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CONSTITUTIONAL LAW-II:

Union & State Structure, Federalism, Liability, Emergency Powers & Basic Structure

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Paper - III: CONSTITUTIONAL LAW-II

To visualize the entire Law of Contract-II syllabus for your final revisions, the heavy theoretical concepts are translated into linear, text-based mind maps.

UNIT-I: Legislature & Executive

- Legislature (Composition): Union (Lok Sabha + Rajya Sabha) ➔ State (Vidhan Sabha + Parishad).
- Legislature (Powers/Functions): Law-making, Budget passing, Executive accountability.
- Privileges (Art 105/194): Freedom of speech, immunity from civil/criminal proceedings for house votes.
- Anti-Defection Law (10th Sch): Disqualification for giving up party membership or defying whips (*Kihoto Hollohan*).
- Executive (Art 52/153): President (Union) & Governor (State) ➔ Titular heads.
- Council of Ministers (Art 74/163): Real executive ➔ Aid and advice is binding ➔ Collective responsibility to the lower house.

UNIT-II: Judiciary under the Constitution

- Supreme Court: Appointment (Collegium System, Art 124) ➔ Powers & Jurisdiction (Original, Appellate, Advisory, Writ).
- High Courts: Appointment (Art 217) ➔ Transfer of Judges (Art 222) ➔ Powers & Jurisdiction (Writ Art 226, Supervisory Art 227).
- Subordinate Judiciary: District judges appointed by Governor in consultation with HC (Art 233).
- Core Pillars: Independence of Judiciary (Basic Structure) ➔ Judicial Accountability (Impeachment).

UNIT-III: Centre-State Relations

- Legislative (Art 245-255): Territorial extent & Subject matter (7th Schedule - Union, State, Concurrent).
- Judicial Doctrines: Pith and Substance, Colorable Legislation, Territorial Nexus, Harmonious Construction, Repugnancy (Art 254).
- Administrative (Art 256-263): Centre's directions to States, Inter-State Council.
- Financial (Art 268-293): Tax distribution, Grants-in-aid, Finance Commission (Art 280).

UNIT-IV: State Liability, Trade & Services

- Liability in Torts (Art 300): Sovereign vs. Non-Sovereign (*Kasturi Lal*) ➔ Rise of constitutional torts (*Nilabati Behera*).
- Liability in Contracts (Art 299): Strict formal requirements for Govt contracts.
- Trade, Commerce & Intercourse (Art 301-307): Free throughout India. Subject to reasonable restrictions.
- Services under State (Art 309-311): Doctrine of Pleasure (Art 310) ➔ Procedural safeguards (Art 311) ➔ All India Services (Art 312) ➔ Public Service Commissions (Art 315).

UNIT-V: Emergency & Basic Structure Theory

- Emergency Powers: Needed to protect sovereignty and democratic framework.
- National Emergency (Art 352): War, external aggression, armed rebellion. Suspends Art 19 (Art 358) & other FRs except 20 & 21 (Art 359).
- State Emergency (Art 356): Failure of constitutional machinery (*S.R. Bommai v. UOI*).
- Financial Emergency (Art 360): Threat to financial stability.
- Amendment & Basic Structure (Art 368): Parliament can amend any part, but cannot destroy the "Basic Structure" (*Kesavananda Bharati*).

UNIT-I: Legislature and Executive under the Indian Constitution

THE 10-MARK BANK (Essay / Long Form)

Q1. Discuss the Composition, Powers, and Functions of the Union and State Legislatures under the Indian Constitution.

1. Composition of the Union Legislature (Parliament - Article 79):
The Parliament is the supreme legislative body of the Union of India. It consists of the President and two Houses:

- Rajya Sabha (Council of States): The Upper House. It represents the States and Union Territories. It has a maximum strength of 250 members (238 elected indirectly by State MLAs via single transferable vote, and 12 nominated by the President for expertise in Literature, Science, Art, and Social Service). It is a permanent body, with one-third of its members retiring every two years.
- Lok Sabha (House of the People): The Lower House. It is directly elected by the people on the basis of universal adult suffrage. The maximum strength is 550 members. Its normal tenure is five years, but it is subject to dissolution by the President.

2. Composition of the State Legislature (Article 168):
The State Legislature consists of the Governor and the House(s).

- Bicameral / Unicameral: Six states (Andhra Pradesh, Telangana, UP, Bihar, Maharashtra, Karnataka) have two houses: the Legislative Assembly (Vidhan Sabha) and the Legislative Council (Vidhan Parishad). Most states only have a Vidhan Sabha.
- Vidhan Sabha: Directly elected, maximum 500 members, minimum 60. Term of 5 years.
- Vidhan Parishad: Indirectly elected (by MLAs, graduates, teachers, local bodies) and nominated by the Governor. It is a permanent body, like the Rajya Sabha.

3. Powers and Functions (Union and State):

- Law-Making (Legislative): Parliament has exclusive power to legislate on the Union List and residuary subjects. State Legislatures legislate on the State List. Both share power over the Concurrent List (with Union law prevailing in case of repugnancy under Art. 254).
- Financial Control: The Legislature controls the "purse strings." No tax can be levied, and no money can be spent from the Consolidated Fund without passing an Appropriation Bill and Finance Bill.

- Executive Accountability: In India's parliamentary democracy, the Executive (Council of Ministers) is collectively responsible to the Lower House (Lok Sabha/Vidhan Sabha). The legislature controls them via Question Hour, Debates, and ultimately, the No-Confidence Motion.
- Constituent Functions: Parliament has the power to amend the Constitution under Article 368.

Q2. What are Parliamentary Privileges? Explain the key individual and collective privileges of the Legislature.

1. Nature of Parliamentary Privileges (Article 105 & 194):

Privileges are special rights, immunities, and exemptions enjoyed by the Houses of Parliament/State Legislatures, their committees, and their members. These are essential to ensure that members can perform their legislative duties effectively, fearlessly, and without outside interference.

2. Individual Privileges (Enjoyed by Members):

- Freedom of Speech (Art. 105(1)): Members have complete freedom of speech within the House. This is absolute within the legislative walls and is broader than a citizen's right under Article 19(1)(a).
- Immunity from Court Proceedings (Art. 105(2)): No member is liable to any civil or criminal proceedings in any court regarding anything said or any vote given by them in Parliament or its committees.
- Freedom from Arrest: No member can be arrested in a *civil* case during a session of Parliament, and 40 days before and after the session. (This immunity does not apply to criminal cases or preventive detention).

3. Collective Privileges (Enjoyed by the House):

- Right to Publish Proceedings: The House has the exclusive right to publish its reports and debates, and importantly, the power to prohibit others from publishing its proceedings.
- Power to Punish for Contempt: The House possesses the judicial power to punish both its own members and outsiders for Breach of Privilege or Contempt of the House (e.g., reprimand, suspension, or imprisonment).
- Right to Exclude Strangers: The House can hold "secret sittings" and exclude strangers (the public/press) from its proceedings to discuss sensitive national issues.

4. Conflict with Fundamental Rights:
In the landmark *Searchlight Case (M.S.M. Sharma v. Sri Krishna Sinha)*, the Supreme Court ruled that the privileges of the Legislature under Article 194(3) prevail over a citizen's fundamental right to freedom of speech and expression (Article 19(1)(a)) when there is a direct conflict regarding the publication of expunged proceedings.

Q3. Discuss the Anti-Defection Law under the Indian Constitution. What are the grounds for disqualification and the exceptions?

