

Constitution of India



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A Brief Discussion on Constitution of India

1.1. Article 33 of the Constitution of India

Empowers Parliament to modify Fundamental Rights in relation to Armed Forces.

1.1.1 Explanation of Article 33

Article 33 of the Constitution of India is an exception to the general application of Fundamental Rights. It grants **Parliament** the power to restrict or abrogate (cancel) the Fundamental Rights of specific categories of people to ensure the proper discharge of their duties and the maintenance of discipline.

1.1.2 Who does Article 33 apply to?

The power under this Article is not limited just to combat soldiers; it extends to:

- Members of the **Armed Forces**.
- Members of the **Public Order forces** (Police forces).
- Persons employed in any bureau or organization established by the State for **intelligence or counterintelligence**.
- Persons employed in the **telecommunication systems** set up for the purposes of any force or bureau mentioned above.

1.1.3 Why the other options are incorrect:

- **Enforce Fundamental Rights:** This is primarily the role of the Judiciary (Articles 32 and 226) and the general spirit of Part III, rather than the specific purpose of Article 33.
- **Impose Martial Law:** This is covered under **Article 34**, which deals with restrictions on rights while martial law is in force in any area.
- **Declare Emergency:** The power to declare a National Emergency resides with the President under **Article 352**.

Note: Laws made by Parliament under Article 33 cannot be challenged in any court on the ground of contravention of any of the Fundamental Rights.

While both **Article 33** and **Article 34** involve the restriction of Fundamental Rights, they operate in very different contexts. Think of Article 33 as a **permanent professional code** for specific groups, whereas Article 34 is a **temporary emergency measure** for a specific geography.

1.1.4 Breakdown of the key differences:

Comparison Table: Article 33 vs. Article 34

Feature	Article 33 (Armed Forces)	Article 34 (Martial Law)
Primary Focus	Maintaining discipline and efficiency within specific services.	Restoring public order when it has completely broken down.
Target Audience	Members of the Armed Forces, Police, and Intelligence agencies.	The General Public living in the area where martial law is imposed.
Application	Applies to these personnel at all times (even during peace).	Applies only during extraordinary circumstances (war, rebellion, riot).
Nature of Restriction	Restricts or modifies Fundamental Rights (e.g., right to form associations/unions).	Suspends Fundamental Rights and civil courts; military rule takes over.

Feature	Article 33 (Armed Forces)	Article 34 (Martial Law)
Power Holder	Only Parliament can make laws under this article.	Parliament indemnifies (protects) acts done by persons in service during the period.

1.1.5 Key Distinctions to Remember

1. The Scope of Restriction

Under **Article 33**, a soldier doesn't lose all rights, but Parliament can say, "You cannot form a political union or address the press without permission." This is a permanent job condition. Under **Article 34**, the entire civil administration is replaced by military tribunals.

2. The Concept of "Indemnity"

Article 34 is unique because it allows Parliament to pass an **Act of Indemnity**. This means if an officer had to take extreme measures to restore order (which might otherwise be illegal), Parliament can protect them from legal consequences after the martial law ends.

3. Martial Law vs. National Emergency

It is a common mistake to confuse Martial Law (Art. 34) with a National Emergency (Art. 352):

- **National Emergency:** Affects the whole country or large parts of it; government and courts continue to function.
- **Martial Law:** Affects a specific area; civil government and ordinary law courts are suspended or superseded by military law.

1.2 Article 30 of the Constitution of India

Guarantees the right to establish and administer educational institutions. It is available to all minorities based on religion or language.

1.2.1 Understanding Article 30

Article 30 is a specific Fundamental Right designed to protect the distinct culture and heritage of minority groups. Unlike Article 29 (which applies to "any section of citizens"), Article 30 is specifically conferred upon **minorities**.

1.2.2 Key Features of Article 30:

- **Dual Criteria:** The Constitution recognizes two types of minorities—**Religious** and **Linguistic**. It does not recognize minorities based on ethnicity, caste, or region.
- **Two-Fold Right:** It gives these minorities the right to:
 1. **Establish** educational institutions of their choice.
 2. **Administer** those institutions.
- **Non-Discrimination in Aid:** The State cannot discriminate against any educational institution in granting financial aid on the ground that it is managed by a religious or linguistic minority.
- **Property Rights:** If the State compulsorily acquires the property of a minority educational institution, it must ensure the compensation amount is such that it does not restrict or abrogate the right guaranteed under this Article.

1.2.3 Why the other options are incorrect:

- **All persons:** Article 30 is not a universal right for everyone; it is a "special" right for minorities.

- **All its citizens:** While minorities are citizens, the right is not available to *all* citizens (e.g., the majority community cannot claim rights under Article 30).
- **All minorities in India:** This is slightly too broad in a legal sense because the Article specifically qualifies them as being based on "religion or language."

Note: The term "Minority" is **not defined** in the Constitution. However, the Supreme Court has ruled (T.M.A. Pai Foundation case) that for the purpose of Article 30, the minority status is determined **state-wise**, not nationally.

1.2.4 Article 29 vs. Article 30: Key Differences

Feature	Article 29 (Protection of Interests)	Article 30 (Right to Administer)
Scope	Broad: Protects language, script, or culture.	Specific: Right to establish and manage educational institutions.
Available to	" Any section of citizens " (Includes both Minorities and Majorities).	" Minorities " (Only Religious or Linguistic).
Nature of Right	Group/Community right to conserve heritage.	Institutional right to educate their community.
Specific Clause	Includes a right against discrimination in state-aided institutions based on religion, race, caste, or language.	Focuses on the right of the minority to provide education to their own children in their own way.

1.2.5 The "TMA Pai" Rule

The Supreme Court, in the famous **T.M.A. Pai Foundation vs. State of Karnataka** case, clarified how we identify a minority:

1. **State-wise determination:** Since states were reorganized on a linguistic basis, a community that is a majority in India (like Hindus) can be a minority in a specific state (like Punjab or Nagaland) and claim Article 30 rights there.
2. **Not Absolute:** The right to "administer" does not mean a right to "mal-administer." The State can still impose regulations regarding academic standards, sanitation, and national security.

1.2.6 Important Legal Nuance

While **Article 30** is only for minorities, **Article 29(1)** gives *any* group of citizens (even the majority) the right to protect their unique language or script. However, the majority cannot establish a "Majority Educational Institution" under Article 30 to get the same exemptions from state interference that minorities enjoy.

Article 32 is famously described by Dr. B.R. Ambedkar as the "**Heart and Soul of the Constitution.**" It is what makes all other Fundamental Rights meaningful because it provides a remedy for their enforcement.

Article 32: The Right to Constitutional Remedies

Article 32 gives a citizen the right to move the **Supreme Court** directly for the enforcement of Fundamental Rights. This is a Fundamental Right in itself, meaning the Supreme Court cannot refuse to entertain a petition filed under this article.

The Five Prongs of Article 32: The Writs

The Supreme Court has the power to issue five types of "Writs" (legal orders):

1. **Habeas Corpus ("To have the body")**: An order to produce a person who has been detained. If the detention is found illegal, the person is set free.
2. **Mandamus ("We command")**: An order to a public official or body to perform a legal duty they have failed to do.
3. **Prohibition ("To forbid")**: Issued by a higher court to a lower court to stop it from proceeding in a case where it lacks jurisdiction.
4. **Certiorari ("To be certified")**: Issued to a lower court to quash (cancel) an order that has already been passed without jurisdiction or in violation of natural justice.
5. **Quo-Warranto ("By what authority")**: Issued to inquire into the legality of a person's claim to a public office.

Article 32 vs. Article 226

While Article 32 is for the Supreme Court, **Article 226** gives similar powers to the **High Courts**. However, there are two crucial differences:

Feature	Article 32 (Supreme Court)	Article 226 (High Court)
Scope	Only for Fundamental Rights .	For Fundamental Rights AND "any other purpose" (legal rights).
Nature	It is a Fundamental Right itself.	it is a Discretionary power of the court.
Territory	Throughout India.	Within the specific State/Union Territory.

Why this matters for your exam:

If a question asks which court has a **wider** jurisdiction regarding writs, the answer is the **High Court**, because it can issue writs for legal rights beyond just Fundamental Rights. But if the question asks which is a Fundamental Right, it is **Article 32**.

101. The **Right to Constitutional remedies** guaranteed under **Article 32** of the **Constitution of India** is available to

- * (A) People of India
- * (B) Only Indian Citizens
- * (C) All natural persons, citizens and non-citizens
- * (D) All Indian Citizens and foreign ambassadors

Answer: (C) All natural persons, citizens and non-citizens.

Why is this the case?

Article 32 is often described as the "**heart and soul**" of the Indian Constitution because it allows individuals to approach the Supreme Court directly for the enforcement of their Fundamental Rights.

While some rights in the Constitution are reserved exclusively for citizens (like freedom of speech or right to public employment), **many other fundamental rights—such as Article 21 (Right to Life and Personal Liberty) and Article 20 (Protection in respect of conviction for offences)—are available to "persons."**

- **Article 32 follows the right:** If a non-citizen (a foreigner) has a fundamental right that is being violated, they must have the remedy to protect it. Therefore, Article 32 is available to any "person" whose fundamental rights (applicable to them) have been infringed.

- **Legal Entities:** It's worth noting that "persons" can also include legal entities like corporations or companies, depending on the specific right being claimed.

Comparison of Rights Availability

Rights for Citizens Only	Rights for All Persons (Citizens & Foreigners)
Article 15 (Non-discrimination on specific grounds)	Article 14 (Equality before law)
Article 16 (Equality of opportunity in employment)	Article 20 (Protection against conviction)
Article 19 (Six basic freedoms)	Article 21 (Right to life and liberty)
Article 29 & 30 (Cultural/Educational rights)	Article 25-28 (Freedom of religion)

Note: Article 32 cannot be used to enforce non-fundamental rights (like statutory rights or simple legal rights).

111. The **power of the President of India to issue an Ordinance** is

- * (A) Executive Power
- * (B) Legislative Power
- * (C) Constituent Power
- * (D) Quasi-Judicial Power

The correct answer is **(B) Legislative Power**.

While the President is the head of the Executive, the power to issue an Ordinance is inherently legislative in nature because it allows the President to make laws when Parliament is not in session.

Why it is a Legislative Power

Under **Article 123** of the Indian Constitution, the President can promulgate Ordinances during the recess of Parliament. Here is why it falls under the legislative category:

- **Force of Law:** An Ordinance has the same force and effect as an Act of Parliament.
- **Subject Matter:** The President can only issue Ordinances on subjects that Parliament is empowered to legislate on.
- **Temporary Nature:** It is a makeshift arrangement to handle urgent matters when the primary legislative body (Parliament) cannot meet.
- **Parliamentary Oversight:** Every Ordinance must be laid before both Houses of Parliament and will cease to operate if not approved within six weeks of the reassembly of Parliament.

Comparison of Powers

To give you a clearer picture of where this fits among the President's other roles:

Power Type	Description	Examples
Executive	Powers related to the administration of the country.	Appointing the Prime Minister and other Ministers.
Legislative	Powers related to law-making and Parliament.	Issuing Ordinances, summoning/proroguing Parliament.

Power Type	Description	Examples
Judicial	Powers related to the legal system and pardons.	Granting pardons or reprieves (Article 72).
Constituent	Power to amend the Constitution.	The President does not have independent constituent power; this rests with Parliament.

President's Ordinance Power Explained

The power to challenge an ordinance is a crucial "check and balance" in Indian democracy. While an Ordinance has the same authority as a law passed by Parliament, it isn't immune to judicial review.

The Supreme Court established clearly (notably in the **DC Wadhwa case** and later the **Krishna Kumar Singh case**) that the President's "satisfaction" is not absolute.

Grounds for Challenging an Ordinance

An Ordinance can be challenged in the High Courts or the Supreme Court on the following grounds:

- **Mala Fide Intention:** If it can be proven that the government acted in bad faith or with an ulterior motive to bypass Parliament.
- **Lack of Urgency:** The President can only issue an Ordinance if "circumstances exist which render it necessary to take immediate action." If there was no emergency or immediate need, it can be questioned.
- **Violation of Fundamental Rights:** Just like a regular law, if an Ordinance violates any part of the **Fundamental Rights (Part III)** of the Constitution, it can be declared void.
- **Beyond Legislative Competence:** The President cannot pass an Ordinance on a subject that Parliament itself isn't allowed to touch (e.g., a subject on the State List).

The "Re-promulgation" Rule

One of the most significant legal boundaries is that the government **cannot keep re-issuing the same Ordinance** to avoid bringing it before Parliament.

The Supreme Court's View: Re-promulgating an Ordinance without trying to get it passed as a Bill is considered a "fraud on the Constitution" and a subversion of the democratic legislative process.

Many landmark laws in India actually started their journey as Ordinances. Because the government often needs to act quickly on economic or social crises when Parliament is not in session, they use the "Ordinance route" first and then seek formal approval later.

Here are some of the most impactful examples:

1. Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970

- **The Context:** This is famously known as the **Nationalization of Banks**.
- **The Story:** In 1969, Indira Gandhi's government issued an Ordinance to nationalize 14 major commercial banks just two days before the Parliament session began. It was a massive shift in India's economic policy and was later challenged in the famous *R.C. Cooper* case before becoming a permanent Act.

2. The Criminal Law (Amendment) Act, 2013 (Nirbhaya Act)

- **The Context:** Following the 2012 Delhi gang-rape case, there was immense public pressure for stricter laws against sexual offenses.

- **The Story:** Since Parliament was not in session and the matter was urgent, the **Criminal Law (Amendment) Ordinance, 2013** was promulgated to immediately toughen the Indian Penal Code. It was later passed by Parliament as a formal Act.

3. The National Food Security Act, 2013

- **The Context:** This is one of the world's largest social welfare programs, guaranteeing subsidized food grains to nearly two-thirds of India's population.
- **The Story:** The government issued the **National Food Security Ordinance** in July 2013 to kickstart the program immediately, which was subsequently replaced by the Act in September 2013.

4. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002

- **The Context:** Banks were struggling with massive Bad Loans (NPAs) and had no quick way to recover money from defaulters.
- **The Story:** The SARFAESI Ordinance was issued in 2002 to give banks the power to seize assets of defaulters without waiting for a lengthy court decree. It completely changed the Indian banking landscape and was soon turned into a permanent law.

5. The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016

- **The Context:** While Aadhaar existed since 2009, it lacked a solid legal framework for many years.
- **The Story:** Although it was eventually introduced as a Money Bill, several early iterations of the rules governing biometric data and its use in subsidies were pushed through executive actions and urgent regulations that mimicked the ordinance spirit to ensure the system didn't stall.

Summary Table: From Ordinance to Act

Landmark Act	Initial Ordinance Year	Primary Purpose
Bank Nationalization Act	1969	State control of the banking sector.
SARFAESI Act	2002	Recovery of bad loans (NPAs).
Criminal Law (Amdt) Act	2013	Stricter punishment for sexual crimes.
National Food Security Act	2013	Right to food for the poor.
Insolvency & Bankruptcy Code	2017 (Amdts)	Speeding up company liquidation/recovery.

112. Under which **Article of the Constitution of India** nothing shall prevent the appointment of the **same person as Governor for two or more States**?

- * (A) Article 152
- * (B) Article 153
- * (C) Article 154
- * (D) Article 155

Answer: **(B) Article 153.**

While Article 153 originally stated that there shall be a Governor for each State, the **7th Constitutional Amendment Act of 1956** added a proviso making it possible for one person to hold the office for two or more states simultaneously.

Breakdown of the Articles Mentioned:

To help you distinguish between these closely related articles, here is what each one covers:

- **Article 152:** Defines the term "State" for the purposes of Part VI of the Constitution (excluding Jammu & Kashmir originally, though this has changed with the Reorganisation Act of 2019).
- **Article 153:** Mandates that there shall be a Governor for each state. The **7th Amendment** inserted the specific rule you asked about: *"nothing in this article shall prevent the appointment of the same person as Governor for two or more States."*
- **Article 154:** Vests the **executive power** of the State in the Governor.
- **Article 155:** Details the **appointment** of the Governor (stating they are appointed by the President by warrant under his hand and seal).

