

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.

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Teacher's Remark

Section - A

Q.1(a). Examine the doctrine of separation of powers Also mention the relevance of this doctrine in India (10 Marks, 150 words)

The Doctrine of Separation of Powers was propounded by Montesquie in his book Les spirit des lois, it refers to structural separation among all the three organs of state, mandating no overlap of functions as well as no encroachment.

Advantages of Separation of Powers

- (1) Effective and efficient functioning of organs in view of non-obstruction.
- (2) No conflict of Interest.
- (3) Ushers domain expertise and fixes responsibility and accountability.

Challenges of Separation of Powers

- (1) Siloed approach to governance.
- (2) Lack of trust and camaraderie in state organs
- (3) Difficulty in resource allocation due to issues of double commitment.

Relevance of Doctrine in India.

Doctrine of Separation of Powers operates in a modified form in India where there is functional overlap as against strict compartmentalisation. India follows a system of checks and balances and separation of power has been held to be part of Basic structure in Indira Gandhi v/s Raj Narain case.

- (1) In India, executive performs legislative and judicial functions too like delegated legislation, ordinance making power (A-123) and executive magistrates.
- (2) Legislature also performs judicial and executive functions like Speaker acting as Tribunal u/A-102 and framing of rules of conduct (A-118).
- (3) Judiciary also performs executive functions like having a registrar and framing rules like SC Rules.

Thus, separation of power doctrine is necessary to maintain efficient checks & balances to maintain efficiency in administration.

Q.1(b). Delegation of Legislative Powers has neither been permitted nor prohibited under the Indian Constitution. Discuss the constitutionality of delegated legislation with the help of decided cases (10 Marks, 150 words)

Delegation of legislative power refers to conferring authority to frame laws in executive through legislation in the expedient needs or otherwise.

Delegation neither permitted nor prohibited

The Indian constitution does not confer any specific instances where delegation is necessary. However such delegation is based on the provisions of the parent Act.

Further the legislation delegated shall be consistent with the provisions of the constitution and shall not be malafide, arbitrary or unreasonable exercise of powers impinging on principles of Natural Justice.

Constitutionality of Delegated Legislation

→ In Re Delhi Laws Act case it was held that delegated legislation should be governed by

two tests -

Abdication
of power
test.

Excessive
delegation
of power
test.

→ In Krishna Kumar Sharma case it was held that there should be a guiding policy or law for the delegated legislation and such power shall not be unfettered.

∴ Thus delegated legislation have been held to be constitutional subject to provisions of Part III and the tests propounded in the Judgement.

Q.1(c). 'Audi alteram partem', rule is a very flexible, malleable and adaptable concept of natural justice to adjust the need for speed and obligation to act fairly." Examine the statement with the help of decided case-law. (10 Marks, 150 words)

'Audi Alteram Partem' or Rule of fair hearing is one of the Principles of Natural Justice which ensure fair, reasonable and equitable application of law.

The principle can be traced from Art. 14, 21 and 22 where individuals are required to be given a fair hearing before condemnation.

Audi Alteram Partem as a concept of Natural Justice

(1) Includes right to receive notice as held in

Olga Tellis case

(2) Right to full disclosure of materials as per St. of Odisha v/s Dr. Bina Paride.

(3) Includes right to receive fair hearing to ensure substantive as well as procedural justice.

(4) Includes right to cross examination

(5) Includes right to legal representation [MH Hoskot v/s UOI]

Balance between fairness and speed of Justice Delivery

(1) Post decisional hearing - In the case of Maneka Gandhi it was held that where it was impracticable to hold pre decisional hearing, due to emergent circumstances there post decisional hearing can be given.

The above law was upheld in Swadeshi Cotton Mills in case of Nationalisation and HL Trehan v/s UOI.

(2) In case of BSEB v/s Subhas Chandra where mass copying was involved it was held that departure from audi alteram partem rule was permitted.

(3) In the case of Hira Nath Mishra it was held that right to cross examination would not be allowed where victim's dignity and security was jeopardised.
∴ Thus Audi Alteram partem rule though a central tenet of Natural Justice needs to be balanced in favour of societal and expedient interests.

