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.

Name: ABHISHEEL JAISWAL

Subject: CONSTITUTION-I

Phone: [redacted]

Criterion	Average	Good	Best
Presentation		✓	
Content		✓	✓
Structure	✓	✓	

Teacher's Remark

① prepare outline for each topic
↳ Intro
↳ good bits
↳ SL Report

8:20 AM – 11:20.

② Structuring issues in some ans

③ Little improvement in (two) ans

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(Section -A)

Q.1(A). The basic principle which, informs both Fundamental Right and Directive principle is equality and Protection against discrimination. Discuss **(10 Marks) [150 words]**

The basic principle of natural law is that all men are equal and hence State shall not discriminate between them on basis of caste, Sex, religion, etc.

However, the State has positive obligation on its part to perform such duty so that apart from political equality, social and economic equality can be attained

Fundamental Right vis-a-vis Equality

Art 14 of the Constitution directs the State not to deny any person equality before law (-ve concept taken from UK based on rule of law) and equal protection of law (taken as +ve concept from US XIV^th Amendment).

The Supreme Court, in fact, in ~~Indra~~

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EP Royappa v. State of TN 1974 SC noted that "equality is antithesis to arbitrariness". Hence it promotes equality of status & opportunity.

However, the State can take affirmative action under Art 15 & 16 to provide protective discrimination to people like women (Art 15(3)), SC/ST/SEBCs [Art 16(4)], etc.

Directive Principles vis-a-vis equality

A conjoint reading of Art 31C, Art 39(b), Art 39(c), Art 41, etc. will make it clear that State has imperative duty to minimise inequality & for that read with Art 14 & 15, 16 the State can in number of ways can take actions as held by the Court in

M. Nagaraj v. UOI 2006 SC

However, for state to take such decision it is imperative that the action must be fair, just & reasonable.

what about reservation?

Q.1(B). Doctrine of equality under Article 14 of the Indian constitution have had an transformative journey since independence. Illustrate with help of case law. **(10 Marks, 150 words)**

Art 14 of the Indian Constitution reads as "The State shall not deprive any person of equality before law & equal protection of law"

↓ -ve concept restraining the power of the State.

↓ +ve concept giving power to State.

- A.14 is both enabling & restraining

The test of Reasonable Nexus

Initially, the court had formed test of reasonable nexus between the law made and the object it sought to achieve. Hence the court in State of WB v. Anwar Ali Sarkar 1953 SC to adjudge the law segregating two classes of people was held valid on the ground of reasonable nexus i.e. law must discriminate on basis of intelligible differentia & object.

Test of Arbitrariness

However, later the court increased the emphasis on 'arbitrary state action' as

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direct challenge to rule of law & gone on to declare in EP Royappa v. State of TN that if "equality is antithesis to arbitrariness .... in fact, in rule of law both are sworn enemy"

The court later in Indira Gandhi v. Raj Narain declared Art 14 as basic structure of the Constitution. Substantive equality vis-a vis formal equality

Finally, the court in Maneka Gandhi v UOI said that "Art 14 does not seeks to achieve only formal equality rather substantive one"

Hence, at present the court sees the 'arbitrary aspect of law' & if it is manifestly arbitrary as decided in Shayara Bano v. UOI then it will be struck down law the very moment.

Q.1(C). A constitutional value Secularism is implicit in the entire constitutional framework. What does secularism in the Indian Constitution mean? [10 marks, 150 words]

Secularism in Indian context is based on the principle of equidistance from all religion rather than state patronising any of the religion of its own as held by the court in TMA Pai Foundation v. State of Karnataka 2002 SC

The Constitutional ~~Concept~~ of Secularism

A. Preamble

It defines India as a sovereign socialist secular democratic republic. In fact, the court in SR Bommai v UOI 1993 SC went upto extent of declaring secularism as basic structure of Indian Constitution even though the word was added after 42nd Amendment of 76.

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B. Right to Equality

Art 14, 15, 16 makes it implicitly clear on part of the State not to discriminate on ground of basis of religion. The court in Javed v. State of Haryana declared a law valid which prohibited man having two wives to contest election.

