



(Section -A)

Q.1(a). Discuss the circumstances under which 'Financial Emergency' can be proclaimed by the President of India and effects thereof.

Financial Emergency can be declared under Art 360 of the Constitution, by a Proclamation by President

Circumstances

The President may declare a Financial Emergency if he is satisfied that there is a threat to:

- 1) Financial stability; or
- 2) Credit of India (or any part thereof)

Effects of Financial Emergency

- 1) The President may require states to observe such canons of financial propriety as he may deem necessary.



- 2.) The salaries and expenditures on various posts (including judges of Supreme Court and High Courts) may be reduced.
- 3.) All Money Bills of States may be reserved for the consent of the President

Validity

A Financial Emergency may be valid for

- two months, till it receives the assent of both Houses of ~~the~~ Parliament (if Lok Sabha is not in session, then 30 days after that)
- Any duration till revoked by subsequent Proclamation

It is to India's economic success that till date, no Financial Emergency has been issued.



Q.1(B). Judicial Review can ensure and strengthen rule of law. Do you agree? Write your views.

Rule of law is the doctrine based on the ideal "be you ever so high, the law is above you".

Rule of law consists of: (as per AV Dicey)

- ① Supremacy of law
- ② Equality before the law
- ③ Independent judiciary to enforce the law

YES, judicial review can strengthen Rule of Law

1) Ensures accountability from legislature and executive regarding true application of Rule of law req ensuring no arbitrary powers to executive (Air India v Nargesh Mirza)

- 2) Provides equality in application of different laws by enforcing Art 14 [eg] Permanent Commission to women after Babita Puriya case
- 3) Checks abuse of discretion by executive [eg] Using policies only for intended purpose (Re Arora v State)
- 4) Protecting vulnerable sections through PIL and judicial activism [eg] sexual harassment law (Vishakha case), bonded labour freedom (Bandhua Mukti Morcha)
- 5) Ensuring rights to citizens [eg] Privacy, commercial speech, right to environment

However, judicial review must not end up into judicial overreach.



Q.1(C). "The Constitution of India is often described as a living document. In this context, discuss the need and rationale for constitutional amendments. Are there any potential downsides to frequent amendments? Explain your perspective with examples."

Constitution of India follows a unique system of amendments which allows scope for flexible as well as rigid structures, explained under Article 368.

NEED and RATIONALE for Constitutional Amendment

- 1) Changing times may need changed structures
[eg] GST Council under Art 246-A could not have been imagined ~~under~~ⁱⁿ 1946.
- 2) Allows future generations to adapt the document to present needs
- 3) Allows rectification of faults
[eg] 44th Amendment added safeguards to Art 352 to prevent more Emergencies



- 4) Allows accommodation of new political situations
(eg) Art 371-A for Nagaland to pacify rebellious attitude
- 5) Allows new values to be added → prevent rigid overthrow of outdated Constitution

Potential downsides to frequent amendments

- ① Uncertainty over provisions due to no continuity
- ② Overruling judicial pronouncements creates sense of 'void' in legal sphere (eg) UNCTD Act
- ③ Constitution is meant to ensure permanence
- ④ incentivizes every generation of politicians to enact constitutional amendments
- ⑤ May lead to political instability

The basic structure doctrine of the Supreme Court acts as a safeguard against arbitrary amendment of the Constitution



Q.1(D). "The concept of natural justice is elastic and is not susceptible to precise definition."
Do you agree with this statement? Explain.

Natural justice refers to the concepts of fairness and good conscience in judicial decision-making.

