Section – A

Q.1) a) Elaborate upon the various powers of Supreme Court bestowed by the Constitution of India.

The Supreme Court of India is the apex court in the integrated judicial setup in India with the powers of judicial review. It is not only the highest Court of appeal but is also the guardian and protector of rights bestowed to citizens and institutions under the Constitution of India.

The Constitution of India has conferred the following jurisdictions and powers upon the Supreme Court:

1.) Right to Constitutional Remedies

- **Article 32 -** gives an **extensive original jurisdiction** to the Supreme Court in regard to enforcement of Fundamental Rights. It is empowered to issue **directions, orders or writs**, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari to enforce them.
- **Public Interest Litigation has been filed as writ petition in Supreme Court –** Hussainara Khatoon v State of Bihar, Bandhua Mukti Morcha v. UoI, Parmanand Katara v UoI, People's Union of Democratic Rights v. Union of India (Asiad case) etc.

2) The Supreme Court is a 'court of record' - Article 129

- It has all the powers of such a court including the **power to punish for its contempt.** A court of record has (1) power to determine its own jurisdiction, and (2) it has power to punish for its contempt. Contempt of Court proceedings are governed by the **Contempt of Courts Act, 1971** which defines both civil and criminal contempt.
- **Section 2(b) - Civil contempt** means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.
- **Section 2(c) - "Criminal Contempt" -** publication whether by words, spoken or written, or by signs, or by visible representations, or any act which scandalises or lowers the authority of any court; or prejudices, or interferes with judicial process or interferes or obstructs the administration of justice.

3) Original Jurisdiction - Article 131

- **Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute – (a)** Government of India and one or more States or **(b)** between the Government of India and any State or States on one side and one or more States on the other or **(c)** between two or more States – if the dispute involves any question of law or of fact on which the existence or extent of a legal right depends.

4) Appellate jurisdiction - Article 132 to 134

- The appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court concerned under ***Article 132(1), 133(1) or 134*** of the Constitution in respect of any ***judgement, decree or final order of a High Court*** in both ***civil and criminal cases***, involving ***substantial questions of law as to the interpretation of the Constitution.***
- Normally, these appeals are in cases **involving substantial questions of law** or **interpretation of the Constitution** or **death penalty awarded by a High Court.**

5) Special leave to appeal by the Supreme Court – Article 136

- **The Supreme Court has also a very wide appellate jurisdiction over all Courts and Tribunals in India** in as much as it may, in its discretion, **grant special leave to appeal under Article 136** of the Constitution from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India.

6) Review of judgments or orders by the Supreme Court– Article 137

- The Supreme Court has the power to review any judgement pronounced or order made by it. Thus, the Supreme Court may review its own judgement order as mentioned under **Article 137.**

7) Advisory Jurisdiction under Article 143

- Under Article 143(1), President of India may refer the opinion of the Supreme Court on a question of law or fact that has arisen, or is likely to arise. It is not obligatory upon the Court to render its opinion on such matter.
- However, under Article 143(2), it is mandatory for the Supreme Court to render its advice on dispute mentioned under proviso to Article 131 i.e. arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement. Thus, what is prohibited under Article 131 is allowed under Article 143.
- The advisory role of the Supreme Court is different from its Ordinary Adjudication in three senses: **First,** there is no litigation between two parties; **Second,** the advisory opinion of the Court is not binding on the government; and **Third,** it is not executable as a judgement of the court.
- **The Third Judges Case -** Supreme Court on a reference made by the President under Article 143 laid down the norms for appointment of judges through a collegium of five senior most judges of SC.

8) Article 142 – Enforcement of decrees and orders for complete justice

- Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary *for doing complete justice in any cause or matter pending before it,* and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
- In course of time, the Apex Court has given a much wider dimension and ambit to Art. 142, practically raising the provision to the status of a new source of substantive power for itself.
- **State of Tamil Nadu v Governor of Tamil Nadu (2025) -** Supreme Court invoked its special powers under **Article 142** and declared those ten Bills as **deemed to have been assented** on the date when they were presented to the Governor due to excessive delay.

9) Hear Curative Petition

- They are the final remedy where the SC can reconsider a dismissed review petition under its inherent powers under ***Article 137 and 142 of the Constitution*** of India. Curative petition, in layman's language, means a method devised by the Supreme Court to review or to relook its own decision passed in the review petition. Any party who wishes to challenge the order of review, can file a curative petition. It was recognised for the first time in ***Rupa Ashok Hurra v Ashok Hurra and Anr. (2002).***

10) Constituting Constitution Bench under Article 145(3) - Supreme Court to form Constitution Bench comprising minimum of five judges to decide any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143.

The power of judicial review bestowed under various provisions of the Constitution such as Article 13, 32, 131, 136 and the power to do complete justice has ensured a check on powers of the Parliament and the executive.

b) What are the tests laid down by the Supreme Court for quantifying and providing quota for Other Backward Classes in local body elections?

Article 243D(6) and Article 243T(6) empowers the State Legislature to make provision for reservation of seats in in favour of backward class of citizens in Panchayat or Municipalities respectively or offices of Chairpersons in the Panchayats or Municipalities at any level. But no directions are given and neither are any fixed principles upon which reservation were to be given.

This led to lot of discrepancies and non-uniform practices across states in providing reservation for backward class in local polls. States like Maharashtra ended up giving overall reservation in excess of 50% which was challenged in **Vikas Kishanrao Gawali vs. State of Maharashtra.** Supreme Court in this case has outlined **triple test or conditions** for providing reservation to backward classes in the local bodies. These include:

a) To set up a dedicated **Backward Commission** to conduct a rigorous empirical inquiry into the nature and implications of the backwardness in local bodies;
b) To **specify the proportion of reservation required in local bodies** in light of recommendations of the commission, so as not to fall foul of overbreadth;
c) To ensure **reservation for SCs/STs/OBCs** taken together **does not exceed an aggregate of 50 per cent** of the total seats.

In **Vikas Kishanrao Gawali** case, the petitioner under Article 32 sought a declaration that Section 12(2)(c) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 is ultra vires the provisions of **Article 243-D & 243-T** including **Article 14 and 16** of the Constitution of India. Further, notifications issued by the State Election Commission of Maharashtra was also challenged **providing for reservation which exceeded 50% limit** in Zila Parishad and Panchayat Samitis of districts.
Supreme Court referred to the judgment of Supreme Court in **K. Krishnamurthy (Dr.) v. Union of India** which held that Article 243D(6) and Article 243T(6) are mere enabling provisions and do not violate the equality clause under Article 14. Court also held that **reservation policy under Article 243-D and 243-T are different from Article 15(4) & 16(4)** and hence both kinds of reservations cannot be linked because socio-economic backwardness under **Article 15(4) & 16(4)** is different from **political backwardness.** Further, **creamy Layer cannot be excluded from reservation of OBC in local bodies** at the level of Panchayat and Municipality.

Thus, the triple test formula to provide reservation for backward class based on their proportion of population in local polls will ensure timely polls in local bodies which is an essential element of grass root democracy.

c) Discuss the application of fundamental rights to parliamentary privilege cases.

Parliamentary privileges granted under Article 105 and 194 in the form of freedom of speech and vote given as part of Article 19(1)(a) are essential for the functioning of the legislature but not absolute and can be subject to the application of fundamental rights, particularly Article 21. While parliamentary proceedings are generally shielded from judicial review under Article 105(2) and 194(2), courts have intervened in cases where personal liberty under Article 21 are infringed to safeguard privileges.

Further protection to freedom of speech and expression under Article 19(1)(a) was provided by adding **Article 361-A** through the **Constitution 44th Amendment Act of 1978.** It highlights that no person shall be liable to any proceedings, civil or criminal in any Court of law in respect of any publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or Legislative Assembly, unless the publication is proved to have been made with malice. A similar immunity is extended to broadcast on air. Newspapers were not immune to publications of parliamentary proceedings prior to the Constitution 44th Amendment.