1. Historical Background and Objective:
Introduced by the 52nd Amendment Act (1985) and placed in the Tenth Schedule, the Anti-Defection Law was enacted to combat the "Aya Ram Gaya Ram" culture of frequent political floor-crossing by legislators, which caused severe political instability.
2. Grounds for Disqualification:
A member of Parliament or a State Legislature incurs disqualification on the following grounds:

- Voluntary Resignation: If an elected member voluntarily gives up the membership of their political party.
- Defiance of Party Whip: If a member votes, or abstains from voting, in the House contrary to any direction (whip) issued by their political party, without obtaining prior permission.
- Independent Members: If an independently elected candidate joins any political party after the election.
- Nominated Members: If a nominated member joins any political party after the expiry of six months from taking their seat.

3. Exceptions to Disqualification:
To ensure the law does not stifle legitimate political realignment, it provides specific protections:

- Merger: Disqualification does not apply if a member's original political party merges with another party. Under the 91st Amendment Act (2003), a merger is legally valid only if at least two-thirds of the members of the legislative party agree to the merger.
- Presiding Officer: A member elected as the Speaker or Chairman may resign from their party to maintain neutrality and rejoin it after their tenure without facing disqualification.

4. Judicial Review (Kihoto Hollohan v. Zachillhu, 1992):
The decision regarding disqualification is made by the Presiding Officer (Speaker/Chairman) of the House. Originally, the Tenth Schedule barred judicial review of this decision. However, in the landmark *Kihoto Hollohan* case, the Supreme Court struck down that bar. It held that the Speaker acts as a Quasi-Judicial Tribunal, and their final decision is subject to Judicial Review by the High Courts and Supreme Court on grounds of *mala fides* (bad faith) or perversity.

Q4. Analyze the Constitutional Position, Executive Powers, and Legislative Powers of the President of India.

1. Constitutional Position (Article 52 & 74):
The President is the Head of the Indian State (Article 52). However, India follows a Parliamentary system. Therefore, the President is a *nominal* or *titular* executive. Real executive power vests in the Prime Minister and the Council of Ministers. Under Article 74(1), the President *shall* exercise their functions in accordance with the "aid and advice" of the Council of Ministers (made binding by the 42nd and 44th Amendments).
2. Executive Powers:
- All executive actions of the Government of India are formally taken in the President's name.
- The President appoints the Prime Minister (Art 75) and other Ministers on the PM's advice.
- The President appoints key constitutional functionaries: Governors of States, the Attorney General, the Comptroller and Auditor General (CAG), the Chief Election Commissioner, and UPSC members.
- The President is the Supreme Commander of the Defence Forces.

3. Legislative Powers:
The President is an integral part of Parliament (Article 79).
- Summoning & Dissolution: The President summons and prorogues Parliament and has the power to dissolve the Lok Sabha.
- Assent to Bills (Article 111): A bill becomes an Act only after the President's assent. The President can give assent, withhold assent (Absolute Veto), or return ordinary bills for reconsideration (Suspensive Veto).
- Ordinance Making Power (Article 123): The President can promulgate Ordinances when Parliament is not in session. An Ordinance has the same force as a legislative Act but must be approved by Parliament within 6 weeks of its reassembly.

Q5. Discuss the Powers and Position of the Governor. How do the discretionary powers of the Governor differ from those of the President?

1. Constitutional Position (Article 153 & 163):
The Governor is the constitutional head of the State executive. Like the President, all executive actions are taken in their name (Article 154). Under Article 163, the Governor must act on the "aid and advice" of the State Council of Ministers headed by the Chief Minister.

2. Powers of the Governor:

- Executive: Appoints the Chief Minister, other ministers, the Advocate General, and the State Election Commissioner.
- Legislative: Summons, prorogues, and dissolves the State Assembly. Gives assent to bills (Article 200) and can promulgate Ordinances (Article 213).
- Pardoning (Article 161): Can grant pardons, reprieves, or commute sentences. (Note: Unlike the President, a Governor cannot pardon a death sentence or a Court Martial sentence).

3. Discretionary Powers (The Key Difference):
Unlike the President, who has no express constitutional discretion, the Constitution explicitly grants the Governor discretionary powers under Article 163. The Governor is not bound by the advice of the Council of Ministers when exercising these specific functions:

- Constitutional Discretion: Reserving a State Bill for the consideration of the President (Art. 200); Recommending the imposition of President's Rule (State Emergency) under Article 356 if the constitutional machinery fails; acting as the administrator of an adjoining Union Territory.
- Situational Discretion: Appointing a Chief Minister when no party has a clear majority; dismissing the Council of Ministers if they lose a confidence vote and refuse to resign.

Q6. Explain the principle of "Collective Responsibility" of the Union and State Council of Ministers.

1. Formation of the Council (Art. 74 & 163):
The Constitution mandates a Council of Ministers (CoM) to aid and advise the nominal heads (President/Governor). At the Union level, it is headed by the Prime Minister; at the State level, by the Chief Minister. The Council comprises Cabinet Ministers (top policy-makers), Ministers of State, and Deputy Ministers.

2. The Principle of Collective Responsibility (Art. 75(3) & 164(2)):
This is the bedrock of parliamentary democracy. The Constitution states that the Council of Ministers shall be *collectively responsible* to the Lower House (the Lok Sabha at the Union level, and the Legislative Assembly/Vidhan Sabha at the State level).

- What it means: The entire ministry functions as a team. All ministers are jointly responsible to the legislature for the policies and actions of the government.
- The Ultimate Sanction (No-Confidence Motion): If the Lower House passes a "No-Confidence Motion" against the government, or if the government loses a vote on a major policy issue (like the Budget), the *entire* Council of Ministers must resign immediately.
- Solidarity: "They swim and sink together." A minister must publicly support all cabinet decisions. If a minister strongly disagrees with a cabinet decision and cannot defend it, they must resign from the Council.

3. Individual Responsibility:
While collectively responsible to the legislature, ministers are individually responsible to the Head of State. Under Article 75(2) and 164(1), ministers hold office "during the pleasure" of the President/Governor. In practice, this means the PM/CM can ask a minister to resign, or advise the President/Governor to dismiss them, ensuring discipline within the Cabinet.

<u>THE 4-MARK BANK (Short Notes)</u>

1. Ordinance Making Power (Article 123 & 213)
This is an exceptional legislative power granted to the President (Art. 123) and the Governor (Art. 213) to deal with urgent, unforeseen situations. An Ordinance can only be promulgated when the Legislature (or either House of Parliament) is *not in session*. It has the exact same legal force as an Act passed by the legislature. However, it is a temporary measure; it must be laid before the legislature when it reassembles and ceases to operate at the expiration of 6 weeks from the reassembly, unless approved earlier.

2. The Electoral College for the President (Article 54)
The President of India is not directly elected by the public. Article 54 establishes an Electoral College consisting exclusively of *elected* representatives to maintain federal parity. The Electoral College comprises: (1) Elected Members of Parliament (Lok Sabha and Rajya Sabha), and (2) Elected Members of the State Legislative Assemblies (MLAs), including the UTs of Delhi and Puducherry. Nominated members (like the 12 in Rajya Sabha) do not vote in Presidential elections.

