

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: Aditya Mahar

Subject: Test 2 Constitution and Admin

Phone: [REDACTED]

Teacher's Remark



Date:

Topic

Question No.

UPSC

Remarks

Q1(a)

The doctrine of separation of powers was given by Montesquieu for governance efficiency.

Doctrine provides for -

1. Strict separation between legislature, judiciary, executive.
2. Non overlapping work
3. Functional expertise
4. Checking dictatorship by de-centralising power.
5. Independence in own spheres.

▶ Eg CrP, 1973 provided separate executive and judiciary (Article 50)

▶ Separation of power is basic structure of constitution (Ram Jawaya vs State)

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	<u>But</u> strict separation leads to inefficiency as work of organs <u>often overlap</u>. <u>Relevance in India</u> 1. India follows <u>weak separation</u>. ↳ Mixed form of governance ↳ Functional overlaps. 2. <u>Checks and balances</u> ↳ Executive accountable to legislature (<u>Article 75 - Shamsher Singh vs State</u>) ↳ President appoints HC, SC judges ↳ Legislature impeaches President, judges (<u>Article 61</u>) 3. Limit administrative <u>discretion</u> ↳ <u>AK Kraipak case</u> (non-bias) 4. Nudge state action towards <u>constitutional values</u>. ↳ <u>Unnikrishnan case</u> led to Article 21-A. Thus, mixed separation enables constitutionalism.	

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Q1.(b)	Delegated legislation refers to the lawmaking <u>outside the legislature</u> expressed as <u>rules, orders, by-laws</u>. <u>Delegation not permitted nor Prohibited</u> 1. Constitution does not prohibit 2. No statute prohibits (only limits) 3. <u>Article 13</u> provides for rules, customs, etc i.e. <u>implied</u> 4. <u>Weak separation of powers</u> (executive can legislate) 5. <u>Legislative powers</u> <u>UPA 245, 246</u> are <u>plenary</u> i.e. <u>delegation implied</u>. 6. Need specified in <u>AK Roy vs State</u> ↳ Complexity ↳ Emergency laws ↳ Experimentation.	311

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	<u>Constitutionality</u> Delegation is allowed with limits. 1. <u>In re Delhi Laws</u> ↳ No excessive delegation ↳ No policy delegation ↳ Provide guidelines and limits 2. <u>State vs Amis Chand</u> ↳ No sub delegation unless explicitly allowed 3. Cannot violate <u>parent act or constitution</u> (<u>Gwalior Rayon case</u>) 4. Be reasonable and practical ↳ <u>Laxmi Narain vs State</u>: cannot modify entirely 5. Continuous <u>control of Parliament</u> ↳ Nexus (law and object) test ↳ Follow laying (<u>Atlas Cycles case</u>) ↳ Committee on subordinate legislation. With welfare state and complexity of government, delegated legislation will only increase.	

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Q 1.(c)

Principle of natural justice are the fundamental rules against judicial, quasi-judicial and administrative authorities for ensuring fairness and reasonableness.

Audi Alteram Partem

1. Means hear the other side
2. TR Verma vs State held that reasonable opportunity to both parties needed.
3. Decide only after hearing.

Rule is flexible and adaptable

New rules within the nation have developed overtime.

1. Post-decisional hearing
↳ Devised in Maneka Gandhi vs UOI

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↳ If no pre-decision hearing, give post decisional immediately

↳ Balance individual and public rights. Allowed only when impractical, emergency and hearing not possible ✓

2. Provide notice to parties. ex

3. Provide evidence :

4. Enable cross-examination

5. ECIL vs B. Kamunakar : providing enquiry report is reasonable act ✓

6. Exceptions

↳ Waiver

↳ Emergency ; impossibility

↳ No legal representation

↳ Not apply to legislative policies

↳ Rights not violated

↳ Interim decisions. 4

Audi alteram partem enables reasoned orders and clarity for parties.

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Q1. a)

Emergency provisions in Constitution ~~are~~ (A. 352-360) are derived from Government of India Act 1935 and Weimar Republic constitution.

They transform federal character into a centralised one.

Circumstances Declaring Financial Emergency

1. Article 360(1)

- When president is satisfied that situation has arisen where financial situation of the union or states is under threat, declaration can be made.

2. 44th Amendment made President's satisfaction judicially reviewable.

3. Article 360(2)

- Parliament (both houses) to pass resolution within 2 months.

