Total Time Alloted: 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.

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Subject: LAW OPTIONAL

Phone: 97841-40351

Criterion	Average	Good	Best
Presentation			
Content			
Structure			

Teacher's Remark

(Section -A)

Q.1(A). Tribunal cannot replace courts? Do you agree? On what grounds recent tribunal act was struck down by the supreme court of India? (10 Marks) [150 words]

In the aftermath of SP Sampath Kumar Judgment validating the Constitutional Amendment relating to Tribunals, there began an era of what was referred to as "tribunalisation of justice" in the country.

Good

Tribunals under the Constitution

Article 323(A) and (B) and them coupled with Administrative Tribunals Act, 1985 led to establishment of various tribunals bypassing or substituting the jurisdiction of High Courts and Supreme Court under Art 226, 227 and 32.

Tribunals as Substitutes to Courts: ? De facto or De Jure?

- Tribunals unlike courts are quasi-judicial bodies headed by public servants rather than judges.
- They are not obliged to follow the rules of evidence, procedure etc.
- The presiding officers may not be conversant/ aware about the legal jurisprudence.
- They are more concerned about policy implementation than defending people's rights.

Constitutional Validity of Tribunals Act

Initially the Supreme Court in Sampath Kumar case upheld the validity of the same citing an argument that although High Court's jurisdiction is taken away, but still there is forum under Art. 226 for the litigations to directly approach the Supreme Court.

However, subsequently the court revised its stance and overturned the above decision in the landmark judgment of L. Chandra Kumar wherein the Court struck down the Tribunals Act based on the following arguments:-

- Tribunals cannot be the real substitute of judicial authority.
- They do not have expertise in dealing with complex laws.
- Finally, Art. 226 and 227 constitute the Basic Structure of Indian Constitution and hence can't be abrogated.

Hence, the Tribunalisation of justice was curtailed by the Supreme Court and rightly so holding that tribunals could be a de facto substitute to judiciary but can never be a de jure substitute to it.

7

Q.1(B). Few constitutional democracies have had as rich and controversial an experience with the constitutional amendment power as India. Elaborate (10 Marks) [150 words]

A constitution is always attributed as a living document i.e. it should be able to adjust and modify according to the needs of time and circumstances. In accordance to the same, the constitution contains mechanisms for its amendment.

Amendment mechanism in different democracies

Some countries like USA, Australia have rigid amendment procedures and evidently they have bar remained unaltered to a great extent.

Whereas, in countries like India, Canada, UK, constitutions are flexible and hence contain elaborate procedures for their amendment.

Art. 368 : The rich but controversial Legacy

This article bestows upon the Parliament its constituent powers i.e. power to amend the constitution.

However, certain safeguards are also provided for in the same such as requirements of special majority, ratification by states etc.

Power to Amend : Whether Absolute ?

Initially, the Supreme Court in judgments like Shankari Prasad, Sajjan Singh case opined that there are no judicially manageable standards to test the constitutionality of amendments and it is the sole prerogative of the Parliament and the people.

However, the Golak Nath case took another major turn arguing that power under Art. 368 is mere procedure, actual power lies in the VIIth Schedule. However, Parliament overturned subsequent the above by way of amending the marginal heading of Art. 368.

Then in the most celebrated judgment of Kesavananda Bharati, the Supreme Court devised the Basic Structure Doctrine holding that there are certain features that can't be taken away via amendment.

This judgment opened the Pandora's box with respect to the amending power of Parliament and kept on adding to its rich legacy by subsequent constitutional amendments judgments various principles and hence often argued by many scholars that it saved the Indian democracy and constitutional fabric.

Q.1(C) Doctrine of separation of power is not adhered in the constitution with absolute rigidity. Do you agree? Comment. [10 marks, 150 words]

The Doctrine of Separation of Powers in its crudest form argued for a strict division of powers between the different forms of the government i.e. the legislature, executive and judiciary. Montesquieu

The USA Constitution is the best proponent of this doctrine as it gives legislative power to the Congress, executive to the President and judicial to the US Supreme Court by Articles 1, 2 and 3.

The Indian Model: Separation of Powers or Checks and Balances?

Dr. BR Ambedkar while justifying the inclusion of Art. 50 (separation between executive & judiciary) under ch. IV clarified that we don't follow strict separation of power because:-

(i) our executive is a part of the legislature; and

(ii) sometimes we will need the expertise of the executive in the law making process.

