the centralized nature of India's federalism; these Articles constitutionalized a Gandhian notion of participatory democracy. [1048]

2. The second is the doctrine of Fiscal Federalism. These Articles (243H, 243I) attempt to structuralize some pledges of fiscal federalism at a sub-state level, however, without binding force on the states, this provision becomes aspirational.

3. The third is the doctrine of Free and Fair Elections, specifically in Article 243K, which also expands this basic feature to local governments as evidence of electoral democracy's sanctity on all levels of government.

4. The fourth is the doctrine of Constitutional Continuity and Non-Interference, which Articles 243N and 243O protect a smooth transition in governance and electoral footing from judicial or other interference.

[1047] Mohinder Singh Gill v Chief Election Commissioner, (1978) 1 SCC 405.
[1048] H.M. Seervai (n 1) 350.

LANDMARK CASE LAWS

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1. *State of U.P. & Ors. vs. Pradhan Sangh Kshettra Samiti & Ors*[1049]

Facts:

The case emerged from the challenge of validity of provisions of the Uttar Pradesh Panchayat Raj Act by the associations of Gram Pradhans. They contended that as a result of these provisions, the powers of the Panchayat would be diminished and too much power would be given to the officers of the State. The Pradhan Sangh claimed that this was contrary to the purpose of the 73rd Amendment, which was intended for Panchayats to be self-governing institutions.

Issues:

- Whether the legislation by the State which restricts the functions of Panchayats is constitutional with respect to Articles 243H–243O.
- Whether Panchayats can be seen as merely the departments of the State.

Arguments:

- Petitioners: Since Panchayats are enshrined in the Constitution under Part IX, they must necessarily have real autonomy and that allows for genuine self-governance; state intervention violates the central purpose of Article 40 and the objectives of the 73rd Amendment.
- Respondent (State): Panchayats are creatures of State law and Article 243G allows for evidence and discretion to the State in defining the powers of Panchayats.

Judgment:

The Supreme Court ruled that while State Legislatures can legislate in relation to Panchayats, their laws must recognize important principles of democratic decentralisation. Panchayats cannot be treated as “departmental agencies” of the State.

[1049] State of U.P. v Pradhan Sangh Kshettra Samiti, (1995) Supp (2) SCC 305.

Effect and Commentary:

The judgment recognized the constitutional status of Panchayats, and curtailed any authority of the State, untrammelled to intervene in the operational functioning of Panchayats. The Court noted that Part IX establishes Panchayats as institutions of self-government, not as a mere adjunct to the State, thereby expanding decentralisation.

2. *Kishansing (Kishan) Tomar vs. Municipal Corporation of Ahmedabad*[1050]

Facts:

The Government of Gujarat delayed the local body elections of Panchayats and Municipalities on the basis of delimitation. The petitioners contended that the delay was in violation of their constitutional obligations to hold regular elections as articulated in Articles 243E and 243K.

Issues:

- Whether any State Government can postpone elections to the Panchayats beyond the term of the Panchayat .
- Whether the State Election Commission is bound to hold elections irrespective of the reluctance of the State .

Arguments:

- Petitioners: Articles 243E and 243K impose the necessity for holding elections as long as there is no postponement beyond the term of the Panchayat. Delaying elections is not leaving either; it is in violation of democratic principles.
- Respondents (State): Delimitation and logistical issues warranted postponement of the elections; it would not be fair or proper to hold elections without the delimitation order being properly approved and issued.

Judgment:

The Supreme Court held that elections to panchayats would have to be conducted prior to any expiry of the term of a panchayat. There will be no indefinite postponement jurisdiction by the

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[1050] Kishansing Tomar v Municipal Corporation of Ahmedabad, (2006) 8 SCC 352.

State. The court expressed the independence of the State Election Commissions (SECs) and observed that it was a constitutional mandate for the elections to be held in a timely manner.

Impact and Analysis:

This judgment constitutionalized the doctrine of free and fair elections to grassroots levels. The enhancement of Article 243K also limited the power of the states to postpone or manipulate elections and enhanced the basic framework principle of democracy .

3. *Mohinder Singh Gill & Anr. vs. Chief Election Commissioner & Ors*[1051]

Facts:

The case arose out of the countermand of elections following violence and disorderly conduct. Petitioners questioned whether the Election Commission had the authority to dispense with or cancel the election after the election process had begun .

Issues:

- Whether or not the Election Commission had constitutional authority in terms of the election process, to cancel or postpone elections, once the process has begun.
- The scope of judicial intervention in electoral processes.

Arguments:

- The petitioners were of the view that once the election process has been underway, the only actors who could void the election results were the courts and the legislature, and therefore the Election Commission could not, inter alia, step in mid-process.
- The respondents, on the other hand, argued that the powers of the Election Commission under Article 324 of the Constitution were plenary, and specifically related to free and fair elections, and the ability to cancel elections with taint.

Judgment:

The Supreme Court held that the Election Commission did have wide powers to ensure free and fair elections, including postponing elections, or cancelling elections when appropriate.

[1051] Mohinder Singh Gill v Chief Election Commissioner, (1978) 1 SCC 405.

Nevertheless, the Court also stated that challenges to elections are to be made by way of election petitions after the results are declared, and not in the middle of the election process.

Impact and Analysis:

Although it predated the 73rd Amendment to the Indian Constitution, this case laid the groundwork for the later development of jurisprudence under Article 243O (which precludes interference with an election to a Panchayat). It also recognized that judicial review of elections is limited to post-election petitions and this avoids the disruption of electoral processes.

4. *Rajbala vs. State of Haryana*[1052]

Facts:

The Haryana Panchayati Raj (Amendment) Act, 2015 established additional eligibility requirements for individuals contesting Panchayat elections, with, among other things, a requirement of minimum educational qualifications and the disqualification of individuals who do not have functional toilets at home. The petitioners contended that these requirements constituted unreasonable restrictions on their constitutional right to run for election.

Issues

- Whether the educational qualifications and other disqualifications violated Articles 14, 21, and the democratic spirit embedded in Part IX.
- Whether the right to run for election is a fundamental right or "statutory" right is susceptible to qualifications.

Arguments:

- Petitioners: The restrictions are arbitrary, as they would disenfranchise large sections of the rural population, particularly women and the poor, and deny equality.
- Respondents (State): The right to run for election is not a fundamental right but a statutory right; the legislature may prescribe reasonable qualifications, especially to advance the standard of governance.

[1052] *Rajbala v State of Haryana*, (2016) 1 SCC 463.

Judgment:

The Supreme Court of India upheld the validity of the Act, stating that the right to contest elections is not a fundamental right, and is in fact a legislative right, and that the State Legislature has power to prescribe qualifications and disqualifications.

Impact and Analysis:

The ruling stimulates dialogues regarding exclusion or efficiency in local governments. While the ruling reaffirmed state authority to impose qualifications, dissenters argue that it is exclusionary and inconsistent with Article 243D by way of only marginally poor people with special qualifications. The ruling also reflects similar disinclination towards intervention with legislative will, notwithstanding the primacy of inclusive concerns advanced by this Court in connection with Panchayat issues.

CONTEMPORARY RELEVANCE

Articles 243H to 243O, part of the 73rd Amendment Act, continue to play a vital role in India's agenda toward decentralized government and the empowerment of Panchayati Raj Institutions (PRIs). Despite the protections provided in the Constitution, Panchayats are still challenged by issues of financial autonomy, free and fair elections, social inclusion, and accountability that shape the discourse of policies and legislation regarding PRIs. [1053]

Fiscal autonomy, which is specified under Article 243H, is important but its potential is not fully realized. While it is true that Panchayats have the power to impose taxes, many Panchayats still rely on state grants for funding, since they have limited fiscal capacity and very narrow local revenue bases.[1054] Audit reports show that Panchayats often fail to generate enough local revenue for sufficiently funding development projects. In addition, there is inconsistent implementation

[1053] India, Constitution, Art 243H.
[1054] Comptroller and Auditor General, 'Report on Panchayat Finances' (2024) Government of India.

of State Finance Commissions' recommendations pursuant to Article 243I limiting resource devolution.