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	• If <u>LS</u> is <u>dissolved</u>, to be passed within <u>2 months</u> of reassembly if RS approves in meantime. • Extends <u>indefinitely</u>. • Does <u>not</u> need <u>repeated</u> resolutions. • <u>President</u> can <u>end</u> it at any time. • <u>Simple majority</u> by houses needed <u>Effects of Financial Emergency</u> 1. <u>Article 360(3)</u> • <u>Centre</u> can declare that states maintain <u>financial prudence</u>. • <u>President</u> can give orders. 2. <u>Article 360(4)</u> • Directions include states to <u>reduce salaries</u> of state officials and reserve money, financial bills for <u>President</u> assent. • President can reduce salaries of <u>Union employees</u> and judges of <u>HC/SC</u>. <u>SR Bommai</u> case held that all emergencies need to be based on relevant material.	

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Q1.(c)

Basic structure doctrine pervades the entire constitution as a fundamental feature, the violation of which may lead to voidability.

Basic Structure

1. Given in Kesavananda Bharti case (1973)
2. Based on constituent power of amendment.
3. Based on theory of implied limitation.
4. State not to exceed powers specified in constitution.

Uncertain Doctrine

1. Not specified in constitution i.e. legitimacy issues.
2. Judiciary is ultimate interpreter (monopoly) (less accountability)

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3. Impacts democratic structures
i.e. Parliamentary Acts
Eg ~~IR Coelho~~ limits 9th schedule.

4. Vague terms constitute the doctrine
like secularism, unity integrity.

5. leads to judicial overreach

Eg ~~NJAC case 2016~~ on judicial
independence.

Usage of Doctrine

Various limitations and tests
aim to solidify it.

1. Identity Test (Nagraj case):

↳ Not individual articles but
identity like equality forms
basic structure.

2. Essence of rights test (IR Coelho)

• Only when essence violated
doctrine applies.

3. Limitations

↳ Prospective (post 1973)

↳ Article 31-B

Basic structure helps ensure
constitutionalism.

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Q2 (a)

Emergency provisions in the constitution have been borrowed from the Weimar Republic Constitution and the Government of India Act 1935.

Article 356 imposes emergency in a state on recommendation of the President (or Governor's report) when satisfied that the state cannot function as per tenets of the constitution.

Article 356 and controversy

1. Has been used around 130 times since independence.
2. Violates separation of power.
3. Allegations of political usage
 Eg → 2021 in Maharashtra; 11 days in Puducherry.
4. Vague terms
 Eg → Failure of constitutional machinery.

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	5. <u>Centralisation</u>: President can use Article 356 even without Governor's recommendation due to use of "<u>otherwise</u>" in A-356. ↳ by-passes the state. 6. Not resorting to easier outcomes like Article 256 (follow Parliamentary laws) and A-257 (executive freedom of centre) alongwith A-365 (coercive force). 7. <u>Rameshwar Prasad case</u> held that usage in case of defections is frequent and not desirable. 8. <u>Sarkaria Commission</u> mentioned <u>improper uses</u> - ↳ No floor test when weak majority (<u>Nabam & Lebia case</u>) ↳ Maladministration or corruption. ↳ No prior warning ↳ Internal struggles ↳ Changes due to new government at centre.	

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	The National commission on working of constitution has suggested changes to improve usage. <u>Consequences of Proclamation</u> 1. <u>Article 356</u> • President exercises <u>executive power</u> of state using Governor. • <u>State government</u> is ~~dissolved~~ dismissed. • <u>Assembly</u> may be suspended or dissolved. • President can exercise <u>legislative power</u> or leave to Parliament on <u>state list</u>. 2. <u>Article 357</u> • Parliament can enable President or other authority to make <u>laws</u> on <u>state list</u>. • Requisition <u>central offices</u> for state. • Pass <u>ordinances</u>. • Use state <u>consolidated funds</u> till Parliament approves.	

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- Does not impact working or powers of High Courts
- 3. State of Rajasthan vs UOI held that proclamation is subject to judicial review on malafide, gross misuse, mere ipse dixit.
 - ↳ Relevancy of material (not correctness)
- 4. SR Bommai case held:
 - ↳ Assembly not to be dissolved before Parliamentary approval.
 - ↳ Dismissed government be revived if proclamation is wrong.
- 5. Consequences operate indefinitely even after termination and state can amend or repeal changes.