3. Money Bills (Article 110)

A Money Bill deals exclusively with financial matters like taxation, borrowing, or the Consolidated Fund of India. It represents the absolute supremacy of the directly elected Lower House. A Money Bill can *only* be introduced in the Lok Sabha (or Vidhan Sabha in states), and only on the recommendation of the President/Governor. The Rajya Sabha (or Vidhan Parishad) cannot reject or amend it; they can only delay it for a maximum of 14 days, after which it is deemed passed.

4. Veto Powers of the President

When a bill is presented to the President under Article 111, they exercise veto powers.

- Absolute Veto: Withholding assent entirely, leading the bill to die (usually used for Private Member Bills).
- Suspensive Veto: Returning the bill for reconsideration. If Parliament passes it again (with or without changes), the President *must* sign it.
- Pocket Veto: Keeping the bill pending indefinitely without taking any action (e.g., President Zail Singh regarding the Post Office Bill). Note: The President has no veto power over Constitutional Amendment Bills (24th Amendment Act).

UNIT-II: Judiciary under the Constitution

<u>**THE 10-MARK BANK (Essay / Long Form)**</u>

Q1. Critically examine the procedure for the Appointment of Supreme Court Judges. Trace the evolution of the Collegium System and its relation to the Independence of the Judiciary.

1. Constitutional Provisions (Article 124):
Article 124(2) states that every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after "consultation" with such of the Judges of the Supreme Court and High Courts as the President may deem necessary. In the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India (CJI) shall always be consulted.

2. Evolution of the Collegium System (The Judges Cases):
The core constitutional debate was whether the word "consultation" meant "concurrence" (giving primacy to the Judiciary) or merely seeking advice (giving primacy to the Executive).

- First Judges Case (*S.P. Gupta v. Union of India*, 1981): The Supreme Court ruled that "consultation" does not mean "concurrence." The Executive was given primacy in judicial appointments, meaning the President could reject the CJI's advice for valid reasons.
- Second Judges Case (*Supreme Court Advocates-on-Record Association v. Union of India*, 1993): Overruled the 1981 judgment. The SC held that "consultation" indeed means "concurrence." It birthed the Collegium System, dictating that the CJI's recommendation is binding on the President. The CJI must consult with the two senior-most judges of the SC.
- Third Judges Case (*In Re Special Reference 1 of 1998*): The President sought advisory opinion to clarify the Collegium's working. The SC expanded the Collegium to a plural body: the CJI and the four senior-most judges of the Supreme Court. A recommendation must be made by the consensus of this collegium.
- Fourth Judges Case (*NJAC Verdict*, 2015): Parliament enacted the 99th Constitutional Amendment and the National Judicial Appointments Commission (NJAC) Act to replace the Collegium and give the Executive a say in appointments. The Supreme Court struck it down entirely, ruling that giving the Executive a veto over judicial appointments violates the "Independence of the Judiciary," which is an inviolable part of the Constitution's Basic Structure.

Q2. Exhaustively detail the Powers and Jurisdiction of the Supreme Court of India. The Supreme Court (Articles 124-147) possesses an exceptionally wide jurisdiction.

1. Original Jurisdiction (Article 131):
The SC has exclusive original jurisdiction in disputes of a federal nature, specifically disputes between:

- The Government of India and one or more States.
- The Government of India and any State(s) on one side and one or more States on the other.
- Two or more States *inter se*.

(Note: It does not extend to disputes arising out of pre-Constitution treaties/agreements).

2. Writ Jurisdiction (Article 32):
The SC is the ultimate guarantor of Fundamental Rights. Under Article 32 (itself a fundamental right), any citizen can move the SC directly for the enforcement of Part III rights. The SC can issue writs in the nature of Habeas Corpus, Mandamus, Prohibition, Certiorari, and Quo Warranto.

3. Appellate Jurisdiction (Articles 132, 133, 134):
The SC is the highest court of appeal in the country.

- Constitutional Matters (Art 132): Appeals lie if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution.
- Civil Matters (Art 133): Appeals lie if the HC certifies the case involves a substantial question of law of general importance that needs SC determination.
- Criminal Matters (Art 134): Appeals lie if the HC: (a) reversed an order of acquittal and sentenced the accused to death, or (b) withdrew a case from a subordinate court, convicted the accused, and sentenced them to death.

4. Special Leave to Appeal (Article 136):
A residual, highly discretionary power. The SC can grant special leave to appeal from any judgment, decree, sentence, or order passed by *any court or tribunal* in India (except military tribunals).

5. Advisory Jurisdiction (Article 143):
The President can refer any question of law or fact of "public importance" to the SC for its opinion. The SC's opinion is advisory and not legally binding on the President or the Government (*e.g., In Re Delhi Laws Act, In Re Berubari Union*).

6. Court of Record & Review Power (Art 129 & 137):
Under Article 129, the SC is a Court of Record and has the power to punish for contempt of itself. Under Article 137, it has the power to review its own judgments to correct patent errors (*curative petitions* evolved from this).

Q3. Discuss the Constitutional provisions regarding the Appointment and Transfer of High Court Judges. Outline the Powers and Jurisdiction of the High Courts.

1. Appointment of High Court Judges (Article 217):
Every Judge of a High Court is appointed by the President. Under the Collegium system, the President acts on the recommendation of the SC Collegium (CJI + two senior-most SC judges). The SC Collegium makes its decision in consultation with the Chief Justice of the respective High Court and the Governor of the State.

2. Transfer of High Court Judges (Article 222):
The President may, after consulting the CJI, transfer a Judge from one High Court to another.

- Judicial Scrutiny (*Judges Transfer Cases*): The Supreme Court has ruled that transfers cannot be punitive. They must be made strictly in the "public interest" for the better administration of justice. The consent of the judge is not required, but the CJI's recommendation (in consultation with the SC Collegium and the Chief Justices of both the transferring and receiving HCs) is determinative.

3. Powers and Jurisdiction of High Courts:

- Writ Jurisdiction (Article 226): Crucial Point: The writ jurisdiction of a High Court is *wider* than that of the Supreme Court. While the SC (Art 32) issues writs only for Fundamental Rights, the HC (Art 226) can issue writs for the enforcement of Fundamental Rights AND "for any other purpose" (i.e., enforcing ordinary legal rights).
- Power of Superintendence (Article 227): Every HC has supervisory jurisdiction over all subordinate courts and tribunals within its territorial limits (except military tribunals). It can call for returns, make general rules, and prescribe forms for proceedings to keep subordinate courts within their jurisdictional bounds.
- Control over Subordinate Courts (Article 235): The HC controls the postings, promotions, and leaves of persons belonging to the judicial service of the State, ensuring the lower judiciary remains independent from the State Executive.
- Court of Record (Article 215): Like the SC, the HC is a Court of Record with the power to punish for its own contempt.

Q4. Explain the structure of the Subordinate Judiciary. Critically analyze the concepts of Independence of the Judiciary and Judicial Accountability.

1. Subordinate Judiciary (Articles 233-237):

The subordinate judiciary operates below the High Court at the district level.

- Appointment of District Judges (Art 233): Appointments, postings, and promotions of District Judges are made by the Governor of the State *in consultation with* the High Court.
- Other Judges (Art 234): Appointments of persons other than District Judges are made by the Governor in accordance with rules made after consulting the State Public Service Commission and the High Court.
- Independence (Art 235): The day-to-day administrative disciplinary control over the subordinate judiciary vests entirely in the High Court, shielding district judges from the State Executive.