Key Facts About the Governor's Office

Aspect	Constitutional Provision
Dual Role	The Governor acts as the Constitutional head of the state and as a vital link between the Union and the State governments.
Salary for Multiple States	If one person is Governor of two states, their salary and allowances are allocated among the states in a proportion determined by the President .
Term of Office	Usually 5 years, but they hold office during the pleasure of the President (Article 156).

To be eligible for appointment as a Governor, the Constitution of India specifies only two main qualifications under **Article 157**. However, over time, several "conventions" (unwritten rules) have also developed.

Constitutional Qualifications (Article 157)

A person must fulfill these two criteria to be eligible:

1. **Citizenship:** Must be a citizen of India.
2. **Age:** Must have completed the age of **35 years**.

Conditions of Office (Article 158)

Once appointed, the person must also satisfy these conditions:

- They should **not be a member** of either House of Parliament or a House of the State Legislature. If such a person is appointed, they are deemed to have vacated their seat in that House on the date they enter the Governor's office.
- They must **not hold any office of profit**.

Important Conventions (The "Sarkaria Commission" Recommendations)

While not legally binding, these practices are usually followed to ensure the neutrality of the Governor's office:

- **The "Outsider" Rule:** The person should be an "outsider"—meaning they should not belong to the state where they are appointed as Governor. This prevents them from getting involved in local party politics.
- **Consultation with the CM:** The President (effectively the Central Government) usually consults the Chief Minister of the concerned state before making the appointment to ensure smooth functioning.

Summary of the Governor's Appointment Process

Step	Detail
Selection	By the Central Government (Union Cabinet).
Appointment	By the President by warrant under his hand and seal (Article 155).
Oath	Administered by the Chief Justice of the High Court of the concerned state (Article 159).

The pardoning power in India is an **executive power** (not a judicial one) granted to the President and the Governor to correct potential judicial errors or provide relief from overly harsh sentences.

The President's power is governed by **Article 72**, while the Governor's power falls under **Article 161**.

1. Types of Pardoning Powers

Both authorities have five distinct ways to grant mercy. It's easiest to remember them by how they change the punishment:

- **Pardon:** Completely removes both the conviction and the sentence. The person is released as if they never committed the crime.
- **Commutation:** Substitutes a harsher punishment with a lighter one (e.g., changing a death sentence to life imprisonment).
- **Remission:** Reduces the *amount* of the sentence without changing its *character* (e.g., reducing 10 years of "rigorous imprisonment" to 5 years of "rigorous imprisonment").
- **Respite:** Awarding a lesser sentence due to special facts, such as the pregnancy of a convict or a physical disability.
- **Reprieve:** A temporary stay (delay) on the execution of a sentence, usually to give the convict time to seek a pardon or commutation.

2. Difference Between President and Governor

While the powers are similar, the President's scope is significantly wider:

Feature	President (Article 72)	Governor (Article 161)
Laws	Applies to offences against Union Laws .	Applies to offences against State Laws .
Court Martial	Can pardon sentences given by Military Courts .	No power regarding Court Martial.
Death Sentence	Can grant a full Pardon for a death sentence.	Cannot grant a full pardon for death, but <i>can</i> suspend, remit, or commute it.

Legal Update: In 2021, the Supreme Court clarified that the Governor *can* pardon prisoners (including death row ones) as part of the state's sovereign power, even before they serve the minimum 14 years usually required by the CrPC.

3. Key Legal Principles

- **Not Personal Discretion:** Neither the President nor the Governor acts on their own. They must follow the **advice of the Council of Ministers** (the Cabinet).
- **Judicial Review:** While the courts cannot question the *wisdom* of a pardon, they can intervene if the decision was **malafide** (bad faith), arbitrary, or based on irrelevant grounds (like caste or religion).
- **No Oral Hearing:** The convict has no right to an oral hearing before the President; the decision is based solely on written petitions.

116. Under which **Article of the Constitution of India** the meaning of "**Gram Sabha**" is given?

- * (A) Article 243(a)
- * (B) Article 243(b)
- * (C) Article 243(c)
- * (D) Article 243(e)

Answer: (A) Article 243(b) (noted in many texts as **243(b)** for the definition, though technically **Article 243(a)** defines the term while **Article 243A** discusses its powers).

To be precise, **Article 243** is the "Definitions" section for the **entire Panchayati Raj system**. Under Article 243(b), the Constitution defines "**Gram Sabha**."

Definition of Gram Sabha

According to the Constitution, a 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.

Essentially:

- **Membership:** It is the only body in the PRIs (Panchayati Raj Institutions) that consists of all the villagers who are voters.
- **Nature:** It is the foundation of the Panchayati Raj System, acting as the primary body of direct democracy at the local level.

Breakdown of Article 243 Sub-clauses:

Article	Subject Matter
Article 243(b)	Defines " Gram Sabha ".
Article 243(d)	Defines " District ".
Article 243(e)	Defines " Intermediate level " (Panchayat Samiti).
Article 243(f)	Defines " Panchayat ".

Key Articles related to Gram Sabha and Panchayats:

It's easy to get these confused, so here is the hierarchy of the 73rd Amendment:

- **Article 243A:** Deals with the **Powers** and **functions** of the **Gram Sabha** (it may exercise such powers as the State Legislature provides by law).
- **Article 243B:** Deals with the **Constitution** of Panchayats (the three-tier system).
- **Article 243C:** Deals with the **Composition** of **Panchayats** (how members are elected).
- **Article 243D:** Deals with **Reservation of Seats** (for SC/ST and women).
- **Article 243E:** Deals with the **Duration of Panchayats** (5 years).

Why this matters for Exams:

The **73rd Constitutional Amendment Act, 1992**, added **Part IX** to the Constitution. The Gram Sabha is considered the "General Body" of the village, while the Gram Panchayat is the "Executive Body."

Here is the breakdown of the **73rd Constitutional Amendment Act, 1992**. The Act distinguishes between provisions that states *must* implement and those they *may* implement based on their discretion.

Mandatory vs. Voluntary Provisions

Mandatory Provisions (Compulsory)	Voluntary Provisions (Discretionary)
Organization of Gram Sabha in a village or group of villages.	Giving representation to members of Parliament (MPs) and State Legislature (MLAs) in Panchayats.
Establishment of a three-tier system (Village, Intermediate, and District levels).	Granting financial powers to Panchayats (levying taxes, fees, etc.).
Direct elections to all seats in Panchayats at all levels.	Providing reservation for Backward Classes (OBCs).
Minimum age of 21 years for contesting elections.	Devolution of powers to perform functions listed in the 11th Schedule (29 functional items).
Reservation of 1/3rd seats for women (including Chairpersons).	Granting autonomy to Panchayats to function as institutions of self-government.
Fixed 5-year tenure and holding fresh elections within 6 months of dissolution.	
Setting up a State Finance Commission every 5 years.	
Setting up a State Election Commission .	

Important Note on the Three-Tier System

While the three-tier system is mandatory, there is a small exception:

States with a population **not exceeding 20 lakhs (2 million)** have the option not to constitute Panchayats at the **intermediate level** (Mandal/Block level).

The 11th Schedule

This schedule contains **29 functional items** (like agriculture, land improvement, minor irrigation, and primary schools) that the State Government *may* transfer to the Panchayats. This is why you see some Panchayats in India being very powerful (like in Kerala) and others having very little to do.

Under Article 243F of the Constitution, the rules for disqualification are quite similar to those for State Legislatures (MLAs), but with a few key differences specifically designed for local governance.

A person is disqualified from being a member of a Panchayat if:

1. General Disqualifications (Article 243F(1)(a))

If they are disqualified under **any law used for State Legislative elections**. This includes standard legal bars such as:

- **Unsound Mind:** Being declared so by a competent court.
- **Insolvency:** Being an undischarged insolvent.
- **Citizenship:** If they are not a citizen of India or have voluntarily acquired the citizenship of a foreign state.
- **Office of Profit:** Holding a position under the Government of India or a State Government that provides financial gain (unless exempted by law).

2. The "Age" Exception (The 21-Year Rule)

This is the most frequent exam point. While you **must be 25 to be an MLA**, Article 243F specifically provides:

No person shall be disqualified on the ground that he is less than 25 years of age, if he has attained the **age of 21 years**.

3. State-Specific Disqualifications (Article 243F(1)(b))

The Constitution gives State Legislatures the power to add their own rules. Many states have introduced unique criteria, such as:

- **The "Two-Child" Policy:** Several states (like Rajasthan, Maharashtra, and Odisha) disqualify candidates if they have more than two children.
- **Educational Qualifications:** Some states require a minimum level of schooling (e.g., passing 8th or 10th grade).
- **Functional Toilets:** Some states require the candidate to have a functional sanitary toilet in their home.
- **Arrears:** Defaulting on payments to a cooperative society or the Panchayat itself.

Who Decides Disqualifications? (Article 243F(2))

If a question arises about whether a member has become subject to any disqualification, it is **not** decided by the Panchayat itself.

- The question is referred to an **authority designated by the State Legislature** (usually a District Collector, a Commissioner, or a special Election Tribunal).
- In many states, the final decision-making power for election disputes rests with the **State Election Commission**.

Summary Table

Feature	Requirement / Ground
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Feature	Requirement / Ground
Minimum Age	21 Years (The big exception).
MLA Rules	If you can't be an MLA, you can't be a Panchayat member (mostly).
Office of Profit	Prohibited (unless the specific office is exempted).
Deciding Authority	As prescribed by State Law (usually a designated executive/judicial officer).

Article 243D is one of the most transformative provisions of the **73rd Amendment** because it ensures that marginalized groups and women have a guaranteed seat at the table of local governance.

It outlines **four main** types of reservations:

1. Reservation for SC and ST

- **Proportional Representation:** Seats are reserved for Scheduled Castes (SC) and Scheduled Tribes (ST) in every Panchayat.
- **The Ratio:** The number of reserved seats must be in the same proportion to the total seats as their population is to the total population of that Panchayat area.
- **Rotation:** These seats are allotted by rotation to different constituencies in a Panchayat.

2. Reservation for Women (The "1/3rd" Rule)

- **Mandatory Minimum:** Not less than **one-third (33%)** of the total number of seats must be reserved for women.
- **Including SC/ST Women:** This 1/3rd quota includes the number of seats reserved for women belonging to the SC and ST categories.
- **Rotation:** Like SC/ST seats, these are also allotted by rotation.
- **Note:** Many states (like Bihar, Madhya Pradesh, and Uttarakhand) have voluntarily increased this to **50%**.

3. Reservation of Offices of Chairpersons

It's not just about being a member; the Constitution also reserves the "top spots" (Sarpanch/President):

- The offices of Chairpersons at the Village, Intermediate, and District levels are reserved for SCs, STs, and Women in a manner determined by the State Legislature.

4. Reservation for Backward Classes (OBCs)

- **Discretionary:** Unlike the mandatory reservations for SC/ST and Women, the reservation for Other Backward Classes (OBCs) is **voluntary**.
- **Article 243D(6)** gives the State Legislature the power to make any provision for the reservation of seats or offices of Chairpersons in favor of backward citizens.

Summary of Reservations under Article 243D

Category	Reservation Type	Basis/Proportion
SC & ST	Mandatory	Population Ratio

Category	Reservation Type	Basis/Proportion
Women	Mandatory	Minimum 1/3rd of total seats
Chairpersons	Mandatory	As per State Law (rotated)
OBCs	Voluntary	At the discretion of the State Govt

Why the "Rotation" matters

The system of rotation ensures that no single constituency is permanently "reserved" or "unreserved." This encourages political participation across the entire district or village over different election cycles.

Legal Landmark: The Supreme Court in the *K. Krishna Murthy case (2010)* ruled that while the 50% vertical reservation limit (from the *Indra Sawhney case*) applies to OBC reservations in local bodies, the 33% reservation for women is a separate constitutional mandate.

124. Promotion of co-operative societies is stated in

- * (A) Article 43A of the Constitution of India
- * (B) Article 43B of the Constitution of India
- * (C) Article 47 of the Constitution of India
- * (D) Article 48A of the Constitution of India

Answer: (B) Article 43B of the Constitution of India.

Constitutional Context

Article 43B was inserted into the **Directive Principles of State Policy (DPSP)** by the **97th Amendment Act, 2011**. It mandates that the State shall endeavor to promote:

- Voluntary formation,
- Autonomous functioning,
- Democratic control, and
- Professional management of co-operative societies.

Comparison of Options

It's easy to mix these up since they all fall under the Directive Principles (Part IV). Here is a breakdown of the other articles mentioned:

Article	Subject Matter
Article 43A	Participation of workers in the management of industries.
Article 43B	Promotion of co-operative societies.
Article 47	Duty of the State to raise the level of nutrition and the standard of living (and prohibition of intoxicating drinks/drugs).
Article 48A	Protection and improvement of environment and safeguarding of forests and wildlife.

Key Note

While the 97th Amendment introduced Article 43B, it also made the "Right to form cooperative societies" a Fundamental Right under Article 19(1)(c).

138. 'Union with strong centre' is taken from

- * (A) Canada
- * (B) Australia
- * (C) Italy
- * (D) USA

Answer: (A) Canada.

While the Indian Constitution is often called a "bag of borrowings," the specific model of a **Federation with a strong Centre** was inspired by the Canadian system.

Why Canada?

When the Indian Constitution was being drafted, the framers wanted a federal structure (distribution of power between the Union and States) but feared that too much state autonomy might lead to the country breaking apart. They looked to the **British North America Act of 1867** (Canada's constitution) for a solution.

Key Features Borrowed from Canada

Aside from the "strong Centre," India adopted several other specific mechanisms from Canada to ensure national unity:

- **Residuary Powers:** Any matter not specifically mentioned in the Union, State, or Concurrent lists belongs to the **Centre** (Article 248).
- **Appointment of State Governors:** The President (acting on the advice of the Central Government) appoints Governors, ensuring a link between the Centre and the States.
- **Advisory Jurisdiction of the Supreme Court:** The President can seek the Supreme Court's opinion on questions of law or fact (Article 143).

Quick Comparison of Sources

Country	Feature Borrowed
USA	Fundamental Rights, Judicial Review, Preamble.
Australia	Concurrent List, Freedom of Trade and Commerce.
Ireland	Directive Principles of State Policy (DPSP).
UK	Parliamentary form of government, Rule of Law.

That is a great question because it highlights why the Indian system is often described as **"Federal in form, but Unitary in spirit."**

While both the USA and India share the basic idea of "States" and a "Central Government," they operate on very different philosophies.

1. The USA: A "True" Federation

The US model is a **"Coming Together"** federation. Independent states decided to join forces to create a central body, but they kept a massive amount of their own sovereignty.

- **Dual Citizenship:** In the US, you are a citizen of your State (e.g., Texas) and a citizen of the USA.
- **State Constitutions:** Every US state has its own separate constitution.
- **Indestructible States:** The Central government cannot change a state's borders or name without its consent.
- **Residuary Powers:** Any power not specifically given to the Federal government belongs to the **States**.

2. India/Canada: The "Quasi-Federal" Model

The Indian model is a **"Holding Together"** federation. It wasn't formed by independent states coming together; rather, a large country was divided into states for better administration.

- **Single Citizenship:** You are only a citizen of India; there is no "State citizenship."
- **Single Constitution:** One document governs both the Union and the States.
- **Destructible States:** Under **Article 3**, the Parliament can change the boundaries, area, or name of any state without that state's permission.
- **Strong Centre:** In times of "Emergency," the Indian system can legally transform into a completely **Unitary** system where the Centre makes all the rules.