Punch Commission has recommended -

- Impartiality of Governor
- Usage of special majority in Parliament
- Prior warning
- Localised emergencies
- Usage of A-256, 257, 365 for funding

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Q2(b)

Principles of natural justice are the fundamental principles ensuring complete justice applicable against the judiciary, quasi-judicial and administrative authorities involving discretion.

Distinction between quasi-judicial and administrative functions -

Quasi-Judicial function involves -

1. Presentation of case by parties.
2. Deciding question of fact.
3. Rarely decide question of law.
4. Final decision may not be based on laws, but justice, equity and good conscience.

► Eg Lok Adalats.

Administrative functions mostly do not involve deciding question

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	of law and decisions <u>do not</u> involve <u>laws</u> or principles of <u>natural justice</u> (focus only on <u>procedures</u>). Changing Criteria of Application of Principles 1. <u>Ridge vs Baldwin</u> held those administrative functions impacting rights of people and methods of availing them need to apply principles. 2. <u>Constitutions</u> have implied usage of principles like <u>golden thread</u> (AK Kraupak) 3. Increasing role of <u>welfare state</u> leads to <u>discretion</u> → controlled by principles. 4. <u>Fairness, anti-arbitrariness</u> part of all decisions as per <u>A-14, 21</u>. (<u>Maneka Gandhi</u>). 5. <u>Expansion</u> of traditional principles of <u>Nemo iudex</u> in causa sua and <u>Audi alteram partem</u>.	

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↳ Requirement of notice, price hearing, enquiry report (ECIL vs B Karunakar) and
↳ speaking orders (MP Industries vs UOI)

6. No strait jacket formula: Can be curtailed -

- Necessity
- Confidentiality [Eg] Rafale case and sealed envelope jurisdiction.
- Impracticability

Even though distinction has reduced, authorities first prioritise laws and regulations and use principles of natural justice only in case of loopholes in law, non-existence of law, or gross injustice otherwise.

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Q2(c)

with 11/10/23

Amendment of constitution provided in Article 368 provides for a mixed approach of UK (easier) and USA (strict process).

Amendment being wide

Simple Majority Special Majority Special Majority + States ratification

1. Simple Majority

- Majority of present and voting

- Eg Schedule 2, 5, 6

- Eg Puisne judges

- Bernbari Union case held that changes due to Article 2, 3 are not deemed amendment u/A 368

2. Special Majority

- Majority of total members and majority of $\frac{2}{3}$ present and

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- voting
- Used for amending Part III, IV, etc.
- 106th Amendment - Nari Shakti Adhiniyam.

3. Special + Ratification

- Needs special majority and ratification by half of states legislatures.
 - Includes President election, executive / legislative powers, Article 368, etc.
 - Rajendra N Shah case diluted 97th Amendment for lacking state ratification.
4. Can be introduced by private member of minister.

Power is not Unlimited

1. Keshavananda Bharti case

- Diluted Shankari Prasad
- Overruled Golaknath
- Constituent power of framing

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	is not same as constituent power of amendment. • Upheld Article 13(4) and harmonious reading with Art. 368. • <u>Basic structure</u> cannot be violated. 2. <u>Basic structure</u> • Law of Parliament cannot violate it. • Will be held void to the extent. • Will of constitution is <u>supreme</u>. • Includes secularism, rule of law, etc (<u>SR Bommai</u>). • 9th schedule can be reviewed (<u>IR Coelho</u>) • Analysed by Identity test and essence of rights test (<u>M. Nagaraj case</u>) i.e. essence cannot be violated but articles can be amended. Thus, basic structure applies theory of implied limitation and ensures constitutionalism.	

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Q3(a)	Delegation refers to transfer of authority to a subordinate official for decision making on relevant issues. This is primarily done by <u>delegated legislation</u> which involves <u>law making by entities other than legislature</u>. <u>St. John's Teacher Training Institute vs NTCE</u> held that delegated legislation is common in times of complexity, acting in emergency, taking risks and experimentation. <u>Excessive Delegation is Judicially Evolved</u> <u>In Re Delhi Laws Case 1951</u> <u>Excessive</u> delegation not allowed <u>Policy</u> making cannot be delegated - Need to provide <u>limits</u> on power by parent act - The case <u>held that</u> Part C of the State Act violated the constitution.	

