

CONSTITUTIONAL LAW | UNIT – III

Speaker, Anti-Defection Law & Judiciary

Expanded Edition • High-Yield Focus for Judiciary & LLB

Most Repeated Areas in Previous Papers

Highest Frequency

Anti-Defection Law (10th Schedule) – grounds, exceptions, Speaker's role, Kihoto Hollohan. Collegium system and judicial appointments.

Very High Frequency

Powers of Speaker, Parliamentary Privileges (Art. 105), Independence of Judiciary, Transfer of Judges, Writ jurisdiction of SC & HC.

High Frequency

Original jurisdiction of Supreme Court (Art. 131), Advisory jurisdiction (Art. 143), Removal of judges, Judicial review.

Scoring Tip

For Anti-Defection always write: Object → Grounds → Exceptions → Speaker → Judicial Review (Kihoto).

For Collegium write the three Judges cases + NJAC.

Presiding Officer of the House

Conduct of Business

Maintains order, decides points of order, interprets rules of procedure, adjourns or suspends sitting.

Certification of Money Bills

Speaker's certificate that a Bill is a Money Bill is final under Art. 110.

Casting Vote

Votes only in case of a tie (Art. 100). Does not vote in the first instance.

Disqualification under 10th Schedule

Decides questions of defection. Decision subject to judicial review after Kihoto Hollohan.

Resignation & Removal

Can resign by writing to Deputy Speaker. Removed by resolution passed by effective majority of the House.

Impartiality Expectation

Though elected on party ticket, Speaker is expected to function impartially once in office.

Articles 105 & 194

Privileges are special rights, immunities and exemptions enjoyed by each House collectively and by members individually so that they can perform their functions without obstruction or fear.

Freedom of Speech

Members have freedom of speech in the House. Not liable in court for anything said or any vote given (Art. 105).

Publication Privilege

Right to publish debates and proceedings. Protection for true reports of parliamentary proceedings.

Other Privileges

Freedom from arrest in civil cases during session, right to exclude strangers, regulate internal proceedings, punish for contempt.

Codification Status

Not fully codified. Based on British House of Commons privileges as on 26 Jan 1950 + evolving practice.

Conflict with FRs

Privileges can come in conflict with fundamental rights (especially Art. 19 & 21). Courts have tried to balance both.

Key Case

P.V. Narasimha Rao v. State – discussed privilege in the context of bribery for voting in the House.

Tenth Schedule – Most Asked Topic

Inserted by the 52nd Constitutional Amendment (1985). Object: to curb the evil of political defections motivated by lure of office or other similar considerations. It seeks to ensure stability of governments and integrity of political parties.

Ground 1 – Voluntarily Giving Up

If a member voluntarily gives up membership of the political party on whose ticket he was elected.

Ground 2 – Voting Against Whip

If he votes or abstains from voting contrary to any direction (whip) issued by the party without prior permission or subsequent condonation.

Who Decides?

Speaker (Lok Sabha / Assembly) or Chairman (Rajya Sabha / Council). Decision is final subject to judicial review.

Time Limit

No strict constitutional time limit, but unexplained delay can be a ground for judicial interference.

Tenth Schedule – Continued

Merger Exception

If a party merges with another and at least 2/3rd of the members of the legislature party agree to the merger, they are protected from disqualification.

Split Exception Removed

Originally there was protection for split (1/3rd members). 91st Amendment deleted this exception to strengthen the law.

91st Amendment

Also limited the size of Council of Ministers to 15% of the total strength of the House (with some exceptions for smaller States).

Kihoto Hollohan (1992)

Speaker's decision under 10th Schedule is subject to judicial review on grounds of malafide, perversity, non-compliance with natural justice, etc. Paragraph 7 (ousting jurisdiction) was struck down.

Recent Trends

Courts have intervened when Speakers delay decisions for long periods or act in a partisan manner. Timely decision is expected.