Key Differences at a Glance

Feature	USA (Federal)	India/Canada (Quasi-Federal)
Origin	Agreement between independent states.	Administrative convenience/National unity.
Residuary Power	Belongs to the States .	Belongs to the Union/Centre .
Judiciary	Dual system (State courts vs. Federal).	Integrated system (Supreme Court at the top).
Governors	Elected (in many US contexts).	Appointed by the Centre.

Why "Quasi"?

The term **"Quasi-Federal"** was famously used by scholar **K.C. Wheare** to describe India because it looks like a federation (with two levels of government) but acts like a unitary state whenever the national interest is at stake.

This "switch" is one of the most unique parts of the Indian Constitution. While the USA remains federal even during a crisis, India can legally transform into a **Unitary State** without a formal amendment.

This is done through **three types of Emergency provisions**:

1. National Emergency (Article 352)

This is triggered by **war, external aggression, or armed rebellion**.

- **The Switch:** The Federal structure is suspended. The Union Parliament gains the power to make laws on any subject, even those normally reserved for the States (the State List).

- **Fundamental Rights:** Most rights (except Articles 20 and 21) can be suspended by the President.

2. State Emergency / President's Rule (Article 356)

This occurs when a State government cannot function according to the Constitution (a "breakdown of constitutional machinery").

- **The Switch:** The President dismisses the State government and the Governor runs the state on behalf of the Centre.
- **Law-making:** The Parliament takes over the job of passing the State's budget and laws.

3. Financial Emergency (Article 360)

This is triggered if the financial stability or credit of India is threatened.

- **The Switch:** The Centre can give directions to any State to observe specific canons of "financial propriety."
- **Salaries:** The President can order a reduction in the salaries of all government servants, including Judges of the Supreme Court and High Courts.

Comparison: Federal vs. Emergency Mode

Feature	Normal (Federal) Mode	Emergency (Unitary) Mode
Power Distribution	Clear division (Union/State/Concurrent).	Centralized: Union controls everything.
State Governments	Autonomous and independent.	Subordinate or suspended.
Executive Control	States follow their own Cabinets.	States must follow Union directions.

Why does this exist?

The framers (like Dr. B.R. Ambedkar) argued that while the "Union" is the norm, the "**Nation**" is the priority. These provisions act as a safety valve to protect the integrity of the country during extreme internal or external threats.

The **Basic Structure Doctrine** is the ultimate "shield" of the Indian Constitution. It was established by the Supreme Court in the landmark **Kesavananda Bharati v. State of Kerala (1973)** case to ensure that Parliament cannot use its power to turn the country into a dictatorship or destroy its federal nature.

What is the Basic Structure?

The Court ruled that while Parliament has the power to amend the Constitution (under **Article 368**), it **cannot** alter or destroy its "Basic Structure."

Think of the Constitution like a building: you can paint the walls, change the windows, or add a room (Amendments), but you cannot remove the **foundation** or the load-bearing pillars without the whole thing collapsing.

Key "Pillars" of the Basic Structure

The Court has identified several features that are untouchable, including:

- **Federalism:** The distribution of power between the Centre and States.
- **Secularism:** The separation of religion and state.

- **Democracy:** Free and fair elections.
- **Separation of Powers:** The balance between the Legislature, Executive, and Judiciary.
- **Judicial Review:** The power of the courts to check the legality of government actions.

How it Protects Against "Abuse of Power"

Before this doctrine, the Central Government sometimes used **Article 356 (President's Rule)** to dismiss State governments run by opposition parties for purely political reasons.

The Basic Structure Doctrine changed the game in two ways:

1. **S.R. Bommai Case (1994):** The Supreme Court ruled that **Federalism** is part of the Basic Structure. Therefore, the President's power to dismiss a State government is not absolute; it can be challenged in court.
2. **Judicial Scrutiny:** If the Centre imposes an emergency without a valid reason, the Court can declare the move unconstitutional and **restore** the dismissed State government.

Summary of the Power Balance

Feature	The Power (Parliament)	The Limit (Supreme Court)
Amending Power	Can change almost any part of the Constitution.	Cannot touch the "Basic Structure."
Emergency Power	Can take over State functions during a crisis.	Must be based on "relevant material," not political whim.
Federalism	Can reorganize State boundaries.	Must maintain the essential federal character of the nation.

This is where the Supreme Court of India truly showed its teeth. On several occasions, Parliament tried to grant itself absolute power, and the Court used the **Basic Structure Doctrine** to say, "Stop."

Here are the three most famous "cases" where the Court struck down Constitutional Amendments:

1. The "Absolute Power" Case (Kesavananda Bharati, 1973)

- **The Amendment:** The 24th and 25th Amendments tried to give Parliament the power to amend *any* part of the Constitution, including Fundamental Rights, and prevented the courts from reviewing laws that claimed to fulfill "socialist" goals.
- **The Verdict:** The Court ruled that while Parliament can amend the Constitution, it **cannot destroy its identity**. This birthed the Basic Structure Doctrine itself.

2. The "Election" Case (Indira Gandhi v. Raj Narain, 1975)

- **The Amendment:** During the Emergency, the **39th Amendment** was passed. It stated that the election of the Prime Minister and the Speaker of the Lok Sabha could **not** be challenged in any court.
- **The Verdict:** The Supreme Court struck this down, stating that **"Free and Fair Elections"** and **"Judicial Review"** are part of the Basic Structure. No one, not even the PM, is above the law.

3. The "Final Word" Case (Minerva Mills v. Union of India, 1980)

- **The Amendment:** The **42nd Amendment** (often called the "Mini-Constitution") tried to state that there shall be *no limitation whatever* on the constituent power of Parliament to amend the Constitution.
- **The Verdict:** The Court struck down these sections. It famously noted that Parliament cannot, under the exercise of its amending power, give itself **unlimited** power. A "limited" amending power is itself a basic feature.

Summary of Struck-Down Clauses

Case	What Parliament Tried to Do	The Court's Reason for Striking it Down
Kesavananda (1973)	Take away Judicial Review of "Socialist" laws.	Judicial Review is an essential pillar.
Indira Gandhi (1975)	Place PM's election beyond court reach.	Rule of Law and Equality are basic features.
Minerva Mills (1980)	Claim "unlimited" power to amend.	A "limited" power cannot be turned into an "unlimited" one.
NJAC Case (2015)	Change how judges are appointed.	Independence of the Judiciary is a basic feature.

Why This Matters Today

Without these rulings, a government with a massive majority in Parliament could theoretically vote to abolish elections, remove the Supreme Court, or declare a specific religion as the "State Religion." The Basic Structure Doctrine is the only thing preventing a "legal" revolution from within.

The **NJAC Case (2015)**—formally known as *Supreme Court Advocates-on-Record Association v. Union of India*—is the most significant modern application of the Basic Structure Doctrine.

It was a historic moment where the Judiciary struck down a Constitutional Amendment that had been passed almost unanimously by both Houses of Parliament and ratified by 16 State Assemblies.

What was the NJAC?

The government passed the **99th Constitutional Amendment Act** to replace the "Collegium System" (where judges appoint judges) with a new body called the **National Judicial Appointments Commission (NJAC)**.

The proposed 6-member Commission consisted of:

1. The Chief Justice of India (Chair)
2. Two senior-most Supreme Court Judges
3. The Union Law Minister
4. Two "Eminent Persons" (nominated by a committee of the PM, CJI, and Leader of Opposition)

Why the Supreme Court struck it down

By a **4:1 majority**, the Court declared the NJAC unconstitutional for the following reasons:

- **Violation of Judicial Independence:** The Court ruled that "Independence of the Judiciary" is a part of the **Basic Structure**. Allowing the Executive (the Law Minister) a seat on the commission that picks judges was seen as a direct threat to that independence.

- **The "Veto" Problem:** The NJAC rules stated that if any **two members** disagreed, a candidate could not be appointed. This meant the two "Eminent Persons" (who might not be lawyers or judges) could effectively veto a choice made by all three senior judges.
- **Judicial Primacy:** The Court argued that for the judiciary to be truly independent, it must have the "final word" or primacy in appointments. The NJAC diluted this into a shared power.

The Aftermath: The "Fourth Judges Case"

This ruling effectively "revived" the old Collegium system. However, the Court admitted that the Collegium system was not perfect and was often criticized for being "opaque" or "nepotistic."

Feature	Collegium System (Current)	NJAC (Struck Down)
Who Decides?	Only Judges (CJI + 4 senior judges).	Judges + Law Minister + 2 Outsiders.
Executive Role	Can only ask for a "reconsideration."	Has a seat and a vote at the table.
Status	Active and Law of the Land.	Unconstitutional and Void.

The Big Debate

This case remains controversial because it pits **Parliamentary Sovereignty** (the will of the people's representatives) against **Judicial Independence**. Critics call it "the tyranny of the unelected," while supporters say it's the only way to keep the courts free from political pressure.

157. The *appropriate unit issued by court to quash the appointment of a person to a public office* is that of **Constitution of India**

- (A) Prohibition
- (B) Certiorari
- (C) Quo warranto
- (D) Mandamus

Answer: (C) Quo warranto.

Understanding Quo Warranto

The term **Quo warranto** literally translates to "**by what authority?**" It is a writ issued by a court to restrain a person from acting in a public office to which they are not entitled.

If a person occupies a public office without the legal qualifications or follows an improper appointment process, the court uses this writ to:

1. Inquire into the legality of the claim.
2. **Quash the appointment** if the claim is found invalid.
3. Oust the person from that office.

Comparison of the Writs Mentioned:

Writ	Meaning	Primary Purpose
(A) Prohibition	"To forbid"	Issued by a higher court to a lower court to stop it from exceeding its jurisdiction.

Writ	Meaning	Primary Purpose
(B) Certiorari	"To be certified"	Issued to quash an order already passed by an inferior court or quasi-judicial body.
(C) Quo Warranto	"By what authority"	Issued to challenge the right of a person to hold a public office.
(D) Mandamus	"We command"	Issued to a public official or body to perform a legal duty they have failed to do.

Key Distinction

While **Certiorari** is used to quash *decisions or orders*, **Quo Warranto** is specifically used to quash the *status or appointment* of an individual in a public office.

Gemini said

Certainly! Here are a few notable instances where the **Writ of Quo Warranto** played a critical role in determining who gets to hold the "keys to the office."

1. The University Vice-Chancellor Case

In various Indian legal precedents (such as *University of Mysore v. Govinda Rao*), the court has used Quo Warranto to test whether a Vice-Chancellor met the statutory qualifications (like years of teaching experience or specific academic credentials) required by the University Act. If the appointee falls short of even one mandatory qualification, the court declares the office vacant.

2. The Case of Cabinet Ministers

In some instances, the writ has been filed to challenge the appointment of a Minister who was not a member of the Legislature and failed to get elected within the mandatory six-month window. If they attempt to hold office beyond that period without election, a Quo Warranto writ can be used to oust them.

3. Requirements for the Writ to be Issued

For a Quo Warranto petition to be successful, the court generally looks for these four criteria:

- **Public Office:** The office must be of a public nature (not a private corporation).
- **Substantive Office:** It must be a permanent position, not a temporary or "acting" role.
- **Statutory/Constitutional Creation:** The office must be created by a statute or the Constitution itself.
- **Contravention of Law:** The person must have been appointed in clear violation of the law or the Constitution.

Summary Table: Which Writ for Which Situation?

If you want to...	Use this Writ:
Stop a lower court from taking a case it shouldn't touch.	Prohibition
Cancel a wrong decision already made by a lower court.	Certiorari

If you want to...	Use this Writ:
Force an official to do their job (e.g., issue a license).	Mandamus
Release someone who is being held in jail illegally.	Habeas Corpus
Remove someone who is "squatting" in a public office illegally.	Quo Warranto

160. The words "Socialist" and "Secular" were inserted in the Preamble by the

- (A) Constitution (Seventh Amendment) Act, 1956
- (A) Constitution (Eighteen Amendment) Act, 1966
- (A) Constitution (Forty Second Amendment) Act, 1976
- (A) Constitution (Forty Fourth Amendment) Act, 1978

Answer: (C) Constitution (Forty Second Amendment) Act, 1976.

The "Mini-Constitution"

The **42nd Amendment** is often referred to as the "Mini-Constitution" because of the vast number of changes it brought to the Indian Constitution during the Emergency. Regarding the Preamble, it made three specific additions:

1. **Socialist**
2. **Secular**
3. **Integrity** (changing "Unity of the Nation" to "Unity and **Integrity** of the Nation")

Comparison of Key Amendments:

Amendment	Year	Major Change Related to Preamble/Rights
7th Amendment	1956	Reorganized states on a linguistic basis.
18th Amendment	1966	Clarified the power of Parliament to form new states.
42nd Amendment	1976	Added "Socialist", "Secular", and "Integrity".
44th Amendment	1978	Removed "Right to Property" as a Fundamental Right.

Why were these words added?

While the Supreme Court had already held that India was a secular and socialist-leaning country in spirit, the 42nd Amendment made these ideals **explicit**.

- **Secular:** Means the State has no official religion and treats all religions equally.
- **Socialist:** In the Indian context, this refers to "Democratic Socialism"—aiming to end poverty, ignorance, and inequality of opportunity through a mixed economy.

Legal Fact: The Preamble has been amended **only once** in the history of India, and that was via this 42nd Amendment in 1976.

The **Kesavananda Bharati v. State of Kerala (1973)** case is widely considered the most important judgment in the history of the Indian Constitution. It was decided by the largest bench ever—**13 judges**—and the verdict was delivered with a razor-thin majority of **7:6**.

1. Can the Preamble be Amended?

Before this case, there was confusion (from the *Berubari Union* case) about whether the Preamble was even a part of the Constitution.

- **The Ruling:** The Supreme Court clarified that the **Preamble is an integral part of the Constitution**.
- **The Consequence:** Because it is part of the Constitution, it **can be amended** under Article 368, just like any other provision.

2. The "Basic Structure" Doctrine

This is the "crown jewel" of the judgment. The Court ruled that while Parliament has wide powers to amend the Constitution, it **cannot** use that power to destroy the **Basic Structure** of the document.

Think of the Constitution as a house: You can paint the walls, change the windows, or add a room (Amendments), but you cannot remove the foundation or the load-bearing pillars (Basic Structure), or the whole house will collapse.

Elements of the Basic Structure include:

- Supremacy of the Constitution
- Republican and Democratic form of Government
- **Secular character** of the Constitution
- Separation of powers
- Federal character

3. Impact on the 42nd Amendment

Because Kesavananda Bharati ruled that the Preamble *could* be amended (as long as the basic structure remained intact), the Parliament was legally able to add the words "**Socialist**" and "**Secular**" three years later in 1976.

The Court later held in the *S.R. Bommai* case that **Secularism** is indeed part of the Basic Structure. Therefore, even though "Secular" was added by an amendment, it cannot be removed today because doing so would violate the Basic Structure.

Summary of the Conflict

Feature	Pre-Kesavananda (Berubari)	Post-Kesavananda (1973)
Is Preamble part of Constitution?	No	Yes
Can it be amended?	No	Yes
Are there limits to power?	Unclear	Yes (Basic Structure)

The "Basic Structure" doctrine is the ultimate "check and balance" in Indian Constitutional law. It ensures that while Parliament can change the law to suit the times, it cannot destroy the soul of the Constitution.

Since the **Kesavananda Bharati** case didn't provide an exhaustive list of what counts as "Basic Structure," the Supreme Court has added to it over the decades through various judgments.

Key Pillars of the Basic Structure

The Court has identified several features that are so fundamental they can **never** be repealed:

- **Supremacy of the Constitution:** No person or body (including Parliament) is above the Constitution.
- **Sovereign, Democratic, and Republican Nature:** India must remain a democracy with an elected head of state.
- **Separation of Powers:** The clear division between the Legislature (law-makers), Executive (law-enforcers), and Judiciary (law-interpreters).
- **Secularism:** The state must remain neutral and respectful toward all religions.
- **Judicial Review:** The power of High Courts and the Supreme Court to strike down unconstitutional laws.
- **Rule of Law:** Governance based on established legal principles, not the whims of individuals.