Some Landmark Judgments which upheld Fundamental Rights over Parliamentary Privileges are:

- **Gunupati Keshavram Reddy v. the Nafisul Hasan and State of U.P - Blitz Publication Case, (1954) (Infringement of Article 22) -** Blitz published a news item casting derogatory aspersions on the Speaker of the U.P. Legislative Assembly. The Speaker referred the matter to the Committee of Privileges of the House for investigations and report which summoned D.H. Mistry, editor of the *Blitz*, to appear before it to clarify the position. Mistry neither appeared before the committee nor did he send any reply. Thereafter, based on Assembly's Resolution, the Speaker issued the warrant of arrest and Mr. Mistry was arrested in Bombay on the charge of committing contempt of the U.P. Legislative Assembly. He was brought to Lucknow and was lodged in a hotel for a week without anything further being done in the matter. In the meantime, a petition for a writ of *habeas corpus* was moved in the Supreme Court on his behalf on the ground that Mistry's Fundamental Right under Art. 22(2) had been violated. Article 22(2) envisages that a person arrested must be produced before a magistrate within 24 hours of his arrest. ***The Supreme***

Court accepted the contention that as Mistry had not been produced before a magistrate, his Fundamental Right under Art. 22(2) was infringed and, accordingly, the Court ordered his release. **This pronouncement created the impression that the Fundamental Rights would control parliamentary privileges.**

- **Pandit M.S.M. Sharma v Shri Sri Krishna Sinha (1959) - [Searchlight-I] -** Supreme Court held by a majority that the privileges enjoyed by a House of Parliament under Art. 105(3) [or a House of State Legislature under Art. 194(3)], **were not subject to Art. 19(1)(a)** and, therefore, a House was entitled to prohibit the publication of any report of its debates or proceedings even if the prohibition contravenes the Fundamental Right of Speech and Expression of the publisher under Art. 19(1)(a). ***The ruling in Gunupati was held not binding*** as it was not 'a considered opinion' on the subject. The Court argued that Art. 105(3) [or Art. 194(3)] was not declared to be 'subject to the Constitution', and, therefore, it was as supreme as any provision of the Constitution including the Fundamental Rights. Any inconsistency between Arts. 105(3) [or Art. 194(3)] and 19(1)(a) could be resolved by 'harmonious construction' of the two provisions, and Art. 19(1)(a) being of a general nature must yield to Art. 105(3) [or Art. 194(3)] which was of a special nature.
- **Searchlight-II –** This case raised substantially the same questions as had been agitated in *Searchlight* I. The Court however refused to reconsider its earlier decision. Thus, the Court in a way reaffirmed the propositions of law laid down by it in ***Searchlight-I.***
- **Keshav Singh v Speaker, Legislative Assembly (1965) -** Allahabad High Court held that when the Legislature acts under the rules framed by it laying down the procedure for enforcing its power to commit for contempt, that would be compliance of Article 21 requiring procedure to be laid down by law for deprivation of personal liberty. It was also held that Art. 22(2) has no application when a person has been adjudged guilty of contempt of the House and has been detained in pursuance of such an adjudication.
- **P.V. Narasimha Rao v State (1998) -** Supreme Court based its decision on two categories namely: **1. Bribe Givers** who could not claim any immunity under Article 105(2) and **2. Bribe Takers** who received money as a motive or reward to defeat the No-Confidence Motion and there being explicit nexus between bribe and vote given as per the bribe. Here the Court held that the member who is alleged to have accepted the bribe but noted accordingly cannot claim immunity under Article 105(2).
- **Sita Soren v Union of India (2024) -** It overruled the judgment of PV Narasimha Rao. ***Bribery is not rendered immune under Article 105(2) and Article 194(2)*** because a member engaging in bribery commits a crime which is not essential to the casting of the vote or the ability to decide on how the vote should be cast. The same principle applies to bribery in connection with a speech in the House or a Committee. **Corruption and bribery by members of the legislatures erode probity in public life.** The offence of bribery is agnostic to the performance of the agreed action and crystallizes on the exchange of illegal gratification. ***It does not matter whether the vote is cast in the agreed direction or if the vote is cast at all.*** The offence of bribery is complete at the point in time when the legislator accepts the bribe.
- **State of Kerala v. K. Ajith (2021) -** Supreme Court upheld the principle that legislative privileges do not grant immunity from criminal law. The case involved the Kerala government's attempt to withdraw criminal charges against its MLAs who were accused of vandalism in the state assembly. The court affirmed that acts of destruction of public property are not protected under the privileges granted to legislators, and that such actions are not considered "proceedings" of the assembly.

So far, the Courts have protected the fundamental rights and ensured that Parliamentary privileges exercised by members of House should not only be subject to rules and procedures of the House (Article 118) but also to fundamental rights under PART-III of the constitution of India.

d) The Wednesbury test focuses on the idea of "irrationality" or "unreasonableness." Explain.

The Wednesbury Principle is used to determine if decisions of administrative authority is so unreasonable or irrational that no sensible person could have taken such decision and can be quashed through judicial review of administrative actions.

While defining irrationality, Lord Diplock equated it with **"Wednesbury Unreasonableness"** which was developed in the case of ***Associated Picture House v Wednesbury Corporation*** and therefore the name – "Wednesbury unreasonableness".

- It simply means that administrative discretion should be exercised reasonably.
- Accordingly, a person entrusted with discretion must direct himself properly in law.
- He must call his attention to matters which he is bound to consider.
- He must exclude from his consideration matters which are irrelevant to the subject he has to consider.
- If he does not obey those rules he can be said to be acting unreasonably.

Council of Civil Service Unions. v. Minister for the Civil Services - Lord Diplock summarised the principles of judicial review of administrative action as based upon one of the following (1) Illegality (2) Irrationality (3) Procedural Impropriety.

Rameshwar Prasad (VI) v Union of India (2006) - Supreme Court held that a decision will be said to be unreasonable in the Wednesbury sense if –

1) it is based on wholly irrelevant material or wholly irrelevant consideration,
2) it has ignored a very relevant material which it should have taken into consideration, and
3) it is so absurd that no sensible person could have ever reached it.

It is to be remembered that scope of judicial review is limited to the deficiency in decision-making process and not the decision

Union of India v G. Ganayutham (1997)

What the Courts Can Do...?	What the Courts Cannot Do...?
Wednesbury Test is to be applied to find out whether the decision was illegal, or suffered from procedural impropriety, or one which no sensible decision maker could arrive at. **Courts can consider whether** ▪ relevant matters were considered or not ▪ irrelevant matters were taken into account, ▪ the action was not bona fide ▪ the decision was absurd or perverse	The Court do not intend to go into the correctness of the choice made by the administrator amongst the various alternatives available to him. The Court also would not prefer to substitute its decision with that of the administrator. This is the Wednesbury Test. The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational.

The Court in **A. Sudhakar v Post Master General (2006)** held that administrative action is subject to control by judicial review in cases of illegality, irrationality namely Wednesbury unreasonableness and procedural impropriety. However where fundamental rights are affected, the **principle of proportionality** which provides a stricter test of reasonableness is applied.

The Supreme Court had first relied on the four-pronged proportionality test in 2016 in ***Modern Dental College & Research Centre v State of Madhya Pradesh***. Later in the ***K.S. Puttaswamy v Union of India (Privacy) (2017)*** and ***Aadhaar (2018)* judgments**, the proportionality test was further recognised as a tool to assess whether a restriction on a fundamental right was justified. Proportionality involves:

(1) Balancing Test – permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations
(2) Necessity Test – requires infringement of human rights to the least restrictive alternative

In modern times, doctrine of proportionality is gaining ground at the cost of Wednesbury Unreasonableness to make scrutiny of administrative actions more exacting and intrusive – State of U.P. v Sheo Shankar Lal Srivastava (2006).

e) The doctrine of necessity is an important exception to the rule of bias. Discuss.