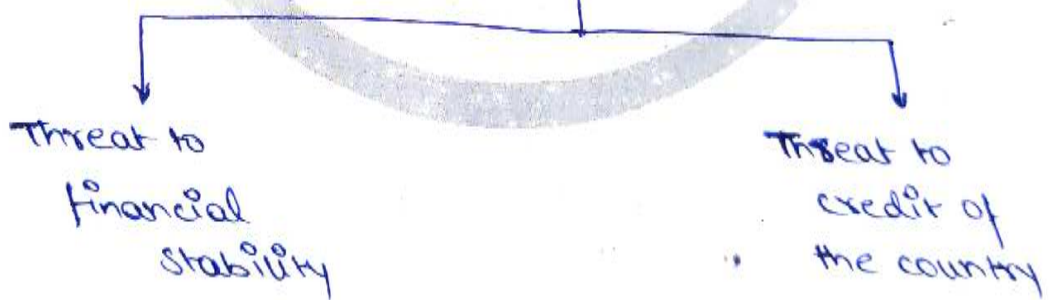
Q.1(d). Discuss the circumstances under which 'Financial Emergency' can be proclaimed by the President of India and effects thereof. (10 Marks, 150 words)

Art. 360 of the Indian constitution provides for proclamation of financial emergency when the financial stability or the credit of India are threatened.

However, there has been no proclamation of financial emergency till date in India despite Balance of Payment crisis and financial recession fears.

Circumstances under which financial emergency can be proclaimed

As per Art. 360 there are two circumstances



The power needs to be used sparingly owing to the large changes which can be brought about due to its

operation.

Effects of Financial Emergency

- (1) Centre can give directions to state governments to exercise fiscal prudence & canons of financial propriety.
- (2) Distribution of revenues to the states and other bodies may be altered. ()
- (3) President can ask state governments to reduce salaries of state govt. employees. ()
- (4) Reduction in salaries of civil servants, Judges of SC & HC.
- (5) Reserving money bills of state legislature for presidential consideration.

∴ Thus the effects of financial Emergency are far and wide and thus the power needs to be exercised with caution and reason and not in arbitrary manner. (S)

Q.1(e). "The amending power of Parliament should not be subjected to the vague and uncertain doctrine of basic structure". Comment. (10 Marks, 150 words)

Art. 368 of the constitution bestows amending power upon the parliament along with the procedure to amend the constitution.

The SC via Basic structure doctrine propounded in Keshavanand Bharati case (1973) has effected a check on the amending power of parliament where it cannot amend the basic features of the constitution.

Vague and uncertain doctrine of Basic Structure

- (1) The doctrine remains undefined and inexhaustive creating ambiguities on the powers of parliament.
- (2) Doctrine represents a violation of separation of power principle (Indira Gandhi v/s Raj Narain)
- (3) Represents Judicial over-reach and Judge made law violating decision of [Asif Hamid v/s St. of J&K].

However, the doctrine of Basic structure has

Served the ends of justice by preserving the basic philosophy and tenets of Indian democracy. → . . .

Significance of Basic Structure Doctrine

- ↳ Rule of law is basic structure (Keshavanand Bharat case)
- ↳ Federalism, Secularism are basic features (SR Bommai v/s UOI)
- ↳ Independence of Judiciary along with lower judiciary is basic structure (All India Judges Assn v/s UOI)
- ↳ Separation of power is basic structure (Indira Gandhi v/s Raj Narain)

Way forward

The Basic structure doctrine need to be harmonised with the principles of rule of law and separation of power to enable effective check and certainty in lawmaking in order to protect the fundamental right and prevent arbitrariness.

Q.2(a). "Imposition of Emergency in a State under Article 356 has always been a matter of controversy." In this backdrop, explain the consequences of proclamation of Emergency in a State. (20 marks)

Art. 356 of the Indian constitution enables the imposition of President's rule in a state, altering the federal character and bringing administration and legislature under union control.

Conditions necessary for imposition of Emergency (Art. 356).

As per Art. 355, the union govt. has the duty to protect state from external aggression. Thus there are two instances where emergency can be imposed -

Breakdown of constitutional machinery / failure to run govt. as per constitution
(Art. 356)

Non-observance of centre's directions
(Art. 365)

Art. 356 - Matter of controversy

↳ Imposed for more than 125 times since enactment of constitution.