Principles of Natural Justice

- 1) Nemo debet esse propria causa (Rule against bias)
- 2) Audi alteram partem (Rule of hearing)
- 3) Speaking order (Rule of reasons)

Elastic application

- Prof Wade said that application of principles of natural justice shall depend upon the nature of every case.
- Lord Reid in Ridge v Baldwin said that "just because something cannot be neatly



cut and dried and weighed and measured does not mean it does not exist"

- Various occasions arise when some principles have to be dispensed with:

- ↳ ~~the~~ cross-examination (Hira Nath Mishra v Rajendra Medical Co)
- ↳ hearing (Maneka Gandhi case → post-decision hearing)
- ↳ speaking order (national security cases)

- However, this does not mean that they will not be followed ordinarily. Following natural justice makes a decision more acceptable and better (Prof. Wade)

Thus, I agree that natural justice cannot be precisely defined. Subba Rao J. said in Mohinder Singh Gill v CEC that "good conscience is the essence of natural justice."

Q.1(E). What are the various modes of judicial control of delegated legislation?

Delegated legislation is the power of the executive to make subordinate rules under a legislation. It is a quasi-legislative action.

Validity of Delegated Legislation

- In Re Delhi Laws Act (1951) → upheld delegated legislation
- Quilley Rayon Mfg v CIT said ~~only~~ that
 - essential legislative functions
 - un canalised / unguided powers cannot be delegated

Modes of Judicial Control

- 1) Excessive delegation of power: when wide power to remove difficulties is granted (Henry VIII clauses) → void.



2) Violation of constitutional provisions

- Provisions allowing unfair discrimination to women void (Air India v Nargesh Mirza)
- Provision asking labour to engage only in specific acts during harvest are void u/A 19(1)(g) (Chintaman Rao v State)

3) No provision for sub-delegation: unless there is express authority to sub-delegate, the authority must exercise discretion (Saluni Mittal v GT)

4) Uncanalised discretion without guiding principles are void

eg) State of UPB v Anwar Ali Sankar

→ tribunal for all criminal cases referred by govt, void

Thus, the judiciary ensures that delegated legislation is within scope of parent legislation



Q.2(A) The Doctrine of Pleasure has been largely watered down by constitutional safeguards to civil servants. Elucidate with help of decided cases

Article 310 of the Constitution allows the Doctrine of Pleasure, wherein all authorities appointed by President / Governor hold office according to pleasure of President / Governor respectively.

However, this is subject to other provisions of the Constitution

leg Art 14, 16, 324, 124, 148, 311 etc.

Constitutional Safeguards to Civil Servants

Article 311 provides for two important Safeguards to civil servants.



- Art 311 (1) : Removal (dismissal) can only be by a person of the same authority as appointing authority
- Art 311 (2) : Reasonable opportunity has to be provided to civil servants to explain their case prior to dismissal

(not applicable to defence posts or civil posts in defence forces)

Relevant case laws

- * In Maresh v State, the Supreme Court clarified that authority of same rank (not necessarily same designation) as the appointing authority can also dismiss an employee validly.
- * In AN Singh v State, it was clarified

that employees of public corporations do not amount to civil servants, and are thus ineligible to avail Art 311 benefits

• Exceptions to Art 311 (2)

reasonable opportunity may be dispensed with in the following circumstances:

① Misconduct amounting to criminal conviction

↳ here, hearing is already given during the criminal trial

[eg] Tulshiram Patel v UOE (convicted of violence, dismissed without further hearing)

② where hearing is not practicable

↳ must give reasons in writing

[eg] in Satyam v UOE, employees of RAW (intelligence) misbehaved. Held



It was impracticable to give them hearing

③ Where there is threat to security of state

↳ The authority must distinguish between a situation of public order versus security of state (TR Ranganajan v State of Tamil Nadu)

Thus, the doctrine of pleasure cannot be arbitrarily exercised against public servants. The civil servants need to have stability of tenure to work effectively.



2(B) Discuss the constitutionality and legal implications of President's Rule under Article 356 of the Indian Constitution

President's Rule or "State Emergency" under Article 356 allows for a change in the ordinary federal arrangement of the Constitution vis-a-vis Union and a State.

Failure of constitutional machinery in state

- Art 356 provides that whenever the Governor is of the view that the administration of state cannot be carried out according to provisions of Constitution, he may submit a report to the President recommending President's Rule

- Under Art 365, if the state govt fails to comply with directions of the Union, it



will be appropriate to impose Art 356.

