

Total Time Allotted: 3 Hours

Total Marks :250

Question Paper Specific Instructions

- Please read each of the following instructions carefully before attempting questions.
- There are EIGHT questions divided in two sections.
- A candidate has to attempt FIVE questions in all.
- Questions no 1 and 5 are compulsory and out of the remaining, THREE are to be attempted choosing at least ONE from each section.
- The number of marks carried by a question /part is indicated against it.
- Word limit in questions, wherever specified should be adhered to.
- Attempts of questions shall be counted in chronological order. Unless struck off, attempt of a question shall be counted even if attempted partly. Any page or portion of the page left blank in the answer book must be clearly struck off.

NOTE: Please take a printout of the answer Booklet and give answers in stipulate time. So that actual examination scenario is stipulated.

Name: RUPAL JAISWAL

Subject: Constitutional Law - Test 2

Phone: _____

Teacher's Remark

1(a) Examine the doctrine of separation of powers. Also mention the relevance of this doctrine in India.

The doctrine of separation of powers, developed by Montesquieu in his book "The spirit of Laws", maintains that one organ of government must not interfere in others and their powers be strictly demarcated.

Rationale of separation of powers:

- ① prevent concentration of power
- ② checks and balances by one organ on another eg. executive declaration of emergency (Art 352) placed before Parliament
- ③ counter arbitrariness

However, today the doctrine has been diluted with exceptions:

↳ Executive legislations of delegated legislation

→ mineralization of justice eg. Central Administrative Tribunal

→ Judicial activism of laying down guidelines in Vishaka v. State of Rajasthan

Relevance in India

- ① To maintain independence of judiciary eg in Madras Bar Association v. Union of India, separation of powers upheld.
- ② NYAC case: held separation of powers basic structure.
- ③ Uphold constitutionalism eg in Minerva Mills case Parliamentary intervention in judicial review not allowed.
- ③ To enforce DPSP: Art 50 mandate separation of executive from judiciary.

However, as Supreme Court in Suprio v. Union of India (2022) held separation of powers in India is modern version i.e. checks and balances. One organ can't usurp essential functions of another.

Q(6) Delegation of legislative powers has neither been permitted nor prohibited in Indian constitution. Discuss the constitutionality of DL in India.

Delegation of legislative powers by the Parliament (legislative body) to the executive (Central government), is not expressly permitted or prohibited by Constitution.

Constitutionality of Delegated Legislation

The constitution under Art 13(2) recognizes "law" includes laws, rules, regulations, thereby impliedly recognizing delegated legislation.

However, today, Supreme Court expressly recognizes "Delegated Legislation" to support legislative will expressed through statute [In re Delhi Laws Act 1951].

Limitations on Delegated Legislation

① Essential legislative functions e.g. policy making cannot be delegated (effacement) abdication not allowed, per In Re Delhi Laws Act 1951

② Power of taxation can be delegated (provided a taxation policy is stated & range is specified) e.g. Avjit Singh vs State of Punjab

③ Henry VIII clause not permitted i.e. power to amend or repeal a statute cannot be delegated

④ Delegatus non potest delegare i.e. a sub-delegate itself cannot delegate further.

in Vivek Narayan Sharma vs Union of India (2023), Supreme Court recognized power delegated to Centre to demonetize currency under Sec 26 of RBI Act is permissible delegation.

Thus, delegated legislation now expressly recognized by judiciary though not by the Constitution

2(c) Audi Alterum Partem a rule is a very flexibly, malleable and adaptable concept of natural justice to adjust speed and justice. Example the statement with decided case laws.

Audi Alterum Partem or "Hear the other side" is the 2nd principle of natural justice, whose habitat now found in Art 14 of the Constitution (Maneka Gandhi v/s Union of India (1980)).

Nature of Audi Alterum Partem

① Pragmatic, not dogmatic i.e. can be moulded to accommodate executive convenience

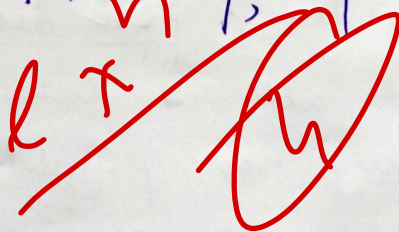
In Maneka Gandhi v/s Union of India, a post decisional hearing was allowed even if pre-decisional hearing not possible.