↳ In SR Bommai v/s UOI it was held that Judicial review of conditions / relevancy of material relied on for declaring emergency can be checked however adequacy cannot be

↳ In St. of Rajasthan v/s UOI it was held that arbitrary & malafide ^aimposition of emergency shall be judicially reviewable.

Consequences of Proclamation

- (1) President shall dismiss Council of Ministers and shall exercise administrative powers through Governor or any other person appointed by him.
- (2) President can ask parliament to make laws on state subjects which shall have the same force as passed by state legislature.
- (3) Parliament can transfer law making powers to President or any other person appointed by him in this behalf.
- (4) President shall exercise Ordinance making power for the state legislature.

(5) There shall be no effect on the operation of fundamental rights and their protection thereof within the state.

(6) President can suspend or dissolve the state legislature.

(7) No effect on State HC and its operations.

Suggestions for resolving controversy

→ Punchhi Commission

↳ State Emergency should be used as a last resort and after all possible resolutions methods have been exhausted.

De Facto IAS

→ Sarkaria Commission

↳ State emergency should be imposed after warning the state executive of the non-fulfilment of directions and used sparingly as it undermines federalism.

→ In SR Bommai v/s UOI it was held that there are certain fit and unfit cases for imposition of

→ State emergency. The fit cases include hung assembly,
violation of secular principles, large scale violence &
breakdown of constitutional principles.

Unfit cases include allegations of bribery, corruption,
delay in observing directions etc.

→ The NCRWC and Venkatchiah commission suggested
that approval time by parliament should be reduced
to 1 month from current 2 months.

It also recommended that resolution approving
shall be passed by special majority as opposed to
simple majority acting as a check against misuse and
arbitrary imposition of emergency.

Thus, State Emergency or President's rule u/A.
356 remains a controversial provision which needs
to be used sparingly as envisaged by Dr. Ambedkar
where he hoped that it would remain a "dead letter".

Q.2(b). "Distinction between quasi-judicial and administrative functions is no longer the exclusive criteria for deciding whether or not the rule of Natural Justice apply." Critically examine this statement. (15 marks)

Principles of Natural Justice are seen to be principles of fairness, equity and equality ensuring Justice completely. These include Right against bias (Nemo Jux in sua causa), Right to fair hearing (Audi Alteram Partem) and Reasoned or speaking order.

Difference between Quasi-judicial and Administrative function no longer exclusive criteria.

It was long understood that Principles of Natural Justice applies only to Quasi-judicial and Quasi-legislative or legislative bodies however as held in AK Kripak V/s UOI, the rules of Natural Justice shall apply to authorities excluding dealing with administrative decisions and actions.

- (2) In the case of Maneka Gandhi, it was held that Principles of Natural Justice shall also apply to decisions impinging on constitutional freedoms that is Art. 14 & 19 under Part III. Such decision shall be just and fair ensuring due process of law as opposed to Procedure established by law.
- (3) In Mohinder Singh Gill v/s CEC it was held that wherever there are civil consequences, the principles of Natural Justice shall apply.
- (4) In SN Mukherjee v/s UOI it was held that principles of Natural Justice provides appellate grounds and minimises arbitrariness and thus need to be applied.
- (5) The evolving nature of Doctrine of legitimate expectation also enable application of Principle of Natural Justice.

However the application of Natural Justice are barred by certain exceptions like -

(1) Post decisional Hearing (Maneka Gandhi v/s UOI)

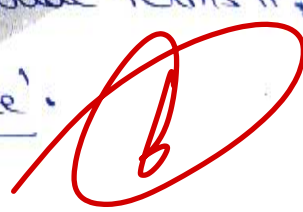
(2) Doctrine of Absolute Necessity

(3) Impracticability (Hira Nath Mishra)

(4) Emergency

(5) Unreasonable (BSEB v/s Subhash Chandra) etc.

Thus the Principles of Natural Justice have a much wider application due to Judicial Interpretations →

and aim to achieve a Just and fair, legal and adjudication system. As professor Wade terms it, 'fairness in action and procedure'. 