- Union has responsibility under Art 355 to protect States from aggression
(Sarbanand Sonowal v UOI : influx of immigrants can also be "aggression")

Constitutionality of Art 356

- * Originally, SC had said that President's Rule cannot be subject to judicial review
(State of Rajasthan v UOI)
- * However, a 4-judge bench of SC in SR Bommai v UOI held that federalism is a basic feature of the Constitution and thus Art 356 cannot be imposed arbitrarily or mala fide.
- * The same was reiterated that government



shall only need to prove majority on the Floor of the House (Rameshwar Prasad, Hanish Rawat and Nabam Reunia cases)

Legal implications of President's rule

- ① President can dismiss state government and assume its functions
- ② President can dissolve state legislature and entrust its powers to Parliament
- ③ President can assume functions of any constitutional authority except High Court

Safeguards

The 44th Amendment ensured the President's Rule cannot last for more than one year without a certificate from the Election Commission, and not more than 3 years as a whole.

Q.2(C). "Essential legislative functions cannot be delegated. Explain with the help of case law. Also discuss the technique and utility of legislative control of delegated.

The doctrine of separation of powers entrusts the act of law-making to the legislature. However, some degree of law/rule-making power needs to be entrusted to executive too in the form of delegated legislation.

Essential legislative Functions cannot be delegated

* In Re Delhi Laws Act (1951) the SC held delegated legislation to be constitutionally valid. However, it said the following cannot be delegated:

- Essential legislative functions
- Unguided / uncanalised discretion

* In Krishnan Sharma v UOI, the SC further clarified that the following are

deemed essential legislative actions (not exhaustive)

- ↳ power to impose tax (Art 265)
- ↳ power to amend or repeal statute
- ↳ power to create authorities with binding/penal powers [eg] SEBI under SEBI Act

* In Quilish Rayon Mfg v CIT, a 5-judge bench clarified that the following are permissible by executive.

- ↳ power to apply statute to different areas

- ↳ power to ~~refer~~ remove difficulties

(only narrow powers to remove difficulties allowed. wide powers

to remove difficulties called "Henry VIII

clauses" are prohibited)



Legislative Control of Delegated Legislation

Technique

- * Committee on delegated legislation exists in Parliament
- * The committee submits reports on the exercise of delegated legislation within scope of parent law

Utility

- * Excessive resort to delegated legislation makes it difficult for legislative oversight to be effective
- * Low productivity of Parliament further reduces scope
- * Legislature already has majority of same party.
Judicial control is more effective in ensuring accountability.



Q.3(A) Explain the significance of the rule of 'AUDI ALTERAM PARTEM' in administrative decision making and state the circumstances under which post decisional hearing can effectively satisfy the mandate of natural justice.

The rule of 'Audi Alteram Partem' is a principle of natural justice which requires an authority to "hear the other side"

Rationale

Prof. Wade said

"Any decision taken without bias and after considering the views of those affected by it is not only better, but also more acceptable to the people"

Components of Audi Alteram Partem

- ① Notice (Sakshi Andolan v ^{State of} Maharashtra)
- ② Hearing (State of Orissa v Dr Bina Pani De)



- ③ Relevant materials and documents
(CIT v Dhaneswari Cotton Mills)
- ④ Cross-examination can be dispensed with to ensure safety of complainants
(Hira Nath Mishra v Rajendra Medical College)
- ⑤ Post-decisional hearing may also be allowed in certain circumstances
(Maneka Gandhi v UOI)

Significance of rule

- non-observance of principles can vitiate the proceedings
- may lead to re-trial or acquittal of the accused
- violation of their fundamental right to



fair trial under Article 21

POST-DECISIONAL HEARING

* In Maneka Gandhi v UOI the SC allowed post-decisional hearing

* In that case, the passport of the appellant was impounded so that she could not leave the country. She was called for hearing afterwards.