C. Right to freedom of religion & minority rights

It runs from Art 25 to 30 and the court has held in Shirur Mutt case that the State cannot intervene in essential religious practice of the religious denomination.

D. Electoral Roll

Art 325 makes it prohibitory to not include name of any person in electoral roll on ground of religion; hence ensuring political equality.

Thereby, equality runs throughout the framework of Indian Constitution.

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1(D). Fundamental right and DPSP are two sides of same coin, ultimately its objective is to achieve idea of welfare state. Discuss [10 marks] [150 words]

Fundamental Rights are means to achieve the end whereas DPSP are end in themselves. Hence it enables the individual on one hand to fully realise their innea potential and on the other hand put obligation on State to fulfill their duties of welfare state.

FRs vs. DPSP → Contenstation

The Supreme Court earlier in Champakai Dorairajan v. UoI 1951 SC has given pemacy to fundamental right over DPSP, hence disturbing the fine balance between both and curtailing power of the State.

However later the Parliament under Art 31C gave emphasis on perceiving DPSP over fundamen rights to achieve goal of welfare state

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by introducing 24th Amendment.

FR & DPSP → Balanced

The court later in Keshvanand Bharti v State of Kerala 1973 SC declared FR & DPSPs as basic structure of Constitution both aiming for achieving welfare state such as Art 46, Art 39(b), Art 39(c), etc.

Finally, the court in Minerva Mills v U noted that "FR and DPSP are made on bedrock of Indian Constitution and giving prima to one over other would be to disturbing balance of other".

However, Art 37 has been an impediment on part of citizen which makes DPSP non-justicia However the court by utilising progressive realiza of rights doctrine has made certain DPSP has FR such as right to health [Paramanand Katara v UOI], right to shelter [Olga Tellis case] etc.

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1(E). Right under article 19(1)(a), includes the right to disseminate information to a wide section society. Does internet as a such medium protected under constitution. Discuss in light of decided case. **[10 marks, 150 words]**

Art 19(1)(a) is the only article which provides "right to freedom" of speech & expression and such freedom also include right to receive information as held by the Supreme Court in [SP Gupta v UoI 1988SC]

Right to Disseminate Information

The Court initially in [Romesh Thapar v UoI] made the right to disseminate information without confinement of 'public order'. However, by 1st Amendment, the Parliament put the reasonable restriction on it by Art 19(2).

Later the court in [Indian Express v UoI] has explicitly recognised that right under Art 19(1)(a) is of free speech & expression which entails freedom to impart information to wide ~~expression~~ section of society.

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Right to Internet

Of late, the court in Anuradha Bhasin v. UOI 2020 SC has declared the right to internet as fundamental right under Art 19(1)(a) & any curtailment of it would have "chilling effect" on such right. However, the court put caveat that the right can be restricted after taking reasonable care test.

Thereby, in present era where the internet has become medium of 'right to information' on one hand and threat to security on other, there must exist a fine balance between liberty and social control.

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Q.2(A) Approval by Governor of the state cabinet decision is merely a constitutional courtesy and it is binding under article 161 of the constitution. Substantiate (20 Marks, 300 Words)

In a Parliamentary democracy, the elected government is accountable towards the people whereas an unelected Governor is merely acting as a constitutional check on the State Government. Hence in normal circumstances he must be bound by aid and advise of council of ministers as held by the SC in Samsher Singh v. State of Punjab 1955 SC

Art 161 and Governor

Art 161 of the constitution makes it explicitly clear that Governor shall be bound by aid and advise of council of ministers except where he has to act on his discretion as given in this Constitution.

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Hence, the Constitution has given Governor, unlike President, some discretionary power so as to prevent failure of constitutional machinery in State such as :-

1. Report to centre to impose Emergency under Art 356
2. Refer any Bill under Art 200/201 to President for consideration.
3. Refer any Ordinance under Art 213 to President for consideration, etc.
4. Appointment of CM in case of feactured mandate

However, such discretion is limited and must be guided by the Constitution as held by the court in Ram Jayaya Kapur v. State of Punjab 1955SC. Thus, executive power of the Governor is subject to aid & advise.