2. Independence of the Judiciary:

Recognized in *Kesavananda Bharati* and the *NJAC Verdict* as an inviolable part of the Constitution's Basic Structure. It ensures judges adjudicate without fear or favor. It is secured by:

- Security of Tenure: Judges cannot be removed at the pleasure of the Executive.
- Difficult Removal Process: Can only be impeached by Parliament under Article 124(4) on proved misbehavior or incapacity.
- Financial Independence: Salaries and allowances are charged on the Consolidated Fund (Art 125/229) and cannot be altered to their disadvantage.
- Separation of Powers: Article 50 (DPSP) directs the State to separate the judiciary from the executive in public services.

3. Judicial Accountability:

While independent, judges are not above the law. Accountability ensures transparency and ethical conduct.

- Impeachment (Art 124(4) & Judges Inquiry Act, 1968): The formal, stringent process for removing a judge. Requires a motion supported by a special majority in both Houses of Parliament. (To date, no judge has been successfully impeached, though proceedings were initiated against Justice V. Ramaswami).
- In-House Mechanism: A peer-review system evolved by the judiciary to investigate complaints against judges that do not warrant full impeachment.
- Restatement of Values of Judicial Life (1999): A code of ethics adopted by the Supreme Court requiring judges to declare their assets and avoid conflicts of interest.

- RTI Applicability: The Supreme Court in *CPIO, Supreme Court v. Subhash Chandra Agarwal (2019)* ruled that the office of the CJI falls under the Right to Information Act, balancing transparency with judicial independence.

THE 4-MARK BANK (Short Notes)

1. Article 136: Special Leave Petition (SLP)
Under Article 136, the Supreme Court possesses extraordinary, discretionary appellate power. It can grant special leave to appeal against any judgment, decree, sentence, or order passed by *any* court or tribunal in India (except armed forces tribunals). It is not a constitutional "right" of the appellant but a special privilege granted by the SC to correct grave miscarriages of justice or address substantial questions of law of general public importance.

2. Article 32 vs. Article 226 (Writ Jurisdiction)
Both articles empower constitutional courts to issue prerogative writs (Habeas Corpus, Mandamus, Certiorari, Prohibition, Quo Warranto). However, Article 32 is a Fundamental Right itself and limits the Supreme Court to issuing writs *only* for the enforcement of Fundamental Rights. Article 226 empowers High Courts to issue writs for Fundamental Rights AND "for any other purpose" (ordinary legal rights). Thus, the scope of Article 226 is technically wider than Article 32.

3. Advisory Jurisdiction (Article 143)
Article 143 empowers the President of India to refer any question of law or fact, which is of such nature and public importance that it is expedient to obtain the Supreme Court's opinion. The SC may, after a hearing, report its opinion to the President. Crucially, this opinion is strictly advisory; it is not a judicial pronouncement binding on the President, the Government, or lower courts, though it carries immense persuasive weight.

4. Transfer of High Court Judges (Article 222)
Article 222 allows the President to transfer a Judge from one High Court to another after consulting the Chief Justice of India. The Supreme Court has laid down strict parameters for this in the *Judges Transfer Cases*: A transfer cannot be a punitive measure; it must strictly be in the "public interest" for the better administration of justice. While the judge's consent is not mandatory, the CJI's recommendation (made after consulting the SC Collegium and the respective HC Chief Justices) is decisive.

UNIT-III: Centre-State Relations

THE 10-MARK BANK (Essay / Long Form)

Q1. Critically examine the Legislative Relations between the Centre and the States under the Indian Constitution. Under what exceptional circumstances can Parliament legislate on State List subjects?

1. Territorial Extent of Legislation (Article 245):

- **Parliament:** Has the power to make laws for the whole or any part of the territory of India. It also possesses the power of *extraterritorial legislation* (laws applying to Indian citizens and property anywhere in the world), which cannot be questioned on the ground of extraterritoriality.
- **State Legislatures:** Can make laws for the whole or any part of the State. State laws generally do not have extraterritorial operation, unless saved by the *Doctrine of Territorial Nexus*.

2. Distribution of Legislative Subjects (Article 246 & 7th Schedule):

The Constitution establishes a three-fold distribution of legislative power:

- **List I (Union List):** Contains 97 subjects of national importance (e.g., Defence, Foreign Affairs, Currency). Parliament has *exclusive* power.
- **List II (State List):** Contains 66 subjects of local/regional importance (e.g., Police, Public Health, Agriculture). State legislatures have exclusive power under normal circumstances.
- **List III (Concurrent List):** Contains 47 subjects needing nationwide uniformity but local adaptation (e.g., Criminal Law, Marriage, Contracts). Both Parliament and States can legislate, subject to the rule of Repugnancy (Art 254).
- **Residuary Powers (Article 248):** Any matter not enumerated in the Concurrent List or State List falls exclusively under the legislative domain of Parliament (e.g., Cyber Laws).

3. Exceptional Power of Parliament to Legislate on State List:

To maintain a strong Centre, the Constitution empowers Parliament to legislate on State List subjects under five specific, exceptional circumstances:

- **National Interest (Article 249):** If the Rajya Sabha passes a resolution by a 2/3rd majority declaring it necessary in the national interest, Parliament can legislate on a State List subject for one year.
- **National Emergency (Article 250):** While a Proclamation of Emergency (Art 352) is in operation, Parliament acquires concurrent jurisdiction over the State List.
- **Consent of States (Article 252):** If legislatures of two or more States pass resolutions requesting Parliament to enact a law on a State List subject, Parliament can do so (e.g., The Water (Prevention and Control of Pollution) Act, 1974).
- **International Treaties (Article 253):** Parliament has absolute power to make any law for the whole or part of India for implementing any international treaty, agreement, or convention, even if the subject falls in the State List.
- **President's Rule (Article 356):** When State emergency is declared, the President can authorize Parliament to exercise the legislative powers of the State.

Q2. Analyze the Administrative Relations between the Centre and the States. How does the Constitution ensure Cooperation and Coordination between them?
1. Executive Power Distribution (Art 73 & 162):

The executive power of the Centre and States is co-extensive with their respective legislative powers. The Centre's executive power extends to matters in the Union List, while the State's extends to the State List. In Concurrent List matters, the executive power ordinarily remains with the States unless a Parliamentary law or the Constitution explicitly reserves it for the Centre.

2. Centre's Administrative Control over States (Directives):

To prevent a breakdown of the federal machinery, the Centre is empowered to issue binding administrative directions to the States:

- **Article 256:** State executive power must be exercised to ensure compliance with laws made by Parliament.
- **Article 257:** State executive power must not impede or prejudice the executive power of the Union. The Centre can direct States regarding the construction/maintenance of means of communication of national/military importance and the protection of railways.
- **The Ultimate Sanction (Article 365):** If a State fails to comply with any lawful direction given by the Centre under these articles, the President can hold that a situation has arisen where the State government cannot be carried on under the Constitution, triggering President's Rule (Article 356).

3. Mechanisms for Cooperation and Coordination:

The Constitution provides robust institutional mechanisms to foster inter-governmental coordination and resolve disputes:

- **Inter-State Council (Article 263):** The President can establish this council to inquire into inter-state disputes, investigate subjects of common interest, and make recommendations for better policy coordination. (Established in 1990 via the Sarkaria Commission's recommendation).
- **Adjudication of Water Disputes (Article 262):** Parliament may by law provide for the adjudication of any dispute regarding the use, distribution, or control of the waters of any inter-state river or river valley. Parliament can entirely bar the Supreme Court's jurisdiction in this matter (e.g., Inter-State Water Disputes Act, 1956).
- **Mutual Delegation of Functions (Art 258 & 258A):** The President can, with the State government's consent, entrust Union executive functions to the State.