* Court upheld this procedure due to need for expediency in the circumstances

↳ Appellant could have escaped if she was called for hearing first and given all due process.



* Similarly, under the UAPA, the govt can declare a terrorist organisation prior to giving a hearing to the organisation

↳ expedient action against terrorists is more necessary Freezing bank accounts

Concerns

Often, it is unlikely that any authority will change its mind after a decision has been taken, even if it calls a person for a formal hearing.

The executive should keep an open mind to all relevant considerations.



Q.3(B) "The doctrine of excessive delegation is a judicially tailored principle" Comment in light of decided cases.

Delegated legislation cannot be outside the scope of the constitution or the parent law.

Excessive delegation

→ The SC held in Krishan Shama v

UOI that there can be no excessive delegation permissible

→ There must be a guiding principle mentioned in the statute regarding how to apply discretion.

→ If there is unanalysed discretion to the executive, it will be void under Article 14



Example: In State of WB v Anwar Ali
Senkan the govt established
special courts to refer some criminal
cases. Since there was no
guiding principle, it was held void

Judicially - tailored principle

The judiciary has evolved multiple
rules regarding limits on delegation:

- ① Parent law must lay down framework
(skeleton legislation) which has the
structure for the rules and
authorities (SR Bhatnagar v UOI)
- ② There must be express provision
for sub-delegation. The principle of



- 'delegatus non potest delegare' applies
(delegate cannot further delegate)

③ wide powers to remove difficulties

(Henry VIII clauses) are not allowed

as per Qualifier Rayon Mfg v CIT

④ Rule-making power cannot be outside
scope of parent legislation

[eg] In 2018, Delhi HC struck down

Legal Metrology Rules for price
fixation when the legal

Metrology Act deals only with
weights and measures

This is one important way of ensuring
judicial control over delegated legislation.

Q.3(C). The doctrine of separation of powers in its classical sense, is more functional than structural, and cannot be applied in any modern government. Discuss

Separation of powers is a doctrine by Montesquieu in 'Spirit of law' (1750) which calls for division of state power between:

- 1) legislature
- 2) Executive
- 3) Judiciary

Structural application

→ The US Constitution sought rigid separation of powers through three organs:

- Congress (legislature)
- President (executive)
- Supreme Court (judiciary)

→ However, India is based on parliamentary



system of responsible government

→ Here, executive is part of legislature and always answerable

Functional application

→ Most organs perform (in limited way) all 3 acts

(eg.1) Parliament has secretariat (executive) and take disqualification decisions (judicial)

(eg.2) Supreme Court makes its rules under Art 145 ~~Executive~~ (legislative) and has Registrar (executive)

(eg.3) Court undertakes delegated legislation and determination of rights at times



However, these are incidental and not
noteworthy encroachments.

→ In Ram Jawaya Kapoor v State of Punjab

the SC said separation of powers is not
rigid in India. Rather, each organ
has its functions defined

→ In KR Coelho too the SC held that

Separation of powers is basic feature

→ Art 50 also calls for separation of
executive and judiciary



Q.5(A). Separation of power Leads to Constitutional Governance. Elucidate

Separation of power is an ideal given by

Montesquieu in 'Spirit of the Law (1750)'

which calls for division of powers among organs of the state into:

- 1) Legislature
- 2) Executive
- 3) Judiciary

SOP leads to Constitutional Governance

↳ Power of each organ laid down in the Constitution

↳ System of "Checks and Balances" ensure that no organ is too powerful



→ ensures limited government and government according to law (where the law itself is also equal)

SOP in India

- In Ram Jawaya Kapoor v UOI the SC stated that there is no strict SOP in India.
- In IR Coelho v State of Tamil Nadu the SC said that separation of powers is a basic feature of the Constitution, although it is in the form of checks and balances.

Q.5(B). Discuss the place of 'Right to Vote' Under the Constitutional Scheme of India.

Universal adult franchise was enacted in India after a long struggle against the colonial rule for representation.