Q.2(c). "Power of the Parliament to amend the Constitution is wide, but not unlimited." Do you agree with this statement? Discuss (15 marks)

Art. 368 of the constitution provides power and procedure to the Parliament to amend the constitution. This power is given to render the constitution a living and constantly evolving document realising the rights and aspirations of Indians.

Power of Parliament is wide but not unlimited PKR

In the case of Shankari Prasad it was first held that Parliament's power is wide and it can amend any part of the constitution. However, the decision was overturned in Golak Nath case where the SC held that the parliament does not have the power to amend rather only procedure is prescribed within A. 368.

SC in the landmark case of Keshavanand Bharti sought to address the anomaly and balanced the Power of Parliament to

amend the constitution with the rights of citizens by evolving a time tested doctrine known as 'Basic structure Doctrine'.

The Basic Structure Doctrine

The doctrine propounds that Parliament has the power to amend any part of the constitution including the Part III and Preamble however the power cannot amend 'Basic structure of the constitution'.

The basic structure remains undefined, inexhaustive and contains various tenets such as -

- ↳ Separation of Power [Indira Gandhi v/s Raj Narain]
- ↳ Rule of law [Keshavanand Bharti case]
- ↳ Independence of Judiciary [All India Judges association case]
- ↳ Federalism and secularism [SR Bommai v/s UOI]
- ↳ Substantive equality and not just procedural

equality (Davinder Singh v/s St. of Punjab)

However, there are certain challenges of Basic structure doctrine which are as follows -

- (1) Judge made law eroding concept of separation of power.
- (2) Judicial over-reach.
- (3) Remains ambiguous and undefined posing legislative challenges.

Thus, it is true that Parliament's power under Art 368 of the constitution is wide but not unlimited as seen by the evolution of Basic structure doctrine keeping an effective check against arbitrary executive and legislative powers.

7½

Q.5(a). Write critical notes on "Modern progressive approach of the principles of natural justice". (10 Marks, 150 words)

Principles of Natural Justice in words of Lord Hewart in R v/s Sussex bring rationality in action and fairness and legality in approach.

Modern progressive approach

↳ Initially Principles of Natural Justice only included 'Rule against Bias' and Rule of fair hearing however, (Nemo iudex in sua causa) (Audi Alteram partem)

in AK Kripak v/s UOI it was understood that Reasoned decision / speaking order is an important part of Natural Justice. C 1

↳ In Siemens engineering v/s UOI, reasoned decisions was first recognised as a third limb of Principles of Natural Justice.

↳ In SN Mukherjee v/s UOI reasoned decision was

understood to have helped bring objectivity against arbitrariness and provides grounds for appeal.

→ In Maneka Gandhi v. Union of India, the concept of Post decisional hearing was applied to further expand the scope of Audi alteram Partem.

→ In case of Olga Tellis, State of Odisha v. Mina Puri De and Hiranath Mishra the scope was further expanded to include right of hearing, right to full disclosure and right to cross examine including legal representation.

However, further expansion through judicial decisions has rendered allegation of Judicial law making and violation of separation of power thus calling for a requisite but balanced approach by Judiciary.

S 2

Q.5(b). "The 'Rule of Law' is based on the principle of legality and is opposed to exercise of arbitrary powers." Discuss. (10 Marks, 150 words)

Rule of law as propounded by AV Dicey includes equality before law, supremacy of law and prevalence of legal spirit. It serves to ensure fairness, reasonableness and legality in decision making.

Based on Principle of legality

In the case of ADM Jabalpur v/s Shivkant Shukla, J. Khanna in his dissenting opinion held that Rule of law shall prevail even during imposition of emergency, as it flows from A-21 & A-14 of the constitution.

Similarly in the case of Indira Gandhi v/s Raj Narain and SR Bommai rule of law was held to be basic feature of the constitution.

In the case of Keshavananda Bharati

Rule of law was held to be the central tenet of Part III which enables the functions of other FRs.

Opposed to exercise of Arbitrary Powers

→ In the case of EP Royappa it was held by the SC that Rule of law is antithetical to arbitrariness.

→ Rule of law also ensures reasoned decision and speaking order which is a part of principle of Natural Justice (AK Kripak v/s VOI) which strikes at the root of arbitrariness.

∴ Rule of law is an important tenet to maintain lawful and peaceful society based on reason rather than a rule of whims & caprices.