Conversely, a State Governor can, with the Union's consent, entrust State functions to the Centre.

- **All India Services (Article 312):** Services like the IAS and IPS are recruited and trained by the Centre but allotted to serve in the States. They are jointly controlled by the Centre and States, ensuring a high standard of unified administration across the federation.
- **Full Faith and Credit Clause (Article 261):** Full faith and credit must be given throughout India to public acts, records, and judicial proceedings of the Union and of every State.

Q3. Examine the Financial Relations between the Centre and the States. Discuss the constitutional mechanism for the distribution of revenues and the role of the Finance Commission.

1. Taxing Powers:

The Constitution creates a strict separation of taxing powers. Parliament levies taxes on Union List subjects (e.g., Income Tax, Customs Duty), and States levy taxes on State List subjects (e.g., Land Revenue, State Excise). There is no concurrent power of taxation (except for GST introduced via the 101st Amendment).

2. Distribution of Revenues (Articles 268 to 271):

To correct the vertical fiscal imbalance (Centre has more revenue-generating power, States have more expenditure responsibilities), the Constitution provides for a sharing mechanism:

- **Taxes Levied by Centre but Collected and Kept by States (Art 268):** Stamp duties, excise on medicinal/toilet preparations.
- **Taxes Levied and Collected by Centre but Assigned to States (Art 269):** Taxes on the sale/purchase of goods in the course of inter-state trade or commerce.

- **Goods and Services Tax (Art 269A):** IGST on inter-state trade is levied and collected by the Centre but apportioned between the Union and States based on GST Council recommendations.
- **Taxes Levied and Collected by Centre and Distributed (Art 270):** All other taxes and duties (like Income Tax) are distributed between the Union and States.
- **Surcharges (Art 271):** Parliament can levy surcharges on taxes for Union purposes. These are exclusively kept by the Centre and not shared.

3. Grants-in-Aid:

- **Statutory Grants (Art 275):** Provided by Parliament out of the Consolidated Fund of India to states in need of assistance, specifically for promoting the welfare of Scheduled Tribes or raising the administration level of Scheduled Areas.
- **Discretionary Grants (Art 282):** Both the Union and States can make grants for any public purpose, even if it falls outside their legislative competence.

4. The Finance Commission (Article 280):

A quasi-judicial, constitutional body constituted by the President every five years. It acts as the balance wheel of Indian fiscal federalism.

- **Core Functions:** It recommends the distribution of the net proceeds of taxes between the Union and States, determines the principles governing grants-in-aid under Article 275, and suggests measures to augment the Consolidated Fund of a State to supplement the resources of local bodies (Panchayats and Municipalities).

Q4. Discuss the Judicial Interpretation of Centre-State Relations. Explain in detail the various Doctrines evolved by the Judiciary to resolve legislative conflicts between the Union and States.

1. The Role of the Judiciary as Federal Umpire:

In a federal structure, conflicts regarding the distribution of powers are inevitable. The Supreme Court of India plays the crucial role of interpreting the 7th Schedule to preserve the constitutional balance. To do this, the judiciary has evolved several interpretive doctrines.

2. Doctrine of Pith and Substance:

- **Application:** Applied when a law passed by one legislature (e.g., State) arguably encroaches upon a subject enumerated in the list of the other legislature (e.g., Union).
- **Principle:** The court examines the "true nature and character" (the pith and substance) of the legislation. If the legislation substantially falls within the competence of the legislature that enacted it, it is held entirely valid, even if it *incidentally encroaches* upon a subject in another list.
- **Landmark Cases:** In *Prafulla Kumar Mukherjee v. Bank of Commerce (1947)*, a state law limiting interest rates for moneylenders was challenged for incidentally touching upon "promissory notes" (a Union subject). The Privy Council upheld the law, stating its pith and substance was "moneylending," a valid state subject. Reaffirmed in *State of Bombay v. F.N. Balsara*.

3. Doctrine of Colorable Legislation:

- **Application:** Used to test the legislative competence of an enacting body.
- **Principle:** Grounded in the maxim: "You cannot do indirectly what you cannot do directly." If a legislature lacks the constitutional power to make a law on a particular subject, it cannot bypass that restriction by dressing up the legislation to make it appear as though it falls within its jurisdiction. The court will look behind the facade to identify the law's true object.
- **Landmark Case:** *K.C. Gajapati Narayan Deo v. State of Orissa (1953)*. The SC clarified that "colorable" refers entirely to the question of constitutional competence, not to the bad faith or *mala fides* of the legislature.

4. Doctrine of Harmonious Construction:

- **Application:** Used when entries within the same list, or across different lists, appear to overlap or conflict.

- **Principle:** The courts must read the entries together and interpret them harmoniously, ensuring that no entry is rendered redundant or a "dead letter." A broad and liberal interpretation must be given to reconcile the competing jurisdictions. (*CIT v. Benoy Kumar*).

5. Doctrine of Territorial Nexus:

- **Application:** Applied to determine the validity of a State law having extraterritorial operation.
- **Principle:** Generally, a State legislature cannot make laws operating outside its geographical boundaries (Art 245). However, if there is a real, sufficient, and legally relevant "territorial nexus" between the State enacting the law and the object/person located outside the State, the law is constitutionally valid.

- **Landmark Case:** *State of Bombay v. R.M.D. Chamarbaugwala (1957)*. The SC upheld a Bombay tax on a prize competition run via a newspaper printed in Bangalore but widely circulated in Bombay, citing a sufficient territorial nexus.

THE 4-MARK BANK (Short Notes)

1. Doctrine of Repugnancy (Article 254)

Repugnancy arises when there is an irreconcilable, direct conflict between a Central Law and a State Law regarding a subject in the **Concurrent List** (List III).

- **The General Rule (Art 254(1)):** The law made by Parliament (whether passed before or after the State law) prevails, and the State law is rendered void to the extent of the repugnancy. (*Zaverbhai v. State of Bombay*).

- **The Exception (Art 254(2)):** If the State law was reserved for the consideration of the President and received their assent, then the State law prevails *within that specific State*, overriding the Central law. However, Parliament can later enact a new law on the same matter, explicitly overriding that State law.

2. GST Council (Article 279A)

Introduced by the 101st Constitutional Amendment Act (2016), the GST Council is a joint constitutional body of the Centre and the States, acting as the nerve center for India's indirect tax system. Chaired by the Union Finance Minister, it embodies "cooperative federalism." It makes binding recommendations on taxes, cesses, surcharges to be subsumed into GST, goods exempted from GST, model GST laws, and the apportionment of IGST, heavily modifying traditional Centre-State financial relations.

3. Inter-State River Water Disputes (Article 262)

Given the highly volatile political nature of sharing river waters, the Constitution drafted a special mechanism. Article 262(1) allows Parliament to enact laws for the adjudication of any dispute over the waters of inter-state rivers. Critically, under Article 262(2), Parliament can enact a law explicitly barring the Supreme Court and all other courts from exercising any jurisdiction in respect of such disputes. (This led to the Inter-State River Water Disputes Act, 1956, which sets up ad-hoc tribunals).

4. Residuary Powers of Legislation (Article 248)

To account for matters that could not be foreseen by the Constitution framers (like modern technological advancements, cyberspace, and newer forms of taxation), the Constitution vests "Residuary Powers" strictly in the Union Parliament. Article 248 states that Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List. If a dispute arises over whether a subject is residuary, it is determined by the Supreme Court.