Notwithstanding the constitutional protections, reports of electoral impropriety related to vote-buying and coercion persist. Although Article 243O seeks to create a safe haven for the electoral process from judicial intervention, it may also serve to delay judicial remedies for electoral disputes, leading one to question if the constitutional protections provide a reasonable balance between autonomy and accountability.

Policy analysts are still recommending the enhancement of Panchayati taxation authority, a clear and transparent grant allocation process, and complete compliance with SFC recommendations as a means to improve fiscal autonomy for PRIs.[1055] The implementation of elections as provided for in Articles 243K and 243O also has new challenges.[1056] Postponement of elections sometimes motivated by political expedience can disrupt democratic continuity. Commonwealth reports of electoral fraud such as buying votes and influencing voters persist despite constitutional measures put in place. While judicial avoidance is a goal of Article 243O, election postponement may delay judicial relief, raising the issue of the independent authority versus the accountability of elections. [1057] Social movements championing transparency and women's participation have been instrumental in pressing for electoral reforms[1058]

While social inclusion through reservations (Articles 243D and 243T) is a significant achievement in its own right, issues continue to emerge. The reservation for women of 33% has led to women office holders in the Panchayat (India, Const. Art 243D), but challenges about structural factors, including male violence and tokenism of women's participation, have decreased women's efficacy. Women's organizations advocated for capacity-building measures and considered adding a protective mechanism, to ensure women gain effective empowerment. Moreover, Article 243M has left certain tribal regions excluded from the definition of the panchayat under the Constitution, generating calls for consideration of the tension between governing with constitutional authority and respecting tribal authority.[1059]Additionally,

[1055] Economic Advisory Council to the Prime Minister, 'Recommendations on Fiscal Federalism' (2024).
[1056] Election Commission of India, 'Report on Panchayat Election Malpractices' (2024).
[1057] Women's Political Watch, 'Campaigns for Electoral Transparency and Women Empowerment' (2025).
[1058] National Commission for Women, 'Status of Women in Panchayats Report' (2024).
[1059] Panchayats (Extension to Scheduled Areas) Act, 1996.

inconsistent implementation of the Panchayats Extension to Scheduled Areas Act, 1996 (PESA) has generated tensions between elected panchayats and tribal governance structures, illustrating unfinished business with respect to legal and policy issues.[1060]

Various Government programs, such as the Digital India e-Panchayat Mission, are aimed at enhancing transparency and effectiveness through digital developments.[1061]Nonetheless, the significant infrastructure deficits and inequality of digital access that still are prevalent in rural areas often inhibit the impact of initiatives such as these from reaching most rural areas.[1062] Article 243-J speaks to the measures for accountability and the mandatory audit framework; however, the shortcomings in institutional capacity result in poor oversight of expenditure. In order to mitigate the abuse and corruption of funds spent in Panchayats, accountability and audit frameworks must be improved.[1063]

The ongoing legal tension between the autonomy of the Panchayats and the local and state government interests continues to exist. The judicial decisions suggest that while the Panchayats are accepted as bodies for self-governance, the state governments continue to have the powers to regulate their medium of engagement and entitlement to participate in elections and conduct the processes. This dynamic continues to inhibit the potential for wholly decentralizing governance in aligning with the spirit of the Constitution.

Here is a conclusion and a bibliography section (in ILI citation style, arranged alphabetically by author with separate lists for books, articles, and websites) for the paper:

CONCLUSION

These provisions represent the principles of democratic decentralization, fiscal federalism, free and fair elections, and continuity of the constitution. While the constitutional text empowers Panchayats with many functions concerning taxation, representation, elections, and accountability, the pragmatic pursuit of grassroots democracy faces limitations.

[1060] Tribal Rights Forum, 'Challenges in PESA Implementation' (2025).
[1061] Ministry of Electronics and IT, 'e-Panchayat Mission Mode Project Report' (2024).
[1062] NITI Aayog, 'Digital Divide in Rural India' (2025).
[1063] Comptroller and Auditor General, 'Report on Panchayat Finances' (2024) Government of India.

The financial independence of Panchayati Raj institutions is still constrained by the discretionary powers of the states and a failure to fully implement the recommendations of State Finance Commissions. The governance of the electoral process, despite its constitutional guarantees, struggles with delays, the enactment of fraudulent practices, and legal questions of non-interference. The provision of social inclusion, through reservations for Scheduled Castes, Scheduled Tribes and women, while establishing a space for distinctive democratic participation, faces sociocultural and other challenges in implementation. Public policy-led initiatives, for instance in digital governance reform, present valuable new opportunities, even if their effects are unproven due to infrastructure and capacity issues.

Judicial pronouncements have upheld the constitutional vision of the panchayat being a self-governing institution while acknowledging the state's powers to regulate and oversee the process. Looking ahead, tackling gaps in enforcement and fiscal capacity, and social empowerment through coherent policy, and legal reform accompanied by participatory bottom-up movements will be critical. Ultimately, the Articles of the 73rd Amendment provided a progressive vision for deepening democracy from below, re-establishing India's commitment to a participatory and decentralized form of governance.

CHAPTER 31 : MUNICIPALITIES: CONSTITUTION & COMPOSITION (ARTICLE 243P–243W)

BY MRUNMAYEE SANTOSH BHAT

INTRODUCTION

India has the most lengthy constitution in the world and it also maintains discipline while trying to provide justice to the second largest population in the world. This is also in a way hindrance, wherein it is difficult for the citizens to directly connect with the government. So, to connect people who are not too close to the government, the 74th Amendment[1064] introduced us to the compositions of Municipalities. Though the main purpose of this amendment was democratic decentralization, it actually helped in establishing direct connection between citizens and governance. This chapter discusses the composition and constitution of the Municipalities . The 74th Amendment introduced new part IXA in the constitution which deals with Municipalities in an article 243P to 243ZG.This Amendment is also known as "Nagarpalika Act"[1065]. This put the states under constitutional obligation to adapt Municipalities as instructed in the constitution. I am going to explain the articles from 243P to 243W .

HISTORICAL & CONSTITUTIONAL BACKGROUND

The formation of self-governing bodies[1066] was not a new concept in India. In the pre-independence era the British formed self-governing bodies in a few cities of India. The first Municipal Corporation was established at Madras in 1687-88[1067]. After that in 1726 the

[1064] 74th Amendment Act 1992
[1065] Nagarpalika Act came in force on 1st June 1993
[1066] 74th amendment act 1992
[1067] First municipal corporation by british

municipal corporation was established in ‘Bombay & Calcutta’. The role of local self-governance was visualized by lord Mayo’s resolution on financial decentralization in 1870. After Mayo’s resolution the resolution of Lord Ripon’s 1872 was established. This Ripon’s resolution is also known as “Manga Carta” . This resolution is considered the foundation for the local self -government in India.

In 1919 the government of India act this was the reason for the local self-government becoming the subject under the charge of responsible Indian ministers in the province after that the Government of India Act 1935 was enacted. Under this act the local self government was designated a provincial subject under the plan of provincial autonomy.

After the independence there were 2-3 attempts made for passing the Nagarpalika bill by different committees the Balwant rai Mehta committee(1957) & Ashoka Mehta Committee highlighted the strong need of elected bodies with great anatomy they highlighted the failures of local government . In 1989, Rajiv Gandhi’s government introduced the 65th amendment also known as the nagarpalika bill; this bill failed to pass in Rajyasabha . After that attempt the national front government led by V.P.Singh in 1990 also made an attempt to reintroduce the upgraded version of the previously introduced bill with some changes but that bill was also lapsed .

Finally in September of 1992 Narsimha Rao introduced the modified version of Nagarpalika Bill in Lok Sabha . That bill was finally passed in December of 1992 as the 74th Amendment Act 1992 . This act came into force in June 1993.

There were five pre-independence eras in which the growth of the concept of local self-governing bodies happened; there were three attempts made in the post-independence era; all these attempts ultimately lead us to the 74th amendment act 1992.