The doctrine of necessity is a legal principle that allows actions that would otherwise be considered a violation of natural justice including rule against bias to be taken in extraordinary circumstances. It is based on the idea that sometimes it is necessary to set aside normal legal procedures to prevent a greater harm from occurring.
An adjudicator, otherwise disqualified for bias, may nevertheless have to adjudicate if:

(i) no other person competent to adjudicate is available;
(ii) *quorum* cannot be formed without him/her;
(iii) no other competent tribunal can be formed.

While upon an application of the doctrine of necessity, the rule of bias is given a go by, if it is not applied it would result in a situation of deadlock where adjudication will be stalled and the defaulting party would benefit. Where alternative arrangements can be made, however, the doctrine of necessity will not be applied.
There are two types of necessity: **necessity** and **absolute necessity.**
In the doctrine of necessity, there is an option of either allowing the biased person or not allowing adjudicating the case. Necessity is when there is no other reasonable alternative to the action in question.

- **Gullapalli Nageswara Rao v. APSRTC (1958) -** This landmark Indian case established the principle that procedural deviations in decision-making can be justified under the doctrine of necessity if essential for achieving justice or preventing harm. The Supreme Court acknowledged the doctrine's applicability in administrative law when procedural rules might hinder the efficient and just resolution of matters.
- **Ashok Kumar Yadav v. State of Haryana and others (1985) -** SC Court held that the member of the Public Service Commission could not be excluded from the selection process completely only because they are related to some of the candidates. However, they may be excluded during the selection process of those candidates to whom the member is related.

Whereas, under the **doctrine of absolute necessity**, allowing the biased person to adjudicate the matter becomes absolutely necessary. In absolute necessity, the situation becomes so urgent and harmful that even if there were alternatives, they would not be effective.

- **Election Commission of India v. Subramaniam Swamy, (1996) – The doctrine in this case was modified to doctrine of absolute necessity.** In a challenge to adjudication of disqualification of a member of a legislature, when bias was alleged against the Chief Election Commissioner on the ground that he was close to the complainant, the court held that as there was a suspicion of bias, the Chief Election Commissioner should excuse himself from participating in the decision in the first instance, and let the other two Election Commissioners decide the point. If, however, there were to be a difference of opinion between the two Election Commissioners, then the Chief Election Commissioner would have to participate on the ground of necessity.
- **Charan Lal Sahu v. Union of India (1989)** - Central Government authorized itself under the Bhopal Gas Disaster Act (Processing of Claims) Act, 1985, to represent all the victims. This was challenged by the fact that the Government held mere 22% share in the Union Carbide Company, and therefore it was alleged that the interests of the Government and the company overlap each other due to a potential conflict of interests between the victims and the Government. The Court further held that although the agreement might be true, no other body can represent

the victims. A statutory exception might not always be expressed, but it is implied in the application, along with the **doctrine of necessity.**

Waiver of Objections Against the Adjudicator

- **King v. Essex Justices, (1927) -** A person may also waive her objections to an adjudicator on the ground of bias, but such waiver should be explicit and with knowledge of consequences, and it should not be inferred lightly.
- **Rattan Lal Sharma v. Managing Committee, Hari Ram Higher Secondary School, (1993) -** However, even after private waiver, if the authority acts in a patently biased manner, it may still be disqualified on the ground of public interest in clean administration.

Thus, doctrine of necessity shields the adjudicator from bias but it does not give licence to decide matters or take decisions in an unreasonable or irrational manner. In 2023, the Attorney General of India and the Corporate Affairs Ministry (MCA) gave their approval to invoke doctrine of necessity to the Competition Commission of India (CCI) to clear pending merger and acquisition deals due to lack of quorum.

Q.2) a) Explain how judicial control over administrative actions is exercised through writs.

The judicial control of administrative action through writs provides a fundamental safeguard against the abuse of power by the administrative authorities. Need for judicial control over administrative actions arises because of vague and discretionary powers given to administrative authorities necessary for their functioning but are subject to misuse and abuse. This not only violates principles of natural justice and rule of law but also hampers basic fundamental rights of the citizens.

The power to issue appropriate **writs** (*habeas corpus, mandamus, prohibition, quo warranto and certiorari*), **directions and orders** under **Article 32** for the Supreme Court and **Article 226** for the High Courts is very wide has ensured adherence of rule of law and principles of natural justice by the administrative authorities thereby safeguarding fundamental rights of citizens.

Supreme Court in **Basappa v. Nagappa (1954)** ruled that in reviewing administrative action, the Courts would restrict themselves to broad and fundamental principles underlying the prerogative writs in the English Law without however importing all its technicalities.

When Writ Petition is Maintainable under Article 32?

- **Kheyerbari Tea Company v ITO (1964) –** A notable aspect of Article 32 is that it can be invoked only when the administrative action is in conflict with the fundamental right of the petitioner. It cannot be invoked if no question of fundamental right arises.
- **Ramjilal v ITO (1951) –** Article 32 cannot be invoked even if administrative action is illegal unless the petitioner's fundamental rights are infringed. Thus, a petition against merely illegal collection of income tax is not maintainable under Article 32 for the protection against imposition and collection of taxes except by authority of law under Article 265, which itself is not a fundamental right.

The rule of maintainability of petition under Article 32 against administrative decision

- First, if the statute for a provision thereof ultra vires any action taken there under by a quasi-judicial authority which infringes or threatens to infringe a fundamental right, will give rise to the question of enforcement of that right and petition under Article 32 will lie.
- Second, if a quasi-judicial authority acts without jurisdiction or wrongly assumes jurisdiction by committing error as to a right, the question of enforcement of that arises and a petition under Article 32 will lie even if the statute is intra vires.

- Third, if the action taken by a quasi-judicial authority is procedurally ultra virus, a petition under Article 32 would be competent.

Writs under Article 32 and 226 can be issued against:

- **Government –** it refers to the executive or administrative organ at the centre or in states. Thus, writs have been issued against Government of India (Maneka Gandhi v Union of India), the President acting in official capacity (Haroobhai v State), Government of a State (Ram Jawaya Kapoor v State of Punjab), Governor of a state acting in official capacity (Krishna Rao v State of A.P.), Government Department such as Income Tax Department (K.A. Karim & Sons v ITO), various officials of centre and state government.
- **Local Authority and Other Authorities** as they are state under Article 12 – R.D. Shetty v Airport Authority of India
- **Statutory Bodies -** Supreme Court in Electricity Board, Rajasthan v. Mohan Lal (1967) held that the expression 'other authorities' is wide enough to include all authorities created by the Constitution or statute on whom powers are conferred by law. It is not necessary that the statutory authority should be engaged in performing governmental or sovereign function. On this interpretation the expression 'other authorities', will include Rajasthan Electricity Board.
- **Non-Statutory Bodies including Societies -** Court in R.D. Shetty v AAI held that if a body is an agency or instrumentality of government it may be an 'authority' within the meaning of Article 12 whether it is a statutory corporation, a government company or even a registered society. Hence, would be subject to writs if they violate fundamental rights.