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Governor bound by aid & advise

1. Under Art 164, if the CM has majority in house then the maignal discretion provided to the Governor by Samsher Singh case is limited until CM function within Constitution.

2. Further, he is bound to sign Money Bill or any other Bill if it is sent to him and he cannot refer all Bills to President as a matter of ~~dis~~course under Art 200 as held by the court in Hoechst Phaemaceuticals case.

3. Further, in case of immediate circumstances, the Governor has to promulgate ordinance.

4. The Governor is bound to call the House when CM advises or to dissolve it except in circumstances where the Govt. has

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lost majority in House. However, the Governor must test the validity of govt. not at his home but at floor of house as held in [SR Bommai v UOI]

However, in [BP Singhal v UOI 2012 SC] the Court has made it clear that the Governor is not a mere agent of the Centre but has power, dignity & authority

12 → Governor
→ Executive

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Q.2(B). it is desirable to have some level of friction, some amount of state contestation, some deliberation-generating froth in our democratic system. Discuss in light 'cooperative' and 'uncooperative' federalism in India. . (15 Marks, 250 Words)

The Indian Constitutional scheme is a 'unique' kind of federalism which is blend of 'unitary and federal' characters as observed by ~~the~~ Prof. D.D. Basu.

Cooperative Federalism & Constitution

Granville Austin has remarked that "Indian Constitution is classic example of cooperative federalism" the reason being so is from viz:-

1. Legislative Powers :- Under Art 252 of the Constitution, States ~~sometimes~~ by resolution delegate their legislative power to Centre to make law on common subject in matter

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under State list such as Water Act, 1974

2. Executive Power :- The Centre / State can even delegate their Executive Power under Art 258/258A to each other with consent.

3. Fiscal Power :- GST Council/ under Art 279A and sharing of taxation power by Centre with State under Art 246A is a classic eg. of cooperative federalism.

4. Inter State Council :- Under Art 263 is constituted for resolving ferches b/w Centre & State.

5. Full Faith & Credit to all laws, decisions, judgment of each State & Union in other State for horizontal & vertical cooperation under Art 261.

Indian Constitution – Competitive/Uncooperative Federalism

1. Existence of State :- Indian Federalism is "indestructible Union of destructible State" where existence of State is on terms of

2. Role of dis under

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5. Re Centre

(State

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State under Art 3.

2. Role of Governor :- He has been given lot of discretionary power such as to refer Bill under Art 200, etc.

3. Emergency :- Centre can impose emergency under Art 356 on ground of 'failure of Constitutional machinery".

4. Repugnancy :- The laws of State in conflict with centre law, the central laws will be supreme in repugnancy. under Art 254

5. Residuary Powers under Art 248 read with Entry 97 List I is with ~~State~~ Centre.

However, the Supreme Court in (State (NCT of Delhi) v. UoI) has declared that Indian Constitution is an example of cooperative federalism.

SI 2

you any college students/friends want to discuss here to discuss why it is important

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Q.2(C). Articles 14, 15 and 16 form part of a scheme of the Constitutional Right to E... Article 15 and 16 are incidents of guarantees of Equality, and give effect to Article 14. Co... **(15 Marks, 250 Words)**

Art 14 provides all citizen & non-citizen right to equality.

Whereas Art 15 & Art 16 guarantees right to citizens that they will not be discriminated on ground of religion, race, caste, sex, place of birth, etc. in access to public place & public offices. However, it enables state to take affirmative action / protective discrimination by providing reservation.

Art 14, 15 & 16 – Part of Right to Equality

A. Art 14 & Art 15

Art 15(1) prohibits the state from discriminating on ground of religion, race, caste, sex as a general direction. However, the state has been empowered under Art 15(3) & Art 15(4) to horizontally & vertically discriminate.

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Art 14, 15 & 16 – Part of Right to Equality

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Art 15(1) prohibits the State from discriminating on ground of religion, race, caste, sex as a general direction. However, the State has been empowered under Art 15(3) & Art 15(4) to horizontally & vertically discriminate.