DOCTRINAL OR ARTICLE BASED DISCUSSION

243P : This article is the foundation article for the entire part of IXA. This part deals with Municipalities . This article's purpose is to define key terms which are used throughout the rest

of IXA . For uniform legal understanding of urban local self-governance. This article defines these following terms :

1. Committee
2. District
3. Municipal Area
4. Municipality
5. Panchayat
6. Population
7. Metropolitan Area

These above terms are defined and explained in the 243P as I mentioned above this article can be called a foundation article . Interpretation of legal language is not an easy job while having the definitions, so imagining interpreting without the definition is a really hard task to do. So, in my opinion this article lays groundwork for interpretation and makes it a little bit easy for us.

243Q : This article mandates the constitution of three types of municipalities in every state based on the characteristics of their areas . There are three types of municipalities which are:

1. Nagar Panchayat : A village which is on the outskirts of a growing city with an increasing population with the decreasing number of jobs which are related to agriculture , transitioning from rural to urban can be constituted as 'Nagar Panchayat.'
2. There are many factors like the pattern or type of employment in the area , population density etc. which decides whether the area is eligible for creating the nagar panchayat or not. The person who is authorized to do that is the state government . Nagar panchayat is also known as town council or notified area council. Examples of Nagar Panchayats are , karjat nagar panchayat , Ayodhya nagar nigam panchayat
3. Municipal Council : In India, a municipal council (also referred to as a municipal committee, municipal board) functions as the elected governing body of a Municipality which is the local government institution for smaller urban areas. A municipality is generally divided into territorial constituencies known as wards.

Residents of each ward elect a representative called a municipal councillors, and together these councillors constitute the municipal council. Municipalities are established under the State Municipal Act. The Municipal Council administers the local urban body . Examples of Municipal Council are, Ambernath municipal council, there are over 200 municipal councils in uttar pradesh , there are many municipal councils in India throughout the states .

4. Municipal Corporation: this is the legal term for a local governing body. The alternate term for municipal corporation is municipally owned corporation each municipal corporation is established through and governed by the municipal act passed by the state legislature. Author D.D. Basu says "243Q purpose in establishing the decentralized three-tier structure for urban governance throughout the India"[1068] . following are the cases related to the article 243Q :"Sai Grampanchayat vs. State of Gujrat[1069]" , "Champa lal vs.State of Rajasthan[1070]" , "NOIDA vs. Chief Commissioner of Income Tax[1071]".

243R: Article 243R of the Constitution of India deals with the composition of municipalities. It mandates that all seats in a municipality shall be filled by persons chosen by direct election from the territorial constituencies in the municipal area, and for this purpose, each municipal area shall be divided into territorial constituencies to be known as ward. For example Municipal Corporation of Maharashtra the city is divided into different wards and there are voters in each ward they vote and elect one of the nominated candidates and the state legislature has authority to pass laws allowing various things. Though I was not able to find many cases related to this article, I came across this case " Shanti G. Patel vs. State of Maharashtra"[1072]

243S: this article mandates the constitution of ward committees within the Municipalities based on their population . It is compulsory for Municipalities to constitute one or more ward committees. the legislature of state may make provisions of the manner in which the ward

[1068] D.D. Basu, Vol 2 Shorter Constitution of India (LexisNexis, Gurgaon, 16th edn., 2021)
[1069] Sai Gram Panchayat vs. State of Gujrat 1999.2 SCC.366
[1070] Champa lal vs.State of Rajasthan 2018 06 SCC.356
[1071] NOIDA vs. Chief Commissioner of Income Tax 2018 12 SCC.463
[1072] Shanti G. Patel vs. State of Maharashtra 2006 02 SCC.505

committees are filled . the ward committee is consist of one ward, the member representing that ward in the Municipality; or two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee, shall be the Chairperson of that Committee.There are few cases I came across on this article but these one are more recent

“ Maheshwar Pratap Singh vs. The State of Bihar &Ors.[1073]” “Vikas Kishanrao Gawali vs. State of Maharashtra”[1074]

243 T: This article deals with the reservations of seats in municipalities. This article provides reservation for SC and STs and OBC in proportionate manner. Which simply means the seats reserved for these categories should be proportionate with the number of population of these categories. This article also provides the reservation for the women category. According to this article the one third of the total seats should be reserved for the women category this one third also includes the seats reserved for the women in the category of SC,ST &OBC. The interesting feature of this Article is the rotation of the reserved seats throughout the municipality; this rotation of seats ensures that the particular ward or office is not permanently reserved for specific reserved seats. This provision also ensures that by periodically rotating the reserved ward system allows the fair representation of all segments.

243U : Every Municipality will last for five years from the date of its first meeting, unless it is dissolved earlier by law. However, a Municipality must be given a fair chance to explain itself before it is dissolved. No changes to the law can cause a Municipality that is currently functioning to be dissolved before its five-year term is up. This clause also protects the present municipality from the government if they use the legislative changes to bypass the democratic mandate of municipality; this article also ensures timely elections and reconstitution of municipality. Case related to the Article. “Krishna Singh Tomar vs. Municipal Corporation City of Ahmedabad"[1075]

[1073] Maheshwar Pratap Singh vs. The State of Bihar &Ors 2016 04 BIJR.2542
[1074] Vikas Kishanrao Gawali vs. State of Maharashtra 2021 06 SCC.73
[1075] Krishna Singh Tomar vs. Municipal Corporation City of Ahmedabad 2006.08 SCC.352

243V: This article specifies the grounds for disqualification of membership of municipality. This article provides a framework for the criteria of disqualification of local bodies election. Following are the criteria for disqualification of membership of municipality :

1. Holding an office of profit under the government.
2. Being of unsound mind.
3. Having been convicted of a serious criminal offense.
4. Possessing more than the maximum number of children, as mandated by some state laws.
5. Having a history of financial impropriety or being an undischarged insolvent.
6. Age less than 21 years.

This article also specifies in the case of question arising regarding the disqualification of a member the state legislature can decide which authority will resolve this question. This provision prevents the question which may raise upon the fairness of the legal process. This article is also the most questioned article. In every state's high court there are many cases filed for the criteria of disqualification. " Sujit Vasant Patil vs. State of Maharashtra & others"[1076]

243W : This article provides states to grant powers, authorities, responsibilities to Municipalities. This article's primary purpose is to enable local bodies to work as an institution of local government . The Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to- the preparation of plans for economic development and social justice. The performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule. This list of functions that may be entrusted to the municipalities has been incorporated as the Twelfth Schedule of the Constitution. This schedule defines 18 new tasks in the functional domain of the Urban Local Bodies, as follows:

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.

[1076] Sujit Vasant Patil vs. State of Maharashtra & others 2016.13 SCC.535

5. Water supply for domestic, industrial and commercial purposes.

6. Public health, sanitation conservancy and solid waste management.

7. Fire services.

8. Urban forestry, protection of the environment and promotion of ecological aspects.

9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.

10. Slum improvement and upgradation.

11. Urban poverty alleviation.

12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.

13. Promotion of cultural, educational and aesthetic aspects.

14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.

15. Cattle pounds; prevention of cruelty to animals.

16. Vital statistics including registration of births and deaths.

17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

18. Regulation of slaughter houses and tanneries. " Shapoorji Paloonj & Company Ltd. vs. Commissioner Custom Central Excise"[1077]

IMPACT AND ANALYSIS

In my opinion we have to agree that the 74th amendment act was a landmark step which provided constitutional recognition and the basis for the urban local government bodies. Some of the authors I came across while researching are Deepak Kumar & Debasish Cattopadhyay, Abhijeet U.Pai, Renu Khosla and NIUA authors. These authors have talked about the gap between promises given at the time of amendment and their actual implementation

[1077] Shapoorji Paloonj & Company Ltd. vs. Commissioner Custom Central Excise 2016 TIOL-556-HC-PATANA-ST.

Author Abhijeet U Pai say's " Urban Local government in India are rendered largely powerless"[1078] while some author said "The devolution where the intentions of decentralization as mandated by the 74th amendment act are yet to be fully realized thereby hindering the financial & self sufficiency of our urban local bodies."