Right to vote

- Article 325 - all ^{citizens} ~~persons~~ above 18 years of age can cast vote in elections
- Article 326 - no ^{citizen} ~~person~~ ~~is~~ eligible to vote (universal franchise) can be restricted on grounds of religion, race, caste, sex, creed or place of birth

Limitations on Right to vote

↳ undertrial prisoners can be restrained



from exercising their vote

↳ Any person may be disqualified under any law by Parliament from exercising their right to vote.

Right to vote is a constitutional right but not a fundamental right.

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Q.5(C). How has doctrine of basic structure, its interpretation and application evolved since it was first introduced?

The doctrine of basic structure evolved with the Kesavananda Bharati v State of Kerala (1973) case.

Need for basic structure

- Parliament should not be allowed to repeal the existing constitution and replace it with a new one under Article 368
- Basic features such as democracy should not be allowed to be repealed

Evolution of Basic Structure Doctrine

① Initial Exposition in Kesavananda

- 7 judges gave varying opinions on content of basic structure

[eg] Reddy J. said Preamble is basic structure



② Early application and defense of doctrine

- Minerva Mills (1978) struck down the restriction on judicial review on Art 368
- Post of PM not held to be above rule of law (Indira Gandhi v Raj Narain)

③ later features of basic structure added

- Federalism & secularism (SR Bommai)
- Judicial review (IK Coelho)
- Independence of judiciary (NIAA case)

④ Test for basic structure

In MA Nagaraj v UOI the SC laid down 'width Test' and 'identity Test' to see if a constitutional amendment struck at the basic features or not.



Q.5(D). Have the 'Emergency Provisions' in effect maintained a unitary Constitution India? Give your assessment.

Emergency Provisions under Part XVIII of the Constitution provide for:

- 1) National Emergency (Art 352)
- 2) President's Rule (Art 356)
- 3) Financial Emergency (Art 360)

Maintained unitary constitution in India

- wide unitary powers to Union when National Emergency is in operation
- Dismissal of state governments when there was Centre - State tussle
(in early 1950s itself the communist govt in Kerala was dismissed by Pt. Nehru)
- Mandatory for state govt to follow Union's directives under Art 365 (A. 257)



However, in present times the federal nature of Constitution remains preserved

- After SR Bommai case, dismissal of state governments under Art 356 significantly reduced
- Centre-State issues have been resolved through dialogue at NITI Aayog, GST Council etc
- States continue to exercise autonomy in their fields
- 44th Amendment restricted scope for arbitrary imposition of National Emergency

Initially the provisions were more prone to misuse, but as India has matured as a democracy, there is more federalism than ever before.



Q.5(E). Discuss the challenges faced in the implementation and functioning of Lokpal & Lokayukta system in India. What are some potential measures to improve their efficacy?

The Lokpal and Lokayuktas Act 2013 was enacted to ratify India's acceptance of UN Convention Against Corruption.

Challenges in implementation

- ① Appointments can be delayed by government (first Lokpal appointed in 2019) — Selection procedure has politicians
- ② Lokayuktas dependent on States' laws for powers → diluted powers means ineffective oversight
- ③ Lack of vigilance capacity especially over local body representatives.



Challenges in functioning

- ① No independent investigation wing
→ only CBI / CVC assistance is possible
- ② No power to seize assets → ineffective to prevent destruction of evidence
- ③ No clarity over who gives sanction for prosecution in certain cases

Potential measures

1. Independent funds from Consolidated Fund of India
2. Independent service for investigation
like CAG
3. Greater powers to impose penalties
and maintain secrecy of complaints

This can make the Ombudsman the 4th Pillar of governance.



Q.6(A). An independent Election Commission is necessary for a functioning democracy as it ensures Rule of Law and free and fair elections. Comment in Light of recent Decision of SC in Anoop barawal v UOI.

Election Commission of India has been entrusted the duty to ensure free and fair elections in India under Article 324 of the Constitution.