How the Doctrine is Used (Significant Cases)

The Basic Structure isn't just a theory; it has been used to strike down major constitutional amendments:

Case	What was Challenged?	Result
Indira Gandhi v. Raj Narain (1975)	An amendment (39th) that said the PM's election couldn't be challenged in court.	Struck Down. The court held that "Free and Fair Elections" is part of the Basic Structure.
Minerva Mills v. Union of India (1980)	An amendment (42nd) that gave Parliament unlimited power to amend the Constitution.	Struck Down. The court ruled that the "limited amending power" of Parliament is itself a Basic Feature.
L. Chandra Kumar v. Union of India (1997)	Laws excluding the jurisdiction of High Courts in certain matters.	Struck Down. Judicial Review by High Courts was declared a Basic Feature.
NJAC Case (2015)	The 99th Amendment, which sought to change how judges are appointed.	Struck Down. The court held that "Independence of the Judiciary" is a Basic Feature.

The "Irony" of the Doctrine

Interestingly, the word "Basic Structure" does **not** appear anywhere in the written text of the Constitution. It is a judicial innovation—a "safety valve" created by the judges to prevent a constitutional dictatorship.

Article 368 is the "DNA-editing tool" of the Indian Constitution. It grants Parliament the power to amend the Constitution and lays down the specific procedures to do so. Without this article, the Constitution would be a "static" document, unable to grow with the changing needs of the nation.

The Three Ways to Amend

While Article 368 specifically outlines two formal types of amendments, in practice, there are three ways the Constitution changes:

Type of Amendment	Requirement	Example
Simple Majority	More than 50% of members present and voting. (Technically outside Art. 368).	Admission of new States (Art. 2), changing names of States.
Special Majority	2/3rd of members present and voting AND more than 50% of total membership.	Fundamental Rights, Directive Principles.
Special Majority + Ratification	Special Majority in Parliament PLUS consent from at least half (50%) of State Legislatures .	Election of the President, High Court/Supreme Court powers, Article 368 itself .

The Evolution of Article 368

The history of this Article is a "Tug of War" between the Parliament (which wanted unlimited power) and the Judiciary (which wanted to protect citizens' rights).

1. **Shankari Prasad Case (1951):** The Court said Parliament **can** amend anything, including Fundamental Rights.
2. **Golaknath Case (1967):** The Court reversed its view, saying Parliament **cannot** touch Fundamental Rights.
3. **24th Amendment (1971):** Parliament reacted by amending Article 368 to say it has the power to amend *any* part of the Constitution.
4. **Kesavananda Bharati (1973):** The Court finally "settled" the debate. It said: "Yes, you can amend anything (including Fundamental Rights), **BUT** you cannot touch the **Basic Structure**."

Key Restrictions on Article 368

- **No Joint Sitting:** Unlike ordinary bills, if the two Houses (Lok Sabha and Rajya Sabha) disagree on a Constitutional Amendment Bill, there is **no provision for a joint sitting**. The bill simply dies.
- **President's Assent:** Under the 24th Amendment (1971), the President **must** give assent to a Constitutional Amendment Bill. They cannot send it back for reconsideration or use a "pocket veto."
- **Judicial Review:** Any amendment made under Article 368 is subject to "Judicial Review" to see if it violates the Basic Structure.

Why does this matter?

Article 368 is the reason why India has had over **100 amendments** (making it a "living document"), while the U.S. Constitution has had only **27** in over 200 years. It strikes a balance between being too rigid and too flexible.

The process of **State Ratification** is the most difficult way to amend the Constitution. It is reserved for changes that affect the **Federal Balance**—the distribution of power between the Central Government and the States.

Under **Article 368**, such an amendment must first be passed by a **Special Majority** in both houses of Parliament and then be ratified (approved) by the legislatures of **at least half** of the States.

When is State Ratification Required?

The Constitution explicitly lists the areas that require this "double-lock" protection. If an amendment touches any of the following, the States must have a say:

1. **Election of the President** (Articles 54 and 55).
2. **Extent of Executive Power** of the Union and the States.
3. **The Judiciary**: Any changes to the Supreme Court or High Courts.
4. **Distribution of Legislative Powers**: Any change to the **Seventh Schedule** (Union, State, and Concurrent Lists).
5. **Representation of States in Parliament**: Changes to how many seats states get in the Rajya Sabha.
6. **Article 368 itself**: If Parliament wants to change the very process of amending the Constitution!

How the Ratification Process Works

Unlike the Parliament, the State Legislatures do **not** need a special majority.

- **Simple Majority**: Each state only needs to pass a resolution by a simple majority (more than 50% of members present and voting).
- **No Time Limit**: Curiously, the Constitution does not prescribe a specific time frame within which the states must ratify the amendment.
- **Irreversibility**: Once a state ratifies an amendment, it generally cannot withdraw that ratification later.

Famous Examples of Ratified Amendments

Because these require the consent of at least half the states, they are often the most debated and publicized.

Amendment	Year	Subject	Reason for Ratification
101st Amendment	2016	GST (Goods and Services Tax)	It fundamentally changed the taxing powers of both Union and States (7th Schedule).
99th Amendment	2014	NJAC (National Judicial Appointments Commission)	It affected the High Courts and Supreme Court.
73rd & 74th	1992	Panchayati Raj & Municipalities	It created a third tier of governance, impacting state administration.

Why this exists

This "Federal Guardrail" prevents a party with a massive majority in the Central Government from turning India into a **Unitary State** (where the Center has all the power) without the consent of the regional governments.

The **Seventh Schedule** of the Indian Constitution (under **Article 246**) is the blueprint of Indian Federalism. It divides the legislative powers between the Union (Central) Government and the State Governments into three distinct lists.

This ensures that there is no confusion—and ideally no conflict—over who has the authority to make laws on specific subjects like taxes, police, or education.

The Three Lists

List Name	Number of Subjects	Who makes the law?	Examples
List I: Union List	100 (originally 97)	Parliament only	Defense, Banking, Foreign Affairs, Railways, Atomic Energy.
List II: State List	61 (originally 66)	State Legislatures only	Police, Public Health, Agriculture, Fisheries, Local Government.
List III: Concurrent List	52 (originally 47)	Both Parliament & States	Education, Forests, Marriage/Divorce, Criminal Law, Trade Unions.

Key Rules of the Seventh Schedule

1. The Power of "Repugnancy" (Article 254)

If both the Union and a State make a law on a subject in the **Concurrent List** (like Education) and the laws conflict with each other:

- The **Union Law** usually prevails.
- The State Law becomes "void" to the extent of the conflict.
- **Exception:** If the State Law was reserved for the President's assent and received it, the State Law can prevail in that specific state.

2. Residuary Powers (Article 248)

What happens if a new subject emerges that didn't exist in 1950 (like Cyber Law or Space Exploration)?

- These are called **Residuary Powers**.
- In India, the power to legislate on residuary subjects belongs exclusively to the **Union Parliament**.

3. Shifting Subjects (The 42nd Amendment)

As we discussed earlier with "Socialist" and "Secular," the 42nd Amendment (1976) was very busy. It moved **five subjects** from the State List to the Concurrent List to give the Center more influence:

1. Education
2. Forests
3. Weights and Measures
4. Protection of Wild Animals and Birds
5. Administration of Justice

Why is this schedule so protected?

As we saw in the "State Ratification" section, if Parliament wants to move a subject from the State List to the Union List, it cannot do it alone. Because this changes the **Seventh Schedule**, it requires:

1. A Special Majority in Parliament.

2. Ratification by at least **50% of the State Legislatures**.

This prevents the Center from "grabbing" powers that belong to the states without their consent.

178. Article 300A of the **Constitution of India** provides for

- (A) right to life
- (B) right to property
- (C) right to education
- (D) right to constitutional remedies

Answer: (B) Right to Property.

It's a bit of a historical "twist" in the Indian Constitution. Originally, the right to property was a **Fundamental Right** (under Article 19(1)(f) and Article 31). However, that changed in 1978.

The History of Article 300A

- **The 44th Amendment (1978):** The Indian government decided that the right to property shouldn't be a Fundamental Right anymore. This was largely to allow the state to acquire land for public projects and land reforms without constant legal battles over "fundamental" violations.
- **Current Status:** It is now a **Constitutional Right** (also called a legal right). While the government can still take your property, they can only do so "by authority of law."
- **The Text:** Article 300A states: *"No person shall be deprived of his property save by authority of law."*

Why the other options are incorrect:

To give you the full picture, here is where those other rights actually live in the Constitution:

Option	Right	Article	Type of Right
(A)	Right to Life	Article 21	Fundamental Right
(C)	Right to Education	Article 21A	Fundamental Right
(D)	Constitutional Remedies	Article 32	Fundamental Right

Key Legal Distinction

Because the Right to Property is under **Article 300A** (a legal right) and not **Article 32** (a fundamental right), you cannot go directly to the Supreme Court under a writ petition just because your property was taken—you generally have to follow the standard legal process in lower courts first, unless there is a significant constitutional breach.

In the Indian legal system, the distinction between these two types of rights is all about **how you can defend them and how easily the government can change them**. Think of Fundamental Rights as "VIP rights" and Constitutional Rights as "Standard rights."

1. Fundamental Rights (The "Untouchables")

These are found in **Part III** of the Constitution (**Articles 12 to 35**). They are considered essential for the development of every individual.

- **Direct Access to the Supreme Court:** If a Fundamental Right is violated, you can skip the lower courts and go straight to the Supreme Court of India under **Article 32** (the "**Heart and Soul**" of the Constitution).
- **Protection from the State:** These rights act as a shield against government overreach. Even the Parliament cannot easily take them away; they are part of the "**Basic Structure**" of the Constitution.
- **Suspension:** Most can only be suspended during a National Emergency (except Articles 20 and 21).

2. Constitutional Rights (Legal Rights)

These are rights granted by the Constitution but located **outside of Part III**. **Article 300A (Right to Property)** is the most famous example.

- **No Direct Supreme Court Jump:** If a Constitutional Right is violated, you generally cannot file a writ petition under **Article 32**. You must follow the "hierarchy of courts"—starting at a **High Court (under Article 226)** or a lower civil court.
- **Easier to Amend:** The Parliament can change or limit these rights through an ordinary law or a standard constitutional amendment. They aren't protected by the "**Basic Structure**" doctrine in the same way.
- **Statutory Basis:** While they are "Constitutional," they often require a specific law (statute) to define exactly how they work.

Comparison Summary

Feature	Fundamental Right (e.g., Free Speech)	Constitutional Right (e.g., Property)
Location	Part III of the Constitution	Anywhere else in the Constitution
Remedy	Direct to Supreme Court (Art. 32)	High Court (Art. 226) or Civil Court
Amendment	Extremely difficult to change	Can be modified by regular Amendment
Nature	Inalienable human rights	Civil or political rights

Why was Property "demoted"?

The reason the **44th Amendment** moved the **Right to Property** from a "**Fundamental**" to a "**Constitutional**" right was to stop individuals from blocking massive national development.

Before 1978, if the government wanted to build a highway through someone's farm, the owner could go straight to the Supreme Court claiming their Fundamental Rights were being violated. Now, the government can take the land as long as they follow a legal process and pay compensation—and the owner has to fight it in the standard court system.

184. The 'Principle of Natural Justice' is

- (A) a rule of law
- (B) a rule of equity

(C) a rule of procedure

(D) a rule of morality

Answer: **(A) a rule of law.**

While the **Principles of Natural Justice (PNJ)** have roots in morality and equity, in modern jurisprudence—especially in Administrative and Constitutional law—they are firmly established as a **fundamental rule of law.**

Why it is considered a Rule of Law

In the landmark case of *A.K. Kraipak v. Union of India*, the Supreme Court observed that the aim of the rules of natural justice is to **secure justice** or to prevent the miscarriage of justice. These rules are not mere "suggestions"; they are mandatory legal requirements that ensure fairness, reasonableness, and equality.

- **Article 14 & 21:** In India, Natural Justice is considered a part of the constitutional "Rule of Law." A violation of these principles is seen as an arbitrary act, which violates Article 14 (Right to Equality) and Article 21 (Right to Life and Liberty).
- **Procedural Fairness:** While it *affects* procedure (Choice C), it is not just a "rule of procedure" like a filing deadline. It is a substantive legal principle that can strike down a government order if ignored.

The Two Pillars of Natural Justice

To understand how it functions as a rule of law, you must know its two core Latin maxims:

1. **Nemo Judex in Causa Sua** (Rule against Bias):

No one should be a judge in their own cause. A deciding authority must be impartial and free from personal, pecuniary, or official bias.

2. **Audi Alteram Partem** (Rule of Fair Hearing):

"Hear the other side." No person should be condemned unheard. This includes the right to receive notice of the charges and a reasonable opportunity to respond.

Comparing the Options

Option	Why it's partially right / why it's wrong
(A) Rule of Law	Correct. It is a mandatory legal standard used to check the validity of administrative and judicial actions.
(B) Rule of Equity	While it shares the "spirit" of fairness with equity, it has evolved into a rigid legal requirement rather than a discretionary equitable remedy.
(C) Rule of Procedure	It <i>governs</i> procedure, but it is much broader. A rule of procedure is a technicality; Natural Justice is a fundamental right.
(D) Rule of Morality	It is based on moral "natural law," but in court, it is enforced as a legal mandate, not just a moral suggestion.

Summary: The Principles of Natural Justice serve as the "conscience" of the law. They ensure that even when a statute is silent on how a process should work, the "Rule of Law" steps in to ensure fairness.

In recent years, courts have increasingly recognized a third pillar of Natural Justice: **The Requirement of a Speaking Order (Reasoned Decisions)**.

A "Speaking Order" is an order that speaks for itself—meaning it clearly states the **reasons** behind the decision.

Why is it the Third Pillar?

If a judge or an administrative officer gives a decision without explaining *why*, the person affected cannot effectively challenge that decision in a higher court. Providing reasons acts as a check against the arbitrary use of power.

The Three Purposes of a Speaking Order

1. **Transparency:** It ensures the deciding authority actually applied their mind to the facts and didn't just act on a whim.
2. **Accountability:** It prevents the authority from introducing irrelevant factors into the decision-making process.
3. **Right to Appeal:** If you want to appeal a decision, you need to know the grounds on which you lost. Without reasons, the right to appeal becomes a "hollow" right.

Exceptions to Natural Justice

While these are "Rules of Law," they are not absolute. There are specific times when Natural Justice can be excluded:

- **Statutory Exclusion:** When a specific law explicitly removes the requirement (though this is often challenged in court).
- **Emergency/Urgency:** In cases of public safety or extreme emergency where immediate action is required (e.g., demolishing a building about to collapse).
- **Academic Evaluation:** Typically, you cannot demand a "hearing" before a professor marks your exam paper.
- **Impracticability:** Where giving notice to thousands of people involved would make it impossible to take action.

Summary Table: The Evolution of Natural Justice

Pillar	Latin Maxim / Term	Core Meaning
Pillar 1	<i>Nemo Judex in Causa Sua</i>	Rule against Bias (Impartiality).
Pillar 2	<i>Audi Alteram Partem</i>	Hear the other side (Fair Hearing).
Pillar 3	<i>Speaking Order</i>	Reasoned Decisions (Explanation).

Key takeaway: If a government body fires an employee without a notice, without a hearing, and without giving a reason, they have violated the **Rule of Law** by failing all three pillars.

In the eyes of the law, even the *appearance* of bias is enough to invalidate a decision. The Rule of Law requires that "Justice must not only be done but must also be seen to be done."

Under the first pillar (**Nemo Judex in Causa Sua**), courts generally categorize bias into four main types. Here are examples of each:

1. Personal Bias

This occurs when the deciding authority has a personal relationship (friendship or enmity) with one of the parties.