- Co-mingling of functions vis-a-vis Checks & Balances

Q.1(D). What are the power and function of Public Service commission. [10 marks] [150 words]

4. PRI institution in India needs to be more constitutionally strengthened to allow more effective functioning. What are those constitutional changes required? [10 marks, 150 words]

Q.2(A) The doctrine of excessive delegation in India, somewhere lies between US and UK approach.' Comment . **(20 Marks, 300 Words)**

With the advent of modern society, the functions of executive became more and more complex and accordingly to adjust with the same Parliament devised the tool of delegated legislation wherein the legislature would provide the structural skeleton of law while leaving it to the wisdom of executive to fill the details as per local requisements.

The Phenomenon of Excessive Delegation

However, in light of increasing delegation of powers, the judiciary had stepped in holding that delegation has to be within the four-corners of law and can't exceed the brief (legislative) both procedurally i.e. Procedural ultra vires and substantially i.e. Substantive ultra vires.

The approach in UK

In UK, the Parliament being the supreme body ('sovereign'), has complete authority

to delegate without any judicial scrutiny. However, they too broadly follow the idea of "delegatus potest non delegare" i.e. legislature can't further delegate its power to any other authority.

- The workable approach of USA

Although, USA also initially followed the "non-delegare" approach, however subsequently the US Judiciary adopted a practical approach by way of authorising the power of delegated legislation but subject to due process and legislative brief. Although, the final word always lies with the judiciary.

Doctsine of Excessive Delegation in India: The Middle Path

The Indian Judiciary has adopted a liberal approach in terms of assessing the validity of delegated legislation in the following ways:-

- the Constitutionality of the delegated legislation is presumed in the first instance. The burden lies on the challenging party to prove otherwise.

- if at all the delegation subscribes to the parliamentary and judicial control mechanisms like laying, consultation, etc. it is held valid. [State of Tamil Nadu v. Hind Stone]
- Instance of excessive delegation
- In the case of Hamdard Dawakhana, the power to add to the list of scheduled diseases to the executive was held to be invalid as it didn't lay down any policy or standard to be able to guide the executive.
- Similarly, besides the broad guidelines for the legislature / executive, there is also a need to conform to the requirements of reasonableness and non-arbitrariness vis-a-vis Article 14 of the Constitution as per the Supreme Court in multiple decisions like In re Delhi Laws Act case.

Hence, it is clear from the aforesaid instances that Indian doctrine of excessive delegation is a modified version of the extreme stances of UK and USA, wherein India taking the middle and the balanced path.

good content but structure lower than other

Q.2(B). Emergency provisions, in general, with a single stroke changes the character of Indian federation. Should they be abolished? Comment with your view. (15 Marks, 250 Words)

The Indian Constitution before its enactment saw a long and unstable struggle for independence wherein a lot of anarchy and chaos prevailed more often than not hence keeping the unity of the country vulnerable. In light of the same, the constitution framers provided for the provisions of emergency to keep the sovereignty, integrity and unity of the country intact.

Art. 352 and its alteration of Federal Principles

According to this provision, the President can declare an emergency on account of war, external aggression and/or armed rebellion.

In consequence to the same, the President and Parliament assumed all the powers of the States themselves hence emodifying the federal character of Indian Polity.

Arguments for Abolition of Emergency Provisions

- It usurped the autonomy of the states.
- People's rights and liberties are jeopardised.
- Scope for misuse as happened in 1975.

Arguments Against Abolition

- The unity and sovereignty of India is of paramount importance.
- ensured peace and stability reducing chances of anarchy during any such event.
- Moreover, rather than hampering with the federal structure, it actually strengthens the same in Indian context by keeping the thread of unity intact so that the federation in itself is not affected.

Finally, considering the safeguards provided in 44th Amendment Act and the Parliamentary scrutiny coupled with Judicial checks and strong public opinion, the chances of misuse of these powers is substantially controlled and hence it should continue its operation in view of broader social and political harmony and co-existence.

Q.2(C). Public interest Litigation has become the tool of judicial activism. Analyze the statement. **(15 Marks, 250 Words)**

The idea of 'Public Interest Litigation' or PIL has its roots in USA where in the 1960s the concept of due process led to development of PIL and class action suits for collective welfare of the downtrodden.

PIL in India

Justice PN Bhagwati devised this tool in India in SP Gupta case holding that for people who can't individually approach justice, someone in their behalf could file a representation in the court, creating an exception for the doctrine of locus standi so that justice is accessible to all the sections of society.

PIL as a tool for Judicial Activism

In the subsequent decades, PIL became a potent weapon for vindication of rights of poor with the Judiciary through its pronouncements further watered down the procedural requirements, some of these

instances are as follows :-

- In Khatri v. Bihar, the Supreme Court acted on a letter written by an undertrial, treating it as a writ petition and pronounced various safeguards for undertrials.
- In the Asian Games Village Case, the court acted upon a news report on the plight of bonded labourers and admitted it as a PIL.
- Similarly, the whole MC Mehta line of judgments created an entire jurisprudence on environmental rights in India as a result of a proactive judiciary.