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Under Art 15(3), State can make laws
a protection of women & children. In fact,
e court has in [Independent Thought v UOI]
eclared ~~As~~ S.375 Exception II of IPC which
llowed husband to rape her wife below
8 years of age. and violative of Art 15(3).

Similarly, the Court in [Unnikrishnan JPV. State of AP 1993 SC] has enabled the State to
provide reservation to socially & educationally
backward classes of citizen in educational
institution to achieve Art 14 read with
Art 46. However, the later decision of Court
in PA Inamdar & TMA Pai was overturned
by 93rd Amendment which exempted private
unaided & minority institutions.

[Art 14 & Art 16]

The Court in [State of Kerala v. NM Thomas] has declared that Art 16 is
enabling power which enables State as a

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facet of Art 14 to provide reservation for downtrodden section. Further, court in India Sawhney v. UOI 1993 SC has held that Art 16(4) is not an exception but facet of Art 16(1) & Art 14 so as to achieve equality by providing reservation to those who are not adequately represented.

But later the court in M. Nagaraj v UOI 2006 SC has made it imperative on State to collect quantifiable data to provide reservation which was noticed in Jaenail Singh v. UP Gupta and was held per incuriam.

Thus, Art 14, 15 & 16 are a part of chain to achieve substantive equality.

Good Content

9

3(A) Examine the scope of administrative relations between the Union and the States of India. Cite various provision of the constitution for the same. (20 marks, 300 Words)

The administrative relations between Indian Union & States make it a place of sharing power between the Centre & State so that both can work in their exclusive domain through in cooperation to promote cooperative federalism.

Scope of Administrative Relations

A. Administrative Relations

1. State to abide Centre's direction under Art 256 and cannot delegate from it.
2. State must act in conformity with the laws made by Parliament under Art 257.
3. The State Centre can delegate some of its power to State or vice versa

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with each other's consent under Art 258/258A

4. Full Faith & Credit be given to all acts of the Centre & States in each other's territory under Art 261.

5. Centre can direct State under Art 265 read with Art 365 to act as per Constitution otherwise it will lead to imposition of Emegency under Art 356.

6. Centre can settle ~~inter~~ by tribunal a inter-State river water dispute under Art 262. The Court in State of TN v. State of Karnataka has said that Centre has exclusive authority to appoint tribunal and State are mandated to follow its decision.

7. Inter State Council under Art 263 to coordinate and discuss on various matters & to all enquire into various matters.

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B. Financial Relations

1. GST Council :- Under Art 279A both representative of Centre & State have table.

2. Grants-in-aid :- Centre under Art 275 accords grant to aid to States who are in need.

3. Deduction of net proceeds under Art 269 on recommendation of Finance commission.

Thus, the structural framework of constitution enables to State & Union to share powers each within its domain. However, there are circumstances when Centre can overpower State machinery such as :-