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	2. <u>Skeletal legislation</u> cannot be delegated (<u>Hari Shankar Bagla case</u>) • Need to provide guidelines to delegated law. 3. <u>Power to modify</u> usually exceeds delegated powers. Allowed when - • <u>Inclusion or exclusion of persons</u> areas, time limit. • Power to remove <u>difficulties</u> (<u>Gammox India Ltd case</u>) • Cannot delegate policy or excessive powers. Need to use <u>nexus test</u> between object and law (<u>Laxmi Narain vs UOI</u>). 4. <u>Henry VIII Clause</u> which makes excess modifications to delegated parent law not allowed. (<u>Talwar Trading Co. case</u>) 5. <u>Imposition of taxes</u> : Only if expressly allowed, to be done with reasons.	

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	6. <u>Gwalior Rayon Co. case</u> held that parliament should have control (<u>abdication test</u>). 7. Must <u>not</u> violate <u>parent Act</u> <u>Vivek Narayan vs UOI (2023)</u> held that <u>demonetisation</u> was valid under <u>S. 26(2) of RBI Act</u>. 8. <u>Parent act</u> must not violate the <u>constitution</u>. 9. <u>Procedural ultra vires</u> can also make delegated legislation excessive. • Not following <u>mandatory laying</u> in Parliament (<u>Atlas Cycles Co Ltd</u>) • Pre and post publication (<u>MH George vs UOI</u>) 10. <u>AK Roy vs State</u> held <u>Sub-delegation</u> not allowed unless <u>express</u> or <u>necessary implication</u>. Must be termed in <u>narrow words</u>.	

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	<u>Apart from the judiciary, the legislature and executive help evolve the principle -</u> <u>By legislature</u> 1. <u>Memorandum</u> laid before the house explaining delegation. 2. <u>Negative</u>, <u>Simple</u>, <u>Affirmative</u> laying 3. <u>Committee on subordinate legislation</u> (gives recommendations). <u>By Executive</u> 1. <u>Pre-publication</u> if mandated in parent Act, ~~process~~ under <u>S-23</u> of <u>General clauses Act</u>. (views of officials, affected parties) 2. <u>Post-publication</u> (<u>ignorantia juris non excusat</u>) Thus, evolution of excessive delegation is a combined effort. <u>Justice Cardozo</u> said no one should have <u>untrammelled power</u>.	91/2

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Q3(b)

Rule of law principles exist in most legal systems of the world and was formalised by AV Dicey.

Rule of law entails -

1. Supremacy of law
 - Absence of discretion
 - Absence of rule by law.
 - Punishments as per law.
2. Equality before law
 - Equal protection by ordinary laws in ordinary courts of ordinary people.
3. Legitimacy found in constitutions.

Conflict between ROL and Administrative Powers

1. Administration involves discretion (rule of law negates discretion).
⇒ Delegated legislation like

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	IT Rules, 2021. 2. Administrative law does <u>not</u> use <u>laws for decisions</u>. [Eg] Use of principles of natural justice (<u>Ridge vs Balduyn</u>) 3. <u>Unequal protection of laws</u> [Eg] Article 311 provides safeguards to public servants (<u>ECIL vs B. Karunakar</u>) 4. Presence of <u>quasi-judicial tribunals</u> like NGT. Whereas Dicey was against <u>Droit Administratif</u>. 5. Legitimacy often decided <u>by courts</u> [Eg] <u>Judicial review</u> <u>Art 13</u>. Administrative actions not always in conflict 1. <u>Control over delegated legislation</u> • Parliamentary control by laying (<u>Atlas Cycles vs State</u>) • Executive control by publica-	

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	tion (ignorantia juris non excusat - MH George case) - Judicial control: ultra vires constitution or parent Act. 2. <u>Control over discretion</u> - At the time of formulation of law by anti-arbitrariness, intelligible differentia (Anwar Ali Sarkar case) - Violation of Part III - At the time of usage, action must not be <u>malafide</u>, follow <u>Wednesbury Principles</u> and <u>Proportionality</u>. 3. <u>Control over Parent Act</u> - Memorandums, committees for discussions on maintaining rule of law. 4. Judicial review. Thus, administrative action and rule of law often <u>work</u> in harmony. 6	