② Content flexible : includes right to fair hearing, right to notice

③ vitiated only when real prejudice
(Moninder Singh Gill v/s state of
Punjab - merely because opportunity
of hearing not given, will not
automatically make decision void.)

④ Inadequate hearing different from
denial of hearing : Thus, if some
hearing opportunity given, will satisfy
require of audi alterum partem
(S M Sharma case).

However, when Constitution
requires fair hearing (eg under Art.
311) and Art 22(2), only limited
by constitutional limitations i.e.
ground of national security, impracticability etc.

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2(d) Discuss the circumstances under which financial emergency can be proclaimed by President in India and effects thereof.

Financial Emergency can be proclaimed by the President under Art 360 of the Constitution.

Circumstances of Financial Emergency

- when there is grave threat of financial stability of the country
- balance of payments crisis
- when credit of India is threatened
- inability to meet fiscal deficit etc.

~~Till date financial emergency has not been proclaimed in India.~~

Once proclaimed, it must be approved by Parliament within 2 months. Thereafter, operates till revoked by

The President .

Consequences/ Effects of financial Emergency

- ① Central Executive can issue directions to state governments to observe canons of financial propriety.
- ② Suspend devolution to the states
- till at least 1 year after termination of financial emergency
- ③ Issue orders for reduction in salary of all public servants/ government employees - even of judges.
- ④ require reservation of all money bills of state legislative assembly for presidential consideration.

Thus, financial Emergency provision permit speedy transition from Federal to unitary financial system in interest of security of state.

1(c) 'The amending power of Parliament should not be subjected to vague and uncertain doctrine of basic structure'. Comment.

Basic structure doctrine is a judicial innovation to limit the power of Parliament to amend basic framework of the Constitution.

Origin of the basic structure doctrine

In 1973, Kesavananda Bharati v/s State of Kerala laid down 'basic structure' as ground to test constitutionality of a Constitution Amendment Act.

Test of basic structure is the inherent original identity of the Constitution must exist even after the Amendment.

In ER Coelho v/s State of Tamil Nadu, again Basic structure doctrine applied, however "rights test" was

emphasized.

Since then free and fair elections
(Indira Gandhi vs Raj Narsen), secularism
(S.R. Bommai), independence of judiciary
(K.J. Somaya case) etc. have been added to
the list.

Need for reforms

- ① Vagueness - no determinate test available to ascertain what is basic structure
- ② Uncertainty - judges discretion in testing basic structure violation - no prescribed limits to it
- ③ Impingement on constituent power of Parliament (Art. 368).

⑤ Thus, a multi stakeholder consultation to prescribe "basic structure" by Constitutional Amendment is required. As Justice Chandrasekhara said "despite its limitations, basic structure doctrine is the pole star of our polity."

7(a) Explain the doctrine of pleasure incorporated into the Indian Constitution in respect of civil servants, highlight the safeguards for protection of civil servants. 'Doctrine of pleasure' is incorporated under Art 310 of the Constitution whereby the civil servants can be dismissed by the President and governor (for state civil servants) at their sweet will.

Content of Doctrine of Pleasure under the Constitution

(1) Subject to other provisions of the Constitution - Art 310 grants pleasure; but not absolute. Other provisions such as fundamental rights, Art 31, Art 310(2) act as limitation upon this doctrine.

Thus, unlike British monarch's pleasure, President and governor being

republican heads of state are limited by the Constitution

② Dismissal of civil servants, not ~~their~~ qualified professionals hired on contractual basis is covered. Thus, contract may provide adequate compensation to such professionals if dismissed before end of specified period.

③ ~~For~~ Exemptions officers/employees covered are:

→ Civil services - all India services, central civil services, subject to President's pleasure while state civil services to Governor's.