In overall view the 74th Amendment gave the positive impacts like constitutional recognition, decentralized democracy, fiscal framework and the development of urban areas however, the effect of the positive impacts is also limited or restricted by uneven and incomplete devolution of powers, finances and functions.

CONTEMPORARY RELEVANCE

This amendment has constitutionally empowered third tier governments to decentralize power. These Articles are responsible for fundamental civic services like waste management , water management etc. in urban areas. These articles provided strong elected bodies with fairness without breaking any law. The strong anatomy, structure of Articles and the definitions provided by these Act helps interpreting the legal language by words.

CONCLUSION

Hence, this Amendment Act[1079] was a landmark step & most needed step at that time. However, there are many flaws like the need to restructure those articles to use them efficiently, the gaps between the promises and the original structure and the proper functioning is lacking. This Act itself was a big step and a landmark decision which helped the decentralization of the government. However, for smooth functioning the loopholes have to be properly dealt with.

[1078] Abhijeet U.Pai "Evaluating the impact of the 74th CAA& Urban governance innovation in India"24th june2025 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5315743
[1079] 74th Amendment Act 1992

CHAPTER 32: COOPERATIVE SOCIETIES (ARTICLE 243ZH TO 243ZT)

BY LAKSITA P

INTRODUCTION

Cooperative societies are "a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;" according to Article 243ZH (3). It is a voluntary association of individuals to benefit the economic interest and thus registered under any cooperative societies act in any state and thus considered as a statutory body having characteristic of perpetual succession, common seal, can enter into contract, can sue others and be sued by others. Justice Kurian Joseph defines "cooperative society is registered on cooperative principles of democracy, equity, equality and solidarity. Democratic accountability, mutual trust, fairness, impartiality, unity or agreement of feeling among the delegates, cooperativeness, etc. are some of the cardinal dimensions of the cooperative principles."[1080]Cooperative societies have a significant impact on the economy of the country and the concept of cooperative society can be observed from ancient times in India. Under the 97th constitutional amendment, Part IX B was inserted in the constitution of India, which is from Article 243 ZH to 243 ZT to be dealt with cooperative societies.

[1080] *Vipulbhai M Chaudhary vs Gujarat cooperative milk marketing federation limited and others,* 2015 SCC OnLine SC 315

HISTORICAL ANALYSIS

Cooperative society was rooted in Indian culture through various forms to help the needy people. The concept of cooperative society can be witnessed in the form of devarai or vanarai. In the southern part of India it was known as kuries or bhishies. The indebtedness of farmers in the 19th century made the government take steps to improve the financial condition of farmers, and such initiatives were setting up Edward law committees. With recommendation this committee cooperative societies bill was enacted in 1904. This act was restricted to credit cooperatives.[1081] With huge response to this act numerous cooperative societies were registered, which resulted in enactment of cooperative society 1912, which aims to provide a legislative framework for non-credit services.[1082]

The world war I and banking sector crisis affected the cooperative society due to which a committee was formed in 1914 under Sir Edward Maclagen. Based upon recommendation, a three tier cooperative structure was formed to ensure the functioning of cooperative societies. In 1919 the cooperation shifted to matter of provinces to enact legislature for their province, resulted in Bombay cooperative societies act of 1925[1083]. After setting up the Reserve Bank of India, Mehta committee recommended that cooperatives should be reorganized as multi-purpose cooperatives. In 1942, multi-unit cooperative society act[1084] was passed which enabled cooperative societies in multi-state level. This act aimed to delegate the power of central registrar to state registrar for functional purposes.

After independence, the government of India identified the need for growth of cooperative society, therefore in the first five-year plan, a committee was appointed in 1951 known as All India credit rural survey committee to submit a report on the credit system in rural areas. The committee submitted its report, and they emphasised that a large number of rural areas were not part of cooperative societies and even if cooperative societies existed in rural areas, members of such cooperatives were not farmers. Therefore, the committee recommended the government to

[1081] The Co-operative Credit Societies Act, 1904 (Act 10 of 1904).
[1082] The Co-operative Societies Act, 1912 (Act 2 of 1912)
[1083] The Bombay Co-operative Societies Act, 1925 (Bom. 7 of 1925)
[1084] The Multi-Unit Co-operative Societies Act, 1942 (Act 6 of 1942).

participate in cooperatives by participating in management or make nominees to board members. The Government of India accepted these recommendations and took various steps such as constituting a central committee for cooperatives training which provided training facilities for cooperatives.

The national cooperative developmental corporation was formed in 1963 to boost and develop cooperative marketing and societies. The cooperatives were slowly developed over the period and consumer cooperatives are examples for such growth. In 1965, Mirdha committee was formed to provide necessary parameters to establish the standard of cooperative societies. This committee also reviewed the existing cooperative and its governing law and suggested some recommendations to amend cooperative legislation made by most of the states. To give adequate attention to the agricultural sector to use cooperative societies, farmers service cooperative societies were recommended by the planning commission 1972.

The multi-unit cooperative societies act of 1942 was replaced by multi state cooperative societies act 1984.[1085] The main aim of the act to bring uniformity in functioning and management of state cooperatives as cooperatives comes under state list. Various amendment made to The Companies act 1956[1086], and national cooperative developmental corporation in early 2000's to bring independence and uniform functioning in its management and membership of cooperative society.[1087] International labour organisation provided recommendations for cooperative society for its promotion globally[1088]. Following these recommendations, the government of India made various changes and amendments in constitution and enacted legislation such as the Multi-State Cooperative Society Act, 2002.

In 2011, 97th constitutional amendment of India brought right to form cooperative society under the purview of article 19[1089] and introduced a new directive principle of state policy for promoting and developing cooperative society under article 43A of constitution of India. Further part IX-B "cooperative societies" was amended into a constitution detailing the functioning and composition of cooperative society.

[1085] The Multi-State Co-operative Societies Act, 1984 (Act 51 of 1984)
[1086] The Companies Act, 1956 (Act 1 of 1956)
[1087] *Ministry of Cooperation, "History of Cooperatives Movement", MoC Officials Induction Programme Readings 31- 44 (Government of India, 2022)*
[1088] International Labour Organization, Promotion of Cooperatives Recommendation, 2002 (No. 193)
[1089] The Constitution of India, art 19

THE DOCTRINE OF SEVERABILITY AND PART IX B OF CONSTITUTION OF INDIA

The doctrine of severability is removal of a repugnant part of the statute or provision within the constitution, and this separated part is void and not the whole act or statute or provision as discussed in A K Gopalan case.[1090] The cooperative societies were subjected to state list under schedule VII list II and entry 32 as per constitution of India. The state has the exclusive right to legislate on matters of cooperative societies. Part IX B was inserted in the constitution of India, under 97th amendment which deals with subject matters of cooperative societies (article 243ZH to article 243ZT). Under article 368(2) proviso, the majority of the states must ratify the same to enforce this part, but only 17 out of 28 states have ratified the same.[1091] Consequently, the doctrine of severability was used by the supreme court of India, under which the court recognised two kinds of cooperative societies which are those operating within the limits of the state and those operating across the states and union territories (multi state cooperative societies). The court struck down the part that only violates the constitution and the remaining part is to be valid and continue to function. Applying this doctrine the court concluded that Part IX B limits to multi state cooperative societies.

PROVISION ANALYSIS

Article 243ZH contains definitions for the Part IX B of constitution. This article has defined "authorised person", "Board", "Co-operative society", "multi-state co-operative society", "office bearer", "Registrar", "State Act" and "State-level co-operative society". This article clarifies the meaning of the above words to be used in the context of cooperative society under Part IX B of constitution.

[1090] *A K Gopalan v. State of Madras,* 1950 SCC OnLine SC 17
[1091] The Constitution of India, art. 368

Article 243ZI empowers the state to legislate law for “incorporation”, “regulation”, “winding up” of cooperative societies in accordance with the principles of voluntary formation, democratic member control, member-economic participation and autonomous functioning

This article confers power to the state legislature to make laws for incorporation, regulation and winding up of cooperative societies in accordance with provisions of Part IX B of Constitution. This article thus limits the power of the State Legislature to enact laws on cooperative societies. The words "autonomous functioning" appearing in Article 243-ZI implies that the State intervention in the functioning of Co-operative Societies should be minimal.[1092]

Article 234ZJ deals with the number and terms of office bearers and board members of cooperative societies. According to this article, the number of directors of the cooperative society shall be in accordance with the state legislature, but such number is not exceeded by twenty-one. Every cooperative society having individual members and any of such members belonging to Scheduled Castes or the Scheduled Tribes will have one seat reserved for them and another two seats are reserved exclusively for women members.