- **Example:** A selection committee is interviewing candidates for a government job. One of the committee members is the father of a candidate. Even if the father acts fairly, the "Rule of Law" assumes personal bias, and the selection can be set aside.
- **Key Case:** *A.K. Kraipak v. Union of India* (A candidate for a position sat on the selection board that was choosing candidates for that same position).

2. Pecuniary (Financial) Bias

This is the "strictest" form of bias. Any financial interest in the subject matter, no matter how small, disqualifies the judge.

- **Example:** A judge is presiding over a case involving a large telecommunications company. It is discovered that the judge owns 1,000 shares in that specific company. The decision is automatically voided because the judge has a financial stake in the outcome.
- **Case Law:** *Dimes v. Grand Junction Canal* (A decree was set aside because the Lord Chancellor held shares in the company involved in the litigation).

3. Subject Matter Bias

This happens when the deciding authority is directly or indirectly involved in the project or policy they are judging.

- **Example:** A government minister decides to build a highway through a specific village. If that same minister then sits as the "Appellate Authority" to hear the villagers' complaints about the highway, there is subject matter bias. They are judging their own policy.

4. Policy/Departmental Bias

This occurs when an official is so focused on the goals of their department that they cannot be impartial toward an individual's rights.

- **Example:** A transport department official is tasked with deciding whether private bus operators should be allowed on a route that is currently run exclusively by the government transport department. The official's natural loyalty to their department's revenue creates a "departmental bias."

Summary: The "Real Likelihood" Test

Courts don't look for proof that a judge was *actually* corrupt. Instead, they use the **Reasonable Suspicion Test**:

Would a reasonable person, knowing the facts, believe there was a real likelihood that the judge could not be fair?

Feature	Personal Bias	Pecuniary Bias
Source	Relationships/Emotions	Money/Shares/Property
Impact	Requires proof of "real likelihood"	Automatically disqualifies (even if the amount is tiny)

The second pillar of Natural Justice, **Audi Alteram Partem**, literally translates to "**hear the other side.**" In legal terms, it means no person should be condemned unheard.

It ensures that before any order is passed that affects a person's rights, property, or liberty, they must be given a fair opportunity to defend themselves.

The Essential Components

For a hearing to be considered "fair" under the Rule of Law, it must include these three stages:

1. Right to Notice

Before any action is taken, the person must be given a formal **Notice**. A vague notice isn't enough; it must be "adequate" and "specific."

- It must state the **time, date, and place** of the hearing.
- It must clearly state the **charges** or grounds of the proposed action so the person knows what they are defending against.

2. Right to Present Evidence

The person must be allowed to tell their side of the story. This includes:

- Filing a written reply.
- Producing witnesses or documents in their favor.
- **Cross-examination:** In many cases (especially disciplinary ones), the right to question the witnesses of the opposing side is considered a vital part of a fair hearing.

3. Right to Legal Representation

While not always an absolute right in every small administrative hearing, in complex cases or where the stakes are high (like a criminal trial), the right to be represented by a lawyer is essential to ensure the "hearing" is meaningful.

Application: Student Disciplinary Actions

This is a very common area where this principle is tested. If a university wants to expel a student for cheating:

1. **The Wrong Way:** The Principal sends a letter saying, "You are expelled effective immediately because we found you cheated." (This is a violation of *Audi Alteram Partem*).
2. **The Right Way:** * **Step 1:** Issue a Show-Cause Notice stating the specific exam and the evidence found.
 - **Step 2:** Give the student 48 hours to explain.
 - **Step 3:** Hold a meeting where the student can explain the circumstances.
 - **Step 4:** Pass a "Speaking Order" explaining why the student's defense was or wasn't accepted.

Exceptions to the Rule

There are times when the "Hearing" can be skipped or delayed:

- **Interim Measures:** Like a temporary suspension of a pilot pending an investigation into a crash (for public safety).
 - **Statutory Exclusion:** In cases of national security (e.g., preventive detention).
 - **Purely Administrative/Confidential Acts:** Such as a routine transfer of a government employee (unless it's a "punitive" transfer).
-

Quick Comparison

Feature	Pre-decisional Hearing	Post-decisional Hearing
Timing	Before the order is passed.	After the order is passed.
Preference	Standard Rule.	Only in extreme urgency.
Validity	Generally valid.	Often seen as "too little, too late" unless it cures the original defect.

Key Takeaway: The goal of *Audi Alteram Partem* isn't necessarily to reach a "correct" decision, but to ensure a **fair process**. Even if a person is clearly guilty, the law says they still have a right to be heard.

In the early days of the Indian Constitution, Natural Justice was seen as a common law concept. However, through landmark Supreme Court judgments, it has been "woven" into the fabric of the Constitution, primarily through the **Golden Triangle** of Articles 14, 19, and 21.

Here is how these principles interact:

1. Article 14: The Right to Equality

The Supreme Court has held that "**Arbitrariness is the antithesis of Equality.**"

- If a government authority makes a decision without hearing the affected party or by being biased, that decision is considered **arbitrary**.
- Since an arbitrary act violates the right to equality, the Principles of Natural Justice (PNJ) are now considered a fundamental part of Article 14.
- **Key Case:** *E.P. Royappa v. State of Tamil Nadu* established that fairness is a soul-mate of Article 14.

2. Article 21: Right to Life and Liberty

This is perhaps the most significant interaction.

- Originally, Article 21 only required a "procedure established by law."
- In the **Maneka Gandhi v. Union of India (1978)** case, the Supreme Court changed everything. It ruled that any procedure that takes away a person's life or liberty must be "**just, fair, and reasonable.**"
- A procedure is only "fair and reasonable" if it follows the Principles of Natural Justice. Therefore, PNJ is now a constitutional requirement for any law affecting personal liberty.

3. Article 311: Protection of Civil Servants

The Constitution explicitly includes *Audi Alteram Partem* for government employees.

- Under **Article 311(2)**, no civil servant can be dismissed or reduced in rank until they have been informed of the charges and given a "**reasonable opportunity of being heard**" in respect of those charges.

4. Constitutional Remedies (Articles 32 and 226)

If a person's right to Natural Justice is violated, they don't just go to a regular court; they can go directly to the High Court or Supreme Court:

- **Writ of Certiorari:** Used to quash an order passed in violation of Natural Justice.
- **Writ of Prohibition:** Used to stop a biased proceeding before a decision is even made.

Summary Table: Constitutional Mapping

Principle	Constitutional Article	Legal Effect
Non-Arbitrariness	Article 14	Ensures fairness in all administrative actions.
Fair Procedure	Article 21	Ensures no one loses liberty without a fair hearing.
Civil Service Protection	Article 311	Mandatory hearing before firing government staff.
Judicial Review	Articles 32 / 226	Provides a remedy to strike down "unfair" orders.

The Big Picture: In India, you cannot separate Natural Justice from the Constitution. If a law ignores these principles, the law itself can be declared unconstitutional for being "unreasonable."

191. The principle of 'Double Jeopardy' is enshrined in

- (A) Article 20(1) of the Constitution of India
- (B) Article 20(2) of the Constitution of India
- (C) Article 20(3) of the Constitution of India
- (D) None of the above

Answer: (B) Article 20(2) of the Constitution of India.

Double Jeopardy in Indian Constitution

Why Article 20(2)?

The principle of **Double Jeopardy** is a fundamental right that protects a person from being punished multiple times for the same mistake.

- **The Rule:** Article 20(2) specifically states: *"No person shall be prosecuted and punished for the same offence more than once."*
- **The Logic:** It prevents the state from using its vast resources to repeatedly put an individual through the emotional and financial strain of a trial for an incident that has already been adjudicated.

Breakdown of Article 20

To help you distinguish between the options, here is what the other clauses cover:

Clause	Legal Principle	Description
20(1)	Ex Post Facto Laws	You cannot be convicted for an act that wasn't a crime when you did it, nor can you be given a penalty greater than what existed at the time of the offence.
20(2)	Double Jeopardy	Protection against being prosecuted and punished more than once for the same offence.
20(3)	Self-Incrimination	No person accused of an offence shall be compelled to be a witness against themselves (the right to remain silent).

Key Distinction: In India, for Double Jeopardy to apply, the person must have been **both** prosecuted and punished in the previous proceeding. If someone was merely prosecuted but acquitted, Article 20(2) technically doesn't bar a fresh trial (though the Code of Criminal Procedure provides broader protections).

While both the Indian and U.S. legal systems aim to protect individuals from government overreach, the scope of "Double Jeopardy" is noticeably different.

India vs. USA: The Scope of Protection

In the **U.S. Constitution (5th Amendment)**, the protection is broader. It applies to "life or limb" and covers three distinct situations:

1. Protection against a second prosecution for the same offense after **acquittal**.
2. Protection against a second prosecution for the same offense after **conviction**.
3. Protection against **multiple punishments** for the same offense.

In **India (Article 20(2))**, the protection is narrower and more specific.

Key Differences

Feature	Indian Constitution (Art. 20(2))	U.S. Constitution (5th Amendment)
Requirement	Requires both Prosecution AND Punishment .	Protection kicks in after either acquittal or conviction.
Acquittal	If a person is acquitted (found not guilty), Art. 20(2) does not strictly bar a retrial.	If a person is acquitted, they can never be tried again for that specific crime.
Departmental Inquiries	Does not apply to departmental or administrative inquiries (e.g., being fired from a job and then prosecuted).	Generally similar, but "punishment" is interpreted very broadly.

Why the difference?

The Indian Supreme Court has clarified (in cases like *Maqbool Hussain v. State of Bombay*) that for Double Jeopardy to be invoked as a **Fundamental Right**, there must have been a proceeding before a court or judicial tribunal.

However, don't worry—if you are acquitted in India, you aren't totally left out in the cold. While Article 20(2) might not protect you, **Section 300 of the Code of Criminal Procedure (CrPC)** provides a statutory bar against retrying someone who has been acquitted for the same offense (known as *Autrefois Acquit*).

The "Jeopardy" Timeline

1. **Attachment of Jeopardy:** In the US, this happens the moment the jury is sworn in.
2. **Indian Protection:** This effectively "activates" only after a final verdict of punishment is handed down.

To understand the narrow scope of Double Jeopardy in India, the landmark case of **Maqbool Hussain v. State of Bombay (1953)** is the gold standard. It perfectly illustrates where the constitutional protection ends and where "administrative" action begins.

The Case: Maqbool Hussain v. State of Bombay

The Incident: Maqbool Hussain, an Indian citizen, arrived at Santa Cruz airport from Jeddah. He was found carrying **107.2 tolas of gold**, which he hadn't declared.

The Consequences:

1. **Customs Action:** Under the Sea Customs Act, the authorities confiscated his gold.
2. **Criminal Prosecution:** Later, he was charged under the Foreign Exchange Regulation Act (FERA) for the same act of bringing gold into the country.

The Argument: Hussain argued that since the Customs authorities had already "punished" him by taking his gold, prosecuting him in a criminal court would be **Double Jeopardy** under Article 20(2).

The Supreme Court's Ruling

The Supreme Court rejected his plea. Their reasoning created the "Triple Test" for Double Jeopardy in India:

- **Not a "Court":** The Customs Authorities were an administrative body, not a judicial tribunal or a court.
 - **Not a "Prosecution":** The confiscation of gold was a departmental penalty, not a "prosecution" as defined by law.
 - **The Verdict:** Because the first action wasn't a judicial trial, the second trial in a criminal court was perfectly legal.
-

The Summary of the Indian Position

In short, for you to claim Double Jeopardy in India (unlike the broader U.S. version), three things must be true:

1. You must have been an **accused** person.
2. There must have been a **prosecution** before a court or judicial tribunal.
3. The proceeding must have resulted in **punishment**.

If any of these are missing (e.g., you were acquitted, or it was just a workplace disciplinary hearing), Article 20(2) does not apply.

Why does this matter?

It ensures that a person can't escape criminal law just because they were already fined by a government department or a professional body (like the Bar Council or a Medical Board).

Since we've covered the "Double" in Double Jeopardy, let's look at the first protection in that trio: **Article 20(1)**, known as the prohibition against **Ex Post Facto Laws**.

In simple terms, "Ex Post Facto" is Latin for "from a thing done afterward." It ensures that the government cannot change the legal consequences of your past actions after you've already done them.

The Two Components of Article 20(1)

Article 20(1) actually provides two distinct shields for a citizen:

1. **No Conviction for Past Acts:** You cannot be convicted of an offense for an act that was **not a crime** at the time you committed it.

- *Example:* If you wore a blue shirt today, and the government passed a law tomorrow making blue shirts illegal, they cannot arrest you for wearing it today.
2. **No Enhanced Punishment:** You cannot be subjected to a penalty **greater** than what was prescribed by the law at the time the offense was committed.
- *Example:* If the fine for speeding was ₹500 when you were caught, and the law changes to ₹5,000 while your case is pending, the court can only fine you ₹500.

The "Civil Law" Exception

It is crucial to remember that this protection **only applies to criminal laws**.

The government is perfectly allowed to pass **retrospective civil or tax laws**. For instance, if the government decides to increase the income tax rate for the previous year, you generally cannot claim protection under Article 20(1) because paying tax is a civil obligation, not a criminal penalty.

Landmark Case: *Kedar Nath v. State of West Bengal (1953)*

In this case, the accused committed an offense in 1947. At that time, the punishment was imprisonment or a fine. By the time the trial ended in 1949, the law had changed to allow a much higher fine. The Supreme Court ruled that the enhanced fine **could not be applied** to the accused because of Article 20(1).

Summary Table: Article 20 Protections

Clause	Name	Protects you from...
20(1)	Ex Post Facto	New laws being applied to old actions.
20(2)	Double Jeopardy	Being punished twice for the same crime.
20(3)	Self-Incrimination	Being forced to speak against yourself.

Let's complete the trilogy with **Article 20(3): the Right against Self-Incrimination**. This is the Indian version of the famous "Right to remain silent" you often hear in legal dramas.

The Core Principle

Article 20(3) states: *"No person accused of any offence shall be compelled to be a witness against himself."*

To claim this protection, three conditions must be met:

1. The person must be **accused of an offence**.
2. There must be **compulsion** (force, threat, or beating).
3. The compulsion must be to make them a **witness against themselves**.

The Landmark Case: *Nandini Satpathy v. P.L. Dani (1978)*

Nandini Satpathy, a former Chief Minister of Odisha, was interrogated regarding a corruption case. She refused to answer numerous questions, claiming her right under Article 20(3).

The Supreme Court's Verdict:

The Court expanded the right significantly, ruling that:

- The right starts the moment the police start questioning you (not just when you reach the courtroom).
- "Compulsion" isn't just physical hitting; it includes **mental torture** and atmospheric pressure in a police station.
- An accused has the right to remain silent if the answer has even a **remote tendency** to expose them to a criminal charge.

Modern Tech: Narco-Analysis and Lie Detectors

Can the police force you to take a "truth serum" or a lie detector test?

In the famous **Selvi v. State of Karnataka (2010)** case, the Supreme Court ruled that:

- **Forced** Narco-analysis, Polygraph tests, and Brain Electrical Activation Profile (BEAP) are **unconstitutional** because they violate Article 20(3).
- Even if the person "consents" to the test, the results cannot be used as evidence in court, though any physical evidence discovered *because* of the test might be admissible.

Comparison of Article 20 Protections

Protection	Legal Term	Simple Meaning
20(1)	Ex Post Facto	"You can't change the rules after I've played the game."
20(2)	Double Jeopardy	"You can't punish me twice for the same mistake."
20(3)	Self-Incrimination	"I have the right to keep my mouth shut."

A Quick Note on "Physical Evidence"

It's important to note that Article 20(3) does **not** protect you from giving physical evidence. The police *can* compel you to provide:

- Fingerprints
- Specimen signatures
- Blood samples
- Photos of your body

The Court views these as "material objects," not "testimony" or "witnessing."