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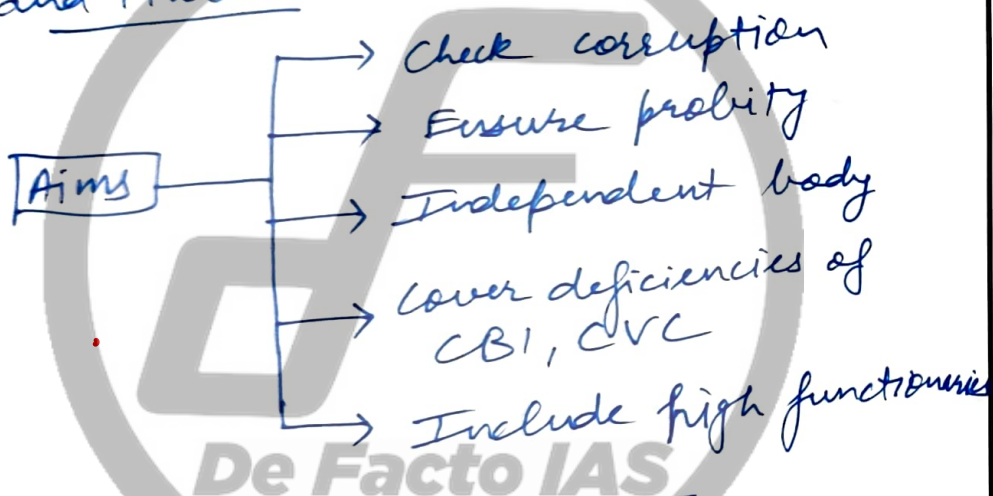
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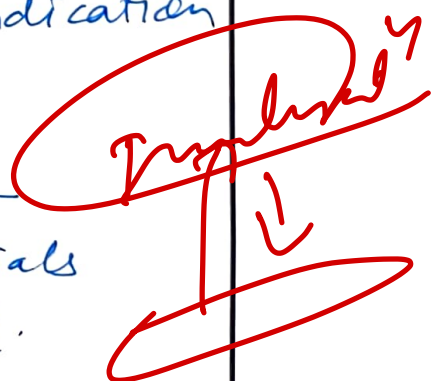
Q3 (c)

The institution of Lokpal and Lokayukta under 2013 Act is the result of Anna Hazare's protests and inspiration of Ombudsman concept from Norway and Finland.



Lokpal is Efficacious

1. Stringent selection process through search committee (50% members women, SC, ST) and Selection committee (PM, speaker, opposition leader, CJI/nominee, eminent jurist).

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	2. <u>Diverse opinions</u> : Lokpal comprises 8 members • 50% judicial members • 50% SC, ST, women. 3. Includes PM, ministers, Parliament members, Group A, B, C, D, central services, All India services. 4. <u>Superintendence over CBI and CVC over Prevention of Corruption Act, 1988.</u> 5. <u>CVC sends report to Lokpal</u> in Group A, B cases, and proceeds with Group C, D investigation. 6. <u>Power to demand summons, seize property.</u> 7. <u>Strict timelines i.e. adjudication in 1 + 1 year.</u> 8. Increased <u>punishments</u> 9. <u>Prior approval</u> for officials can be given by Lokpal. 10. <u>Jurisdiction over entities fully or partially funded by state.</u>	De Facto IAS 

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	11. Jurisdiction over entities receiving <u>> ₹10 lakh donation</u> under FCRA. 12. Appoint Director of Prosecution in CBI and requisition staff <u>Inadequacies</u> 1. <u>No suo moto powers.</u> 2. <u>Efficiency poor.</u> Eg As per Transparency international, 68% cases dismissed without action. 3. <u>Whistleblower</u> name needed - low anonymity and danger. 4. Limitation period of <u>7 years.</u> 5. <u>Appointment delays</u> - Eg Lokpal appointed 1st time in 2019. - Eg Director of prosecution not appointed. 6. No constitutional backing. 7. Interpretation of 'eminent jurist' is a problem. Changes like increased limitation, suo moto powers are needed.	Justified

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Q 5 (a)

Principles of natural justice are the fundamental principles of law acting against the judicial, quasi judicial and administrative authorities to ensure complete justice, fairness and equity.