Based on this, let us go through some of the important judgments of Constitutional Courts on various writs:

WRIT OF HABEAS CORPUS

The writ provides remedy for a person wrongfully detained or restrained. By this a command is issued to a person or to jailor who detains another person in custody to the effect that the person imprisoned or the detenu should be produced before the Court and submit the day and cause of his imprisonment or detention. The detaining authority or person is required to justify the cause of detention. If there is no valid reason for detention, the Court will immediately order the release of the detained person. The writ is available to all the aggrieved persons alike and is the most effective means to check the arbitrary arrest by any executive authority. It is available only in those cases where the restraint is put on the person of a man without any legal justification. The writ is not of punitive or of corrective nature. It is not designed to punish the official guilty for illegal confinement of the detenu. Nor can it be used for devising a means to secure damages. Landmark judgments include:

- **Sunil Batra vs. Delhi Administration -** This case broadened the scope of habeas corpus, allowing it not only for the detainee but also to protect the rights of fellow prisoners. It established the principle that the writ can be used to safeguard the well-being and rights of individuals in detention, even if they are not directly the petitioners.
- **Sheela Barse v State of Maharashtra** –
- **D.K. Basu v. State of West Bengal -** is a landmark judgment by the Supreme Court of India in 1997 that established crucial guidelines to prevent custodial violence and protect the rights of arrested individuals. The ruling focused on ensuring transparency and accountability in police actions during arrest and detention

CERTIORARI

It is a command or order to an inferior Court or tribunal to transmit the records of a cause or matter pending before them to the superior Court to be dealt with there and if the order of inferior Court is found to be without jurisdiction or against the principles of natural justice, it is quashed: "*Certiorari is historically an extraordinary legal remedy and is corrective in nature. It is issued in the form of an order by a superior Court to an inferior civil tribunal which deals with the civil rights of*

persons and which is public authority to certify the records of any proceeding of the latter to review the same for defects of jurisdiction, fundamental irregularities of procedure and for errors of law apparent on the proceedings."

Necessary conditions for the issue of the Writ of Certiorari:
When any persons
(a) Having legal authority
(b) To determine questions affecting rights of subjects,
(c) Having duty to act judicially,
(d) Acts in excess of their legal authority, writ of certiorari may be issued.
Unless all these conditions are satisfied, mere inconvenience or absence of other remedy does not create a right to certiorari.

The following important points about writ of certiorari may be noted:
- **It is a remedy operating in personam**, therefore writ can be issued even where the authority has become functus officio (having served its purpose), to the keeper of the records.
- **Writ can be issued against constitutional bodies** (legislature, executive and judiciary or their officers), statutory bodies like corporations, non-statutory bodies like companies and cooperative societies and private bodies and persons.
- **Certiorari can be issued to quash judicial, quasi-judicial as well as administrative actions (A.K. *Kraipak v Union of India*, 1970).**
- The writ is corrective in nature, thus its scope of operation is quite large. The purpose of certiorari is not only negative (to quash an action) but it contains affirmative or positive action also.
- In ***Gujarat Steel Tubes v Mazdoor Sabha (1980),*** Court held that while quashing the dismissal order, the court can also order reinstatement and the payment of back wages.

GROUNDS TO ISSUE CERTIORARI:
1. Lack of Jurisdiction
a) If the authority is improperly constituted
b) If the authority commits an error in its decisions on jurisdictional facts and assumes jurisdiction which it never had
c) If the authority is incompetent to take action regarding area, party or subject-matter
d) If the law giving jurisdiction itself is unconstitutional
- **Rafiq Khan v State of UP (1954) –** UP Panchayat Raj Act authorised the SDM to either quash the entire order of Panchayat Adalat or cancel its jurisdiction but had no power of modification of order which the SDM did. Court issued writ of certiorari to quash decision of SDM.
- **Budh Prakash Jai Prakash v S.T.O (1952) –** Sales Tax Officer imposed tax on forward contracts irrespective of place of delivery of contract. Court issued certiorari on the ground that subject matter is outside the jurisdiction of the authority.

2. Excess of Jurisdiction – J.K. Chowdhary v Datta Gupta (1958) – Governing Body of a college affiliated to Guwahati University dismissed its principal. Court issued certiorari to quash action on ground of excess of jurisdiction
3. Abuse of Jurisdiction – exercising jurisdiction in bad faith, for improper purpose or extraneous considerations
4. Violation of Principles of Natural Justice – the decision of the authority may be quashed by the Court
5. Error of Law Apparent on the Face of Record

WRIT OF PROHIBITION is a judicial order to agencies – constitutional, statutory or non-statutory from continuing their proceedings

- in excess of abuse of their jurisdiction or
- in violation of principles of natural justice or
- in contravention of any law of the land.

Writ of Prohibition can be issued even when the authority has reached its decision to stop it from enforcing the decision. It is a speedy and effective remedy as the only relief sought is to stop the authority from continuing or implementing its decision due to lack of jurisdiction.

One difference between writ of prohibition and certiorari is that writ of prohibition is issued while administrative process is in motion to stop it from proceeding further. Whereas certiorari is issued to quash the proceedings and is therefore issued when the administrative authority has completed its decision or implemented its decisions.

The writ of prohibition can be issued only against judicial and quasi- judicial authorities. It is not available against administrative authorities, legislative bodies, and private individuals or bodies.

WRIT OF MANDAMUS

Mandamus literally means 'we command'. It is a command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform. It can also be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose. Mandamus must lie only to enforce a duty which is public in nature. A public-spirited person can also file the writ of mandamus **(Ratlam Municipality v Vardhi Chand**).

The writ of mandamus is available against all kinds of administrative action, if it is affected with illegality. Where the duty is not mandatory but it is only discretionary, the writ of mandamus will not be issued. The principles are illustrated in **Vijaya Mehta v. State**

In **Bhopal sugar Industries Ltd. V. income Tax Officer, Bhopal, (1961)** Supreme Court held that, where the Income Tax Officer had virtually refused to carry out the clear and unambiguous directions which a superior tribunal like the Income tax appellate Tribunal had given to him by its final order in exercise of its appellate power in respect of an order of assessment made by him, such refusal is in effect a denial of justice, and is furthermore destructive of one of the basic principles in the administration of justice based on as it is the hierarchy of Courts.

The writ of mandamus cannot be issued

(a) against a private individual or body;
(b) to enforce departmental instruction that does not possess statutory force;
(c) when the duty is discretionary and not mandatory;
(d) to enforce a contractual obligation;
(e) against the president of India or the state governors; and
(f) against the chief justice of a high court acting in judicial capacity.

The Supreme Court has held in **Daya v. Joint Chief Collector (1962),** that where the act against which mandamus is sought has been completed, the writ if issued, will be in fructuous. On the same principle, the Court would refuse a writ of mandamus where it would be meaningless, owing to lapse or otherwise.

QUO WARRANTO in the literal sense, it means 'by what authority or warrant'. It is issued by the court to enquire into the legality of claim of a person to a public office. Hence, it prevents illegal usurpation of public office by a person.

- The writ can be issued only in case of a substantive public office of a permanent character created by a statute or by the Constitution. It cannot be issued in cases of ministerial office or private office.

- Unlike the other four writs, this can be sought by any interested person and not necessarily by the aggrieved person.
- Another instance of granting the writ of quo warranto is where a candidate becomes subject to a disqualification after election or where there is a continuing disqualification.
- In cases of office of private nature the writ will not lie. In **Jamalpur Arya Samaj Sabha v. Dr. D. Rama, (AIR 1954 Pat 297)** Patna High Court refuse to issue the writ of quo warranto against the members of the Working Committee of Bihar Raj Arya Samaj Pratinidhi Sabha- a private religious association.
- In **Niranjan Kumar Goenka v. The University of Bihar, Muzaffarpur**, the Patna High Court held that writ in the nature of quo warranto cannot be issued against a person not holding a public office.

b) Employees of Public Sector Undertakings (PSUs) do not enjoy the benefit of Article 311 as available to civil servants. Explain with the help of case laws.