→ Civil posts of ~~Attor~~ advocate general, solicitor general

→ defence personnel - at President's pleasure

Safeguards available to civil servants

① Dismissal only after inquiry (Art 311)

② Immunity against dismissal
by an authority superior in rank
to the one which appointed them i.e.
no other person than President or his
delegate can dismiss [Art. 31(1)]

③ Fair hearing - civil servants can't
be dismissed without an inquiry
where adequate/reasonable opportunity
of hearing provided

In ECIL v/s B. Karunakar, it
was held this hearing includes right
to receive inquiry report.

④ Right to receive notice of witnesses
examined and to cross examine
them [Union of India v/s E Bhargava]

However, there are certain
exceptions to these safeguards:

↳ "if inquiry not in the practicable,
President can do away with it.

→ in the interests of public security
not possible to hold inquiry

→ not provided to secretarial staff of
Parliament, staff of judiciary and
defence personnel

→ ~~not~~ failure to hold inquiry not
automatically invalidates the decision

- actual prejudice must be shown

→ temporary employees not covered
unless their contract provides for it
or entails penal / civil consequences
for them. Holding full blown inquiry
casts aspersion on character thus
hearing must be granted.

Thus, doctrine of pleasure
under the Constitution (Art 310) is
subject to procedural fairness under
Art 311. It acts as safety valve against
arbitrary and politically motivated dismissal.

✓ ✓ ✓ ✓ ✓ ✓
✓ ✓ ✓ ✓ ✓ ✓
✓ ✓ ✓ ✓ ✓ ✓

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7(c) 'Powers of election commission are not sufficient'. Comment.

Election Commission of India is the arbiter of both Parliamentary and state Assembly elections in India. It is a constitutional body under Art-324 of the Constitution.

Power of Election Commission of India

① Power to supervise and superintend elections. The Supreme Court in

Union of India vs Association of PUC

(2001) held this to be a reservoir of all other necessary powers of Election Commission.

② Preparation of Electoral roll (Art 326)

- to register all citizens above 18 years without discrimination - ECI prepare

a common roll.

③ Enforces model code of conduct -
to curb use of corrupt means,
use of government machinery,
hate speech etc.

④ Registers political parties (under
Section 29A of RPA 1951)

⑤ Appoints electoral officers of
observers, District Electoral officer and
chief Electoral officer in consultation
with state government.

Deference in powers

① No explicit enumeration in the
constitution of powers to control
election expenditure

② Condition of service of Chief
Election Commissioner and Election
Commissioners determined by President
(Now CEC and EC Act 2019)

③ No power to delist political parties
- or to enforce inner party democracy

④ Lack of enforceability of model code
- ECI only chastises or summons political leaders.

⑤ No staff of its own - relies on
bureaucracy of central and state
government to conduct election

Clearly, Election Commission of India has extensive powers though
its functioning is restricted by law

As per Supreme Court of India in
Anoop Baranwal v/s Union of India

(2023), ECI is the "guardian of Indian democracy". Thus, it is
necessary to safeguard its independence
(through selection committee comprising
PM, LoP and CJI) and enumerate its
recognized powers by amending Art-324

→ No kind of power?
→ ECI → !!

2

7(c) Discuss the powers and functions of the UPSC. Also explain how it has maintained its impartiality.

Union Public Service Commission is a constitutional body created under Art 315 of the Constitution. It acts as the watchdog of meritocracy in Indian ~~bureaucracy~~.

Powers of UPSC (Art. 316)

- ① Conduct examinations for recruitment to Central Civil Services (Grade A and B), All India Services (IAS, IPS)
- ② Frame joint schemes of recruitment for two states on Governor's request, with prior President approval
- ③ Hold training for civil servants before joining, mid-career or

otherwise, as prescribed.

④ Advise government on appointment, promotion, suspension, removal etc. of civil servants.

However, Parliament can by law remove requirement of consultation for specific purposes.

Limitations on UPSC's powers

↳ can't advise on reservation matters or reserved post inclusion/exclusion

↳ only recruiting functions, not personnel matters like salary, term of service etc. [Handled by Ministry of Personnel and Training]

Impartiality of UPSC

Constitution ensures impartiality of UPSC through following provision:

① tenure of tenure: upto 6 yrs or 65 years, whichever is earlier.