Traditional principles -

1. Nemo Jurex in causa sua
2. Audi alteram partem
3. Applied only to judicial and quasi-judicial authorities.

Modern Progressive approach

1. Ridge vs Baldwin held that administrative action affecting rights and process related to people also to follow natural justice.
2. Constitution and rule of law enable state to implement principles which flow like a golden thread through consti-

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	tution (<u>NK Kharpak vs UOI</u>) - Expanded to involve <u>anti-arbitrariness</u> (<u>Maneka Gandhi case</u>) and Articles 14, 21 apply to administrative cases. <u>Welfare state</u> - more complex functions - discretion needs limits through principles. - Rule against bias expanded - ↳ Include <u>pecuniary bias</u> (<u>RC Cooper case</u>) ↳ <u>Judicial obstinacy</u> <u>Audi alteram partem</u> expanded - ↳ <u>Notice, evidences, cross-examination, enquiry report</u> needed (<u>ECIL vs B. Karumka</u>) ~~Reasoned decisions~~ (<u>Siemens Evg case</u>) But limits like emergency, impossibility, necessity, legislative action hinder principle's application. The principles are implied in constitution and laws and are increasingly used.	P.H. M

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Q 5. (b)	The concept of Rule of law was propounded by AV Dicey, which exists in legal systems of most nations. Rule of law is based on principle of legality - 1. <u>Supremacy of law</u> • Negation of rule by law • Punishments as per law • Anti-arbitrariness • <u>EP Royappa case</u> held that equitable application of laws negates arbitrariness. 2. <u>Equality before law</u> • Everyone is subject to <u>ordinary law</u> through <u>ordinary courts</u>. • No <u>discrimination</u> on race, religion, caste, sex, etc. • <u>Articles 14-18</u> focus on equality. • <u>Negative concept of law</u>.	

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	3. <u>Legitimacy of rules</u> is derived from the <u>Constitution</u> which embodies will of the people (different from Dicey) and not judges. <u>Rule of law is opposed to arbitrariness</u> 1. <u>Due process of law</u> (<u>Maneka Gandhi case</u>) ensures fairness. 2. <u>Wednesbury principles</u> (absence of irrationality, <u>manifest arbitrariness</u>) 3. <u>Proportionality principles</u> ensures laws are reasonable, least restrictive, and necessary (<u>Puttaswamy case</u>) 4. <u>Separation of powers</u> ensures checks and balance against arbitrary power (<u>L. Chandra Kumar</u>). 5. <u>Basic structure doctrine</u> ensures essence of constitutionalism i.e. limited state remains. (<u>Kharman Rao case</u>)	

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Q5(c)

The concept of constituent power of Parliament has been discussed in case of amendment of constitution since the 1st amendment act and Sajjan Singh case.

Keshavanandi Bharti case (1973) clarified the difference.

Constituent Power to Frame Constitution

1. Available only with original constituent assembly.
2. Supported in Golaknath case.
3. Plenary power to create constitution.
4. Could amend, add, remove even basic structure of constitution.
5. Constituent power of Parliament ended with enactment of constitution.

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	6. <u>No provision to <u>revise</u> the powers.</u> <u>Constituent Power to Amend Constitution</u> 1. Derived from <u>Article 368</u> (through <u>24th Amendment</u>) 2. Support in <u>Shankari Prasad case</u>. 3. Keshavananda case modified it to state only amending power remains, <u>not framing</u>. 4. <u>Does not</u> allow changing <u>basic structure</u> i.e. - equality, democracy, secularism, fairness, etc. 5. <u>A-13(2) and 368 to be harmoniously construed</u> i.e. A-368 is not ordinary power, hence A-13(2) not applicable. 6. Parliament's constituent power to amend <u>derived from Constitution</u>, hence, <u>cannot violate it</u>. The concept of basic structure ensures flexibility of constitution through constituent power.	

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Q5(d)

Tribunals are quasi-judicial authorities of statutory origin formalised through 42nd amendment (Article 323 A & B).

Phenomenon of Tribunalisation

1. First tribunal was in 1941 as Income Tax Appellate Tribunal.
2. ARC report and Swarn Singh Committee suggested separate legislation.
3. 42nd Amendment, 1976

- Article 323 A: Parliament to create law for recruitment and service matters of centre and union, states.
(Administrative Tribunals Act/1985)
- SP Sampath Kumar vs State held that power must of tribunal must

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	be similar to High courts . • <u>Article 323 B</u>: Tribunals for labour, finance, elections , etc . • <u>VJI vs R. Gandhi held A-323 B</u> list is inclusive, advisory ; can be expanded . 4. New tribunals like NGT, Army Tribunal . 5. <u>L. Chandra Kumar case held</u>: ↳ Appeal to HC exists (division bench) ↳ cannot decide constitutionality of parent Act . ↳ Judicial member supremacy 6. <u>Tribunals Reform Act, 2021</u> ↳ Overturned <u>Rojer Mathew</u> ↳ Selection Committee ↳ Min^m age 50 yrs; For 70/67 yrs or 4 yrs tenure . ↳ <u>Abolished</u> tribunals like <u>IPAB</u>. Executive and judiciary need to display <u>doctrine of constitutional trust</u> for efficiency .	226 Who? Know! 226 S.I.