1. National Emergency :- Then under Art 353 the Centre can give direction to State to work according to its directions.

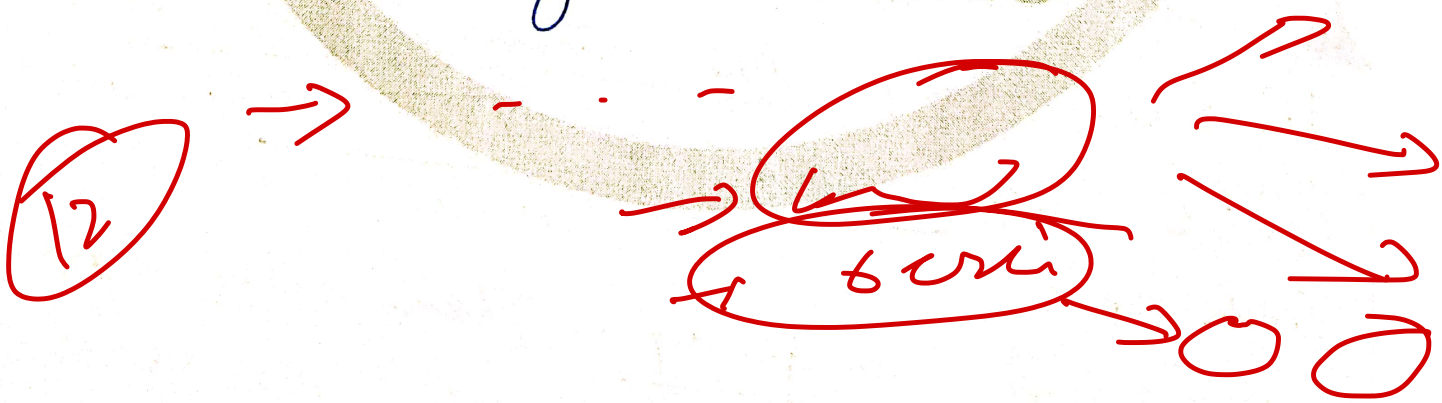
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2. State Emergency :- The Centre completely overtakes State Govt. and President under Act 356 (1) runs the State machinery through the Governor.

3. Trade & Commerce Clause :- Under Art 304 the States cannot work in derogation of inter-state trade & commerce freely.

Thus, the Constitution empowers both Centre & State to rule on their respective domain but to maintain unity & integrity of India, Centre has been given some overarching powers.



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there any ... when review is dismissed? (15 Marks, 250 Words)

Supreme Court under article 137 of Constitution. Is

Art 137 of the Constitution is the last resort available to any person or to court itself to review any of its judgment where it feels the court has done gross injustice as the Supreme Court is not "infallible" but only Supreme".

Review Jurisdiction under Art 137

Art 137 of the Constitution empowers the court to review any of its judgment either suo motu or on application been made by party.

The court in State of UP v. Kesho Ram Industries 1962 SC held that under Art 137 only Supreme court can execise review of its judgment to overcome any injustice.

Such execise of power is usually exercised when the person has exhausted

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all remedies viz. SLP, Writ jurisdiction, etc.

Remedy on dismissal of Review Petition

(1) Curative

The court in order to provide justice has gone one step ahead by devising a remedy which is extra-constitutional in case of Rupa Ashok Hurra v. Ashok Hurra 2002 SC by inventing curative petition as a remedy.

However such remedy can only be availed when Attorney General allows writing to file such petition. Also, such petition is decided by senior most judges of the court.

Thus, the Supreme Court in order to do complete justice under Art 142 has made this remedy to

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review any of its decision.

It has been exercised in cases like Yakub Menon v. State of Maharashtra 2014 SC where the ~~accused~~ accused a teenage convict exhausted all its remedy & was sentenced for death.

→ 145 → Rules

8-2

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Q.3(C). Examine the provisions of the Constitution regarding appointment of Judges of the Supreme Court of India. Should judge appoint judges ? Give reasons. **(15 Marks, 250 Words)**

Art 124(5) of the Indian Constitution provides a mechanism for appointment of Judges of the Supreme Court by the President after 'consulting' the Chief Justice of India.

Consultation:

The issue came up before the Court in (SP Gupta vs. UoI 1982SC) (1st Judges case), that whether consultation of President with CJI is mere consultation or more than that. The Court through Justice Bhagwati held that it is mere consultation and ultimate decision has to be taken by President based on advise of Council of Ministers. Also CJI can be any person of exceptional character & tenure.

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Consultation is effective consultation

Later the Court, in [SCAORA v UOI 1993 SC (2nd Judges)] has dubbed many issues and held that

i) Consultation means effective consultation

ii) SC invented collegium of CJI + 2 senior most Judges for recommendation / name for SC Judge.

iii) CJI must be the senior most Judge as per Convention.

Consultation is Concurrence

Finally, in 3rd Judges case viz [SCOARA v. UOI 1998 SC] / In re Judges Appointment case, the Court render its Advisory Jurisdiction has consolidated the present rule & held:

i) Consultation means Concurrence.

ii) Collegium was widened
- 1+2 for HC Judge Appointment
- 1+4 for SC Judges appointment / transfer of HC Judges.