Finally, although the highlighted picture of PIL jurisprudence presents a beautiful approach of judicial activism but it is pertinent to mention that in the name of judicial activism the court can't and must n't take the route of Judicial overreach which it did in the cases of firecrackers ban on a community etc. as it tends to disturb the harmonious functioning of the different organs of the government.

Q.3(A) Municipal governance plays a critical role in economic activity of urban area. Discuss is the constitutional mandate of urban governance in India. **(20 marks, 300 Words)**

Q.3(B). 'One need not cavil at the description of an amending power as sovereign power, for it is sovereign only within the scope of the power conferred by a particular constitution. Discuss in light of article 368 of the constitution. **(15 Marks, 250 Words)**

Q.3(C). What are the different ground of judicial review of administrative action? Is there any difference between administrative and quasi administrative action which may be subjected to judicial review? **(15 Marks, 250 Words)**

Q.4(A). What is the scope of the phrase: "reasonable opportunity of being heard in respect of those charges" in Article 311(2) of the constitution of India? Discuss with case law **(20 marks, 300 Words)**

Q.4(B) Separation of power leads to constitutional governance. Discuss. **(15 Marks, 250 Words)**

Q.4(C). Discuss the constitutional provision for protection of Scheduled cast and Scheduled tribe in India. **(15 Marks, 250 Words)**

Section – B

Q.5(A). What are the ground and effect of financial Emergency

1929

Article 360 of the Constitution Provides for Power of President to declare a financial emergency if the finance or credit of the nation is under threat.

Procedure:

Within two months of the proclamation of financial emergency, both houses of Parliament must approve the same by way of a simple majority.

Operation:

It remains in operation until it is revoked by the Parliament President.

Effects:

1. The Parliament can undertake any expenditure from the consolidated fund of the state.
2. States can't spend from consolidated fund without President's approval.
3. The Governor has to reserve all the money bills for the consideration of the President.
4. The President can reduce the salary of government officials, judges etc.

Luckily, Art. 360 so far has never been invoked in Indian constitutional history.

15

Q.5(B). Acquiring property, although a prerogative of state, must be guided by some principles and cannot be arbitrary. Discuss

Art. 300A states that "No person shall be deprived of his property except by way of a law." authority of

Although this right is a mere constitutional right post 44th Amend Act, 1978, but still as per the Supreme Court, the acquision by the state has to be via proper legislative mechanism which has to be fair and reasonable.

(→ Atma linga Reddy Dist. v. State of Andhra

Also, the Parliament has made the Right to Rehabilitation and Fair Compesation, Land Acquision Act 2013.

According to this law, proper process of compensation, rehabilitation, resettlement etc. have to be followed and the state's acquisition can't be on some flimsy grounds.

Hence, Public interest and element of reasonableness are still very much a part of the scheme of Acquisition of Property.

Q.5(C). Anti defection law for disqualification of the members of parliament is against democratic spirit of constitution. Evaluate.

The 52nd Amendment, 1985 added X^th schedule to the Constitution relating to provisions on Anti-Defection to curb the vice of defections in the political realm.

Broad outline of X^th Sch.

According to it, the particular legislator had to follow the party line / directions of the whip in terms of voting and speaking in the house.

In case he or she doesn't comply with the same, is liable for disqualification from the membership of the house.

Against democratic spirit

The legislators are representative

of the people and they are duty bound to act as per the wishes of the people. However their exercise of right of speech and vote is hampered by the Anti-defection law and hence violates the democratic spirit of the constitution.

Hence, as a result of the same we have seen that the Xth Sch. has broadly failed to curb the evil of defection along with unnecessary suppression of voices of the legislators.

Argue how it allows parties to manipulate voters representation

Q.5(D). What is the structure and function of recently introduced Commission of Backward classes in the constitution of India. In what respect they differ from other constitutional Body.

The National Commission of Backward Classes (NCBC) has been accorded with Constitutional status.

Structure of NCBC

→ 10 members

Solved Part

Q.5(E). Discuss power and function of Lokpal and its utility, given presence of other anti-corruption mechanism.

Lokpal has been appointed as a corruption watchdog in the country under the Lokpal Act, 2013.

Functions of Lokpal:

- to investigate complaint against ministers, legislators and civil servants.
- to make enquiry and try the aforesaid cases.
- to suggest/recommend action against the wrongdoers.