This article also provides the term for the elected member and office bearers. Accordingly, every elected member and office bearer will have a term of five years from the date of election and the term of office bearer will be conterminous with the term of board. Any casual vacancy arising shall be filled with nomination of the same class of members. As per this article, it empowers the state legislature to make law for co-option of persons having experience in “Banking”, “management”, “finance” or “specialisation in any other field” as a member of board. Such co-opted members will not have the right to vote and they are not eligible to be elected as office bearers.

In *Daman Singh vs. State of Punjab*, the Constitution Bench had held that “the creation, the constitution and the management of the society is a creature of the statute. They are controlled by the statute, and so, there can be no objection to statutory interference with their composition on

[1092] *State of Kerala v. Joe Thomas & Ors.*, 2025 SCC Online Ker 3507

the ground of contravention of the individual right to freedom to form association."[1093] This was reaffirmed by the court that "once a person becomes a member of a Cooperative Society, he loses his individuality with the society and he has no independent rights except those given to him by the statute and the bye-laws. He must act and speak through the society or rather, the society alone can act and speak for him with the rights or duties of the society as a body."[1094]

Article 243ZK provides guidelines for election of board members of cooperative societies. The law enacted by the state legislature for election of board members will be followed by cooperative society for election of board members and such election is conducted before the term of board in order to ensure the smooth continuation of board even after expiry of board members. The state legislature shall authorise a body or authority for direction, supervision and controlling election in cooperative society.

It was observed by the court that "article 243ZK contains non-obstante clause and a mandate that the election of a Board of every cooperative society shall be conducted before the expiry of the term of the Board so as to ensure that the newly elected members of the Board assume office immediately on the expiry of the office of the Members of the outgoing Board. No State legislation can whittle down this mandate. The provision in the Constitution does not delineate any exceptions, to the rule of installing elected members of the Board immediately on the expiry of the term of the outgoing Board, so as to permit the Legislature of a State to legislate on the subject to allow the outgoing Board of the Cooperative Society to remain in office beyond the period of five years from the date of its election. This provision is intended to introduce uniformity and certainty in respect of tenure of members of the Board and the office-bearers of all the cooperative societies across India."[1095]

Article 243ZL affirms that the board cannot be suspended or superseded for more than six months. This article also provides the scenarios in which the board shall be suspended or superseded such as persistent default, negligence in performance of duties, acting in prejudice to

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[1093] *Daman Singh v. state of Punjab*, 1985 SCC OnLine SC 11

[1094] *State of UP and another v. C.O.D Chheoki employees cooperative society ltd and ors.* 1997 3 SCC 681

[1095] *Arun Ganpatrao Dongle & Ors v. State of Maharashtra & Ors.,* 2012 SCC OnLine Bom 1898

the interest of members or cooperative society or when the authority authorised by state legislature fails to conduct election as per the state act

If there is no governmental shareholding or loan or any financial assistance or guarantees provided by government to cooperative societies cannot be superseded or suspended. The administrator appointed will manage the cooperative society and he facilitates the election within stipulated period and hand over management of the cooperative society to the elected board when board is superseded. State act provided the provision for condition of service for such administrators.

Article 243(ZL) is dealing with "the supersession and suspension of board and interim management states that notwithstanding anything contained in any law for the time being in force, no board shall be superseded or kept under suspension for a period exceeding six months. It provided further that the Board of any such co-operative society shall not be superseded or kept under suspension where there is no government shareholding or loan or financial assistance or any guarantee by the Government. Such a constitutional restriction has been placed after recognizing the fact that there are cooperative societies with no government shareholding or loan or financial assistance or any guarantee by the government."[1096]

In the case of *Bhanwar Lal vs. State of Rajasthan & Ors.*,[1097] Rajasthan state has amended the Rajasthan Co-operative Societies Act, 2001[1098] in 2015, which allows the registrar to remove the board and appoint administrator (government servant) to manage the affairs of the societies until the elections and this amendment conferred the power to administrative officers to perform all functions of the elected members. Therefore, the timeline for this administrative office is not limited to six months but until the elections. This amendment was challenged in the court, stating that it is ultra virus to Articles 14[1099], 19(1)(c) read with 43-B, 243-ZJ, 243-ZK, 243-ZL of the Constitution of India and thus the court quashed this article.

[1096] *Thalappalam Service Co-operative Bank Ltd. & Ors. v. State of Kerala & Ors.,* 2013 (16) SCC 8
[1097] *Bhanwar Lal v. State of Rajasthan & Ors.,* 2017 SCC OnLine Raj 1132
[1098] Rajasthan Co-operative Societies Act, 2001 (Act No. 16 of 2002), s.30
[1099] The Constitution of India, art. 14

Article 243ZM enables the state legislature to enact state laws that provide provision in relation to audit of accounts and cooperative society and such audit shall take place once in each financial year. The state law also provides the qualifications and experience required by the auditors or audit firm to audit accounts in cooperative society. The general body of cooperative society is authorized to appoint the auditor or audit firms from the state approved panels.

The object of Article 243-ZM of the Constitution is to empower the State Legislatures to make appropriate laws for an independent professional audit of Co-operative Societies. As per the said article, the Legislature of a State shall lay down the minimum qualifications and experience of auditors and auditing firms who shall be eligible for auditing accounts of Co-operative Societies. The State Government or an authority authorised by the State Government shall prepare a panel of such eligible auditors or auditing firms and the general body of the Co-operative Society shall appoint an auditor or an auditing firm from such a panel to audit the accounts of the Society. Under the provision to clause (3) of Article 243-ZM of the Constitution, a Co-operative Society is given a choice to choose any of the eligible auditors or auditing firms from a panel approved by the State Government or an authority authorised by the State Government on that behalf. The proviso provides for one panel of auditors and auditing firms for audit of accounts of Co-operative Societies in the State. This does not mean that the minimum qualifications and experience of auditors and auditing firms eligible for auditing accounts of all types or kinds of Co-operative Societies in the State shall be the same. The eligibility criteria may depend on the type or kind of a Cooperative Society. It is for the State Legislature to lay down the eligibility criteria as stated in clause (2) of Article 243-ZM of the Constitution.[1100]

Article 243ZN provides guidelines for convening of general body meetings, the state act provides the provision for annual general body meetings should be convened within six months of close of the financial year for transacting the business.

[1100] *Karnataka Electricity Boards Employees Credit Co-operative Society, Gadag & Ors. v. State of Karnataka & Ors.,* 2013 SCC OnLine Kar 10261

Article 243ZO provides right to information for the members of cooperative society. It empowers the state legislature to provide right to information by providing access to every member of cooperative society to accounts and books of cooperative society in which regular transactions are recorded. This article also ensures that participation of cooperative society members in management and provides the necessary requirements to attend the meeting by the members. members of cooperative society are also entitled to get training and education as per the provisions of state act.

This article empowers the state legislature to make provision regarding the participation of members. The word "as may be provided in such law" in article 243ZO (2) is interpreted by the court and it was held that the word "may" cannot be read as "shall" and Article 243ZO also does not stipulate as to how, in what manner and to what extent such 'member participation' must be made. Though it was mentioned as a Constitutional objective, what should be the extent and manner etc. were left to be decided by the State and hence the expression 'may' as it appears under Article 243ZO.[1101]

Article 243ZP empowers the cooperative society to file returns to the designated authority within the period of six months of close of every financial year. This article provides the various matters in which cooperative society must file the returns, such as annual report relating to its activity, statement of accounts, surplus disposal plan approved by general body of cooperative society, amendment list to the bye-laws of cooperative society if applicable, declaration in relation to conduct of annual general body meeting date and due of election and any other information that might be required by Registrar as per the provision of state act.