- ② Salary of members and staff charged on Consolidation Fund of India, mus not votable.
- ③ Removal only as per Supreme Court inquiry by President. Grounds are misbehaviour, incapacity, holding over of post etc.
- ④ Appoints own staff and determine their conditions of service [Art 322].
- ⑤ No employment post- retirement under any government [Art. 319].

Thus, the constitution, by prescribing structure, functions, tenure, removal mechanism, ensures that UPSC can effectively fulfill its mandate without fear, favour or political ill will.

4(a) explain the scope of judicial review with reference to cases arising under Xth schedule of the Constitution - -

Schedule X of the Constitution deals with Anti-Defection provisions of the Constitution. It was added vide 52nd Constitutional Amendment Act 1985.

Rationale of Schedule X)

- to cleanse public life of bribery, ills of hoax trading etc
- maintain democratic responsibility of elected representatives to their constituencies
- uphold political party as a recognised institution

Provision of Schedule X)

- ① Prohibits giving up membership of the political party from which

one is elected

② speaker as the tribunal to decide
disqualification cases and disqualification
of defectors - is final.

③ limits membership of independent
candidates ~~of political party~~ - can't

join a political party.

④ ~~size of cabinet~~ to be limited to
No nominated member can join a
political party after 6 months of
getting elected.

Judicial review of Schedule X cases

① Speaker's discretion :

subject to judicial review on
grounds of malafide, irrelevant
considerations. [Like Thomas Kishore
Holln v/s Sachindhu].

② Timeline for decision on
disqualification petition :

Supreme Court can entertain petition to expedite the holding of parliamentary session for speaker's decision [Shivraj Singh Chauhan vs Speaker, MP Legislative Assembly].

In Nabam Rebia case, even held speaker to decide ordinarily as soon as possible within 3 months time, such cases of disqualification.

③ Interpretation of "voluntarily giving up membership"

Court has interpreted "giving up membership" to include "public criticism of political party, voting contrary to directions issued by Party whip". However, not all whips binding — Kihoto Kalloln held only such whips issued on

> Speaker

policy matter core of party's election campaigns, no confidence motion etc. are binding.

Thus, judicial review of schedule X has been a guide to development of ~~of~~ anti-defection law. from textual to purposive interpretation, judiciary has ensured inbuilt safeguards against speaker's arbitrary discretion.

De Facto

De Facto

4(b) Justice should not only be done but also manifestly and undoubtably seem to be done. comment.

Principles of natural justice ensure that "justice is not only done but also manifestly and undoubtably seem to be done." [R vs Sussex Justices, Lord Denning]

The content of the maxim

The maxim imports rule against bias into administrative decision-making.

① ~~one~~ who No one shall be a judge in his own cause [or nemo iudex in causa sua]

→ prevents conflict of interest eg in J Mohapatra vs State of Orissa, an author whose

was under consideration for inclusion in syllabus, was not allowed to sit in panel.

② Prevent conflict of interest if in G. Nageshwar Rao vs APSRTC the secretary who framed policy of nationalization was not allowed to decide challenge to its validity.

③ Curb departmental bias in the aforesaid case, (G. Nageshwar Rao II) when secretary was replaced by the Minister of Road Transport, held, no departmental bias as minister is head of the ministry.

Other approaches of ensuring justice seen to be done

① Audi Alteram Partem : includes right of fair hearing

right to notice, examine evidences etc.

Eg in Maneka Gandhi case, post-decisional hearing was mandated

⑥ Reasoned decision or written ~~dec~~ reasons for decision

In Alex Sult v/s Union of India, it was held to be the 3rd rule of natural justice. Reasons ensure transparency in decision making, enable judicial review and ~~hold~~ ensure application of mind.

Thus, principles of natural justice are a kind of higher law evolved under common law.

They work together to ensure administrative discretion does not run wild. Thus, when applied truly ensure justice not only done but seen to be done.

6

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4(c) Judicial activism has both positive and negative impact on the judiciary.