UNIT-IV: Liability of State, Trade & Services

<u>**THE 10-MARK BANK (Essay / Long Form)**</u>

Q1. Discuss the Liability of the State in Torts under the Indian Constitution. Trace the judicial evolution from the doctrine of Sovereign Immunity to Constitutional Torts.

1. Constitutional Provision (Article 300):

Article 300 of the Constitution states that the Government of India or a State may sue or be sued in the name of the Union of India or the respective State. However, it does not explicitly define the circumstances under which the State is liable, stating instead that liability remains the same as it was for the Dominion of India before the Constitution.

2. The Sovereign vs. Non-Sovereign Dichotomy:

Historically, courts applied the English maxim "The King can do no wrong."

- **Sovereign Functions:** Functions exclusively performed by the State (e.g., defense, administration of justice, maintenance of law and order, police powers). The State was *immune* from tortious liability arising from these functions.
- **Landmark Case - *Kasturi Lal v. State of UP (1965)*:** Police officers arrested the plaintiff and seized his gold. The gold was kept in the police malkhana, from where a head constable stole it and absconded. The Supreme Court held the State *not liable* because seizing and keeping property under police powers is an exercise of a "sovereign function."

3. The Shift to Public Law Remedy (Constitutional Torts):

Courts gradually realized the Sovereign Immunity doctrine was archaic and unjust in a modern welfare state.

- **Dilution of Immunity:** In *Nagendra Rao v. State of AP (1994)*, the SC severely criticized the sovereign immunity defense, holding that in a democratic welfare state, the distinction between sovereign and non-sovereign functions is virtually non-existent.

- **Constitutional Torts (*Nilabati Behera v. State of Orissa, 1993*):** The Supreme Court revolutionized State liability. It ruled that the defense of sovereign immunity is strictly inapplicable in public law proceedings (writ petitions under Art 32/226) involving the violation of Fundamental Rights (like the Article 21 right to life via custodial death). The State bears absolute liability to pay monetary compensation for such "constitutional torts."

Q2. Analyze the Constitutional requirements for the Liability of the State in Contracts. What are the legal consequences of non-compliance?

1. Mandatory Formalities (Article 299):

To protect public funds from unauthorized or clandestine contracts made by public servants, Article 299 sets out three mandatory, absolute requirements for any contract made in the exercise of the executive power of the Union or a State:

- It must be *expressed* to be made by the President, or by the Governor of the State.
- It must be executed *on behalf* of the President or the Governor.
- It must be executed by such persons and in such manner as the President/Governor may direct or authorize.

2. Consequences of Non-Compliance:

- **Contract is Void:** The provisions of Article 299 are mandatory. If any of the three conditions are not met, the contract is legally void. The Government cannot be sued for damages or specific performance.
- **No Implied Contracts:** There is no concept of an "implied contract" with the Government. Promissory estoppel generally cannot be used to bypass the mandatory requirements of Art 299.

- **Personal Liability:** If an officer executes a contract *without* proper authorization (failing Art 299), that officer can be held personally liable under Section 230(3) of the Indian Contract Act.

3. Quasi-Contractual Relief (Section 70, Indian Contract Act):

To prevent unjust enrichment by the Government, the courts apply Section 70. If a person lawfully does anything for the Government (e.g., delivers goods or builds a structure) without intending to do it gratuitously, and the Government enjoys the benefit, the Government is legally bound to compensate the person, *even if the contract was void under Article 299* (*State of West Bengal v. B.K. Mondal*).

Q3. "Trade, commerce, and intercourse throughout the territory of India shall be free." Discuss this statement under Article 301 and explain the permissible restrictions.

1. The General Rule (Article 301):

Subject to the other provisions of Part XIII, trade, commerce, and intercourse throughout the territory of India shall be free. This provision aims to prevent the economic Balkanization of India, ensuring that state boundaries do not act as tariff walls or barriers to the free movement of goods.

- *Landmark Case - Atiabari Tea Co. v. State of Assam:* The SC clarified that "free" means freedom from laws that impose a *direct and immediate restriction* on the movement of trade.

2. Permissible Restrictions (Articles 302 to 305):

Freedom of trade is not absolute. The Constitution provides a carefully calibrated system of restrictions:

- **Parliament's Power (Art 302 & 303):** Parliament may impose restrictions in the "public interest" (e.g., controlling the supply of essential commodities).

However, Parliament cannot show preference or discriminate between States unless there is a severe scarcity of goods.

- **State's Power (Art 304):** State legislatures can:
    - (a) Impose non-discriminatory taxes on imported goods (equal to taxes levied on locally manufactured goods) to prevent discrimination against local goods.
    - (b) Impose *reasonable restrictions* in the public interest. **Crucially**, any bill seeking to impose such restrictions requires the *prior sanction of the President* before being introduced in the State Legislature.
- **State Monopolies (Art 305):** Laws providing for a State monopoly in any trade or business are protected from being challenged under Article 301.

Q4. Critically examine the 'Doctrine of Pleasure' under the Indian Constitution. What are the constitutional safeguards provided to civil servants under Article 311?

1. The Doctrine of Pleasure (Article 310):

Inherited from British common law ("durante bene placito"), this doctrine states that every person who is a member of a defense service, civil service of the Union, or an All-India service holds office *during the pleasure of the President*. Those in State civil services hold office *during the pleasure of the Governor*. Theoretically, this means the State has the power to dismiss a civil servant at any time without assigning cause.

2. Constitutional Safeguards (Article 311):

To prevent arbitrary dismissal and political victimization, Article 311 places two absolute procedural restrictions on the Doctrine of Pleasure for civil servants:

- **No Dismissal by Subordinate Authority (Art 311(1)):** A civil servant cannot be dismissed or removed by an authority subordinate to the one that originally appointed them. (E.g., if appointed by the DGP, a sub-inspector cannot be dismissed by a Superintendent of Police).

- **Right to an Inquiry (Art 311(2)):** No civil servant shall be dismissed, removed, or reduced in rank except after an inquiry in which they have been informed of the charges against them and given a *reasonable opportunity of being heard* in respect of those charges.

3. Exceptions to the Safeguards (Provisos to Art 311(2)):

The mandatory inquiry can be completely dispensed with if:

- (a) The dismissal is based on a prior criminal conviction.
- (b) The disciplinary authority records in writing that holding an inquiry is "not reasonably practicable" (e.g., severe witness intimidation).
- (c) The President/Governor is satisfied that the inquiry is not expedient in the interest of the security of the State.

Q5. Discuss the constitutional provisions regarding All India Services and the Public Service Commissions.

1. All India Services (Article 312):

Unlike standard federal systems with strictly separate central and state bureaucracies, India has "All India Services" (like the IAS, IPS, and IFS) common to both the Union and the States.

- **Creation:** A new All India Service can only be created if the **Rajya Sabha** (representing the States) passes a resolution by a 2/3rd majority declaring that it is necessary in the national interest. Parliament may then create the service by law.
- **Control:** Officers are recruited by the Central Government but assigned to State cadres. Immediate administrative control vests with the State, but ultimate disciplinary control (dismissal/removal) vests with the Centre, ensuring administrative unity.

2. Public Service Commissions (Articles 315-323):

The Constitution mandates a Union Public Service Commission (UPSC) for the Centre and a State Public Service Commission (SPSC) for each state (or a Joint PSC for two or more states).