As per the article 243ZP every cooperative society must file their audit report within six months of the end of a financial year, such an audit report contains details of financial transactions and intended to provide transparency to stakeholder of cooperative society. But this transparency is questionable because it was held by the court in the case of Thalappalam *Service Cooperative Bank Ltd. and Ors. vs. State of Kerala*[1102] and Ors that cooperative societies registered under state

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[1101] *Pradeep U.R. & Ors. V. Kerala State Co-Operative Election Commission & Ors* MANU/KE/0915/2016

[1102] *Thalappalam Service Cooperative Bank Ltd. and Ors. Vs. State of Kerala*, 2013 (16) SCC 82

cooperative societies act will not come under the term "public authority". Therefore, it is uncertain for stakeholder of cooperative societies to access such information.

Article 243ZQ deals with Offences and penalties. According to this article, the state legislature by law can make provision regarding offences relating to cooperative society and penalties for those offenses. As per this article when following an act or omission by the cooperative society shall be considered as an offence.

a) Any act of filing false return or furnishing the false information or if the person wilfully omits to furnish information by a cooperative society or members of cooperative society or officers of cooperative society.
b) Disobeying the summons or requisition or any order passed by the authorised person in accordance with the provision of the state act by any person with wilful intention.
c) If any employer fails to pay the amount to cooperative society which has been deducted from his employees within the period of fourteen days from the date of deduction.
d) If any officer or custodian of books, accounts, records, cash, security and other property belonging to the cooperative society has failed to handover the above-mentioned books and properties of cooperative society to the authorised person.
e) Any corrupt practice before, during, or after election of board members or office bearers.

Article 243ZR provides the application to multi-State co-operative societies. This article affirms that the provision of this this part is applicable to multi-state co-operating societies, which is subjected to modification by "Legislature of a State", "State Act" or "State Government" and it is constructed in reference with "Parliament", "Central Act" or "the Central Government" respectively.

Article 243ZS applies to union territories. Union territory having no legislative assembly as if the references to the Legislature of a State were a reference to the administrator thereof

appointed under article 239[1103] and if the Union territory has a Legislative Assembly, then that Legislative Assembly is applied. This article also empowers the president to direct that provision of this part shall not be applicable to union territories by notification in the Official Gazette.

Article 243ZT declare that any state legislature in force regarding cooperative society before ninety seventh constitutional amendment which is inconsistent with the provision of this part shall be amended or repealed by the competent legislature or by a competent authority or within the expiration of one year from the date of commencement, whichever is lesser.

CONSTITUTIONALITY OF COOPERATIVE SOCIETY

In the case of *Union of India vs. Rajendra shah*, constitutionality of the Cooperative societies was declared by the supreme court of India. The respondent Rajendra N shah challenged the constitutionality of cooperatives societies in Gujarat High Court. Part IX B of constitution dealing with cooperatives societies enacted by parliament wants to be ratified by state legislature under article 368(2) proviso, but only 17 out of 28 states ratified and rest of the states did not ratify the same and therefore it was held by high court that cooperative societies (Part IX B) was ultra virus of the constitution of India for want of ratification by states legislature under Article 368(2) proviso. The supreme court, relying upon various cases and doctrine of severability, held that the Part IX B dealing with cooperatives societies from article 243 ZH to Article 243ZT is applicable only to muti state cooperative societies that are operating with multiple states and union territories. The doctrine of severability was to be applied for the amendment and only the part of which is ultra virus to the constitution is struck down and the rest of the amendment continues to remain valid. If this doctrine is unapplied to the case, then the amendment made in article 19 and article 43-B would have to be struck down as part of the 97th amendment. The state legislature has exclusive right upon cooperative societies as per Entry 32, List II and parliament have power to make law for muti state cooperative societies. Therefore, it was held

[1103] The Constitution of India, art. 239

by the supreme court that Part IX-B of the constitution of India is operative in so far as multiple state cooperative societies are concerned.[1104]

CONCLUSION

It can be concluded that cooperative societies are stepping stones for development of rural areas and foster economic development. Cooperatives have made substantial contributions to several fields, including agriculture, banking, housing, and consumer products, since their inception with the goal of fostering social welfare and economic advancement. Rooted in India's rural fabric, the cooperative movement has empowered small-scale producers and underprivileged communities by providing them with access to resources and opportunities.[1105] It was decided by the court that the 97th amendment is not completely ultra-virus to the constitution. By applying doctrine of severability, Part IX B Article 243 ZH to Article ZT dealing with cooperatives societies are applicable to multi-state cooperative societies and state legislatures have exclusive right over the cooperatives operating within the state. However, uniformity of cooperative societies differs across the state.

[1104] *Union of India v. Rajendra n shah,* 2021 SCC OnLine SC 474

[1105] Gurinder Jit Singh Bhullar and Harinder Mohan, "Cooperative Sector in India: Challenges and Future Prospects" 16 *International Journal for Research Publication and Seminar*, 72 (2025)

CHAPTER 33: SCHEDULED & TRIBAL AREAS (ARTICLE 244-244A)

BY ANKITA DEOPARE

INTRODUCTION: THE DISTINCTIVE CONSTITUTIONAL COMMITMENT TO INDIGENOUS INDIA

India's constitutional framework represents one of the most ambitious attempts by a post-colonial State to reconcile the imperatives of national unity with the protection of cultural plurality and historical justice. This reconciliation is most vividly reflected in the constitutional treatment of indigenous and tribal communities, formally recognised as Scheduled Tribes (STs). These communities, numbering over 104 million people and constituting approximately 8.6 per cent of India's population as per the Census of 2011, occupy a unique position in the Indian polity.[1106] Their socio-economic organization, cultural practices, customary legal systems, and relationship with land and natural resources are markedly distinct from those of the mainstream population.

The Historical Imperative for Special Governance

Tribal societies in India have traditionally been characterised by collective ownership of land, subsistence-based economies, customary dispute resolution mechanisms, and a close spiritual and material interdependence with forests, rivers, and mountains. Colonial interventions, particularly through land revenue systems, forest laws, and commercial exploitation, disrupted these traditional arrangements and resulted in large-scale alienation of tribal land and

[1106] Office of the Registrar General and Census Commissioner, Government of India, Census of India 2011, Government of India Publication, New Delhi.

resources.[1107] The policy of *Exclusion* and *Partial Exclusion* adopted by the British, while ostensibly protective, effectively isolated tribal regions, preventing the benefits of general administration and development from reaching them. This history of economic exploitation and administrative neglect informed the Constitution makers. The framers of the Constitution were acutely conscious that the application of uniform administrative and legal systems to such communities would not only be ineffective but could further entrench historical injustices.

The Principle of Substantive Equality

It is in this context that **Articles 244 and 244-A** of the Constitution, read with the **Fifth and Sixth Schedules**, assume paramount constitutional significance. These provisions carve out Scheduled and Tribal Areas as constitutionally distinct spaces governed by special administrative arrangements. They embody a deliberate departure from the notion of formal equality towards a model of **substantive equality**, recognising that the equal treatment of unequals perpetuates injustice. Rather than functioning as mere exceptions to constitutional norms, these provisions seek to operationalise the constitutional promise of justice—social, economic, and political—for indigenous communities by granting them institutional safeguards and a degree of internal self-determination.

This chapter undertakes a comprehensive analysis of the constitutional framework governing Scheduled and Tribal Areas. It examines the philosophical foundations of special tribal governance, analyses the protective regime under the Fifth Schedule, contrasts it with the autonomous self-rule model under the Sixth Schedule, and explores the exceptional provision for the creation of an autonomous State under Article 244-A. The chapter further evaluates judicial interpretations and identifies contemporary challenges that continue to impede the realisation of genuine indigenous self-governance.

[1107] B. B. Chaudhuri, Tribal Transformation in India, Inter-India Publications, New Delhi, 1992.