Article 311 provides certain safeguards to civil servants employed in civil capacities under the Union or a State on their dismissal, removal or reduction in rank. This safeguard is not available to employees of Public Sector Undertakings because they do not hold 'civil post' within the meaning of Article 311.

A 'civil post' means an appointment or office on the civil side and includes all personnel employed in the civil administration of the Union or a State. A necessary factor to make a **civil post** 'under the government' is the ***relation of master and servant between the state and the employee.*** Whether such a relationship exists is a question of fact to be decided in each case based on number of factors. ***Some of these factors are:***

- Who selects the employee?
- Who appoints him?
- Who pays him the remuneration or wages?
- Who controls the method of his work?
- Who has power to suspend or remove him from employment?
- Who has a right to prescribe the conditions of service?
- Who can issue directions to the employee?

If the answer to all these questions is the GOVERNMENT then it is a Civil Post under the Government.

Benefits Available to Civil Servants Under Article 311 – Not Available to Employees of PSUs

- No person holding civil post under the union or state shall be dismissed or removed by an authority subordinate to that by which he was appointed.
- No such person holding civil post under the union or state shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.
- Penalties shall be imposed only after an inquiry based on evidence.

However, these benefits are not available to employees of PSUs. In ***Tekhraj v. Union of India***, Court held that even if some institutions become 'State' under Article 12, its employees do not become holders of civil post so as to be entitled to the benefits of Article 311. They however, would be entitled to the benefits of PART-III of the Constitution of India.

Case Laws on Civil Post

- ***State of Uttar Pradesh v. Audh Narain Singh* (AIR 1965 SC 360) -** Ordinarily, the right of an employer to control the method of doing work, and the power of superintendence and control are strong indicators of the master and servant relationship.
- ***State of Assam v. Kanak Chandra Dutta* (AIR 1967 SC 884) -** A civil post outside the regularly constituted services does not have to carry a definite rate of pay; they may be paid on commission basis; the post need not be whole-

time, it may be part-time and its holder may even be free to engage himself in other activities. What is important, however, is the existence of the master-servant relationship.

- ***State of Gujarat v. Ramanlal Keshav Lal* (AIR 1984 SC 161) -** Applying the above mentioned criteria, Supreme Court has held the panchayat service in Gujarat created by a State law to be State civil service and its members as servants of the State.
- ***Inder Sain v. Union of India* (AIR 1969 Del 220) + *Lekh Raj v. Union of India* (AIR 1971 SC 2111) -** The term 'civil servant' does not include a member of a defence service or even a civilian employee in defence service who is paid salary out of the estimates of the Ministry of Defence.
- ***Jagannath Prasad v. State of Uttar Pradesh* (AIR 1961 SC 1245) -** Defence persons, therefore, while falling under Articles 309 and 310 do not enjoy the protection of Article 311. A member of the police force, however, is a 'civil servant'.
- ***Union of India v. S.B. Mishra* (AIR 1996 SC 613) -** Rules made under Art. 309 are not applicable to defence personnel as they remain subject to the President's pleasure.

Members of Statutory Organisation do not hold Civil Post

- **K.C. Joshi v. Union of India (AIR 1985 SC 1046) + Bool Chand v. Kurukshetra University (AIR 1968 SC 292) + S.L. Agarwal v. Hindustan Steel (AIR 1970 SC 1150) + Sabhajit Tewary v. Union of India (AIR 1975 SC 1329) -** Ordinarily, The statutory public corporations, or government companies registered under the Companies Act, although regarded as instrumentalities of the State and, thus, 'authorities' for the purposes of Art. 12. Yet, they have their own distinctive personality separate from the government. Accordingly, employees of such bodies are not regarded as employees of the government and do not, thus, fall within the term 'civil servants' and do not, therefore, fall under the scope of Arts. 310 and 311.

c) Analyse the relevance of doctrine of eminent domain under the Constitution of India. Explain the limitations of this doctrine with the help of case law.

Eminent Domain is regarded as an inherent right of the state, an essential incident of its sovereignty, to take private property for public use. This power depends on the superior domain of the state over all property within its boundaries. It is supposed to be based upon an implied reservation by the state that property acquired by its citizens under its protection may be taken, or its use controlled, for public benefit irrespective of the wishes of the owner. The three essential ingredients of eminent domain are –

1) The property is taken for public use by the state
2) The property is taken without owner's consent
3) Just Compensation is paid for the property taken

Constitutional Status for Eminent Domain

- ***Eminent domain is provided under Entry 42 of the Concurrent List i.e. List III of the Seventh Schedule - "acquisition or requisitioning of property".***
- **Prior to Constitution 44th Amendment - Article 19(1)(f)** and **Article 31** dealt with right to property and effectively was part of fundamental rights under PART-III of the Constitution of India.
- **Subsequent Amendments in Right to Property -** Article 31 came to be modified drastically through several constitutional amendments and ultimately in 1978, by the **Constitution 44th Amendment**, Articles 19(1)(f) and 31 were abrogated and Right to Property became a constitutional right under **Article 300A.** This diluted the restrictions which were earlier placed on government to acquire property for public purpose.
- **Article 300A** states that no person shall be deprived of his property save by authority of law. So, Article 300A acts as a protection against the right of eminent domain of state as against government's right to acquire property under Article 31A, 31B and 31C.

- **Article 31A** of the Indian Constitution is a crucial provision that shields certain laws, particularly those related to land reforms and property acquisition, from being challenged under Articles 14 and 19 of the Constitution. It essentially protects specific types of legislation aimed at acquiring estates, managing property, amalgamating corporations, or modifying certain rights, from being deemed void due to inconsistencies with the fundamental rights to equality and freedom.
- **Article 31C** protects laws that implement certain Directive Principles under PART-IV from being challenged as violations of fundamental rights under Articles 14 and 19. Specifically, it shields laws that aim to give effect to the DPSPs outlined in Article 39(b) and (c), which deal with the distribution of material resources and the prevention of concentration of wealth. Article 39(b) has been largely used to nationalise resources (acquisition by the government) of coal, electricity, banks, textile mills etc. which were privately owned. Supreme Court in Tinsukhia Electric Supply Co. Ltd. v State of Assam held that a legislation acquiring electricity undertakings relate to Article 39(b) as electricity generated by the company constitutes material resources of the community. Even coal was considered as one of the most important known sources of energy and therefore was considered a vital national resource.
- A recent Nine Judge Constitution Bench in **Property Owners' Association v State of Maharashtra (2024)** has held that all private properties cannot form part of the 'material resources of the community' which the State is obliged to equitably redistribute as per the DPSP under Article 39(b) of the Constitution.
- **Kesavananda Bharati Judgment on Article 31-C - First part of Article 31C** protected a law giving effect to the policy of the state towards securing principles of Article 39(b) and Article 39(c) from being challenged on grounds of violation of Article 14, 19 and 31. **SC held the first part of Article 31C as valid** as it identified a limited class of legislation and exempted it from operations of Article 14, 19 and 31. The Court also held that the "amount" paid cannot be illusory or arbitrary and must have reasonable relationship with the value of property in question.

Restrictions on Acquisition of Public Property

1) Public Purpose

- **Public Purpose has been described under Section 2 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.**
- **State of West Bengal v. Subodh Gopal Bose (1954):** This case is significant in the context of eminent domain as it clarified that the exercise of eminent domain must be for a public purpose. The Court held that the acquisition of land for a private company was not valid unless it was shown that it served a public purpose.
- **Indore Development Authority vs Manoharlal And Ors (2014):** This case clarified the scope of public purpose for land acquisition. The court ruled that acquisition for private entities can be considered valid only if it serves a larger public good. This judgment helped prevent misuse of land acquisition powers.
- **Society for Indian Power Stations & Anr. vs. A.P. Transco Ltd., & Ors (2011):** This case established a two-pronged test for determining public purpose. First, the acquisition must be authorized by a valid law. Second, the acquisition must be genuinely for a public purpose, even if a private entity is involved in the project's execution. This judgment ensured that the public interest remains paramount, even when private companies are involved.
- **State of West Bengal vs. Bela Banerjee & Ors (1996):** This case dealt with the acquisition of land for setting up industries. The court held that mere generation of employment or promotion of economic development alone may not necessarily qualify as a public purpose. The public purpose must be directly linked to the acquisition and benefit a wider section of the society.