194. The 'Rule of Law' is not an ideal principle of

- (A) England
- (B) Russia
- (C) U.S.A.
- (D) India

Answer: **(B) Russia.**

This question touches on the classical interpretation of the "Rule of Law," most famously articulated by **A.V. Dicey**.

Why Russia is the Odd One Out

While the term is used globally today, in a historical and constitutional context:

- **England (UK):** The Rule of Law is the "foundational" principle of the British Constitution. Dicey's three pillars—supremacy of law, equality before the law, and the role of courts—were modeled on the English system.
- **USA:** The US Constitution is built entirely on the Rule of Law, specifically the idea of a "government of laws, not of men." This is reinforced by the Bill of Rights and Judicial Review.
- **India:** The Indian Constitution adopts the Rule of Law as a "Basic Structure" (established in cases like *Kesavananda Bharati*). Article 14 ensures equality before the law, mirroring the English principle.
- **Russia:** Historically, particularly during the Soviet era (USSR), the state followed the principle of "**Socialist Legality**." Unlike the Rule of Law, which places the law *above* the state to protect individual rights, Socialist Legality viewed the law as a tool of the state to achieve political and social goals. While modern Russia has a constitution, it is historically and theoretically distinct from the **Western "Rule of Law"** tradition.

Comparison of Legal Frameworks

Principle	Rule of Law (A, C, D)	Rule by Law / Socialist Legality (B)
Supreme Power	The Law is supreme; the State is bound by it.	The State is supreme; Law is its instrument.
Individual Rights	Protected from state interference.	Subordinate to the interests of the State.
Equality	Everyone is equal before the law.	Law is applied based on social/political utility.

The Dicey Connection

To understand why England, the USA, and India are grouped together, remember **A.V. Dicey's** three requirements for the **Rule of Law**:

1. **Absence of Arbitrary Power:** No man can be punished except for a distinct breach of law.
2. **Equality before the Law:** All classes are subject to the ordinary law of the land administered by ordinary courts.
3. **The Constitution is the Result of Ordinary Law:** Rights are not "granted" by a document but arise from the decisions of courts (though India and the US use a written Constitution to achieve the same end).

The Indian Supreme Court didn't just adopt Dicey's British "Rule of Law"; they supercharged it to fit a country with a written Constitution. In England, Parliament is supreme; in India, the **Constitution is supreme**.

Here is how the Indian judiciary transformed an "ideal principle" into a concrete legal shield.

1. The "Basic Structure" Doctrine

The most significant evolution occurred in the landmark case ***Kesavananda Bharati v. State of Kerala (1973)***. The Court ruled that while Parliament has the power to amend the Constitution, it cannot destroy its "Basic Structure."

The **Rule of Law** was identified as one of these unalterable features. This means even a unanimous vote in Parliament cannot abolish the Rule of Law in India.

2. Expanding Article 14 (The "New Concept")

Originally, Rule of Law was seen as simple "equality before the law." However, in ***E.P. Royappa v. State of Tamil Nadu (1974)*** and later in the ***Maneka Gandhi case (1978)***, the Court gave it a dynamic meaning:

- **Anti-Arbitrariness:** Rule of Law is the antithesis of arbitrariness. If a government action is "arbitrary" (illogical, unfair, or biased), it violates the Rule of Law and is struck down under Article 14.
- **Principles of Natural Justice:** The state must act fairly. No one should be a judge in their own cause, and everyone must be heard (**Audi Alteram Partem**).

3. The Low Point: The ADM Jabalpur Case (1976)

You cannot discuss the Rule of Law in India without mentioning its temporary "eclipse" during the Emergency.

- **The Case:** In *ADM Jabalpur v. Shivkant Shukla*, the Supreme Court infamously ruled that during an Emergency, the Rule of Law is suspended, and citizens lose the right to move the court for Habeas Corpus.
- **The Correction:** This was later considered a "black mark" on Indian judicial history. The **44th Amendment** and subsequent judgments (like *S.R. Bommai*) ensured that the Rule of Law cannot be easily discarded, even during crises.

Summary: Dicey vs. The Indian Version

Feature	Dicey's Rule of Law (England)	Indian Rule of Law
Source	Judicial Decisions	Written Constitution
Parliament	Parliament is Supreme	Constitution is Supreme
Judicial Review	Limited (No written Bill of Rights)	Strong (Power to strike down laws)
Equality	Formal Equality	Substantive Equality (includes Reservations/Affirmative Action)

Key Takeaway for Exams

In India, the Rule of Law isn't just an "ideal"; it is an **enforceable constitutional mandate**. If the government acts without the authority of law, or if the law itself is "unreasonable," the courts will intervene.

To see the Rule of Law in action, look at how the Supreme Court handles cases where the government exercises its "discretionary power" (the power to make choices).

One of the most famous examples of the Rule of Law striking down arbitrary government action is the **Petrol Pump Allotment Case**.

Case Study: *Common Cause v. Union of India (1996)*

The Scenario:

In the mid-1990s, the Minister for Petroleum and Natural Gas had a "discretionary quota" to allot petrol pumps to citizens. Using this power, the Minister allotted 15 petrol pumps to his own relatives, friends, and the staff of other ministers.

The Legal Challenge:

A petition was filed arguing that these allotments were not based on any transparent criteria or merit, but were simply "gifts" given by a powerful official.

The Court's Ruling:

The Supreme Court quashed (cancelled) all 15 allotments. The Court's reasoning is a perfect summary of the Rule of Law in India:

- **Public Property is a Trust:** The Court held that the Minister is not the "owner" of petrol pumps; he is a trustee. Public property must be dealt with in a transparent and fair manner.
- **Arbitrariness is the Enemy:** Because there were no guidelines, no advertisements, and no public notice, the action was "arbitrary." In India, **Arbitrariness = A Violation of Article 14.**
- **Personal Liability:** In a rare move, the Court fined the Minister ₹50 lakhs personally, ruling that under the Rule of Law, even a Minister is legally accountable for misusing their official position.

Another Key Example: *State of Bihar v. Subhash Singh (1997)*

In this case, the Supreme Court clarified that the **bureaucracy is also bound by the Rule of Law.**

The court noted:

"In our democracy governed by the rule of law, the Judiciary has expressly been entrusted with the power of judicial review... the State is subject to *etat de droit* (the State is submitted to the law)."

The court held that if a government official ignores a court order or fails to follow prescribed procedures, they can be held personally accountable (including paying costs) because **no officer is above the law.**

How the Rule of Law Protects You

If the Government...	The Rule of Law says...
Passes a law that is vague or unclear	The Court can strike it down for being "void for vagueness."
Gives a contract to a friend without a tender	The Court can cancel it for being "arbitrary."
Arrests someone without telling them why	The Court can release them via <i>Habeas Corpus</i> .

Summary for your Exam

If you are asked how the Rule of Law is applied in India, remember these three keywords:

1. **Non-arbitrariness:** Every action must have a logical reason.
2. **Transparency:** Decisions regarding public property must be open to the public.
3. **Judicial Review:** The courts have the final say on whether the government followed the law.

197. Ambedkar described this Article of the Constitution of India as the "**heart and soul of the Constitution**"

- (A) Article 32
- (B) Article 21
- (C) Article 19
- (D) Article 14

Answer: **(A) Article 32.**

Dr. B.R. Ambedkar famously referred to Article 32 as the "**heart and soul**" because, without it, all other Fundamental Rights would be mere "paper rights." It provides the machinery to enforce those rights.

Why is Article 32 so Important?

Article 32 gives every citizen the right to move the **Supreme Court** directly for the enforcement of Fundamental Rights. In legal terms, it is the **Right to Constitutional Remedies**.

Ambedkar stated:

"If I was asked to name any particular article in this Constitution as the most important—an article without which this Constitution would be a nullity—I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it."

The Five "Writs" of Article 32

To protect these rights, the Supreme Court has the power to issue specific orders known as **Writs**. Think of these as different "surgical tools" used to fix legal wrongs.

Writ	Meaning	Purpose
Habeas Corpus	"To have the body"	To set free a person who has been illegally detained.
Mandamus	"We command"	To order a public official/body to perform their legal duty.
Quo-Warranto	"By what authority"	To challenge the legality of a person holding a public office.
Certiorari	"To be certified"	To quash (cancel) an order already passed by a lower court.
Prohibition	"To forbid"	To stop a lower court from continuing a case outside its jurisdiction.

Comparison with the Other Options

While the other articles mentioned are vital, they represent the "body" of our rights, whereas Article 32 is the "protector" of those rights.

- **Article 14:** Right to Equality.
- **Article 19:** Right to Freedom (Speech, Assembly, etc.).
- **Article 21:** Right to Life and Personal Liberty (often called the "brightest star" in the constellation of rights, but not the "heart and soul").

Key Distinction: Article 32 vs. Article 226

It is a common exam trick to confuse these two. While they both deal with Writs, they have distinct differences:

1. **Scope:** Article 32 is only for **Fundamental Rights**. Article 226 (High Courts) can be used for Fundamental Rights *plus* any other legal right.
2. **Status:** Article 32 is itself a **Fundamental Right**. This means the Supreme Court *cannot* refuse to hear a petition under it. Article 226 is a discretionary power of the High Court.
3. **Geography:** Article 32 applies to the whole of India; Article 226 applies only to the specific State/Territory of that High Court.

The **most significant case involving Habeas Corpus**—and a dark chapter in Indian legal history—is the **ADM Jabalpur v. Shivkant Shukla (1976)**, often called the **Habeas Corpus Case**.

To understand why Article 32 is the "heart and soul," you have to see what happens when that heart stops beating.

The Context: The Emergency (1975–1977)

During the Emergency, the government suspended Fundamental Rights, including Article 21 (Right to Life and Liberty). Thousands of political opponents were arrested and detained without trial.

- **The Question:** Could a citizen still file a *Habeas Corpus* petition under Article 32 to ask the court, "Why am I being held?" if their Fundamental Rights were suspended?
- **The Supreme Court's Initial Stance:** In a controversial 4:1 ruling, the Court said **No**. They argued that if the Right to Life (Article 21) is suspended, the remedy (Article 32) cannot be used.
- **The Dissent: Justice H.R. Khanna** famously disagreed. He argued that the state has no power to deprive a person of life or liberty without the authority of law, even during an Emergency. He essentially fought to keep the "heart and soul" alive.

Modern Application: The Case of Sunil Batra

While *ADM Jabalpur* showed the danger of losing this writ, the case of **Sunil Batra v. Delhi Administration (1980)** showed its incredible power for reform.

1. **The Letter:** Sunil Batra, a prisoner, wrote a simple letter to a Supreme Court judge alleging that another prisoner was being brutally tortured by jail wardens.
2. **The Action:** The Court treated this **informal letter** as a *Habeas Corpus* petition.
3. **The Ruling:** The Court ruled that *Habeas Corpus* could be used not just to release someone from jail, but also to **protect them from ill-treatment** while inside.

Key takeaway: This case expanded the "heart and soul" to include the rights of prisoners, proving that the Writ is a shield against any form of state cruelty.

How Habeas Corpus Works Today

If a person is picked up by the police and not produced before a Magistrate within 24 hours (as required by law), their family can approach the High Court (Art. 226) or Supreme Court (Art. 32).

Step	Action
1. Petition	Filed by the detained person or any friend/relative.

Step	Action
2. Rule Nisi	The Court issues an order to the authority to "produce the body" (the person).
3. Justification	The State must prove the detention is legal and follows due process.
4. The Result	If the State fails, the Court orders the immediate release of the person.

Did you know?

The Supreme Court later admitted the *ADM Jabalpur decision was a mistake*. Through the **44th Amendment**, the Constitution was changed so that **Articles 20 and 21 can never be suspended**, even during a National Emergency. This ensures the "heart and soul" of the Constitution can never be silenced again.

While **Habeas Corpus** is about physical freedom, **Mandamus** is about administrative accountability. It is the writ used to wake up a "sleeping" authority.

What is Mandamus?

Derived from the Latin for "**We Command**," this writ is a direction issued by a superior court (Supreme Court or High Court) to a lower court, tribunal, or public authority to perform a **legal duty** that they have failed or refused to do.

The 3 Golden Rules for Mandamus

A court won't issue a Mandamus just because you're unhappy; three specific conditions must be met:

1. **Legal Right:** You must have a clear legal right to the performance of the duty.
2. **Public Duty:** The duty must be of a "public" nature (you cannot use Mandamus against a private shopkeeper or a private company).
3. **Demand and Refusal:** You must have asked the authority to do the job first, and they must have officially refused or ignored you.

When Can Mandamus Be Used?

- **To Enforce Statutory Duties:** If a municipality is legally bound to provide clean water but refuses to maintain the pipes, a citizen can seek Mandamus.
- **To Compel Jurisdiction:** If a lower court refuses to hear a case that it is legally required to hear.
- **Against the Government:** To compel the government to pay a person's salary that has been illegally withheld.

When Is It PROHIBITED?

There are certain people and situations where a "Command" cannot be sent:

- **The President of India or State Governors:** They are immune while in office.
- **Private Individuals:** You cannot "Mandamus" your neighbor to fix their fence.
- **Discretionary Acts:** If a law says a Minister "may" build a park (choice), you cannot force them. If the law says they "shall" build it (duty), you can.

Comparison: Mandamus vs. Prohibition

It's easy to mix these up. Think of them as "**Action**" vs. "**Inaction**."

Feature	Mandamus	Prohibition
The Goal	To force an authority to act .	To force an authority to stop acting .
Timing	Issued when a duty is neglected.	Issued while a trial is ongoing (to stop it).
Nature	Active/Positive command.	Preventive/Negative command.

Landmark Case: *Gujarat State Financial Corp. v. Lotus Hotels (1983)*

In this case, the Financial Corporation had entered into a contract to provide a loan to a hotel. Later, they backed out without a valid reason.

The Supreme Court issued a **Writ of Mandamus**, commanding the Corporation to release the funds. The Court held that a public body cannot act arbitrarily or retreat from its solemn promises without justification.

Quick Summary of the "Remedy" Articles

- **Article 32:** You go to the Supreme Court (Only for Fundamental Rights).
- **Article 226:** You go to the High Court (For Fundamental Rights + Legal Rights).

Quo-Warranto literally means "**By what authority?**" It is perhaps the most unique of the five writs because it allows any citizen to challenge a person holding a **public office** to prove they have the legal right to be there. If the person cannot prove their authority, the court "ousts" (removes) them immediately.

The Purpose of Quo-Warranto

The goal is to prevent **usurpation** (illegal seizure) of public office. It ensures that only those who meet the legal qualifications set by the Constitution or statutes can hold positions of power.

Essential Conditions to Issue the Writ

A court will only grant Quo-Warranto if:

1. **Public Office:** The office must be of a public nature (e.g., a Minister, a University Vice-Chancellor, or a Municipal Councillor). It cannot be used against a private manager or a club president.
2. **Substantive Office:** The position must be permanent/substantive, not just a temporary or "acting" role.
3. **Constitutional or Statutory:** The office must have been created by the Constitution or a law.
4. **Contravention of Law:** The person must have been appointed in violation of the law (e.g., they don't meet the age or educational requirements).

Why it's the "Citizen's Weapon"

Unlike *Mandamus* or *Certiorari*, where the person filing the case must have a direct personal interest (locus standi), **any member of the public** can file for Quo-Warranto.

Example: If you notice that a person has been appointed as a Government Pleader but they haven't practiced law for the required 7 years, you can file a Quo-Warranto petition even if that person has never harmed you personally. You are acting on behalf of the public.

Landmark Example: *University of Mysore v. Govinda Rao (1965)*

In this case, the Supreme Court clarified that before issuing this writ, the court must be satisfied that the appointment was made contrary to statutory rules. It isn't enough to say "someone else was better"; you must prove the appointee was **legally ineligible**.