THE CONSTITUTIONAL PHILOSOPHY: INTEGRATION WITHOUT ASSIMILATION

The constitutional approach towards tribal communities is rooted in a rejection of assimilationist policies that characterised colonial governance. The Constituent Assembly debates reveal a conscious effort to avoid imposing the dominant socio-cultural framework upon tribal societies. Leaders such as Jaipal Singh Munda consistently emphasised that tribal communities were not "backward Hindus" but distinct peoples with their own civilisational identity.[1108] The framers were thus determined to adopt an approach based on the foundational principles advocated by figures like Verrier Elwin, which later came to be known as the **Panchsheel for Tribal Development** (or the philosophy of *NEFA*).[1109]

Differentiated Governance and Identity Preservation

The framers recognised that tribal marginalisation differed fundamentally from caste-based disadvantage. Tribal communities were not merely socially excluded; they were territorially concentrated, economically exploited, and culturally threatened. Consequently, conventional tools such as political reservation or general welfare schemes were deemed structurally insufficient. What was required was a territorial and institutional framework that could preserve indigenous autonomy while enabling gradual integration into the constitutional order.

This approach is often described as one of **"integration without assimilation"**. Integration signified participation in the political and constitutional life of the nation, securing access to public services, and ensuring national security. Non-assimilation, conversely, ensured the preservation of cultural identity, customary law, and community control over resources, recognizing that their unique system of land tenure and community life was non-negotiable. Articles 244 and 244-A operationalise this philosophy by constitutionally mandating differentiated governance structures.

[1108] Constituent Assembly Debates, Volume IX, Proceedings dated 5 September 1949, Government of India Publication.
[1109] Verrier Elwin, A Philosophy for NEFA, Government of India Press, Shillong, 1957

Four interrelated objectives underpin this differentiated framework:

1. **Protection of Land and Natural Resources:** This seeks to shield tribal communities from market-driven dispossession, recognizing land as central to their culture and economy.
2. **Preservation of Cultural Identity:** This safeguards languages, customs, traditional institutions, and customary dispute resolution mechanisms.
3. **Socio-Economic Development:** This is envisaged in a manner consistent with indigenous values and ecological sustainability, avoiding disruptive 'top-down' modernization.
4. **Political Self-Governance:** This empowers tribal institutions to manage local affairs, resolve disputes, and formulate local rules according to customary norms, institutionalizing a form of internal self-determination.

SCHEDULED AREAS UNDER THE FIFTH SCHEDULE: THE PROTECTIVE MODEL

The Fifth Schedule governs Scheduled Areas in States other than Assam, Meghalaya, Tripura, and Mizoram. This model is essentially a protective framework, focusing on preventing the exploitation of tribal communities by introducing special executive and regulatory controls over the State's power.

A. Criteria and Declaration of Scheduled Areas

Although the Constitution does not explicitly define "Scheduled Areas", their identification has evolved through executive practice and judicial interpretation. The **Scheduled Areas and Scheduled Tribes Commission (1961)**, commonly known as the Dhebar Commission,

articulated four principal criteria that guide the declaration: preponderance of tribal population, compactness and contiguity, economic backwardness, and administrative feasibility.[1110]

The power to declare any area as a Scheduled Area rests exclusively with the **President of India**, who exercises this authority by issuing a Presidential Order after **consultation with the Governor of the concerned State**.[1111] This centralized mechanism underscores the constitutional understanding that tribal protection is a national obligation transcending mere State boundaries and requires the direct intervention of the Union executive.

B. Administrative Structure and the Role of the Governor

While Scheduled Areas fall within the territorial jurisdiction of States, the Fifth Schedule subjects State executive power to special constitutional controls, ensuring a minimum uniform standard of protection. Article 244(1) authorizes the Union Government to issue directions to States regarding the administration of Scheduled Areas.[1112]

The **Governor** occupies a pivotal position within this framework, effectively acting as a constitutional trustee and the President's agent. The Governor is required to submit **annual reports to the President** on the administration of Scheduled Areas.[1113] These reports are intended to facilitate Union oversight; however, the absence of strict statutory timelines and public disclosure has often diluted their accountability potential, making the Governor's role susceptible to the political pressures of the State Government.

[1110] Government of India, Report of the Scheduled Areas and Scheduled Tribes Commission (Chairman: U. N. Dhebar), Volume I, 1961
[1111] The Constitution of India, Fifth Schedule, Paragraph 6.
[1112] The Constitution of India, Article 244(1)
[1113] The Constitution of India, Fifth Schedule, Paragraph 3

C. Tribes Advisory Council (TAC)

The Fifth Schedule mandates the establishment of a **Tribes Advisory Council (TAC)** in every State with Scheduled Areas.[1114] The TAC is composed predominantly of Scheduled Tribe members drawn from the State Legislature, ensuring representative participation. Its function is to advise the State Government on matters relating to tribal welfare and advancement.

Despite its constitutional status, the TAC's advisory nature significantly limits its effectiveness. Its recommendations are not binding, and in practice, TACs often function sporadically, raising concerns about tokenistic consultation rather than genuine participatory governance. Furthermore, the TAC's composition often struggles to accommodate traditional tribal leadership structures, leading to a disconnect between the formal council and the grassroots tribal institutions.

D. Regulatory and Quasi-Legislative Powers of the Governor

The most distinctive feature of the Fifth Schedule is the conferral of extraordinary, quasi-legislative powers upon the Governor. This power acts as a constitutional filter and a protective barrier:

1. **Exemption and Modification Power (Paragraph 5(1)):** The Governor may direct that any Central or State law shall not apply to a Scheduled Area or shall apply with such modifications as they deem necessary.[1115] This power is critical for preventing the automatic application of laws—such as land, forest, or mining laws—that may adversely affect tribal interests or clash with customary practices.
2. **Regulation-Making Power (Paragraph 5(2)):** The Governor may make regulations for the "peace and good government" of Scheduled Areas, particularly to **restrict the transfer of tribal land to non-tribals** and **regulate money-lending**.[1116] These powers

[1114] The Constitution of India, Fifth Schedule, Paragraph 4.
[1115] The Constitution of India, Fifth Schedule, Paragraph 5(1)
[1116] The Constitution of India, Fifth Schedule, Paragraph 5(2)

acknowledge that market mechanisms historically facilitated tribal exploitation and therefore require constitutional restraint and interventionist state protection.

TRIBAL AREAS UNDER THE SIXTH SCHEDULE: THE AUTONOMOUS SELF-RULE MODEL

The Sixth Schedule represents a qualitatively different and more advanced model of tribal governance, applicable to specified areas in **Assam, Meghalaya, Tripura, and Mizoram**. It establishes a robust system of political autonomy that goes beyond mere protection and enables institutionalized self-rule, often described as an "imperium in imperio" (a state within a state). Unlike the Fifth Schedule, which operates through executive discretion, the Sixth Schedule constitutionally entrenches autonomous institutions.

A. Autonomous Districts and Regional Councils

Under paragraph 1 of the Sixth Schedule, Tribal Areas are organised into **Autonomous Districts**, which may further be divided into **Autonomous Regions**.[1117] Each is governed by an elected **District Council** or **Regional Council**. These Councils function as quasi-sovereign bodies exercising a defined set of legislative, executive, and judicial powers within their jurisdiction. The constitutional entrenchment of these elected bodies provides stability and legitimacy to tribal self-rule.

B. Legislative and Administrative Powers

District and Regional Councils are empowered to make laws on a range of matters central to tribal life and identity, including:

1. **Land and Resource Management:** Land use, forest management (excluding reserved forests), and shifting cultivation (*Jhum*).

[1117] The Constitution of India, Sixth Schedule, Paragraph 1

2. **Social and Cultural Matters:** Village administration, inheritance of property, marriage, and social customs.[1118] These legislative powers enable the preservation of customary law and community-based governance systems, preventing the automatic imposition of general civil codes.
3. **Local Administration:** They control primary schools, dispensaries, markets, fisheries, and public ferries.

C. Judicial and Financial Autonomy

The Sixth Schedule also grants significant autonomy in the realms of justice and finance:

1. **Judicial Autonomy:** Councils may constitute village courts to adjudicate disputes among Scheduled Tribes according to customary law.[1119] This allows the parallel functioning of traditional judicial systems alongside the formal state judiciary, promoting culturally sensitive dispute resolution.
2. **Financial Autonomy:** Financially, they may levy taxes on lands, buildings, professions, trades, and vehicles, and manage **District and Regional Funds**, ensuring a degree of fiscal independence essential for effective self-governance.