2) Just Compensation - Judgments

- **State of Bihar v. Kameshwar Singh (AIR 1952 SC 458) –** Supreme Court observed that power to acquire property compulsorily meant power to take property for a **public purpose** and for **compensation.** The Court defined eminent domain as *"the power of the sovereign to take property for public use without the owner's consent upon making just compensation".* The ideas of '**public purpose**' and '**compensation**' are thus **inherent in entry 42 of the Concurrent List**

- **Chiranjit Lal Chowdhry v. Union of India, (AIR 1951 SC 41) –** An incident of this power, however, is that property shall not be taken for public use without just compensation.
- **A.V. Papayya Sastry & Ors vs Government Of A.P. & Ors (2007):** This landmark judgment introduced the concept of "market value" as the basis for determining compensation in land acquisition cases. It moved away from the earlier principle of "price paid for similar land in the vicinity." This judgment significantly improved fairness for landowners.
- **Union Of India & Ors vs Shiv Raj & Ors (2014):** This judgment addressed the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act). The court upheld the Act's provisions, recognizing the rights of displaced persons and ensuring fair compensation and rehabilitation.
- **Union Of India & Ors vs Shiv Raj & Ors (2014):** This judgment upheld the LARR Act, 2013, which introduced significant improvements in ensuring just compensation. The Act mandates considering factors like potential future value of the land, along with the market value, for a more holistic assessment. It also includes rehabilitation and resettlement benefits for displaced persons, aiming for a more just outcome for those affected by land acquisition.
- **National Thermal Power Corporation Ltd. vs. UOI & Ors (2014):** This case dealt with the concept of "solatium" (additional compensation) along with market value. While the court didn't mandate a fixed solatium amount, it acknowledged the need to compensate for hardships faced by landowners due to acquisition, like relocation costs or loss of livelihood.

3) Due Process to be Followed -

- This is ensured through **the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.**
- Only such land can be acquired which can be declared as for **"public purpose"** under Section 2 of the Act – such as land for strategic purposes relating to naval, military, air force, and armed forces, infrastructure projects, projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities, project for industrial corridors or mining activities, national investment and manufacturing zones, project for water harvesting and water conservation structures, sanitation etc.
- **Social Impact Assessment Reports** for such projects is mandatory and to be prepared in consultation with Panchayat, Municipality or Municipal Corporation.
- **Any person can object to such acquisition of land and authorities must conduct public hearing**
- **Preparation of Rehabilitation and Resettlement Scheme by the Administrator for affected families.**
- **The Collector shall pass Rehabilitation and Resettlement Awards for each affected family in terms of the entitlements.**

Despite Eminent Domain being the prerogative of the sovereign authority, yet there are sufficient safeguards not only under the constitution of India but also under the Land Acquisition Act of 2013.

Q.3) a) Explain the significance of 'Audi Alteram Partem'. What are the cases or circumstances in which the aforesaid principle of natural justice can be excluded?

Two cardinal principles of natural justice are rule against bias and rule of fair hearing or 'Audi Alteram Partem'. The second rule contemplates that judge should give decision only after hearing both sides and if the other side is not present then to give them reasonable opportunity for presenting their case.

National Central Cooperative Bank v. Ajay Kumar (1994) - This rule also implies that a person against whom an order to his prejudice is passed should be given information as to the charges against him and should be given opportunity to submit his explanation thereto.

Ingredients of Fair Hearing

Hearing' involves a number of stages. Such stages or ingredients of fair hearing are as follows:-

1) NOTICE - Notice is the starting point of hearing and means mandatory communication of charges to the accused. Unless a person knows the case against him, he cannot defend himself. Before the proceedings start, the authority concerned is required to give notice to the accused. If proceedings start without giving due notice to the affected party, then it would violate the principles of natural justice. Therefore, notice must give the affected person sufficient time to prepare a case. It should be adequate and must mention all grounds taken against the person so he is made aware of allegations against her, failing which it will be quashed.

- **The adequacy of a Notice is determined by Courts** – Eg: Notice contains allegations of fraud without substantiating the particulars of such fraud. Notice is not specific as to details of occurrence of incident attributed to noticee, or otherwise vague.
- **Illustration:** Notice of disconnection of telephone line did not contain specific reason but only used vague expression "unauthorized use", it was held bad. (Kuldeep Dhingra v. Municipal Corporation of Delhi, 1992)
- **Notice is not specific as to action proposed to be taken - Illustration:** Notice did not specifically indicate that the authority proposed to debar person from taking any future contract with department, such notice was held bad – (Joseph Vilangan v. Executive Engineer, 1978)
- **Madhab Roy v. State of West Bengal (1975) -** In preventive detention cases, notice must be given at the earliest opportunity. If grounds are vague or insufficient for the detenu to make a representation, notice will be quashed.
- **U. P. Singh v. Board of Governors, Maulana Azad College (1982) -** In an action against students guilty of violence on campus, notice could not be served as they were absconding. The High Court held that the failure to serve notice would not affect the validity of proceedings.

2) HEARING

- ***'Hearing' means giving an opportunity to the accused person to rebut the charges made against her.*** Such opportunity may be given through **personal hearing**, or through **written representation.**
- Administrative authorities are required to give **reasonable opportunity of being heard**, but what constitutes reasonable opportunity in a given circumstance is a **flexible concept**, and the same will be adjudged by courts depending upon the context, facts, and circumstances of the case.
- ***Union of India v. Jesus Sales Corporation*, (1996) - There is no right of oral hearing in all circumstances** and in many cases, courts have held that the submission of a written representation is sufficient compliance of natural justice.
- **The necessity of oral hearing would depend on (a) the nature of the enquiry**, **(b) the nature of facts involved, (c) the circumstances of the case, and (d) the nature of the deciding authority.**
- For example, where complex questions of fact involving technical problems arise, or when detailed evidence is required to be taken from witnesses, an oral hearing may become necessary.

Some instances where Oral Hearing was Required are given as follows:

(i) **Travancore Rayons v. Union of India, 1971 -** When excise duty was imposed on a company on the ground that it manufactured a particular chemical composition, and the company disputed the same, but the government did not give an opportunity for personal hearing before upholding levy of duty, such action was quashed, inter alia, as it raised technical questions which should have been decided after taking expert evidence.

(ii) **Union of India v. Chand Putli, 1973 -** When determining the question of Indian citizenship of a person and passing a deportation order against her, a personal hearing is necessary.

(iii) **Chandra Kanti Das v. State of Uttar Pradesh, (1981) -** Disciplinary proceedings against civil servants normally require a personal hearing.

(iv) Personal hearing is normally insisted upon in disciplinary actions against professionals by their concerned association. **(In Re: An Advocate, 1989); Institute of Chartered Accountants of India v. L. K. Ratna, 1987); and**

(v) **Dhakeshwari Cotton Mills Ltd. v. C. I. T., 1955 -** In tax matters, since tribunals discharge quasi-judicial functions, they must give adequate right of personal hearing so that the assessee can fully object to the proposed assessment.