Q.5(c) Constituent power to frame the constitution and the constituent power to amend the constitution have different connotation and scope. Explain. (10 Marks, 150 words)

Constituent Assembly of India framed the constitution and enacted it on 26th Nov. 1949 and it came into effect on 26th Jan 1950. With the coming into effect the constituent assembly was dissolved and so was the power to frame.

However under A-368 of the constitution, Parliament reserves the right to amend the constitution giving effect to the vision of constitution being a living document which is constantly evolving as per needs of society.

Difference between power to frame and power to Amend

In Shankari Prasad v/s UOI, the SC held that parliament

had both the power and authority to amend the constitution. It could virtually reframe the constitution.

However in IC Golaknath v/s St. of Punjab (1967) the SC overruled its decision in Shankari Prasad and held that the Parliament neither had the power nor the authority rather what Art. 368 supplies, is the procedure to amend the Constitution. Thus it cannot amend any part of the constitution.

In the landmark case of Keshavanand Bharti case, SC sought to balance and overruled its 1967 Judgement and made a distinction between the power to amend and frame. It evolved Basic structure doctrine which held that parliament can amend any part except the basic features. Thus by SC's various decisions there now exists a difference between power to amend & frame the Constitution.

A. 226

Q.5(d). Explain the phenomenon of tribunalisation of justice in India. (10 Marks, 150 words)

The phenomenon of tribunalisation of justice refers to increasing no. of tribunals formed to dispense justice within the country.

Art 323A and A-323B gives union and state govt the power to form tribunals to adjudicate disputes.

A-323A → Tribunals formed by union govt. for adjudicating public service disputes. (Eg. CAT, SAT)

A-323B → Gives power to both union and state govt. to form tribunals for other subjects like DRT etc.

In the case of Sampath Kumar it was held that tribunals should be given equal respect and the chairman should be an HC judge.

Significance of Tribunals

- Faster adjudication of disputes leads to reduction in pendency and case burden.
- Involves domain expertise thus proper adjudication of disputes
- Does not require to follow procedural laws, like evidence etc. leading to innovative and complete Justice opportunities.

Challenges with Tribunalisation

- Funding and Infrastructure constraints
- Leads to violation of procedural equality.
- As held in L Chandra Kumar case Tribunals cannot oust the Jurisdiction of the HC.
- Most matters are ultimately appealed compromising with finality of Judgement.

Thus Tribunals are alternative courts however

Strengthening their functioning shall promote Justice delivery

Q.5(e). What are the main advantages and need of delegated legislation?(10 Marks, 150 words)

Delegated legislation refers to laws made outside the legislature and mostly by executive authorities on whom the legislatures and legislation confer the authority.

Main Advantages

- Helps to evolve law with the changing needs of the society.
- Better implementation and applicability of laws ✓
- Efficient feedback and according due change ✓
- Localised and regional needs taken care of ✓
- Legal infirmities in the parent legislation removed. ✓

Thus delegated legislation offers significant advantages and the need for the same evolved due to

Need of delegated legislation

↳ To supply details to the parent legislation like
Date of enactment

↳ To modify or ^{amend} ~~repeat~~ the parent legislation

↳ To provide ancillary or connected powers and duties of the authorities. ✓

However there exist certain challenges with respect to Delegated legislations these include -

(a) Excessive delegation of powers.

(b) Delegation of essential legislative functions

(c) Sub delegation of powers.

SP
S I

Thus delegated legislations propound/mandate
a balance between the need & challenges and
shall be used in a fair, and reasonable
manner.

Q.7(a). Explain the doctrine of pleasure incorporated into the Indian constitution in respect of Civil servants. Highlight the safeguards for the protection of civil servants.
(20 marks)

A-310 of the Indian constitution propounds the Doctrine of Pleasure in the Indian constitution. It mandates that Civil servants serving under the Union govt shall serve at the pleasure of President while those serving under the state shall serve at the pleasure of Governor of state.

Common

Doctrine of Pleasure: A wide concept

It includes -

- ↳ Determination of tenure
- ↳ Service conditions
- ↳ Rules of compulsory retirement
- ↳ Any provision incidental to service.