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Q 5 (e)	Delegated legislation refers to the law making outside of legislature involving rules, orders, by-laws and is also called quasi-judicial legislation. <u>Advantages of Delegated Legislation</u> - Helps fill legal loopholes Eg IT Act, 2000 has 2021 Rules and intermediary guidelines. - Ensures <u>parliament's continuing control</u> using memorandum, laying (<u>Atlas Cycles vs State</u>) and Committee on Subordinate legislation. <u>Judicial control</u> in case of ultra vires constitution enables <u>accountability</u> (<u>MH George case</u>). - Ensures <u>nexus of parent law</u> with field action (<u>Laxmi Narain vs State</u>)	

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5. Allows flexibility

⇒ Addition or reduction of persons, areas from scope of law.

Need of Delegated Legislation

1. Increasing complexity of work due to welfare state.

2. Reduce Parliament's work load.

3. Adapt to new situations

⇒ SEBI regulations on day trading.

4. Diversify work - allows experimentation.

5. Act during emergencies

⇒ COVID-19 regulations under Epidemic Diseases Act, 1897.

6. Advantage of weak separation of powers.

St. John's Teacher Training Institute case held that delegation is a necessity today but must be controlled by not allowing sub-delegation.

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Q 7(a)	Doctrine of pleasure has its origin in <u>English courts</u> where <u>King was supreme</u> and could do no wrong. Prerogative was to appoint or remove any official without any reason or compensation. <u>Doctrine of pleasure in India</u> 1. <u>Article 310</u> • <u>President and Governor</u> have power to appoint defence service, civil service service, All India, posts under Union (President); and state civil service and civil posts (by Governor) • <u>Not unfettered</u> right. • Includes right to decide <u>terms</u> of service, promotion and <u>deputation</u>, <u>retrospectivity</u>. • <u>Ramesh Prasad vs State</u> held	

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	that the law ^{mentioned} ~~mandated~~ under Article 309 is <u>only advisory</u> (not mandatory). • Till <u>law made u/A 309</u>, President and Governor have powers. <u>Limits on Doctrine of Pleasure</u> 1. Law made <u>u/A 309</u> cannot violate constitution. 2. <u>Article 311</u> safeguards. 3. <u>Shamsher Singh vs State</u>: President, Governor act on aid and advice. 4. Tenure protection of Election Commissioners (<u>A. 324</u>), <u>CIC</u>, <u>UPSC members (A. 315)</u>, etc. () 5. Cannot violate <u>Part III</u>. 6. Limits based on <u>DPS P</u> like <u>A. 39(4)</u>, (c) on equal pay, etc applicable. <u>Safeguards for Civil Servants</u> 1. <u>Article 311 (1)</u> • Cannot be dismissed or removed	

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	by a person lower than appointing authority. • Does <u>not</u> need to be <u>similar</u> person; coordinate rank is fine. • Power of A 310 is constitutional and hence <u>cannot be delegated</u>. • Action must be by <u>way of punishment</u>. <u>Purnushottam Lal Dhillon vs State</u> held it is punishment if person had right over post and has encountered evil consequences. 2. <u>Article 311(2)</u> • Opportunity of <u>being heard</u> at enquiry stage (not sentencing stage) • Means evidence, cross-examination • <u>Ajay Hasia vs Khalid</u> held it is not for posts under PSUs, CSIR, etc as they are statutory. • Only for civil services and civil posts under union and state <u>NOT for defence service</u> and civil posts under it (handled by <u>Army Act, etc</u>)	

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Limits on A-311 safeguards

1. When convicted for criminal offence.
2. President/Governor finds it will be difficult.
3. Impracticability.
4. No safeguard for probationers.
5. Not apply in case of suspension.
6. A-310(2): if post lost by abolishing it (new entrant) - compensation.