D. Governor's Supervisory Role

Despite extensive autonomy, the Governor retains supervisory powers to ensure constitutional balance and national integrity. The Governor may annul Council acts threatening public order, extend or exclude laws, and dissolve Councils upon inquiry.[1120] This oversight reflects the constitutional attempt to harmonise the ideal of local autonomy with the ultimate integrity of the national constitutional order.

[1118] The Constitution of India, Sixth Schedule, Paragraph 3
[1119] The Constitution of India, Sixth Schedule, Paragraph 4
[1120] The Constitution of India, Sixth Schedule, Paragraph 16

ARTICLE 244-A: THE ULTIMATE TIER OF AUTONOMY

Article 244-A empowers Parliament to create an autonomous State within Assam comprising Sixth Schedule areas.[1121] This provision was inserted through the Twenty-second Amendment Act, 1969, to address the political demand for greater self-determination from the hill tribes of Assam (leading eventually to the creation of the State of Meghalaya).

Such a State may have its own **Legislature and Council of Ministers**, approaching full statehood while remaining within the State of Assam. The creation of such an autonomous State requires a law passed by Parliament, which can then delineate the legislative and executive powers of the new entity, including the assignment of taxes. A critical safeguard is the requirement of a **two-thirds parliamentary majority for any amendment** to the law creating the autonomous State, ensuring institutional stability and protecting it from simple majoritarian changes.

JUDICIAL INTERPRETATION AND CONSTITUTIONAL LIMITS

Judicial interpretation has been crucial in defining the limits of special governance and ensuring that the protective mechanisms of Articles 244 and 244-A conform to the broader constitutional scheme of fundamental rights.

A. Supreme Court's Delineation and Chebrolu Leela Prasad Rao

In a landmark judgment, ***Chebrolu Leela Prasad Rao v. State of Andhra Pradesh***, the Supreme Court held that the Governor's extraordinary powers under the Fifth Schedule are **not absolute**. The Court ruled that these powers are subject to fundamental rights and cannot override

[1121] The Constitution of India, Article 244-A

constitutional schemes such as PESA (The Panchayats (Extension to Scheduled Areas) Act, 1996), which is itself a parliamentary law designed to give effect to the Fifth Schedule. The judgment involved the scrutiny of a Governor's order granting 100% reservation for ST teachers in Scheduled Areas. The Court emphasized that:

1. The protective discrimination must conform to the constitutional principles of **equality and proportionality**.
2. The Governor's power under the Fifth Schedule is **not plenary** and must operate within the strict boundaries of the constitutional mandate, particularly in relation to Part III (Fundamental Rights).[1122]

B. Balancing Protection, Equality, and Development

Judicial scrutiny ensures that autonomy does not degenerate into arbitrariness or become a tool for new forms of exclusion. In the seminal case of *Samatha v. State of Andhra Pradesh*, the Supreme Court dealt with the issue of mining leases in Scheduled Areas and declared that government land, forest land, and tribal land in Scheduled Areas cannot be leased to non-tribals for industrial or mining operations.[1123] The Court held that transfer of land to non-tribals (including the government for the purpose of granting leases to private companies) is invalid. The principle established is that special governance mechanisms are means to achieve **substantive equality and protection**, not exceptions to constitutional discipline. Courts have consistently intervened to ensure that development projects are not executed at the cost of tribal rights, reinforcing the necessity of consulting local bodies and adhering to the spirit of the protective laws.

[1122] Chebrolu Leela Prasad Rao v. State of Andhra Pradesh, (2020) 5 Supreme Court Cases 513
[1123] Samatha v. State of Andhra Pradesh, (1997) 8 Supreme Court Cases 191

CONTEMPORARY CHALLENGES

Despite constitutional safeguards, the realization of the promise of indigenous self-governance faces persistent challenges that originate from administrative apathy, resource conflicts, and legal ambiguities.

A. Implementation Deficits and PESA (The Panchayats (Extension to Scheduled Areas) Act, 1996)

The Panchayats (Extension to Scheduled Areas) Act (PESA) was enacted to extend the provisions of Part IX of the Constitution (Panchayats) to the Fifth Schedule areas, providing for Gram Sabhas (Village Assemblies) to be the cornerstone of self-governance.[1124] However, its implementation remains weak. State laws often fail to genuinely empower Gram Sabhas, which are deprived of real authority over matters such as approval of development plans, control over minor forest produce, and regulation of land alienation. Administrative centralisation continues to undermine autonomous institutions, preventing true grassroots self-rule.

B. Land Alienation and Resource Conflict

Land alienation due to large-scale development projects, mining, and industrial expansion continues unabated. The constitutional safeguards have often proved insufficient against the state's *eminent domain* power and the economic pull of national resource needs. Conflicts surrounding the Forest (Conservation) Act, 1980, and the effective implementation of the **Forest Rights Act (FRA), 2006**, demonstrate a persistent struggle between tribal land rights and state-controlled forest bureaucracy, leading to the loss of both livelihood and cultural identity.

[1124] M. P. Jain, Indian Constitutional Law, Eighth Edition, LexisNexis Butterworths Wadhwa, Nagpur, 2018, p. 1650

C. Cultural Erosion and Institutional Overlap

The imposition of modern administrative structures alongside traditional institutions creates overlap and conflict. The TAC, District Councils, and the Gram Sabhas often operate without clear jurisdictional harmony, leading to administrative confusion. Furthermore, the gradual erosion of indigenous identity due to external cultural influences and lack of specialized educational policies threatens the very fabric the Constitution sought to preserve.[1125]

CONCLUSION

Articles 244 and 244-A, read with the Fifth and Sixth Schedules, represent a transformative constitutional commitment to indigenous self-governance. They recognize that justice in a diverse society requires differentiated institutions that acknowledge and empower distinct historical and cultural entities. This framework is a powerful legislative model for accommodating internal differences and securing substantive equality.

However, constitutional design must be matched by sustained political will, administrative sensitivity, and judicial vigilance. Only when State and Union governments prioritize the spirit of non-assimilation over expediency, ensure the full and genuine empowerment of the Gram Sabhas, and enforce the protective land laws rigorously, can the constitutional promise to India's indigenous peoples—the promise of justice, autonomy, and dignified self-determination—be fully realised.

[1125] B. K. Roy Burman, "Tribal Development: Challenges and Prospects", (2000) Volume 35, Issue 1, Economic and Political Weekly, p. 123.

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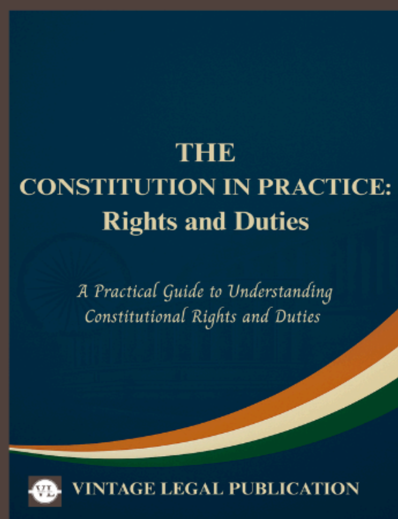

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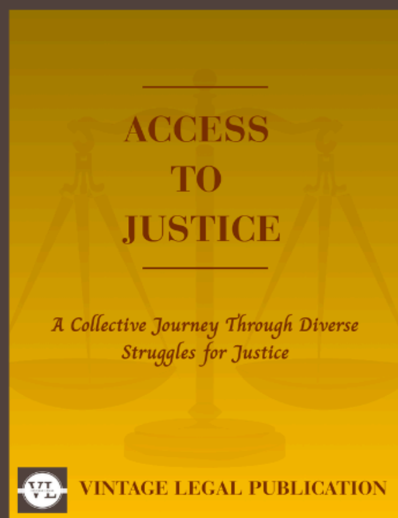

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