The doctrine of pleasure needs to be exercised in aid and consultation of Council of ministers as held in [Sambhar Singh v/s St. of Punjab]

Need for Doctrine of Pleasure

- (1) To effect public policy and carry out operations in sync with it.
- (2) To dismiss erring officials and restore efficiency in administration.
- (3) To take action against maladministration and promote good governance.

Safeguards for Protection of civil servants.

- (1) As held in PL Dhingra v/s VOI, Civil servants are not at the mercy of President or governor and need to be compensated if dismissed unfairly or unreasonably.
- (2) Part III [fundamental rights] as a check on Doctrine of Pleasure - In the case of Kameshwar Prasad v/s St. of Bihar, it was held that dismissal was against Right to livelihood and Art. 19(1)(g) of the

Constitution.

(B) Article 311 as a check against Art-310. -

Art-311 (1) mandates that a civil servant cannot be dismissed by an authority subordinate to the appointing authority, thus only authority above or of same rank can dismiss.

Art-311 (2) mandates that a fair, reasonable hearing should be provided before dismissal.

In case of Tulsi Ram Patel v/s UOI and Ak Kaul v/s UOI, the scope of 'reasonable opportunity' of hearing was deliberated. It was held to include -

- ↳ Right to receive notice
- ↳ Right to know charges
- ↳ Right to know material evidences
- ↳ Right to cross examination etc.

However in certain situations like criminal convictions, emergency situations, impracticability, security of the state, conditions under Art-31(2) can be dispensed with.

(4) Non-arbitrariness, malafide dismissal is subject to Judicial review.

(5) Election commissioners, Attorney General and CAG are not covered under Doctrine of Pleasure.

Thus the Doctrine of Pleasure carries a wide amplitude of powers however unguided and unfettered powers used in a whimsical and malafide manner needs to be Judicially reviewed, as seen in recent Jammu & Kashmir Lt-gov. using powers under A-310 & A-311 to secure national interest.

13

Q.7(b). "Powers of Election Commission are not sufficient." Comment. (15 marks)

Art. 324 - 329 deal with Elections in India. Art. 324 establishes an Election Commission to conduct free and fair elections. The ECI has the powers to direct, control and superintend the entire election process in India.

Powers of Election Commission of India

Administrative Powers

- ↳ To prepare one general roll for the election in India (Art. 325)
- ↳ To enable all citizens above 18 years of age without any discrimination to vote (Art. 326)
- ↳ To appoint election machinery within a state, including Booth officers, Returning officers, Regional officers etc. (RPA, 1950)

- ↳ To announce the schedule of the elections (RPA Act)
- ↳ To invite and scrutinize nomination papers filed by the candidates (RPA Act)
- ↳ To co-ordinate with security agencies to prevent electoral malpractices.
- ↳ To transfer officers within and outside a state while model code of conduct is in operation.

Legislative Powers

- ↳ To frame Model code of conduct
- ↳ To set criteria for recognising and registering political parties in accordance with RPA.
- ↳ To frame rules like symbols order for allotment of symbols to political parties.

Quasi-Judicial Powers

- ↳ To adjudicate symbol disputes between political parties
- ↳ To advise president on disqualification matters.

Power Not sufficient

- (1) Power to deregister parties is still elusive in case of violation of electoral principles.
- (2) No legal backing to Model code of conduct makes its enforcement by ECI weak (ADR v/s UOI case).
- (3) No power of prosecution by ECI renders it dependent on central agencies like CBI.
- (4) High executive interference as seen by CEC Act, 2023 which is in violation of SC's Anoop Baranwal Judgement.
- (5) ECI's funding is constrained due to non-charged expenditure on CFI thus no power to appoint cadre officers.

Suggestions

- ↳ Power to deregister parties and prosecution for violation of model code of conduct (Law Commission of India).
 - ↳ Increasing independence of ECI by equating removal procedure of CEC & EC and making expenditure charged.
- Thus, ECI plays a sentinel role in ensuring a robust and well functioning democracy and needs to be strengthened further.

Q.7(c). Discuss the powers and functions of the Union Public Service Commission.
Also explain how it has maintained its impartiality. (15 marks)

Art. 315 - 323 deals with procedure of examination and recruitment under the Indian constitution. [Art. 315]
provides for UPSC with a chairman and such other members as President deems fit.