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Whether Judges Appoint Judges?

India is the only country in the world where the SC in name of independence of judiciary appoints judges itself. The Parliament through 99th Amendment tried to appoint National Judicial Appointment Commission but the Act was declared unconstitutional in SCORA V UOI 2015 SC

The further disagree with such non-transparent practice of the Court and agree with Apeksha Chandra that such precedent is geared for nepotism, corruption, and affects rule of law in parliamentary democracy.

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Q.5(A). Articles 25, 26, 27 and 28, provides religious freedom to all citizens of India. The objective of these right is to sustain the principle of secularism in India. Discuss **[10 Marks, 150 Words]**

The Supreme Court in the case of SR Bommai v. UOI 1993 SC has declared secularism as the basic feature of Indian Constitution. → Q.5A

Art 25 and religious freedom

Art 25(1) gives all individuals right to freely profess, practice and propagate religion and equally attain conscience of religion subject to public order, health, morality and other Fundamental rights. The court in Shirur Mutt case held that what to practice is to decipher from the essential religious practice of that religion.

Later, the court in Indian Young Lawyer Association v. State of Kerala 2017 SC held

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that such rights are subject to other fundamental rights such as Art 17 and religion cannot promote evil practices like untouchability.

Art 26 & religious freedom

Art 26 on the other hand gives right to freedom to religious sects to manage their own religious affairs, establish charitable organisation, etc. subject to public health, order & morality (not fundamental rights)

The court in [SP Mittal v. UOI] gave test of deciding who is sect and also declared that Art 25 is facet of Art 26 and contents it.

Art 27 & 28

It makes the State secular where State cannot impart religious instruction in govt. school nor can force people to pay tax except based on their consent.

(5)

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SC judge

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(b) Write short notes on Meaning of the term 'Other Authorities' under Article 12 of the Constitution. [10 marks, 150 Words]

Art 12 of the Constitution defines 'the State' as Parliament & State Legislature, Central & State Govt, local authority or 'Other Authorities' under control of India or territory of India.

However, the term 'Other Authority' has been subject to controversy whose interpretation liberally has widen the scope of fundamental rights.

The 'How' Test

Initially, the court in Rajasthan Electricity Board v. Mohan Lal 1967 emphasised on 'how' aspect i.e. if the authority is created by the Statute then such authority will be 'Other Authority' under Art 12 as it is drawing power from Constitution and declared Board as Other authority.

The 'Why' Test

Later the court started emphasising

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on 'why' function i.e. in RD Shetty v. IAA 1979 SC the court said that if authority is created to perform such function which can't be done by any other body other than State and State has deep & pervasive control over it then it is 'other authority'

The Final Test

The Court finally in Pradeep Biswas v. ICB 2002 held that if authority is financially, functionally & administratively under the control of State then it is other authority. Hence CSIR was declared the State.

Recently the court has even gone upto extent of declaring private institution in Jeneeth (Jayagopal v. SRM University) under term other authority. However, the Court is expansive interpretation may increase the workload on judiciary by declaring every 'other authority' as the State.

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Q.5(c). What do you mean by Eminent Domain? Does it is in conflict with modern notion of welfare state. Cite constitutional provisions. [10 marks, 150 Words]

Eminent Domain is the State's exclusive and overarching power to take over any private property as it is 'eminent' owner of all resources and just need to pay adequate compensation in lieu of that.

Conflict with Welfare State notion

Initially, Art 31 gave right to property to every individual. However, it became constraint in distributive justice where the ~~court~~ state has to face lot of hurdles in cases like Shankari Prasad Deo case, Bajjan Singh v. State of Punjab 1965SC, IC Golak Nath v. Punjab 1967SC. Hence State abolished it as fundamental right under

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Art 31 and gave emphasis on Art 31A, 31B, 31C read with IX th Schedule to bring land reforms in India so as to achieve : idea of welfare state.

All these amendments were held valid in Keshvanand Bharti v. State of Kerala & later in IR Coelho v. State of TN 2007 SC.