3) DISCLOSURE OF MATERIALS

- **An adjudicatory body must decide a case only on the basis of relevant materials placed before it**, and the affected person should be apprised of such materials and given an opportunity to rebut and explain the same. Whether copies of the material relied upon must be supplied, or whether it is sufficient to convey the gist or allow inspection of the material, will depend on the facts of the case.
- (***Union of India* v. *Mohd. Ramzan Khan*, (1991)** - For example, in disciplinary proceedings against civil servants, the relevant materials and even a preliminary inquiry report must be supplied to the accused officer if relied upon by the disciplinary authority.
- ***Krishna Chandra Tandon* v. *Union of India*, (1974)** - However, the principle of disclosure is limited to relevant and material documents alone, and documents not relied upon by the adjudicating body need not be supplied to the affected person.
- ***Vijay Kumar* v. *State of Maharashtra*, (1988) -** Natural justice is also infringed if the adjudicatory body decides a matter on the basis of confidential information not disclosed to the affected party. Officer denied a senior certain information, on the basis of a confidential report which was not supplied to him, while juniors were given that information. The Court quashed the order for non-disclosure of relevant material.

4) RIGHT OF CROSS-EXAMINATION

Whether this right is available to a person undergoing an administrative adjudication will depend on the facts and circumstances of each individual case. In general, the right to cross examine has been given in the following cases:

(i) Inquiry by employer for taking disciplinary action against employees in labour matters (Rohtas Industries v. Workmen, (1977);

(ii) Disciplinary proceedings against government servants;

(iii) Disciplinary proceedings by a statutory corporation against its employees; and

(iv) Tax cases.

If the adjudicatory authority allowed taking of oral evidence, right of cross examination would be available to the opposite party.

5) RIGHT TO LEGAL REPRESENTATION

Ordinarily the representation through a lawyer in the administrative adjudication is not considered as an indispensable part of the fair hearing. However, in certain situations denial of the right to legal representation amounts to violation of natural justice.

Thus where the case involves a question of law or matter which is complicated and technical or where the person is illiterate or expert evidence is on record or the prosecution is conducted by legally trained persons, the denial of legal representation will amount to violation of natural justice because in such conditions the party may not be able to meet the case effectively and therefore he must be given some protectional assistance to make his right to be heard meaningful.

In general, the right to counsel is not considered a mandatory part of the right to fair hearing. (*H. C. Sarin* v. *Union of India*, AIR 1976 SC 1686) Where complicated questions of fact and law arise in an adjudicatory proceeding, however, denial of counsel may result in the party being unable to fully defend she, and this will be violative of natural justice. *Zonal Manager, Life Insurance Corporation* v. *City Munsif, Meerut*, 1968

There are several statutory provisions prohibiting the presence of lawyers at adjudicatory proceedings:

- **Industrial Disputes Act -** Section 36(2)(a), (b), and 36(4) - restrict the conditions under which a lawyer can appear before an Industrial Tribunal;

- **Central Civil Service (Classification, Control & Appeal) Rules 1957 -** Rule 15(5) provides that government servants cannot appoint lawyers unless permitted by the disciplinary authority;
- **Article 22(3)(b)** of the Constitution prohibits detenues in preventive detention cases from engaging counsel, although the Advisory Board may permit the same. If the government or adjudicating authority is represented through a lawyer, then the concerned person or detenu will have the right of legal representation. (*Nand Lal Bajaj* v. *State of Punjab*, (1981) 4 SCC 327)

6) REASONED DECISIONS

- **S. N. Mukherjee v. Union of India, (1990) -** Decisions of administrative bodies must disclose reasons, so that reviewing authorities can examine whether they were taken on basis of relevant considerations or suffer from erroneous factual or legal foundations. This is an important check on the abuse of administrative discretion, and promotes transparency and public confidence in the administrative process.
- In some limited cases, however, the requirement to give reasons can be excluded either explicitly by statute, or impliedly by surrounding circumstances.
- **Illustration:** In cases of review of an externment order, reviewing authorities will not insist on reasons for rejecting an appeal, as that would involve a discussion of evidence which may lead to danger to witnesses. (*State of Maharashtra* v. *Salem Hasan Khan*, (1989)).
- Similarly, a Court Martial is not required to give reasons under the Army Act (*Som Datt Datta* v. *Union of India*, AIR 1969 SC 414), and in certain cases, it has been held that the disciplinary authority, if it agrees with reasons given by the Inquiry Officer, need not separately give reasons (*Tara Chand Khatri* v. *Municipal Corporation of Delhi*, (1977) 1 SCC 472).

EXCLUSION OF NATURAL JUSTICE

Though the normal rule is that a person who is affected by administrative action is entitled to claim natural justice, the requirement may be excluded under certain exceptional circumstances. There are exceptional situations which demand exclusion of the principles of natural justice. In the following cases, the requirement of natural justice may be excluded:

(1) **STATUTORY EXCLUSION -** Where a statute excludes the application of any or all the rules of natural justice, then the Court cannot ignore statutory mandate and read into the concerned provision the requirement of natural justice.

- **Union of India V. J.N. Sinha**, the competent authority acting under Rule 56 (J) of the Fundamental Rules passed an order compulsorily retiring a government servant. It did not provide for giving any opportunity to the government servant concerned to show cause against the proposed action. The Supreme Court upheld the said decision. However in India, Parliament is not supreme and therefore statutory exclusion is not final and the statute must stand the test of constitutional provisions. Even if there is no provision under the statute for observance of the principles of natural justice, Courts may read the requirement of natural justice for sustaining the law as constitutional.

(2) LEGISLATIVE FUNCTION - Legislative action, plenary or subordinate, is not subject to the rules of natural justice. This is so because these rules lay down a policy without reference to a particular individual. A legislative action, for example, price fixing, is a direction of general character, not directed against a particular person or individual manufacturer or trader. There is no question of invoking principles of natural justice in such cases.

- **Charan Lal Sahu v. Union of India** (Bhopal Gas Disaster case), Constitutionality of Bhopal Gas Disaster (Processing of Claims) Act, 1985 was challenged because the provisions of the Act took away rights of victims to establish their own right which was a denial of access to justice without a procedure established by law. Moreover, it was also violative of the requirements of natural justice. Rejecting the contention, the Supreme Court held that the State had taken over the rights and claims of the victims in the exercise of sovereign power in order to discharge the Constitutional obligations.
    - **Union of India v Cynamide India Ltd. (1987) –** SC held that no principles of natural justice has been violated when the govt issued a notification fixing prices of certain drugs. The Court reasoned that the decision flowed

from a legislative act and not an administrative act and hence the principles of natural justice would not apply.

(3) EMERGENCY - In exceptional cases of urgency or where prompt and preventive action is required for public welfare, then the principles of natural justice need not be observed. According to **Justice Krishna Iyer**, "If to condemn unheard is wrong, it is wrong except where it is overborne by dire social necessity." Some Examples:

- Where a dangerous building is required to be demolished to save human lives – Nathubhai Dhulaji v Municipal Corp. (1957)
- Where a Banking company is required to be wound up to protect the interest of depositors – Joseph Kuruvilla v RBI (1962)
- Where a person dangerous to peace is required to be externed or detained, or where a passport is required to be impounded in public interest – Maneka Gandhi v UOI (1978)
- Trade dangerous to society is to be prohibited – Cooverjee v Excise Commissioner (1954)
- Dire social necessity requires exclusion of the elaborate process of pre-decisional hearing.

However, immediacy' does not exclude duty to act fairly because even an emergent situation can co-exist with the canons of natural justice. Thus, even in the case of an emergency where precious rights of the people are affected, post-decisional hearing has relevance to administrative fairness.

(4) PUBLIC INTEREST - The requirement of notice and hearing may be excluded where prompt action is to be taken in the interest of public safety, public health or public morality. In cases of pulling down property to extinguish fire, destruction of contagious plant or animal life, destruction of unwholesome food; etc., action has to be taken without giving the opportunity of hearing. Nevertheless, hearing may be given in some of these situations after the action has been taken as a corrective measure to see whether a mistake has been committed.