Utility of Lokpal in CVC CBI

- Besides Lokpal there are other institutions like CVC, CBI which deal with investigation related offences.

The lokpal has been given the

Supervisory role over these bodies with respect to investigation of cases received from the lokpal. However, the lokpal's role and utility could be enhanced if it is given proper powers (coercive) to try and punish the wrongdoers besides clearly defining their jurisdiction so as to effectively utilise the services of this important legislative function.

3

Q.6(A) If any state refuses to enforce law passed by parliament. What options Union have to command states obedience in the constitution? [250 words, 15 Marks]

Recently, the Indian Constitutional Structure faced a peculiar conundrum wherein a few states failed or rather refused to enforce laws passed by Parliament in their respective jurisdiction. So it becomes pertinent to examine whether the aforesaid action is legal in light of the constitutional provisions which are listed as follows:—

Executive Direction to state

As per Article 365 of the Constitution, the Central Government can give directions (can be coercive) to states to implement a particular law or policy.

Consequences of Non-implementation

The provision further provides that in case any state fails to implement any such directive of the Central

Government, then in that case the Governor can assume that there is a breakdown of constitutional machinery in that particular state.

In furtherance of the same, Art. 356 can be imposed in the particular state and the centre can assume the powers of state legislature and executive and accordingly go ahead with the implementation of the aforesaid law.

Hence, in view of the aforesaid provisions the state cannot have the option of refusing to implement any Parliamentary law as long as the said law is constitutionally sound.

Q 6(B) Power and function of election commission should be strengthened to deal with fair conduct of election. Do you agree? Support your argument [250 words, 15 Marks]

Election Commission of India is one of the most important body/office in the Indian Constitutional scheme as per Dr. Ambedkar.

Powers and Functions

Article 324 provides for an Election Commission and authorises it to supervise the elections of President, Vice President, Parliament and State legislature.

In furtherance to the same the Election Commission can frame rules, regulations etc. for elections, but they are subject to any law made by Parliament.

EC : A toothless tiger ?

The instances of EC acting as mere watchdog with no coercive powers to enforce Model Code of Conduct

Rules on Antecedents of candidates, election expenditure etc.

Need for empowerment of EC

For the smooth conduct of elections, the EC ought to have powers to enforce rules relating to the aforesaid issues because Parliament is not so willing to legislate upon the same. Hence, for ensuring free and fair elections which is also a part of the basic structure of Indian Constitution, the EC needs further strengthening as it is one of the very few public body which still commands people's faith and confidence.

→ Support Score measure

Q.6(C). Enumerate the protection available to civil servants under Art. 311 of the constitution. [250 words, 15 Marks]

Article 311 acts as an exception to the Doctsine of Pleasure under Art. 310 which says that the President or the Governor has the power to regulate, modify the terms and conditions of its employees.

Safeguards under Article 311

(i) Any employee of the Government can't be dismissed or removed by any authority lower than the one which made the appointment.

(ii) Similarly no person shall be removed before giving him a chance of fair hearing to present his case before the relevant authority.

The Supreme Court in Union of India v. Tulsiram Patel case held that

The right of hearing includes right to present evidences and right to cross-examine the witnesses.

The Supreme Court has further declared that in case of violation of the above safeguards, the employee has the right to get reinstated and even get the arrears of his remuneration.

Although these protections are not available to defence employees, employees of Parliament and Supreme court and also the contractual employees.

Q.7(A). Legislature holds the key to control delegated legislation not the Court. Comment in light of reference to case law. [300 words, 20 Marks]

The Delegated legislation in essence is the power granted by the legislature to the executive to fill in the broad skeletal law any rules or other directives as per local requirements. Hence, the Parliament remains the ultimate authority to check any excessive exercise of the delegated power by the executive.

Parliamentary Control of Delegated legislation

- Laying Requirements

The rules framed by the executive have to be laid before the houses of Parliament within a stipulated time period and can be enforced only after their approval.

- Scrutiny by Parliamentary Committees

- Consultation Publication

Proper publication by a fairly popular mode i.e. gazette, newspapers etc. is a mandatory requirement to people to comply with the same.

[↳ Harla v. State of Rajasthan]

- Consultation with the Public

As per the judgment in Tuljapur Corporation the Supreme Court held that consultation with the vested interests if prescribed by the law and even otherwise is an essential requirement.

Hence, it is evident that it is the Parliament which holds the key to control delegated legislation before the judiciary steps in.

even there judicial doctrines and Delegated legislations, it the legislature should ordinarily delegate its are better situated to control it

Q.7(B) Legislative immunity is not absolute, it is a creature of constitution and be limited by it. [250 words, 15 Marks]

Art. 105 and Art. 194 of the Constitution provides for immunity to legislators for anything said or vote given on the floor of the house. Furthermore, they have the freedom from arrest, jury service etc. from the precincts of the house.