Judicial activism has its origin in US - implies Judiciary Taking proactive role in legislative decision making, issuing detailed guidelines etc.

Positive effect of judicial activism

① Progressive development of fundamental rights

↳ right to sexual orientation

(Nandji Singh Gaurhar case)

↳ right to privacy (K S Puttaswamy)

↳ right ^{against} adverse effects of climate change (Ranjit Singh vs Union of India (2023))

② Accessibility of Justice for poor :

evolved public interest litigation through judicial activism TSP Gupta v. Union of India (1983)

- ③ fill legislative vacuum of in Visaka v/s State of Rajasthan
 - ④ keep arbitrary government actions under check of in Adhaar case struck down some provisions; in Union of India v/s ADR (2023) struck down electoral bond scheme
- Negative impacts of Judicial Activism

As per professor Nani Palkhivala, judicial activism has following counter effects:

- ① promoting judicial adventurism of going against legislative provisions [Shilpa Shailish case under Hindu Marriage Act (2024)]
- ② erosion of legitimacy when executive does not respect judicial

guidelines of in Anoop Baranwal case

③ Promotes "Judges can do no wrong mindset"

Qx ✓

④ Violates separation of powers - can lead to even Parliament interfering in judicial decisions then.

⑤ Political protests and citizen education hindered - as look to judiciary ^{as} first recourse.

To ensure judicial activism held within proper bounds, Supreme Court in Supriyo v/s Union of India (2023), followed doctrine of judicial restraint i.e. refused to recognize right to marry unless the legislature amends the laws.

9½

Q(a) "Imposition of emergency in a state under Art 356 has always been a matter of controversy. In this backdrop, explain the consequences of proclamation emergency in a state."

Imposition of Emergency in a state (or popularly called President's Rule) is governed by Art 356 of the Constitution read with Article 365 and Art 355.

Grounds under Art. 356

Empowers President to declare

President's Rule in a state if:

↳ Governor reports or even otherwise

↳ & for that administration of state cannot be carried out in accordance with the Constitution.

Art. 355, on the other hand, entails that it shall be the duty of the Union government to ensure that the government of states carried in

accordance with the Constitution and may even issue directions to the state.

Art 355 entails if state government do not follow directions of the Union, it can be held that government cannot be carried out in accordance with the Constitution.

Controversy around Art 355

- ① Abuse of governor's discretion:
who reports to President without regard for actual situation on ground of in Uttarakhand (2016), in Maharashtra (2017), J&K (2019), several times governors led to dismissal of state governments.
- ② Decision based on political grounds
of Janata Dal dismissed Congress government in 9 states after coming to power in 1977.

- ③ Indefinite criteria for "constitutional breakdown leads to vague and myopic reasons for President's Rule."

Consequences of Proclamation of President's Rule

① Executive power: Centre takes over role of state executive and can issue any directions in this role

② Suspension / ~~dismissal~~ of State Legislative Assembly: S R Bommai /

Union of India (1993) held President should not dismiss unless approved by Parliament. Otherwise, Supreme Court can revive the Assembly.

③ President can authorize expenditure out of Consolidated Fund of State when legislature not in session

④ ~~For~~ Parliament acquires law-making powers - although such laws may be modified by the state

legislature when emergency lifted.

safeguards against misuse of Art 356

① Under the Constitution:

~~Every~~ to be approved by Parliament by special majority within 2 months

↳ every 6 months, such affirmation required, otherwise lapses

↳ max. 3 years duration; after 1 year, only on ECI stating election not possible

② by the Judiciary:

↳ Guidelines to prevent misuse:

Judicial review of President Rule
in S.R. Bommai v/s Union of India on
male fide, irrelevant considerations

↳ Rameshwar Prasad v/s Union of India - can't impose President rule for mere good governance

To set to rest controversy around Art 356,
Sarkaria Commission recommendation
of recording governor's report in proclamation,
first give a warning to state must be considered.

Indisputable

Pro / Non so far

11

(b) Distinction between quasi-judicial and administrative function is no longer the exclusive ~~domain~~ criteria for deciding whether or not rules of natural justice apply.

Initially examine.

