

SYNOPSIS

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361. Protection of President and Governors and Rajpramukhs

(1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61:

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State:

(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.

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(3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

**361A. Protection of publication of proceedings of Parliament and State Legislatures**

(1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature of a State, unless the publication is proved to have been made with malice:

Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.

(2) Clause (1) shall apply in relation to reports or matters broadcast, by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting

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station as it applies in relation to reports or matters published in a newspaper.

Explanation.--In this article, "newspaper" includes a news agency report containing material for publication in a newspaper.

**361B. Disqualification for appointment on remunerative political post**

A member of a house belonging to any political party who is disqualified for being a member of a House under paragraph 2 of the Tenth Schedule shall also be disqualified to hold any remunerative political post for duration of the period commencing from the date of his disqualification till the date on which he contests an election to a House and is declared elected, whichever is earlier.

Explanation--For the purpose of this article,-

(a) the expression "House" has the meaning assigned to it in clause (a) of paragraph 1 of the Tenth Schedule;

(b) the expression "remunerative political post" means any office-

(i) Under the Government of India or the Government of a State where the salary or remuneration for such office is paid out of the public revenue of the Government of India or the Government of the State, as the case may be; or

(ii) Under a body, whether incorporated or not, which is wholly or partially owned by the Government of India or the Government of a State and the salary or remuneration for such office is paid by such body,

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except where such salary or remuneration paid is compensatory in nature.

363. Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.

(1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

(2) In this article-

(a) "Indian State" means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and

(b) "Ruler" includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.

363A. Recognition granted to Rulers of Indian States to cease and privy purses to be abolished

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Notwithstanding anything in this Constitution or in any law for the time being, in force--

(a) the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler shall, on and from such commencement, cease to be recognised as such Ruler or the successor of such Ruler;

(b) on and from the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, privy purse is abolished and all rights, liabilities and obligations in respect of privy purse are extinguished and accordingly the Ruler or, as the case may be, the successor of such Ruler, referred to in clause (a) or any other person shall not be paid any sum as privy purse.

#### **364. Special provisions as to major ports and aerodromes**

(1) Notwithstanding anything in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification--

(a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or

(b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

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(2) In this article--

(a) "major port" means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port;

(b) "aerodrome" means aerodrome as defined for the purposes of the enactment's relating to airways, aircraft and air navigation.

365. Effect of failure to comply with, or to give effect to, directions given by the Union

Where any State has failed to comply with or to give effect to any directions given in the exercise of the executive power of the Union under any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution.

366. Definitions

In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-

(1) "agricultural income" means agricultural income as defined for the purposes of the enactments relating to Indian income-tax;

(2) "an Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents

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habitually resident therein and not established there for temporary purposes only;

(3) "article" means an article of this Constitution;

(4) "borrow" includes the raising of money by the grant of annuities, and "loan" shall be construed accordingly;

(5) "clause" means a clause of the article in which the expression occurs;

(6) "corporation tax" means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled:-

(a) that it is not chargeable in respect of agricultural income;

(b) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals;

(c) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian income-tax the total income of individuals receiving such dividends, or in computing the Indian income-tax payable by, or refundable to, such individuals;

(7) "corresponding Province", "corresponding Indian State" or "corresponding State" means in cases of doubt such Province, Indian State or State as may be determined by the President to be the corresponding Province, the corresponding Indian State or the corresponding State, as the case may be, for the particular purpose in question;

(8) "debt" includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under

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any guarantee, and "debt charges" shall be construed accordingly;

(9) "estate duty" means a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under laws made by Parliament or the Legislature of a State relating to the duty, of all property passing upon death or deemed, under the provisions of the said laws, so to pass;

(10) "existing law" means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation;

(11) "Federal Court" means the Federal Court constituted under the Government of India Act, 1935;

(12) "goods" includes all materials, commodities, and articles;

(12A) "goods and services tax" means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;

(13) "guarantee" includes any obligation undertaken before the commencement of this Constitution to make payments in the event of the profits of an undertaking falling short of a specified amount;

(14) "High Court" means any Court which is deemed for the purposes of this Constitution to be a High Court for any State and includes-

(a) any Court in the territory of India constituted or reconstituted under this Constitution as a High Court, and


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(b) any other Court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution;

(15) "Indian State" means any territory which the Government of the Dominion of India recognised as such a State;

(16) "Part" means a Part of this Constitution;

(17) "pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable; a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund;

(18) "Proclamation of Emergency" means a Proclamation issued under clause (1) of article 352;

(19) "public notification" means a notification in the Gazette of India, or, as the case may be, the Official Gazette of a State;

(20) "railway" does not include-

(a) a tramway wholly within a municipal area, or

(b) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway;

(22) "Ruler" means the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler;

(23) "Schedule" means a Schedule to this Constitution;

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(24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution;

(25) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution;

(26) "securities" includes stock;

(26A) "Services" means anything other than goods;

(26B) "State" with reference to articles 246A, 268, 269, 269A and article 279A includes a Union territory with Legislature;

(26C) "socially and educationally backward classes" means such backward classes as are so deemed under article 342A for the purposes of the Central Government or the State or Union territory, as the case may be.

(27) "sub-clause" means a sub-clause of the clause in which the expression occurs;

(28) "taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly;

(29) "tax on income" includes a tax in the nature of an excess profits tax;

(29A) "tax on the sale or purchase of goods" includes-

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

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(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;

(30) "Union territory" means any Union territory specified in the First Schedule and includes any other territory comprised within the territory of India but not specified in that Schedule.

### **367. Interpretation**

(1) Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the

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interpretation of an Act of the Legislature of the Dominion of India.

(2) Any reference in this Constitution to Acts or laws of, or made by, Parliament, or to Acts or laws of, or made by, the Legislature of a State, shall be construed as including a reference to an Ordinance made by the President or, to an Ordinance made by a Governor, as the case may be.

(3) For the purposes of this Constitution "foreign State" means any State other than India:

Provided that, subject to the provisions of any law made by Parliament, the President may by order<sup>3</sup> declare any State not to be a foreign State for such purposes as may be specified in the order.

(4) For the purposes of this Constitution as it applies in relation to the State of Jammu and Kashmir-

(a) references to this Constitution or to the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied in relation to the said State;

(b) references to the person for the time being recognized by the President on the recommendation of the Legislative Assembly of the State as the Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office, shall be construed as references to the Governor of Jammu and Kashmir;

(c) references to the Government of the said State shall be construed as including references to the Governor of Jammu and Kashmir acting on the advice of his Council of Ministers; and

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(d) in proviso to clause (3) of Article 370 of this Constitution, the expression "Constituent Assembly of the State referred to in clause (2)" shall read "Legislative Assembly of the State.

CONSTITUTION OF INDIA Article