Need for independence

- ① Handles electoral competition between ruling party and opposition parties
- ② Works at both national and state level
- ③ Cannot favour Union govt ministers over opposition leaders / state govt
- ④ Neutral enforcement of Model Code of Conduct needed



Issues with present appointment model

- Art 324 provides that President shall appoint Chief Election Commissioner
- On the advice of CEC, other election commissioners can be appointed and removed.
- This shall last till Parliament enacts law on the subject
- Thus, Union government (PM) aids and advises President to appoint the CEC
- This puts credibility and neutrality of CEC in doubt



SC decision in Anoop Barwala v UOE

↳ Election Commissioners shall be appointed by collegium comprising:

- 1) Prime Minister
- 2) Leader of Opposition
- 3) Chief Justice of India

↳ This collegium shall aid and advise the President on appointment of ECI

Rationale

→ Perception of ECI as neutral body is necessary for continued faith in democracy



→ This shall continue till Parliament enacts law on the subject

→ The rationality and constitutionality of that law shall be tested later on.

Views

While many say this is an example of judicial overreach, I agree with the verdict.

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The SC has used the Nobel - Prize winning 'judge approach' to set the default option as uncomfortable for governments to consider changing.



Q.6(B). "Article 311(2) lays down that a Civil servant cannot be dismissed or removed or reduced in rank unless he has been given a reasonable opportunity to show cause against the action proposed to be taken against him". Critically examine the statement with reference to the decided cases.

Article 311(2) presents an exception to the doctrine of pleasure provided in Article 310. It requires reasonable opportunity to show cause against action proposed against him.

42nd Amendment removed the

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" dual hearing " clause - where the civil servant would have opportunity at:

- hearing stage / trial
- punishment / sentence stage



Limitations to Article 311(2)

① Misconduct amounting to criminal conviction

↳ In such a case, hearing has been given by the sessions court already

↳ Tulsiram Patel v UOI (employee convicted of violence, dismissed)

② Where hearing is impracticable

↳ reasons have to be recorded in writing

↳ Satyavir v UOI (RAW agents held liable for extortion and misbehaviour, dismissed. Held, hearing was impractical)



③ Where there is a threat to security of state

↳ must distinguish between issues of public order and security of state (TR Ranganajan v State of Tamil Nadu)

Art 311 provides an important safeguard to the permanent executive from the vagaries of politics.



Q.6(C). "Discuss the constitutional validity and judicial review over decisions made by Administrative Tribunals as established under the Administrative Tribunals Act, 1985. How has the judiciary reacted to the evolution of these tribunals over the years?"

A tribunal is a special type of authority:

- established under statute (not by agreement)
 - whose decisions are judicial in nature (not administrative)
- SC in Bharat Bank v Employees (1950)

Evolution of tribunals

Although tribunals were established prior to its enactment also, the 42nd Amendment gave constitutional status to tribunals by way of Act 323-A and 323-B



Administrative Tribunals under Art 323-A

- Central Administrative Tribunal (CAT),
and Joint
State Administrative Tribunals (SAT and JAT)
can be established
- Law by Parliament needed
↳ accordingly, Administrative Tribunals Act 1985
passed
- Law can exclude jurisdiction of all courts
except Supreme Court
↳ thus, Section 28 of AT Act excluded
even Art 226 & 227 jurisdiction of HCs

Constitutional validity and judicial review

→ In C Sampath Kumar v UOI the
SC upheld this provision taking a narrow



view of scope of Art 226-227.

→ However, in L Chandra Kumar v UOI

the SC said judicial review is a

basic feature and Article 226/227 cannot

be excluded.

∴ Now, prior to appeal under Art 136, one must mandatorily approach HC under Art 226/227.

Judicial reaction to tribunals

- In Madras Bar Assn v UOI the SC said the tribunals must provide equally efficacious remedy to citizens, and struck down the National Tax Tribunal
- Even recently, the Search cum. Selection Committee for tribunals is being reviewed by SC.