Quasi-judicial decisions impose a higher standard where entire principles of natural justice ~~have~~ to be followed.

On the other hand, administrative decision making follows a relaxed criteria of principles of natural justice.

Application of principles of natural justice

① In quasi-judicial decisions, a body with entrappings of a court is the decision-making authority eg NCT, CAT.

As Supreme Court held in Central Inland Navigation Co. vs Brojo

Nath Ganguly, Judicial procedure replete with principles of natural justice (P^{NJ}) must be followed by quasi-judicial authorities.

② Administrative decision making:

Earlier, only an opportunity of hearing was to be provided—criteria of reasoned decision, right of submitting evidence were not held applicable to admin bodies.

However, trend has changed.

In A K Kraipak v Union of India

the Supreme Court held that if purpose of PNJ is to prevent miscarriage of justice, there is no reason why any distinction should be made between quasi-judicial and administrative decision making."

Further, in SBI vs Rajesh Agrawal (2023), the Supreme Court quashed RBI Master Directions which provided declaration of an account 'fraud' without notice to account holder.

Thus, the present judicial trend is to close the gap between quasi-judicial and administrative adjudication.

Minimum standards of fair hearing, rule against bias and reasoned decision (Dev Dutt vs Union of India) are now applicable to both → filter

Q

PO's

→

200) * Power of the Parliament to amend the constitution is wide, but not unlimited. Do you agree with this statement, discuss.

Amending power of the Parliament is derived out of Art 368. It empowers the Parliament to amend any part of the Constitution by special majority. However, if federal parts are to be amended, simple majority of state legislatures to ratify it is compulsory.

Power of Parliament to amend is wide

→ Constituent power : Art 368
by ^{25th} ~~42nd~~ Constitution Amendment Act
was amended to specify there shall be no limits on constituent power of Parliament

→ No explicit limitations in Art ~~368~~ 368 signifying the power is

plenary.

However, the power of amendment is now limited by philosophy of constitutionalism, called "Basic structure".

Ans Ans Com f.

Limitations imposed by basic structure doctrine

- ① Identity of Constitution cannot be changed [Kesavananda Bharati vs Union of India (1973)]
- ② Width Test and Rights Test used to test Constitution Amendment Acts [I.R. Coelho] - no part of constitution can be amended as to take away basic framework.
- ③ Evolutionary scope of basic structure of from initially, fundamental rights to now separation of powers (SCA R A v/s UoI)

free and fair elections (Indira Gandhi
✓/s Raj Waring), secularism (SR
Bommai case) have all extended
scope of basic structure thus
limiting Parliamentary constituent
power.

Thus, it can be agreed that
although the power of amendment
granted to Parliament is wide, it
is not without limitations.

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5(a) write critical note on "Modern
progressive approach of the principles of
natural justice."

Principles of natural justice have
evolved under common law to
curb arbitrary decisions by executive.

Today, from pragmatic approach,

Principles of Natural Justice ("PONS")
have acquired a pragmatic
meaning.

Trends in PONS

① Rule against Bias

- ↳ bias includes not just
personal bias [A K Kraipak v/s
Union of India] but also pecuniary
bias [J Mohapatra v/s State of
Odisha], subject matter bias etc
- ↳ Institutional bias i.e. one member

from same department whose decision is challenged does not violate the rule

② Audi Alterem Partem

↳ to guarantee fair hearing, not just representation but even cross-exam, access to enquiry report [E Bhaskaran case] is allowed

↳ to accommodate executive exigencies, post-decisional hearing considered adequate [Maneka Gandhi case]

➔ ③ Rule of reasoned decision - new addition to PONT basket to ensure a well-reasoned decision taken.

➔ These PONTs have come a long way from pre-modern to modern times. However, they must not be let to become an unwieldy horse. Judicial interpretation must carefully balance justice with administrative discretion.

5(b). "The Rule of Law" is based on the principle of legality and is opposed to encroachment of arbitrary powers. Discuss

AV Dicey in his "The Constitutional Theory" came up with Rule of Law as foundation of a robust democracy. The concept is antithesis of arbitrariness and strikes at illegal administrative decisions.