- **Appointment & Independence:** The President appoints UPSC members; the Governor appoints SPSC members. To ensure impartiality, members have security of tenure (6 years or age 65 for UPSC / age 62 for SPSC). They can only be removed by the **President** on grounds of proved misbehavior after an inquiry by the Supreme Court.
- **Functions (Art 320):** Conducting examinations for appointments to services; advising the President/Governor on methods of recruitment, principles of promotions/transfers, and all disciplinary matters affecting civil servants.

THE 4-MARK BANK (Short Notes)

1. Constitutional Torts

A judicial innovation stemming from the *Nilabati Behera* case. It acts as an exception to the archaic doctrine of Sovereign Immunity. If the State or its agents violate a citizen's Fundamental Rights (e.g., police brutality violating Article 21), the victim or their heirs can file a writ petition under Article 32 or 226. The constitutional court will hold the State strictly liable and award monetary compensation as a "public law remedy," which is distinct from private tort remedies.

2. Regulatory and Compensatory Taxes

In the context of Freedom of Trade (Article 301), the Supreme Court (*Automobile Transport v. State of Rajasthan*) established that not all taxes are restrictions. If a tax is merely regulatory (e.g., licensing fees to enforce traffic rules) or compensatory (e.g., a toll tax collected specifically to maintain the bridge or highway used by the trader), it actually facilitates trade rather than hindering it. Therefore, such taxes do not violate the freedom guaranteed under Article 301.

3. Exceptions to Article 311(2) (Dispensing with Inquiry)

While Article 311(2) guarantees a civil servant a fair inquiry before dismissal, the Constitution provides three explicit exceptions where this fundamental safeguard is bypassed:

(a) When dismissal relies on conduct that led to a criminal conviction by a court of law;

(b) When the empowered disciplinary authority records in writing that it is not reasonably practicable to hold an inquiry;

(c) When the President or Governor is satisfied that holding an inquiry would compromise the security of the State.

4. Rajya Sabha's Special Power under Article 312

Article 312 grants a unique, exclusive power to the Rajya Sabha regarding All India Services. Because creating a service common to the Union and States affects state autonomy, the Lok Sabha cannot initiate it. Parliament can only legislate to create a new All India Service (e.g., a proposed All India Judicial Service) if the Rajya Sabha first passes a resolution supported by not less than two-thirds of the members present and voting, declaring it necessary in the national interest.

UNIT-V: Emergency Powers & Amendment of the Constitution

<u>**THE 10-MARK BANK (Essay / Long Form)**</u>

Q1. Discuss the Need for Emergency Powers in the Indian Constitution. Detail the provisions regarding National Emergency under Article 352.

1. Need for Emergency Powers:

Dr. B.R. Ambedkar noted that the Indian Constitution is uniquely designed to be federal during normal times and unitary during emergencies. The core need for these powers (found in Part XVIII) is to safeguard the sovereignty, unity, integrity, and security of the nation. In existential crises where the normal, deliberative federal machinery is too slow, the Constitution provides a self-executing mechanism to centralize power for swift, decisive action.

2. Grounds for National Emergency (Article 352):

The President can proclaim a National Emergency for the whole or any part of India if satisfied that a grave emergency exists whereby the security of India is threatened by:

- **War** (Formal declaration of armed conflict).
- **External Aggression** (Attack by a foreign nation without a formal declaration of war).
- **Armed Rebellion** (The 44th Amendment Act, 1978, replaced the highly subjective term "internal disturbance" with "armed rebellion" to prevent political misuse).

3. Procedural Safeguards and Approval:

- **Cabinet Concurrence:** The President can issue the proclamation *only* upon receiving written advice from the Union Cabinet (not just the Prime Minister).
- **Parliamentary Approval:** Must be approved by both Houses of Parliament within **one month** from the date of its issue.

- **Special Majority:** Approval requires a majority of the total membership of the House AND a majority of not less than 2/3rds of the members present and voting.
- **Duration:** Once approved, it continues for **six months**. It can be extended indefinitely, but strictly requires fresh Parliamentary approval every six months.

Q2. Critically examine State Emergency (President's Rule) under Article 356 and Financial Emergency under Article 360.

1. State Emergency / President's Rule (Article 356 & 365):

- **Grounds:** It is invoked when the President is satisfied that a situation has arisen in which the government of the State *cannot be carried on in accordance with the provisions of the Constitution*. Under Article 365, if a State fails to comply with a lawful direction from the Centre, it is legally deemed a failure of constitutional machinery.
- **Approval & Duration:** Must be approved by both Houses within **two months** by a Simple Majority. It lasts for 6 months and can be extended up to a maximum of **3 years** (with strict conditions for extensions beyond one year).
- **Judicial Review (*S.R. Bommai v. Union of India, 1994*):** The Supreme Court ruled that Article 356 is subject to judicial review. The majority of a State government must be tested on the **floor of the House**, not by the Governor's subjective assessment. The Court can restore a dismissed government if the proclamation was *mala fide* or unconstitutional.

2. Financial Emergency (Article 360):

- **Grounds:** Declared if the President is satisfied that the financial stability or credit of India (or any part thereof) is threatened.
- **Approval & Effect:** Must be approved within **two months** by a Simple Majority. Once approved, it continues indefinitely until revoked. During its operation, the Centre can mandate the reduction of salaries of all state/union

employees (including Supreme Court/High Court Judges) and require all State Money Bills to be reserved for the President's consideration. *(Never declared in India).*

Q3. Exhaustively analyze the Impact of Emergency on Federalism and Fundamental Rights. Distinguish between Article 358 and Article 359.

1. Impact on Federalism (The Unitary Shift):

During a National Emergency, the federal distribution of powers is drastically modified:

- **Executive:** The Centre acquires the absolute power to give executive directions to a State on *any* matter.
- **Legislative (Article 250):** Parliament gains concurrent jurisdiction to make laws on any subject enumerated in the State List. Such laws remain valid until six months after the emergency ends.
- **Financial (Article 354):** The President can modify the constitutional distribution of revenues between the Union and the States.

2. Impact on Fundamental Rights:

- **Article 358 (Automatic Suspension):** The moment a National Emergency is declared on the grounds of *war or external aggression* (NOT armed rebellion), the six fundamental freedoms under **Article 19** are automatically suspended across the country. The State can enact laws violating Article 19. Upon the emergency's end, Article 19 revives, but no legal remedy lies for anything done during the emergency.
- **Article 359 (Suspension of Right to Move Court):** It does not automatically suspend any right. It empowers the President to issue a specific Order suspending the *right to move any court* for the enforcement of the Fundamental Rights specifically mentioned in that Order. It applies to all emergency grounds (including armed rebellion).

- **The Absolute Exception (44th Amendment):** The President **cannot** suspend the right to move the court for the enforcement of **Article 20 (protection in respect of conviction) and Article 21 (Right to Life and Personal Liberty)** under any circumstances.

Q4. Explain the formal procedure for the Amendment of the Indian Constitution under Article 368.

1. Nature of the Amending Power:

Article 368 balances constitutional rigidity with flexibility. An amendment can only be initiated by introducing a Bill in either House of Parliament (not in a State Legislature). There is no provision for a joint sitting in case of a deadlock.