Exam Structure

Object → Two grounds → Merger exception → 91st Amendment → Role of Speaker → Kihoto Hollohan → Conclusion.

Articles 124–147

Original Jurisdiction (131)

Disputes between Centre and States or between States.
Exclusive jurisdiction of SC.

Writ Jurisdiction (32)

Enforcement of Fundamental Rights. Called the 'heart and soul' of the Constitution by Dr. Ambedkar.

Appellate Jurisdiction

Appeals from High Courts in constitutional, civil and criminal matters (Arts. 132–134). Also special leave under Art. 136.

Advisory Jurisdiction (143)

President can refer questions of law or fact of public importance for the opinion of the Court. Opinion is not binding but carries great weight.

Review & Curative

Power to review its own judgments. Curative petition developed in Rupa Ashok Hurra to prevent abuse of process.

Court of Record

Judgments are binding. Has power to punish for its own contempt.

Articles 214–231

Constitution

Every High Court consists of a Chief Justice and such other judges as the President may appoint.

Writ Jurisdiction (226)

Wider than Art. 32. Can issue writs for enforcement of FRs as well as for any other purpose (legal rights).

Superintendence (227)

High Court has superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

Control over Subordinate Courts

Art. 235 – Posting, promotion, leave, discipline of persons in judicial service of the State (below District Judge level).

Transfer of Judges (222)

President may transfer a judge from one High Court to another after consultation with the CJI. Consultation must be effective.

Independence Safeguards

Security of tenure, fixed service conditions, removal only through parliamentary process (like SC judges).

Evolution of the System

1981

First Judges Case

Consultation does not mean concurrence. Executive had primacy in appointments.

1993

Second Judges Case

Collegium system evolved. CJI's opinion has primacy. Consultation means concurrence.

1998

Third Judges Case

Collegium = CJI + 4 senior-most judges for Supreme Court appointments. Process clarified.

2015

NJAC Case

99th Amendment and NJAC Act struck down. Collegium restored. Independence of judiciary is part of basic structure.

Constitutional Safeguards

Security of Tenure

Judges can be removed only by a special address of Parliament on grounds of proved misbehaviour or incapacity.

Fixed Service Conditions

Salaries, allowances and privileges charged on Consolidated Fund. Cannot be varied to their disadvantage after appointment.

Separation from Executive

Art. 50 (DPSP) – State shall take steps to separate judiciary from executive in public services.

Power of Judicial Review

Courts can examine the constitutionality of legislative and executive actions. Part of basic structure.

Contempt Power

Power to punish for contempt protects the authority and dignity of the courts.

Collegium

Judicial primacy in appointments is seen as a safeguard of independence (though debated).

Must-Remember Decisions

Kihoto Hollohan (1992)

Speaker's decision under 10th Schedule is subject to judicial review. Para 7 struck down.

Second Judges Case (1993)

Collegium system established. Primacy of CJI in appointments.

Third Judges Case (1998)

Clarified composition of Collegium and consultation process.

NJAC Case (2015)

Struck down 99th Amendment. Collegium restored as part of basic structure.

L. Chandra Kumar (1997)

Judicial review by HC under 226/227 is part of basic structure. Tribunals cannot oust it.

P.V. Narasimha Rao

Discussed parliamentary privilege in context of bribery for voting.

Must-Remember Points

01

Speaker

Presiding officer + Money Bill certificate + 10th Schedule decisions (subject to review).

02

Privileges

Freedom of speech in House is protected. Privileges exist to enable effective functioning.

03

Anti-Defection

Two grounds + merger exception + Kihoto Hollohan + 91st Amendment.

04

Supreme Court

Guardian of Constitution – original, appellate, writ, advisory jurisdictions.

05

Collegium

Judicial primacy in appointments after three Judges cases; NJAC struck down.

06

Independence

Security of tenure, fixed conditions, judicial review, contempt power – all protect independence.

End of UNIT – III

Speaker • Privileges • Anti-Defection • Judiciary