Despite being that the Parliament has provided adequate safeguard by introducing Art 300A by making right to property as constitutional right and it cannot be taken without adequate compensation as held in Cimaderi Case 2005.

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Q.5(b). Executive clemency is a matter of discretion and yet subject to certain standards. Enumerate the ground on which pardoning power of governor can be challenged. Refer judicial pronouncement. [10 Marks, 150 Words]

Art 160 of the Indian Constitution enables the Governor to pardon, repreve, reserve, etc. any of the pronouncement made by the court under his power of Executive clemency so that it should keep a check over fallability of court and to prevent any gross injustice.

Executive clemency is Matter of discretion

In the Parliamentary democracy, the Head of State is bound by aid and advice of the elected council of Ministers as held by the Supreme Court in Sanshee Singh v. State of Punjab 1974SC.

Hence the discretion to grant pardon/clemency is not personal discretion of Governor rather he should act on aid & advice of CoM as held recently in UoI v. AG Pannesaraam 2020SC. Referring Maru Ram v. UoI 1983SC

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Executive clemency & standard

The court has however in Kehar Singh v. UOI 1988 SC declined to give any guidelines to constitutional functionary for exercise of their power.

However in Epuru Sudhakar v. State of AP 2013 SC the court made it explicitly clear that the Governor's exercise of over malafide or extraneous consideration would be subject to review of the court.

Thereby the governor's decision to grant clemency is subject to judicial review on limited grounds when there would be malafide on his part.

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Q.5(E). "There is fine distinction between notion of constitutionality to a pre and post constitutional law". Examine the statement in light of Article 13 of Indian Constitution. [10 Marks, 150 Words]

Art 13(1) of the Constitution declares any law which is of pre-constitutional era to the extent of inconsistency void. Such law has been given legitimacy by Art 372(1).

Whereas Post constitutional law under Art 13(2) should be in contravention of rights under Part III & if they will be contravene then they will be void.

Distinction b/w their constitutionality

The Court in State of UP v. Charanjit Lal Chowdhary has explicitly made it clear that there is 'presumption of constitutionality' of any statute until and unless it is challenged and proved otherwise.

The court has evolved the doctrine of eclipse and made it clear in

Jika Ram Ji v. State of UP that eclipse would be applicable to both pre as well as post constitutional law & if they are violative of part III they will be unconstitutional till eclipse is removed.

But the court in order to save many laws has evolved doctrine of severability by reading down several provision & severing it to make pre constitutional law such as in RMDC vs. State of Bombay to make it constitutional.

However, agreeing with Justice Nariman in his writing on Dicey and Notes that when there was no Constitution before 1950, then how can law before Constitution can attach presumption of constitutionality as Art 372(1) legitimises even illegal act done by Britishers.

62

Q.6(A).). India is a union of states, rather than as a federation of states, comment critically on the nature of Indian federation in the light of constitutional provisions and decided cases. [300 words, 20 Marks]

Art 1 of the India Constitution declares "India i.e. Bharat shall be the union of states" meaning thereby, unlike ~~the~~ the USA, the states in India has not come into existence by agreement but by constituting themselves in Union. Hence, federalism in India is a "unique of its kind" as said by DD Basu.

India is Unitary Constitution

KC Wheare opined earlier that "Indian Constitution is Unitary Constitution" and it was reiterated by the Supreme Court in State of Rajasthan v. UOI 1977SC]. The Reason being:-

1. Existence of States: They are "~~destructible~~ indestructible union of destructible States"

Part of

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Hence, the Parliament can anytime like J&K Reorganisation Act can change the existence of State.

2. Imposition of Emergency: Under Art 356 read with Art 355 the State can impose Emergency in State and dismiss the State Government. However after [SR Bommai VUoI 1993SC] such dismissal's ground is subject to judicial review.

3. Role of Governor: He has been accorded lots of discretionary power such as to refer State Bills under Art 200 to President, make report under Art 356, etc.