2. Types of Amendments under Article 368:

- **By Special Majority:** The majority of constitutional provisions (including Fundamental Rights and Directive Principles) require a Special Majority. The bill must be passed by:
  - A majority of the "total membership" of each House, AND
  - A majority of not less than "two-thirds of the members present and voting" in each House.
- **By Special Majority + State Ratification:** If an amendment seeks to alter the *federal structure*, an extra layer of rigidity is added. After passing Parliament with a Special Majority, the bill must be ratified by the legislatures of **at least one-half of the States** by a simple majority. Provisions requiring ratification include: the election of the President, the Supreme Court and High Courts, the distribution of legislative powers (7th Schedule), and Article 368 itself.

(Note: Amendments altering state boundaries or creating legislative councils require only a simple majority and are not deemed amendments under Art 368).

Q5. Trace the judicial evolution of the "Basic Structure Theory." Explain its significance with reference to landmark Supreme Court judgments.

1. The Evolution of the Basic Structure Theory:

The conflict between Parliament's amending power (Art 368) and the protection of Fundamental Rights (Art 13) led to a massive constitutional evolution.

- **Phase 1: Absolute Power (*Shankari Prasad, 1951* & *Sajjan Singh, 1965*):** The Supreme Court held that Parliament's amending power under Art 368 is absolute and includes the power to take away Fundamental Rights.
- **Phase 2: Fundamental Rights are Supreme (*Golaknath v. State of Punjab, 1967*):** The SC reversed its stance, ruling that Fundamental Rights are "transcendental" and Parliament cannot amend them. Parliament retaliated with the 24th Amendment, asserting its unlimited power to amend.
- **Phase 3: The Birth of Basic Structure (*Kesavananda Bharati v. State of Kerala, 1973*):** A 13-judge bench resolved the conflict. It upheld the 24th Amendment but laid down a profound limitation: While Parliament can amend any part of the Constitution, **it cannot alter, abrogate, or destroy the "Basic Structure" or foundational framework of the Constitution.**
- **Phase 4: Reaffirming the Theory (*Minerva Mills v. UOI, 1980*):** Parliament tried to nullify the Basic Structure theory via the 42nd Amendment (barring judicial review of amendments). The SC struck this down, declaring that "Judicial Review" and the "limited amending power of Parliament" are themselves parts of the Basic Structure.

2. Significance:

The Basic Structure Theory serves as the ultimate constitutional safeguard, ensuring that the Constitution's core identity—Secularism, Democracy, Federalism, Rule of Law, Separation of Powers, and Judicial Independence—cannot be destroyed by a transient parliamentary majority.

THE 4-MARK BANK (Short Notes)

1. The Need for Emergency Powers

A democratic constitution is designed for peaceful times. However, the framers realized that in abnormal, existential crises (war, armed rebellion, financial collapse), the slow, deliberative federal process could endanger the nation. Emergency powers act as a "safety valve," allowing the Constitution to temporarily transform from a federal structure into a powerful, centralized unitary state, ensuring rapid, unified action to preserve the sovereignty and integrity of India.

2. S.R. Bommai v. Union of India (1994)

A watershed Supreme Court judgment that heavily curbed the political misuse of Article 356 (President's Rule). It established that a Presidential proclamation dismissing a State government is not immune from judicial review. It mandated that a Chief Minister's majority must be tested on the floor of the House (Floor Test), not subjectively by the Governor. Crucially, it gave the Supreme Court the power to restore a dismissed State government if the emergency proclamation is found unconstitutional.

3. The 44th Constitutional Amendment Act, 1978

Enacted to prevent the future misuse of emergency powers seen during 1975. Key safeguards included: (a) Substituting the vague term "internal disturbance" with "armed rebellion" for declaring Art 352; (b) Mandating *written advice* from the Cabinet to the President; (c) Requiring a Special Majority for parliamentary approval; and (d) Prohibiting the suspension of Articles 20 and 21 during any emergency.

4. Special Majority + State Ratification

Under Article 368, if an amendment seeks to alter the federal balance of the Constitution, it requires a deeply rigid process. The bill must first pass both Houses of Parliament by a Special Majority (majority of total membership + 2/3rds present and voting). Afterwards, it must be ratified by the legislatures of not less than half of the States by a simple majority before it is presented to the President for assent. This applies to items like the 7th Schedule and the Union/State Judiciary.

REVISION TRACKER: CONSTITUTIONAL LAW-II

(Use this checklist to ensure complete syllabus coverage).

UNIT-I

- [ ] Union & State Legislature (Composition, Powers, Functions).
- [ ] Parliamentary Privileges (Art 105, 194).
- [ ] Anti-Defection Law (10th Schedule).
- [ ] President & Governor (Position, Executive & Legislative Powers).
- [ ] Council of Ministers & the Aid and Advice clause (Art 74, 163).

UNIT-II

- [ ] Supreme Court Appointment (Collegium System, NJAC).
- [ ] SC Jurisdiction (Original, Appellate, Advisory, Writ).
- [ ] High Court Appointment, Transfer (Art 222), and Jurisdiction.
- [ ] Subordinate Judiciary.
- [ ] Independence of Judiciary & Judicial Accountability.

UNIT-III

- [ ] Legislative Relations (Art 245-255, 7th Schedule).
- [ ] Repugnancy (Art 254).
- [ ] Judicial Doctrines (Pith & Substance, Colorable Legislation, etc.).
- [ ] Administrative Relations & Centre's directives.
- [ ] Financial Relations & Finance Commission.
- [ ] Inter-State Council & Co-operation mechanisms.

UNIT-IV

- [ ] Liability in Contracts (Art 299).
- [ ] Liability in Torts (Art 300, Sovereign vs. Non-Sovereign, Const. Torts).
- [ ] Freedom of Trade, Commerce, Intercourse (Art 301-307) & Restrictions.
- [ ] Services under the State (Art 309-311, Doctrine of Pleasure).
- [ ] All India Services & Public Service Commissions.

UNIT-V

- [ ] Need for Emergency Powers.
- [ ] National Emergency (Art 352) & Impact on FRs (Art 358/359).
- [ ] State Emergency (Art 356 & *S.R. Bommai* guidelines).
- [ ] Financial Emergency (Art 360).
- [ ] Impact of Emergency on Federalism.
- [ ] Amendment procedure (Art 368).
- [ ] Basic Structure Theory (*Kesavananda Bharati*, *Minerva Mills*).

QUICK-REFERENCE TABLES

Table 1: President vs. Governor

Feature	President (Union)	Governor (State)
Pardoning Power	Can pardon death sentences and Court Martial sentences.	Cannot pardon Court Martial sentences; can only commute (not pardon) death sentences.
Discretionary Power	Has no express constitutional discretionary power.	Has express constitutional discretionary powers (Art 163).
Ordinance Making	Article 123.	Article 213.

Table 2: Supreme Court vs. High Court Jurisdiction

Feature	Supreme Court (Art 32)	High Court (Art 226)
Writ Scope	Can issue writs **only** for the enforcement of Fundamental Rights.	Can issue writs for Fundamental Rights **and** for "any other purpose" (legal rights).
Territorial Scope	Entire territory of India.	Confined to the territorial jurisdiction of the respective State.
Advisory Power	Yes, under Art 143 (advises President).	No such advisory jurisdiction exists.

Table 3: Types of Emergencies

Type	Article	Grounds	Approval Time
National	352	War, external aggression, armed rebellion.	1 Month (Special Majority)
State	356	Failure of constitutional machinery in State.	2 Months (Simple Majority)
Financial	360	Threat to financial stability or credit.	2 Months (Simple Majority)

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