Still, UOI vs Tulsi Ram Patel held that Departmental appeal and A-32/226 SC/HC appeal applicable. known

Also, ECIL vs B. Karunakar held that equity report to be given other-wise malafide decision. 12

A law under A-309 can help in organising recruitment, promotion and removal.

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Q7(b)

Article 324 establishes ECI as the independent constitutional authority for managing, superintendence of elections of President, Vice President, elections to Lok Sabha and state assemblies, preparation of electoral rolls.

Powers of Election Commission

1. Pleary powers subject only to constitution and statutes
(Kanhaiya Lal vs RK Trivedi, 1985).
2. Article 327: Parliament can make laws for elections
 ↳ RPA, 1950: ECI can -
 - Decide territorial constituency after Delimitation Commission.
 - Prepare electoral rolls.
 ↳ RPA 1951: ECI can -
 - Register and recognise parties
 - Assign symbols and

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adjudicate

- Advise President / Governor on disqualifications
- Supervise, use officials.

Powers of EC are not sufficient

1. No bar on post retirement office of profit or joining politics. ✓
2. Charges are voted upon (no financial independence)
3. No power to deregister political parties (National Congress vs Institute of social welfare) ~~embarrassing @~~
4. Unequal position of EC and other commissioners v/A 324(5)
5. Allegations of partisanship; non implementation of MCC. ✓
6. EC Act 2023 issues -
↳ Selection committee has majority of government (independence lost)

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	↳ Overriding <u>Anoop Baranwal case</u> (no CJI in selection) ↳ Inadequate qualifications ↳ <u>Bias</u>: ~~Search~~^{selection} committee can go beyond selected names 7. No power to <u>convict</u> (criminalisation) ~~email and 9 Q~~ <u>Still</u> steps have been ~~taken~~ to improve efficiency - 1. Other <u>penal laws</u> can be used for <u>MCC</u> violation. 2. <u>Social media</u> guidelines. 3. Usage of <u>EVM</u>, <u>VVPAT</u> for <u>transparency</u>. 4. <u>SVEEP</u> - voter education 5. <u>C-Vigil</u> app - complaints 6. Voter participation increased 58% (2009) to 67.9% (2024) <u>Dinesh Gouswami Committee</u> suggests parity in EC and members removal, charges not be voted, impartial selection for free and fair elections.	~~Planned~~ ~~Problems~~ ~~10~~ ~~9~~

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Q 7(c)	UPSC is an independent constitutional body created under <u>Article 315</u> for fair recruitment process. <u>Powers and Functions of UPSC</u> 1. <u>Article 320</u> gives powers • Help in recruitment of central, UT services, All India services. • Help in <u>joint recruitment</u> on state request • Help in any matter on Government request. • <u>A-320(3)</u>: Advise government in following- → Methods of recruitment → Principles of transfer, promotion → Criteria for service change and deputation. • Advise in disciplinary matters → Withdrawal of salary, promotion	

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	→ Demotion → Removal → Dismissal • Advise in case of legal charges incurred by officials for official duties. • Advise on temporary recruitment (> 1 yr) • Advise on re-appointment. 2. <u>State vs Mandodhan Lal</u> held that UPSC advice not mandatory. Yet, as per <u>Article 323</u> need to explain non-adherence to advice. 3. Selection by UPSC is <u>only provisional</u> (<u>H. Mukherjee vs State</u>). 4. <u>Article 321</u>: Power/jurisdiction can be <u>expanded</u> to other authorities/corporations. ↳ <u>Article 320(3) Proviso</u>: Limit jurisdiction by President. 5. <u>Article 320(3)</u>: No jurisdiction in <u>OBC, SC/ST</u> recruitment, and bulk of <u>Group C & D</u> ..	<i>Handwritten notes in red:</i> <u>not mandatory</u> <u>but</u>

Date:

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Remarks

Maintaining Impartiality

1. Article 317 : Regulation of removal
 - Induced bankruptcy.
 - Outside employment
 - Unsound mind
 - Misconduct : In Re Article 317(1) case (2002) held ~~in~~ lack of integrity, involved in state contracts is misconduct.
↳ SC decision is binding.
2. A-322 : Service condition can't be changed after appointment.
3. A-319 : UPSC chairperson can't be employed anywhere; members of UPSC, SPSC can become chairperson. SPSC chairperson, members can become UPSC members.
4. Article 316 : Chairpersons, members not eligible for re-appointment (State VS UD Duvvuri).

UPSC has mostly remained transparent and untouched by controversies.