The members shall have a tenure of 6 years or till they turn 65 years. Moreover the half of the members shall have 10 years working experience with the union or the state government.

Powers and Functions of UPSC

Administrative Powers

(1) Power to organise and conduct examination to various posts within the central govt. including the All India Services (Art. 312)

(2) President is required to consult UPSC for framing rules regarding recruitment, dismissal and retirement of civil servants (Art. 320)

- (3) Power to provide for funds to civil servants to depend themselves from consolidated fund (A-320)
- (4) Power to, award damages for injuries caused due to service obligations (Art-320)

Legislative Powers

- ↳ Power to frame rules for examination and code of conduct to be observed.
- ↳ Power to frame rules for internal functioning of the organisation.

Quasi-Judicial Powers

- ↳ Power to institute inquiries against delinquent service officers.
- ↳ Advisory powers towards president.

Maintenance of Impartiality

- ↳ Security of Tenure - [A-315] provides for 6 years tenure or 65 years of age. Removal shall be

based upon grounds of Occupation of paid employment,
infirmity of body or mind, misbehaviour and only
after enquiry by SC.

↳ Expenditure is charged on the Consolidated fund
of India rendering chances of executive interference
minimal.

↳ Observing high standards of ethical conduct and
transparency in recruitment procedures.

↳ Observance of Principals of Natural justice like
Rule Against Bias and Audi Alteram Partem in
Operations.

However to further strengthen impartiality of UPSC
there needs to be greater autonomy in appointment
procedure needing minimal executive interference.
because UPSC and its functions are cornerstone of
ensuring good governance within the country.

Q.8(a). What Constitutional safeguards are available to civil servants under the Constitution of India? Explain the circumstances under which a civil servant can be dismissed from service without holding a regular inquiry against him. (20 marks)

Art. 308-323 under the Indian constitution deals with recruitment, appointment and dismissal of civil servants in India. Art. 310 mandates that civil servants under the union govt serve at the pleasure of President while those under state serve under the pleasure of Governor and therefore propounds the Doctrine of Pleasure.

However Art. 311 provides for safeguards to civil servants. Additionally Part III (fundamental rights) and principles of natural justice also serve as safeguards.

Constitutional safeguards

(1) Art. 311 provides for two safeguards to civil servants -

Safeguards for civil servants.

Ast. 311 (1)
[Authority of
dismissal]

Ast. 311 (2)
[Reasonable
opportunity
before dismissal]

As per Ast. 311 (1), no civil servant can be dismissed by an authority lower than the authority which appointed her to service.

While Ast. 311 (2) mandates that a reasonable opportunity should be given to the civil servant before her dismissal.

In case of Tulsiram Patel and later upheld in Ak Kaul,

it was noted that reasonable opportunity includes -

- Right to receive notice
- Right to be informed of charges
- Right to defend & legal representation
- Right to cross examination and fair hearing

(2) As held in Kameshwar Prasad v/s St. of Bihar,

fundamental rights shall act as a check against

Doctrine of Pleasure.

(3) As held in [A. D. Dhingra v/s UOI], principles of Natural Justice, including Nemo Jurex in sua causa and Audi Alteram Partem and Reasoned Order shall guard civil servants.

(4) Further as held in [Satyavir v/s UOI], doctrine of pleasure cannot work on the whims and caprices rather its application should be legitimate, fair and reasonable.

Dismissal without holding regular Enquiry

The exception to Art. 311(2) gives instances where civil servants can be dismissed without any reasonable opportunity or regular enquiry, these include -

(a) Conviction for a criminal case - If a civil servant is convicted for a criminal offence and subjected to a punishment, the requirement for holding

regular enquiry could be dispensed with.

(b) Impracticability - If a civil servant is not approachable or it so happens that it is impracticable to hold an enquiry

For eg. A teacher applied for leave to visit abroad, leave was denied, teacher still left thus in this case dismissal will be valid.

(c) In the interest of National security - As recently

seen certain govt. officials were dismissed due to alleged link with terror outfits in Jammu & Kashmir

→ terror

∴ Thus constitution provides adequate safeguards to enable civil servants to uphold the mandate of civil services and work without any interference or interruption.