Summary of Writs (The Final View)

Writ	Key Question
Habeas Corpus	Where is the person?
Mandamus	Why aren't you doing your job?
Prohibition	Stop! You don't have jurisdiction.
Certiorari	Your decision was wrong; let us fix it.
Quo-Warranto	Who gave you the right to hold this office?

A Fun Fact for Exams

The writ of Quo-Warranto cannot be issued against the **Prime Minister** or a **Chief Minister** as long as they maintain a majority in the house, unless they fail to meet the basic eligibility criteria for being a Member of Parliament/Legislative Assembly (like age or citizenship).

200. The Directive Principles of state policy are fundamental for the

- (A) upliftment of backward classes
- (B) protection of individual rights
- (C) good governance of the country
- (D) creation of an independent judiciary

Answer: **(C) good governance of the country.**

This is explicitly stated in the Constitution itself. While the Fundamental Rights (Part III) protect individuals from the state, the Directive Principles of State Policy (DPSP) in Part IV are the guidelines for the state to create a "welfare state."

The Constitutional Mandate: Article 37

To understand why (C) is the answer, we look at **Article 37**, which defines the nature of these principles:

- They are **not enforceable** by any court (you cannot sue the government for not providing a living wage immediately).

- However, they are **"fundamental in the governance of the country."**
- It is the **duty of the State** to apply these principles in making laws.

Comparison of the Options

Option	Relationship to DPSP
(A) Upliftment of backward classes	This is <i>one</i> of the goals (e.g., Article 46), but the DPSP covers much more, like environment, health, and village panchayats.
(B) Protection of individual rights	This is primarily the role of Fundamental Rights (Part III), which are "justiciable" (enforceable in court).
(C) Good governance	This is the broad, overarching purpose as defined by Article 37.
(D) Independent judiciary	This is a "Basic Structure" feature of the Constitution, largely handled by Articles 50, 124, and 214.

Key DPSP Categories

The DPSP acts as a "Socialist, Gandhian, and Liberal-Intellectual" map for the government to follow:

- **Socialist:** Promoting the welfare of people, minimizing inequalities, and ensuring right to work (Articles 38, 39, 41).
 - **Gandhian:** Organizing Village Panchayats, promoting cottage industries, and prohibiting intoxicating drinks (Articles 40, 43, 47).
 - **Liberal-Intellectual:** Uniform Civil Code, protecting monuments, and separating the judiciary from the executive (Articles 44, 49, 50).
-

Summary: Rights vs. Principles

A helpful way to remember the difference for exams is:

- **Fundamental Rights:** What the government **cannot** do to you (Negative obligations).
- **Directive Principles:** What the government **should** do for the people (Positive obligations).

It has been a productive session! We've covered a wide range of legal terrain, from the "heart and soul" of the Constitution to the "twisted" roots of Tort law.

Here is a summary of the **landmark cases** we discussed, organized by the legal principles they established:

1. Constitutional Law (The "Remedies")

These cases define how we protect our fundamental rights through Article 32.

- **ADM Jabalpur v. Shivkant Shukla (1976):** Known as the *Habeas Corpus Case*. It historically showed the danger of suspending Article 32 during an Emergency. It led to the 44th Amendment, ensuring the Right to Life (Art. 21) is never suspended again.
- **Sunil Batra v. Delhi Administration (1980):** Expanded the scope of *Habeas Corpus*. The Court ruled it could be used not just for illegal detention, but to protect prisoners against torture or inhumane treatment inside jail.

2. The Law of Evidence (The "Proof")

These cases clarify how documents and experts are handled in a courtroom.

- **University of Mysore v. Govinda Rao (1965):** Established the strict criteria for the **Writ of Quo-Warranto**. It held that a court will only oust a public official if their appointment clearly violates statutory rules, not just on a whim.
- **Arjun Panditrao Khotkar v. Kailash Kushanshao Gorantyal (2020):** A modern landmark regarding electronic evidence. It made the **Section 65B Certificate** mandatory for the admissibility of electronic records (like emails and digital signatures) in court.

3. Tort Law (The "Wrongs")

These cases established the foundations of civil liability and negligence.

- **Donoghue v. Stevenson (1932):** The "Snail in the Bottle" case. This is the origin of the **Neighbor Principle** and the modern legal **Duty of Care**. It proved you owe a duty to anyone who might be reasonably harmed by your actions.
- **Gujarat State Financial Corp. v. Lotus Hotels (1983):** An important application of the **Writ of Mandamus**. The Court commanded a public body to stick to its promise, proving that government authorities cannot act arbitrarily when they have a duty to perform.

Summary Table: Principles at a Glance

Legal Principle	Key Case	Takeaway
Personal Liberty	<i>ADM Jabalpur</i>	Habeas Corpus is the shield of the citizen.
Prisoner Rights	<i>Sunil Batra</i>	Rights don't end at the prison gate.
Negligence	<i>Donoghue v. Stevenson</i>	You must take care not to injure your "neighbor."
Digital Evidence	<i>Arjun Panditrao</i>	No electronic proof without a Sec. 65B certificate.
Mandamus	<i>Lotus Hotels</i>	Public bodies must fulfill their legal duties.

If **Article 21** is the "**heart**" of the Constitution, then **Article 32** is the "**shield**" that protects it. Dr. B.R. Ambedkar famously called **Article 32 the "Heart and Soul"** of the Constitution because, without it, all other Fundamental Rights would just be words on a page.

Article 32 gives you the **Right to Constitutional Remedies**. This means if your Fundamental Rights are violated, you have the right to go **directly to the Supreme Court** to get them enforced.

1. Key Features of Article 32

- **It is a Fundamental Right itself:** Unlike other rights that just declare what you have, Article 32 is a right that ensures you *get* those rights.
- **Direct Access:** Usually, you have to start at a lower court and appeal your way up. Under Article 32, you can jump straight to the Supreme Court.
- **Cannot be Suspended:** This right cannot be taken away except during a National Emergency.
- **The "Guarantor":** It makes the Supreme Court the official "Protector and Guarantor" of Fundamental Rights in India.

2. The Five Weapons: The Writs

To enforce your rights, the Supreme Court has the power to issue five specific types of legal orders, called Writs.

Writ	Meaning	Purpose
Habeas Corpus	"To have the body"	To release a person who has been detained unlawfully (by police or anyone else).
Mandamus	"We command"	To order a public official or government body to do their legal duty.
Prohibition	"To forbid"	To stop a lower court from continuing a case that is outside its jurisdiction.
Certiorari	"To be certified"	To "quash" (cancel) an order already passed by a lower court or authority.
Quo-Warranto	"By what authority"	To ask a person holding a public office to prove they are legally qualified to be there.

3. Article 32 vs. Article 226

While **Article 32** lets you go to the **Supreme Court**, **Article 226** lets you go to a **High Court**. Interestingly, the High Court's power is actually *wider* in one specific way:

- **Article 32 (Supreme Court):** Can **only** be used for the violation of **Fundamental Rights**.
- **Article 226 (High Court):** Can be used for Fundamental Rights **AND** for any other legal right (like a property dispute or a contract issue).

4. Why is it so important?

Without Article 32, the government could ignore your right to free speech or your right to life (Article 21), and you would have no immediate way to stop them. It provides a "remedy" for the "wrong." In legal terms, this follows the maxim "**Ubi jus, ibi remedium**"—*Where there is a right, there is a remedy*.

[Five Types of Writs in Indian Constitution](#) This [video](#) provides a clear and detailed explanation of the five different types of writs available under Article 32, helping to visualize their specific functions in protecting your rights.

A powerful real-world example of how these rights work is the **ADM Jabalpur v. Shivkant Shukla (1976)** case, often called the "**Habeas Corpus Case**." It is considered one of the most controversial moments in Indian legal history because it tested whether the government could take away the right to life during an emergency.

The Background: The 1975 Emergency

In 1975, Prime Minister Indira Gandhi declared a National Emergency. During this time, the government suspended Fundamental Rights, including the right to go to court under Article 32. Thousands of political opponents were arrested without trial under the Maintenance of Internal Security Act (MISA) [03:41].

The Legal Battle

Many of those arrested filed **Habeas Corpus** petitions in various High Courts, arguing that even during an emergency, the state cannot imprison someone without a valid legal reason.

- **The High Courts' View:** Nine different High Courts bravely ruled in favor of the citizens, stating that the right to life and liberty is so basic that it cannot be totally suspended [07:08].
- **The Supreme Court's "Darkest Hour":** The government appealed these decisions to the Supreme Court. In a 4-1 majority, the Supreme Court ruled that while an emergency is in effect, a person **cannot** move any court for the enforcement of their right to liberty [08:49]. Essentially, they ruled that "the law is the sole repository of liberty," and if the law is suspended, liberty is gone [10:22].

The Lone Dissent: Justice H.R. Khanna

The one judge who disagreed was **Justice H.R. Khanna**. In his famous dissent, he argued that the right to life and liberty did not "start" with the Constitution; these are natural rights that exist as long as a person is alive [10:50].

- He stated that even without Article 21, the state has no power to deprive a person of their life or liberty without the authority of law [11:07].
- Because of this brave stance against the government, Justice Khanna was passed over for the position of Chief Justice of India, but he became a legend in legal history for protecting the spirit of the Constitution [00:18].

The Modern Correction: Justice K.S. Puttaswamy (2017)

The "wrong" of the ADM Jabalpur case was finally fixed 40 years later. In the landmark **Right to Privacy** case (2017), the Supreme Court officially overruled the ADM Jabalpur judgment [13:01].

- The court declared that Justice Khanna was right all along: the right to life is **inalienable** and exists independent of any constitution or statute [14:06].
- Today, because of the 44th Amendment and this new ruling, your rights under Articles 20 and 21 **cannot** be suspended, even during an emergency.

[ADM Jabalpur Vs Shivkant Shukla case | Justice H. R. Khanna | Explained](#)

India's Basic Structure Doctrine Explained

The **Basic Structure Doctrine** is a judicial principle established by the Indian Supreme Court. It holds that while the Parliament has the power to amend the Constitution, it cannot alter or destroy its "basic structure"—the fundamental features that give the Constitution its identity.

Think of it as a house: you can repaint the walls, change the furniture, or even add a new room, but you can't knock down the foundation or the load-bearing pillars without the whole thing collapsing.

1. How it Started: *Kesavananda Bharati v. State of Kerala* (1973)

Before 1973, there was a constant "tug-of-war" between the Parliament and the Judiciary. The Parliament claimed it had absolute power to amend any part of the Constitution (including Fundamental Rights), while the Court sought to protect those rights.

The landmark ruling in the **Kesavananda Bharati** case settled this by concluding:

- **Article 368** gives Parliament the power to amend the Constitution.
- However, that power is **not absolute**.
- The "Basic Structure" must remain inviolable.

2. What counts as "Basic Structure"?

The Supreme Court has never provided a rigid, exhaustive list. Instead, it decides whether a feature is "basic" on a case-by-case basis. Over the years, the following have been recognized as part of the core:

- **Supremacy of the Constitution:** No branch of government is above the law.
- **Republican and Democratic form of Government:** India must remain a democracy where leaders are elected.
- **Secular Character:** The state must remain neutral in matters of religion.
- **Separation of Powers:** The distinct roles of the Legislature, Executive, and Judiciary.
- **Federalism:** The distribution of power between the Union and the States.
- **Judicial Review:** The power of the courts to determine the legality of laws.

3. Why is it significant?

The doctrine acts as a **safety valve** for democracy. Without it, a government with a massive majority in Parliament could theoretically:

1. Abolish elections.
2. Remove the right to free speech permanently.
3. Turn the country into a monarchy or a legal autocracy.

By enforcing the Basic Structure Doctrine, the Judiciary ensures that the **"spirit" of the Constitution survives even as the "letter" of the law evolves.**

4. Comparison of Powers

Feature	Parliamentary Power	Judicial Limitation
Amendment	Can change almost any article.	Cannot destroy the "Basic Structure."
Fundamental Rights	Can be abridged or modified.	Core identity of rights must remain.
Final Word	Passes the law/amendment.	Determines if the amendment is "constitutional."

Following the ***Kesavananda Bharati*** case, the Indian government actually tried to push back against this new limitation. The following cases are the "supporting pillars" that turned the Basic Structure Doctrine from a one-time ruling into an unshakable legal reality.

1. ***Indira Gandhi v. Raj Narain (1975)***

This was the first real test. During the Emergency, the 39th Amendment was passed, which essentially said that the election of the Prime Minister could not be challenged in any court.

- **The Ruling:** The Supreme Court struck down that specific part of the amendment.
- **The Logic:** They ruled that **Free and Fair Elections** and **Judicial Review** are part of the Basic Structure. Even a constitutional amendment cannot take away the court's right to look into election disputes.

2. *Minerva Mills v. Union of India* (1980)

This is perhaps the **most important follow-up**. The Parliament had passed the 42nd Amendment, which claimed that there were **no limitations** on Parliament's power to amend the Constitution and that no amendment could be challenged in court.

- **The Ruling:** The Court struck down these clauses.
- **The Logic:** The Court famously stated that the Constitution granted Parliament a *limited* power to amend. Therefore, Parliament cannot use that limited power to turn it into an *absolute* power.
- **The "Harmony" Principle:** It established that there must be a balance between **Fundamental Rights and Directive Principles**; destroying that **balance violates the Basic Structure**.

3. *Waman Rao v. Union of India* (1981)

This case dealt with the **"9th Schedule"—a sort of "black hole"** where the government used to put laws to protect them from judicial review.

- **The Ruling:** The Court drew a "line in the sand" (April 24, 1973—the date of the *Kesavananda* judgment).
- **The Logic:** Any law added to the 9th Schedule *after* that date is open to challenge if it violates the Basic Structure. This stopped the government from using the 9th Schedule as a shield to bypass the Constitution.

4. *S.R. Bommai v. Union of India* (1994)

This case expanded the doctrine to protect the nature of the Indian state itself, specifically regarding the dismissal of state governments.

- **The Ruling:** The Court included **Secularism** and **Federalism** as part of the Basic Structure.
- **The Impact:** It made it much harder for the Central Government to arbitrarily dismiss State Governments (President's Rule), ensuring that the federal "structure" of India remained intact.

Summary of the "Evolution"

Year	Case	Key Feature Added to "Basic Structure"
1973	<i>Kesavananda Bharati</i>	The concept itself; Supremacy of Constitution.
1975	<i>Indira Gandhi</i>	Free and Fair Elections; Rule of Law.
1980	<i>Minerva Mills</i>	Limited Power of Parliament; Judicial Review.
1994	<i>S.R. Bommai</i>	Secularism; Federalism.

Why this matters today

Without these follow-up cases, the Basic Structure Doctrine might have been ignored or "legislated away." These rulings created a system of Checks and Balances, ensuring that no single branch of government becomes too powerful.

A modern and high-stakes example of the Basic Structure Doctrine in action is the **NJAC (National Judicial Appointments Commission) Case of 2015**.

This case is unique because the Supreme Court used the doctrine to strike down a **Constitutional Amendment** that had been passed with near-unanimous support from both Houses of Parliament and ratified by 20 State Legislatures.

The Conflict: How to Appoint Judges?

For decades, India has used the "**Collegium System**", where a group of the most senior judges decides who will become a judge. Critics (including the government) argued this was opaque and resembled "judges appointing judges."

In 2014, the Parliament passed the **99th Amendment**, creating the **NJAC**. This was a 6-member body to replace the Collegium:

1. The Chief Justice of India (CJI).
2. Two senior-most Supreme Court judges.
3. The Union Law Minister (Executive).
4. Two "eminent persons" (selected by a committee of the PM, CJI, and Leader of Opposition).