4. Legislative Powers: Under Art 248 (residuary power), Art 249 (national interest on subject matter in State List), Art 250, Art 253, etc., Centre can make laws even if such subject is in state's domain.

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5. Repugnancy :- In case of repugnancy, the law made by the Centre will be given preference to extent of repugnancy as held in. G. Mohan Rao V. State of TN 2021 SC

Indian Constitution is Federal

Sir Ivor Jennings has noted that "Indian constitution is federal constitution with strong centralising tendency". However, the Supreme Court in SR Bommai v UOI & later in Kuldip Nayyar v UOI 2006 SC held that "Federalism is basic structure" & ~~is~~ described to Ivor Jennings view. The reason being:-

1. Legislative Power :- It has been clearly demarcated under Art 245, Art 246 read with List I, II & III
2. Independent & Impartial Judiciary to decide on dispute under Art 131.

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3. GST Council & Fiscal Relations :- Under Art 279A the Centre & State has equal power on financial & taxation matters.

4. Executive Powers :- They have been clearly demarcated between Art 256 to Art 279A.

5. Inter State Council :- Under Art 263 to decide on cases of dispute between centre & State.

The Court in [State (NCT of Delhi) v. UOI 2018 SC] agreed with the previous judgment has held that Indian Constitution is federation of States where each organ enjoys their power exclusive in its domain.

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Q.6(B). The re-promulgation of the Ordinance is an 'abuse of power' and 'an act of fraud on the Constitution'. Examine critically the above statement in the light of judicial pronouncements. [250 words, 15 Marks]

Art 123/213 of the Constitution enables the President / Governor to promulgate Ordinance when both or either House is not session to meet any immediate need. Hence the Executive has been given power to legislate, similar to GoI Act, 1935.

Repromulgation of Ordinance

In case of DC Wadhwa v. State of Bihar (1987 SC), a professor came to Court telling that a law in State of Bihar has been re-promulgated since 13 years. The Court held that such repromulgation of Ordinance is to prevent the Parliamentary scrutiny and it is fraud on Constitution as it is blatant 'misuse of

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power' on part of Executive. The power to promulgate ordinance is to meet only existing immediate situation till the House is not in session and not to make it as a source of legislation.

Later, however, the Court in ~~State~~ I. Venkata Reddy vs. State of AP 1987SC has given 'enduring right theory' that State Executive can exercise such power only to prevent the parliamentary scrutiny but also at same time to meet the need of the State.

However, the 7 Judge Bench by 4-3 finally in Krishna Kumar Singh v. State of Bihar 2017SC has held that repromulgation of ordinance by the Governor is fraud on the Constitution & the Governor

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must lay down before the State Legislature the reason for promulgation of Ordinance in the very 1st Session so as to keep it under scrutiny of Parliament. The court has also mentioned T. Venkata Reddy Case.

They, in a democracy, the power should only be exercised in conformity of law, however the noble Objective it may have. Thereby, repromulgation of Ordinance is blatant misuse of power.

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Q.6(C). Recent decision of Supreme court providing for GST council recommendation only recommendatory in nature is a blow to fiscal federalism. Do you agree? Argue **[250 words 15 Marks]**

Art 279 A of the Constitution has given the power to the President to constitute GST council which has been notified so as to recommend on matters related to imposition of tax, cess, etc., Model GST Laws, etc. to Parliament or State Assembly.

UOI vs. Madhya Minerals 2022 SC

The judgment authored by ~~the~~ Justice Chandrachud has explicitly made it clear that Union or State Govt. are not bound by the recommendation of GST Council and its recommendation is merely recommendatory in nature. This in fact is a one of the landmark which would, in turn promote fiscal

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federalism as it will give due respect to the rights of State or Centre to execise their constitutional power to legislate without bound by any body.

In fact, the court has made it clear by quoting Robert Scaphiro that "cooperative federalism comes when state and centre rather than fighting for rights, give up their rights for mutual cooperation". Here also the centre & State has given up their rights under Art 246A to make law on various taxes related to GST and if there would be any other fetter on such power by GST Council it will affect fiscal federalism.

6.

Content improved needs