12

Q.8(b). How does parliamentary control over delegated legislation work? Discuss the different methods of parliamentary control over such legislations. (15 marks)

Delegated legislations are referred to as laws framed outside the legislature through an authority bestowed by the legislature or the legislature.

There are ~~three~~ methods of control over delegated legislation -



These control mechanisms ensure non excessive delegation of power, effective utilisation of discretion and to check against failure to utilise discretion.

Working of Parliamentary control

Parliamentary control ensures delegated legislation is consistent with parent Act and does not give excessive delegation of power to

authority in violation of Doctrine of essential legislative functions.

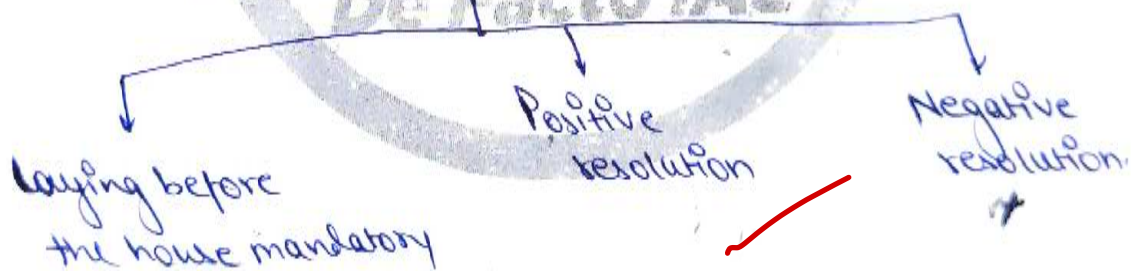
Parliamentary control works over delegated legislation in following ways -

Different methods of Parliamentary control

Direct control

(1) Through debate, deliberation, replies within the house and on the floor of the house.

(2) Through procedure of laying before the house.



- Depending on the legislation, laying delegated legislation on the floor of the house may be mandatory.
- In case of positive resolution, a delegated legislation

requires positive resolution for coming into effect.

- For Negative resolution a legislation ~~only~~ shall be operational until a negative resolution is passed to that effect.

Indirect Control

(1) Through Committees of parliament like committee on subordinate & Delegated legislation which scrutinises legislations.

(2) Through public opinion and feedback mechanism.

∴ Thus Parliamentary control plays an essential check on the powers of delegated legislation and the authority implementing the doctrine of check & Balances in letter & spirit.

B2

Q.8(c). What is an Ombudsman, and what is its primary purpose? How effective are Ombudsman institutions in addressing grievances and ensuring administrative accountability? (15 marks)

Ombudsman refers to a neutral arbiter dealing with grievance redressal activities in an organisation or independently. (Eg) RBI Ombudsman, Lokpal & Lokayukta.

In India the institution of Ombudsman has been borrowed from Sweden and made to fit the peculiar Indian regulatory landscape.

Primary purpose of Ombudsman

(1) To invite grievances and complaints from customers using services/goods.

(Eg) Lokpal invites applications/complaints from citizens against govt. functionaries.

(2) To adjudicate the dispute in a speedy manner leading to efficient adjudication.

- (3) To disseminate information and awareness about quality of service delivery amongst citizens.
- (4) To carry out regular checks and audits in order to flag deficiencies and recommend changes in policies. ensuring administrative accountability.
- (5) To participate in policy making and instill trust in customers.
- (6) To provide companies or govt. functionaries an effective way to deal with disputes.

Effectiveness of Ombudsman Institutions

- (1) Faster disputes resolved through RBI Ombudsman scheme.
- (2) Lokpal and Lokayukta provided efficient resolution to long pending disputes.

Challenges that remain

- 1) Lokpal and lokayukta's across states remain severely underfunded affecting precision and efficiency
- 2) Several states have not adopted Lokayukta institution yet leaving a vacuum in grievance redressal
- 3) High executive influence in appointments vitiating the proceedings.
- 4) Avenue for retired judges leading to inefficiency
- 5) Long pending delays affecting the concept of 'Justice delayed is Justice denied'
- 6) Infrastructural and regulatory bottlenecks.

Thus there is a need to ensure greater independence strengthen funding and infrastructure to realise the true aim of Ombudsman i.e. Good & efficient Governance.