The "Basic Structure" Challenge

The Supreme Court (in a 4:1 majority) struck down the NJAC and the 99th Amendment entirely. Here is how they used the doctrine:

- **Independence of the Judiciary:** The Court ruled that judicial independence is a "Basic Feature" of the Constitution.
 - **The "Veto" Problem:** The NJAC rules stated that if any **two** members disagreed, a candidate could not be appointed. This meant the Law Minister and one "eminent person" could veto a choice made by all three senior judges.
 - **The Verdict:** The Court held that giving the Executive (the Law Minister) a seat at the table and a potential veto power over judicial appointments was a direct threat to judicial independence. Therefore, it violated the Basic Structure.
-

Why it was Controversial

This case sparked a massive debate that continues to this day (often mentioned by the Vice President or Law Minister in the news).

- **The Government's View:** They argued that "Parliamentary Sovereignty" is also a basic feature—the will of the people (through their elected representatives) should matter in how the judiciary is structured.
- **The Court's View:** They argued that if the Executive helps choose the judges, those judges might feel "indebted" to the government, ruining the "Separation of Powers."

Summary of the Doctrine's Impact

The NJAC case proved that the Basic Structure Doctrine isn't just a historical relic from the 70s. It is a powerful, active tool that the Supreme Court uses to check the power of the Parliament, even when the Parliament is acting with a massive majority.

While the **Basic Structure Doctrine** is often hailed as the savior of Indian democracy, it isn't without its fair share of critics. Legal scholars, politicians, and even some judges have argued that it creates a "government by judges" rather than a government by the people.

Here are the four primary criticisms of the doctrine:

1. The "Anti-Democratic" Argument

The most common criticism is that the doctrine undermines **Parliamentary Sovereignty**.

- **The Logic:** In a democracy, the people elect representatives to make and change laws. If a Parliament with a 2/3rd majority passes an amendment, who is the Court (an unelected body) to say "No"?
- **The Critique:** Critics argue the doctrine allows the Judiciary to veto the "will of the people," making the Court a "Third House of Parliament" with ultimate power.

2. Lack of Definition (The "Vagueness" Problem)

The Supreme Court has never explicitly defined what "Basic Structure" means in a single, exhaustive list.

- **The Issue:** Because the list is open-ended and decided on a case-by-case basis, it is seen as **subjective**.
- **The Critique:** What one judge considers "basic" might not be what another judge thinks. This leads to legal uncertainty, where the government never knows if an amendment will be struck down until *after* they pass it.

3. Judicial Supremacy

Critics argue the doctrine has shifted the balance of power too far toward the courts.

- **The Logic:** The Constitution was meant to have a balance between the Legislature, Executive, and Judiciary.
- **The Critique:** By claiming the power to decide what the "core" of the Constitution is, the Judiciary has essentially placed itself **above** the Constitution. As the saying goes, "*The Constitution is what the judges say it is.*"

4. No Textual Basis

If you read the Indian Constitution from cover to cover, you will not find the words "**Basic Structure**" anywhere.

- **The Issue: Article 368** explicitly gives Parliament the power to amend the Constitution without mentioning any "hidden" limits.
- **The Critique:** Strict constitutionalists argue that the Court "invented" this doctrine out of thin air in 1973 to protect its own power from a strong executive (under Indira Gandhi).

Comparison of Perspectives

Perspective	View on the Doctrine
Pro-Doctrine	It's a "Safety Valve" that prevents India from turning into an autocracy.
Anti-Doctrine	It's "Judicial Tyranny" that ignores the mandate of the voting public.
Middle Ground	It's a necessary evil that needs more clearly defined boundaries.

The Current Debate

In recent years, high-ranking officials (including the Vice President of India) have publicly questioned the doctrine, especially following the **NJAC** ruling. They argue that the "sanctity of the people's will" is

being ignored. However, supporters argue that without this "shield," the Constitution could be dismantled piece by piece by any party with a massive majority.

While India's **Basic Structure Doctrine** is a famous example of "judiciary-led" protection, different countries use different mechanisms to protect their core values. Some write these limits directly into the text, while others rely on a very difficult amendment process.

1. Germany: The "Eternity Clause"

Germany is the gold standard for **Codified Unamendability**. Because of their history with the collapse of the Weimar Republic, they decided that certain parts of their Constitution (the *Basic Law*) should never be changed, even with a 100% vote.

- **Article 79(3):** Known as the **Eternity Clause (*Ewigkeitsklausel*)**.
- **What is protected?** Human dignity (Article 1) and the basic structure of the state as a federal, democratic, and social republic (Article 20).
- **Difference from India:** In Germany, the limit is **explicitly written** in the text. In India, it was **interpreted** by judges because the text didn't mention any limits.

2. United States: "Constructive Unamendability"

The U.S. Constitution has almost no "eternity clauses" (except for one rule: no state can lose its equal representation in the Senate without its consent). Theoretically, the U.S. could amend its Constitution to become a monarchy.

However, it is **Constructively Unamendable** because the process is so difficult:

- **The Bar:** You need a 2/3rd majority in both the House and Senate, AND approval from 3/4th (38 out of 50) of the States.
- **The Result:** It is so hard to get that many people to agree that the "Basic Structure" is protected by the sheer difficulty of the math, not by a specific legal doctrine.

3. Comparison of Protection Methods

Country	Method of Protection	Can the "Core" be changed?
India	Judicial Doctrine (Basic Structure)	No; the Supreme Court will strike it down.
Germany	Textual Prohibition (Eternity Clause)	No; it is legally "eternal."
USA	Procedural Rigidity (Article V)	Technically Yes, but practically almost impossible.
UK	Parliamentary Sovereignty	Yes; Parliament can change anything with a simple majority.

4. Other Unique Examples

- **France & Italy:** Both have clauses stating that the **"Republican form of government"** cannot be the subject of an amendment. You cannot legally vote to bring back the King in these countries.

- **Israel:** Recently, in 2024, the Israeli Supreme Court followed India's lead. Even though Israel doesn't have a formal written constitution, the Court ruled it has the power to strike down "Basic Laws" if they threaten Israel's identity as a democratic state.

Summary

India's approach is unique because it sits in the middle. The amendment process isn't as hard as the U.S., and the limits aren't written down like Germany's. This gives the Indian Supreme Court a very "active" role in deciding what the country's identity should be.

This cheat sheet consolidates the evolution, key components, and major cases of the **Basic Structure Doctrine**. Use this as a quick reference for the "pillars" of Indian Constitutional Law.



The "Big Five" Landmark Cases

Case	Year	Key Outcome / "Basic Feature" Identified
Kesavananda Bharati	1973	The Birth: Parliament can amend anything <i>but</i> the Basic Structure. (Supremacy of Constitution).
Indira Gandhi v. Raj Narain	1975	The Test: Struck down 39th Amendment. Added Free and Fair Elections and Rule of Law .
Minerva Mills	1980	The Shield: Struck down 42nd Amendment. Added Judicial Review and Limited Amending Power .
S.R. Bommai	1994	The Expansion: Added Secularism and Federalism . Controlled the misuse of Article 356.
NJAC Case	2015	Modern Context: Struck down 99th Amendment. Added Independence of Judiciary as a core pillar.



Core Elements of the Basic Structure

While the Supreme Court has no "official list," these features are now firmly established:

1. **Supremacy of the Constitution:** The Constitution, not Parliament, is the highest power.
2. **Sovereign, Democratic & Republican Nature:** India cannot be turned into a monarchy or colony.
3. **Secular Character:** The state must remain neutral and respectful of all religions.
4. **Separation of Powers:** The Executive, Legislature, and Judiciary must stay in their own lanes.
5. **Federal Character:** Power remains divided between the Centre and the States.
6. **Judicial Review:** The right of the courts to check the legality of laws.
7. **Rule of Law:** No person (or politician) is above the law.
8. **The Golden Triangle:** The harmony between **Articles 14** (Equality), **19** (Freedom), and **21** (Life).



The Critical Debate: Pros vs. Cons

The Pro-View: It is the "**Constitutional Insurance**" of the citizen. It prevents a "brute majority" in Parliament from turning India into a dictatorship or a theological state.

The Anti-View: It is "**Judicial Overreach.**" Critics argue that unelected judges shouldn't have the power to veto the will of the people expressed through their elected representatives.

Global Comparison

- **Germany:** Uses an "**Eternity Clause**" (Article 79) to make human rights and democracy unchangeable by law.
- **USA:** Uses "**Procedural Rigidity**" (Article V), making the amendment process so difficult that the core structure is protected by default.
- **UK:** Follows "**Parliamentary Sovereignty**"; technically, Parliament can change anything with a simple majority.

To understand why the **Basic Structure Doctrine** was created in 1973, you have to see the 22-year "legal war" that preceded it. It was a high-stakes game of chess between the Parliament (trying to implement land reforms) and the Judiciary (trying to protect Right to Property).

Here is the timeline of that tug-of-war:

1. The Opening Move (1951): *Shankari Prasad Case*

After Independence, the government passed the **1st Amendment** to abolish the *Zamindari* (landlord) system. Landlords argued this violated their Fundamental Right to property.

- **The Court's View:** Parliament has the power to amend **any part** of the Constitution, including Fundamental Rights.
- **Score:** Parliament 1, Judiciary 0.

2. The Reinforcement (1964): *Sajjan Singh Case*

The **17th Amendment** was challenged on similar grounds.

- **The Court's View:** The Court upheld its earlier decision. Parliament's power to amend under **Article 368** is limitless.
- **The "Seed" of Doubt:** However, Justice Hidayatullah famously mused in his dissent whether Fundamental Rights should really be "playthings" of a majority government.
- **Score:** Parliament 2, Judiciary 0.

3. The Counter-Attack (1967): *Golaknath Case*

This was a massive shift. An 11-judge bench heard the case.

- **The Court's View:** Reverse gear! The Court ruled that Parliament **cannot** amend Fundamental Rights. They argued that "Amendment" is just another form of "Law," and Article 13 says no law can take away Fundamental Rights.
- **The Result:** Parliament's hands were tied.
- **Score:** Parliament 2, Judiciary 1.

4. The Power Play (1971): *24th & 25th Amendments*

Indira Gandhi's government was furious. They used their massive majority to pass amendments that specifically stated:

1. Parliament **can** amend any part of the Constitution (nullifying *Golaknath*).

2. The President **must** give assent to such bills.
3. Courts cannot question laws that claim to distribute wealth (curbing Judicial Review).

5. The Final Checkmate (1973): *Kesavananda Bharati*

The largest bench in history (13 judges) sat for 68 days to decide if the 24th Amendment was valid.

- **The Compromise:** The Court played a masterstroke. They said: "*Parliament, you CAN amend Fundamental Rights (winning back the government's favor), BUT you cannot touch the **Basic Structure** of the Constitution.*"
- **The Result:** The Court gave away the "pawn" (Right to Property) to save the "King" (the Constitution itself).

Summary Table: The Tug-of-War

Year	Event/Case	Who Won?	Core Philosophy
1951	<i>Shankari Prasad</i>	Parliament	Parliament is supreme.
1967	<i>Golaknath</i>	Judiciary	Fundamental Rights are "sacrosanct."
1971	24th Amendment	Parliament	We can change anything we want.
1973	<i>Kesavananda</i>	Draw/Balanced	Change is okay; Destruction is not.

The **Right to Property** was the "litmus test" that forced the Indian legal system to define its limits. It is the only Fundamental Right that was eventually deleted from the Constitution because it created a direct collision between **Socialism** (the government's goal) and **Individualism** (the Constitution's protection).

1. The Original Conflict (1950–1970s)

In 1950, **Article 19(1)(f)** and **Article 31** made the right to own and hold property a Fundamental Right.

- **The Government's Goal:** Post-independence India wanted to break the *Zamindari* system. They needed to take land from wealthy landlords and redistribute it to landless farmers to reduce poverty.
- **The Landlords' Defense:** Every time the government tried to take land, the landlords went to court, arguing that their "Fundamental Right to Property" was being violated.
- **The Stalemate:** The Courts often ruled in favor of the landlords, demanding the government pay "market rate compensation," which the young Indian state simply couldn't afford.

2. The 44th Amendment (1978): The "Demotion"

After the *Kesavananda Bharati* case (1973) established that the **Basic Structure** must be protected, the government realized that as long as Property was a "Fundamental Right," it would always be a hurdle for socialist reforms.

In 1978, the Morarji Desai government passed the **44th Amendment:**

- **Deleted:** Articles 19(1)(f) and 31 were removed from the list of Fundamental Rights.

- **Inserted: Article 300A** was added to a different part of the Constitution.

3. Fundamental Right vs. Legal Right

This change was massive. Property shifted from being a "sacred" right to a "legal" right.

Feature	As a Fundamental Right (Pre-1978)	As a Legal Right (Post-1978/Article 300A)
Enforcement	You could go directly to the Supreme Court (Art. 32).	You usually start in a High Court or civil court.
Protection	The law taking the land could be declared "void."	The government can take land, provided they follow a "procedure established by law."
Compensation	High/Market value was often mandatory.	Compensation must be "fair," but it's determined by Parliament's laws.

4. Why this led to the Basic Structure Doctrine

The struggle over property taught the Judiciary a vital lesson: **Parliament will change the text of the Constitution to get what it wants.**

If Parliament could delete the Right to Property today, what would stop them from deleting the Right to Free Speech or the Right to Religion tomorrow?

- The Court eventually "sacrificed" the Right to Property to appease the government's socialist goals.
- In exchange, they established the **Basic Structure Doctrine** to ensure that while property could be taken away, the *essence* of democracy (elections, judicial review, secularism) could not.

5. Where do we stand today?

Today, the government can acquire your land for "public purposes" (like building a highway or a dam) under the **LARR Act (2013)**. You cannot claim it's "unconstitutional" to take the land, but you *can* go to court if the government doesn't follow the legal procedure or fails to pay the compensation promised by the law.

The **Ninth Schedule** (and **Article 31B**) is often called the "Constitutional Dustbin" or "The Shield." It was created in 1951 to give the government a "safe space" to pass laws without the fear of judges striking them down.

1. The Concept: The "Legal Vault"

Normally, if a law violates Fundamental Rights, the Court can declare it void (**Article 13**). The Ninth Schedule was designed to bypass this.

- **The Rule:** If a law is put inside the Ninth Schedule, it becomes immune to judicial review on the grounds that it violates Fundamental Rights.
- **The Original Intent:** Prime Minister Nehru created it to protect **Land Reform Laws** (Zamindari abolition). He didn't want wealthy landlords to block social equality by citing their "Right to Property."

2. The Problem: The "Dustbin" Phase

Over the decades, the government realized they had a magic wand. Instead of just land reforms, they started putting *all kinds* of controversial laws into the Ninth Schedule to hide them from the Courts.

- **Example:** Tamil Nadu's 69% Reservation law was put there to bypass the Supreme Court's 50% cap on reservations.
- **The Result:** The Schedule grew from 13 laws in 1951 to over **280 laws** today. It became a way for the Parliament to say, "The Judiciary cannot touch us."

3. The Counter-Move: *I.R. Coelho Case (2007)*

The Supreme Court eventually realized that the Ninth Schedule was being used to "hollow out" the Constitution. In a landmark 9-judge bench ruling, they finally "opened the vault."

- **The Ruling:** The Court held that the Ninth Schedule is **not a blank check**.
- **The "Cut-off" Date:** They ruled that any law added to the Ninth Schedule **after April 24, 1973** (the day the Basic Structure Doctrine was born) can be challenged.
- **The Test:** If a law in the Ninth Schedule violates a Fundamental Right that is also part of the **Basic Structure**, the Court will strike it down.

4. Summary: Then vs. Now

Era	Status of Ninth Schedule	Can the Court review it?
1951–1973	Absolute Shield	No. It was a "No-Go Zone" for judges.
1973–2007	Growing Controversy	Ambiguous; laws were being added constantly.
2007–Today	Subject to "Basic Structure"	Yes. If it hits the "Core" (Articles 14, 19, 21), it can be killed.

Why it matters

The *I.R. Coelho* judgment ensures that the Parliament cannot use a "side door" (the Ninth Schedule) to do something they aren't allowed to do through the "front door" (regular amendments). It effectively made **Judicial Review** the ultimate watchdog of the Constitution.