Rule of Law - Content

① Supremacy of Law:

- ↳ law must be the basis of every action [Ram Jawaya Kapoor case]
- ↳ admin action without statutory backing falls foul of rule of law [Nirek Narayan Sharma (2024)]

② Equality before law

- ↳ no person is above law - all

subject to same laws

→ Absence of Privilege of under Art. 146/8 of the Constitution

③ Predominance of legal spirit

→ rights of people must be upheld

→ ~~thus~~ thus, independent judiciary is of essence [~~and~~ SCARA v/soi (2015)]

Thus, rule of law permeates our constitution with constitutionalism. Its content has evolved with changing times and as Justice Krishna in ADM Jabalpur v/so Shrivastava

Shukla held 'Rule of Law permeates the entire fabric of our Constitution'

5(c) constituent power to frame the Constitution and the constituent power to amend the constitution have different connotation and scope. Explain.

~~constitute~~ Prof Carl Schmitt in his "Constitutional Theory" distinguishes between constituent power to frame the Constitution and constituent power to amend the Constitution.

Difference between the two,

① Constituent power to frame:

→ it belongs to the Constituent Assembly in India

↳ involves taking the most fundamental political decision regarding the polity of the country of federal or unitary; republican or monarchy etc.

② Constituent power to amend:

~~Article 368~~ → ✓
is derived out of ~~Art 368~~ of the Constitution (which was itself framed by Constituent Assembly)

→ currently exercisable by the Parliament which is the apex law making authority

Citi hbr

In Kesavananda Bharati v/s Union of India (1973), Supreme Court distinguished ordinary law making power from constituent power of Parliament. This constituent power to amend is limited by basic structure doctrine. While the Constituent power to frame the Constitution was unlimited

Then, constituent power to amend is limited and is derived out of constituent power to frame the Constitution.

5(d) Explain the phenomenon of
tribunalization of justice in India.

Tribunalization of justice refers to
judicial ~~functions~~ powers embued
with administrative institutions
called tribunals.

The trend of tribunalization
was legally recognised by 42nd
Constitution Amendment Act which
inserted Articles 323A and 323B
in the Constitution.

Development of tribunals in India

- ① Administrative tribunals for
service matters
of Administrative Tribunal Act 1965
- ② Quasi judicial tribunals created
for speedy justice, NCT, CAT etc

③ from finer to penalties : Eg
Tribunal Reforms Act 2021 and
Jan Vishwas Act 2023 has abolished
several fines and now penalties to
be imposed by bureaucrats called
"Adjudicating officers."

Evaluation of Tribunalization

Pros

- ↳ speedy justice
- ↳ technical expertise
in decision making
- ↳ not bound by
technicalities for
ex: CPC, BNSS etc

4/2

Cons

- ↳ fear of supersting
constitutional
courts eg. ~~Reg~~
Madras Bar
Association vs
Union of India
- ↳ political decision
making
- ↳ lack of independence

Thus tribunalization is a mixed bag
of fears and aspirations.

5(e) what are the main advantages and need of delegated legislation.

Delegated legislation refers to the administrative rule-making, now recognized as constitutional in India. [In re Delhi Laws Act, 1951]

Need of Delegated Legislation

- ① Meeting emergency situations —
to meet disasters under Epidemic Diseases Act
- ② Impose skeletal legislation with technicalities of RBI Act 1935 empowers RBI to make monetary provisions
- ③ Lack of legislature's foresight —
leaves discretion with delegate to modify statute of removal of

difficulties clause [recognized as valid by SC in Manu Bhandari v. Sethi University]

- ④ Decentralised decision making for local grievance redressal,

Challenges of Delegated Legislation

- ① Abdication of essential legislative functions by Legislature of Kerala Vth clause [struck down in Indira Singh v. State of Rajasthan]
- ② Ensuring Triple Chain of Accountability challenging [in NCT of Delhi v. Union of India]
- ③ Lack of publication - may lead to innocent violation

Thus to overcome these challenges, Committee of Subordinate Legislation prescribes mandatory laying before house, prior publication and consultation.