Legislative Immunity: Whether Absolute?

Art. 105(3) provides that Parliament has to prescribe these privileges by way of a law and until it does so, the privileges would be those as existent on 26th Jan. 1950 i.e. those of British House of Commons.

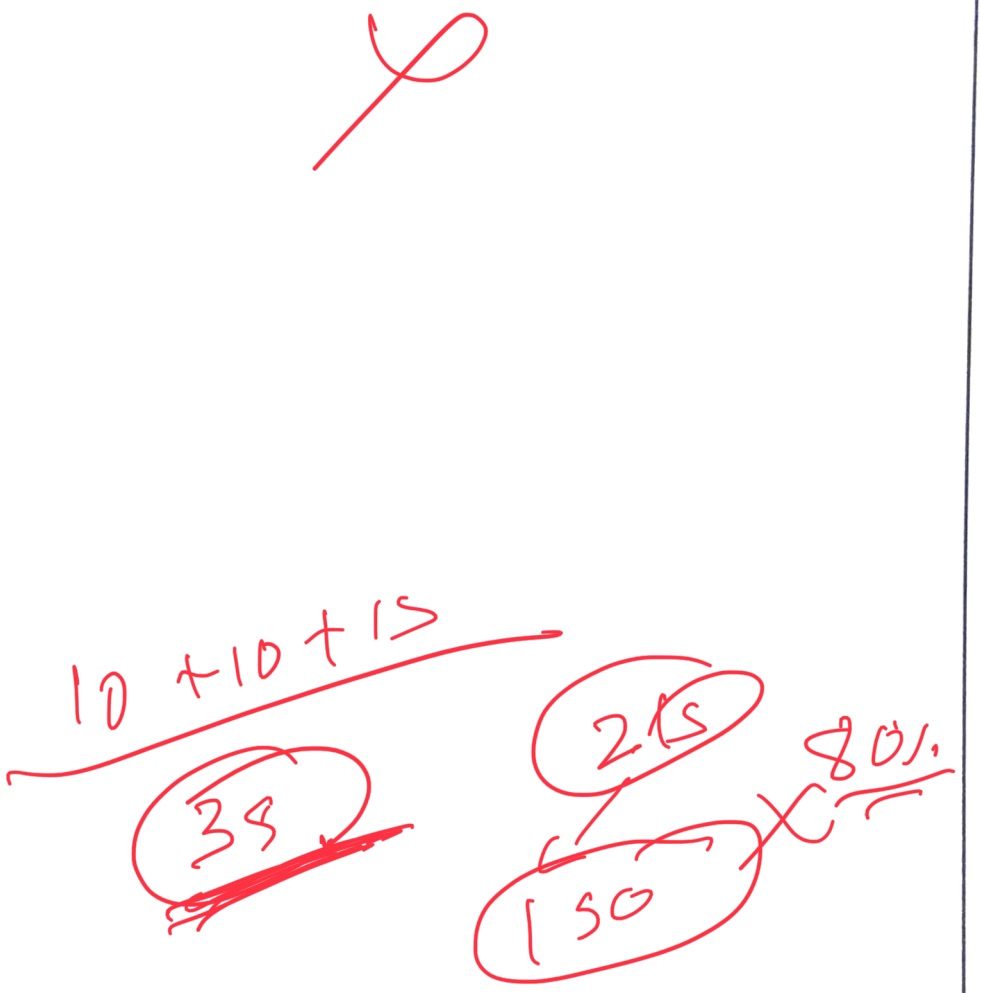
Restrictions on Legislative Immunity

- In view of the landmark judgments of Supreme Court in

Searchlight case, Keshav Singh's case, the legislature can't use its privileges to usurp the fundamental rights of ordinary people.

However, as long as the Parliament doesn't define these privileges, it remains strong to define or interpret various privileges without getting scrutinized from the judiciary.

Q.7(C). Constitution provides a protectory framework for Civil Servants, as an enabling there free and fair functioning. Do you agree? Explain using provision the constitution. [250 words, 15 Marks]



Q.8(A). Doctrine of ' Nemo judex in causa sua' (no one should be a judge in his own cause) is an effective rule of natural justice. How it differs from other rules of natural justice? [300 words, 20 Marks]

Q.8(B). Discuss the role of Finance Commission in determining scope of fiscal federalism in India. [250 words, 15 Marks]

Q.8(C). Discuss the challenges in the functioning the institution of Ombudsman in India. [250 words, 15 Marks]