- **Maneka Gandhi v. Union of India**, the Supreme Court conceded that a passport may be impounded in public interest without compliance with the principles of natural justice but as soon as the order impounding the passport has been made, an opportunity of post decisional hearing, remedial in aim, should be given to the person concerned. In this case it has also been held that "public interest" is a justiciable issue and the determination of the administrative authority about it is not final.

(5) IMPRACTICABILITY - Judicial approach in applying the rules of natural justice to fact-situations is not theoretical but pragmatic. Where the number of persons is so large that it is not practicable to give all of them the opportunity of being heard, the Court does not insist on observance of the principles of natural justice.

- **Bihar School Examination Board v. Subhash Chandra,** the candidates at the Secondary School Examination of the Board at one Centre indulged in mass-copying. The Board cancelled the examination of all subjects at the Centre concerned and permitted the examinees to re-appear at a supplementary examination. The candidates challenged the order on the ground that no opportunity had been given to them to show cause before passing the order. The Supreme Court held that it was obvious from the results that the candidates concerned had indulged in mass copying and the examination as a whole had been vitiated by use of unfair means on a mass scale, it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had used unfair means.
- **R. Radha Krishanan V. Osmania University,** the entire M. B. A. entrance examination was cancelled by the University because of mass copying, the Court held that notice and hearing to all the candidates is not practicable in such situation.

(6) ACADEMIC EVALUATION - Where a student is removed from an educational institution on grounds of unsatisfactory academic performance, the requirement of pre-decisional hearing is excluded. Thus, in **Jawahar Lal Nehru University v. B.S. Narwal**, a student of the University was removed from the rolls because of unsatisfactory academic performance without giving any hearing. The Supreme Court held that the very nature of academic evaluation appears to negative any

right to hearing. The Court observed that the instant case was "merely one of assessment of academic performance of a student which the prescribed authorities of the

(7) INTERIM DISCIPLINARY ACTION - Where disciplinary action is preventive in nature, the observance of the rules of natural justice is excluded. Thus, in **Abhay Kumar V. K. Srinivasan**, the institution passed an order debarring the student from entering the premises of the institution and attending classes till the criminal case against him for stabbing a co-student is under consideration. The validity of this order was challenged on the ground of denial of the principles of natural justice. Rejecting the contention, the Delhi High Court ruled that such an order could be compared with an order of suspension pending enquiry which is preventive in character in order to maintain peace on the campus and therefore the principles of natural justice not attracted

(8) CONTRACTUAL TRANSACTION – In **State of Gujrat v. M.P. Shah Charitable Trust**, the Supreme held that the principles of natural justice are not attracted in case of termination of an arrangement in any contractual field. The reason is clear that termination of an arrangement/agreement is neither a quasi-judicial nor an administrative act. hence the question of duty to act judicially does not arise.

b) What would be your opinion regarding the view that 'reservation' is now considered as an important facet of equality rather than an exception to equality? Discuss with reference to landmark judgments.

Supreme Court in its earlier judgments in Champakam Dorairajan, M.R. Balaji and T. Devadasan had held that reservation under Article 15(4) and 16(4) which allowed affirmative action were considered as ***constitutionally mandated exceptions to the Equality and non-discrimination principles*** enunciated under Articles 15(1) and 16(1). However, this understanding was completely changed in the decision in **State of Kerala v N.M. Thomas** as reservation was held to be not as an exception to equality but an extension to the Equality Code under Article 16 and 14 of the Constitution of India.

Let us understand the changing paradigm through the landmark judgments in this field:

- **State of Madras v. Champakam Dorairajan, (AIR 1951 SC 226) –** Supreme Court observed that the reserving seats in educational institutions solely based on caste and religion is unconstitutional. Supreme Court struck down reservation policy as it violated an *individual's* fundamental rights upon a conjoint reading of Articles 15(1) and 29(2). The Court considered the constitution caste blind because it required that except where specifically provided otherwise, government must treat citizens as individuals and not as members of racial, ethnic or religious groups.
- **M.R. Balaji v State of Mysore (1963) –** Court capped the reservation at a maximum of 50% on the ground that the exceptions namely Articles 15(4) and 16(4) could not swallow up the rule of equality and non-discrimination. Court held that Article 15(4) does not provide for classification between backward and more backward class of citizens. Court held that caste cannot be sole criteria to determine socially and educationally backward classes. Further, reservation under 15(4) should be reasonable and should be applied to defeat or nullify the main rule of equality under Article 15(1).
- **T. Devadasan v Union of India (1964)** - The policy of Balaji judgment was reaffirmed where the Court prohibited the state from carrying forward unfulfilled vacancies into succeeding recruitment years. SC also declared that more than 50% reservation of post in a single year would be unconstitutional as it destroys Article 16(1) and in the name of advancement of backward communities, fundamental rights of others cannot be annihilated. Reiterating the principles of Balaji, Court held that Article 16(4) is an exception to Article 16(1).
- **State of Kerala vs. N.M. Thomas (1976) –** There was a fundamental shift in understanding as Article 16(4) no longer operates as an exception to 16(1) but a facet of it, allowing the government limited powers to do what it would otherwise be prohibited from doing by virtue of 16(1), but now exists as "*one of the methods of achieving equality embodied in Article 16(1).*" Thus, Article 16(1) being a facet of "Doctrine of Equality" enshrined under Article 14, permits reasonable classification as well and hence it was permissible to give preferential treatment to SC/ST under Article 16(1) outside Article 16(4).

The idea of equality was further stretched through the **Constitution (93rd Amendment) Act, 2006** as it added a **new clause 5 to Article 15.** The new Clause 5 provides that nothing in Article 15 or in Article 19(1)(g) shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally Backward classes of citizens or for the Scheduled Caste or the Scheduled Tribes in so far as such special provisions relate to admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the *minority educational institutions* referred to in Clause (1) of Article 30.
The above amendment was enacted to nullify the effect of the three decisions of the Supreme Court, i.e., T.M. Pai Foundation v. State of Karnataka, Islamic Academy v. State of Karnataka and P.A. Inamdar v. State of Maharashtra. Five Judge Constitution Bench in Ashok Kumar Thakur v Union of India upheld the constitutionality of the **Constitution 93rd Amendment which added Article 15(5).** It provided 27% reservation for Other Backward Classes (OBCs) in aided educational institutions, but emphasized that the "creamy layer" (wealthier and socially advanced OBCs) must be excluded from the benefits of reservation to ensure the advantages reach the most disadvantaged sections of the OBC community.

The gates opened by N.M. Thomas judgment was further given finality in **Neil Aurelio Nunes v Union of India (2022)** whereby Supreme Court not only upheld reservation in post graduate courses but also forwarded the idea of substantive equality going beyond the narrow formal equality. Court also held that the binary of merit versus reservation is superfluous and substantive equality can be achieved through Article (15(4) and 15(5).

Same understanding was expressed by the Supreme Court in **Janhit Abhiyan v Union of India (2022)** as the Constitution Bench upheld the reservation provided to economically weaker sections (EWS) under Article 15(6) and 16(6) through the Constitution 103rd Amendment. The court also observed that reservation is an instrument of affirmative action by the state to ensure an all-inclusive march towards the goal of an egalitarian society. Reservation for EWS over and above the 50 per cent cap also does not violate the basic structure. Treating EWS as Separate Class Reasonable does not affect special rights of SC/ST/OBC despite their exclusion and overall it promotes substantive equality.

Thus, N.M. Thomas judgment can be considered as one of the most important judgments in constitutional history as it has tried to expand the envelope of equality by accommodating reservation within it. This change of judicial attitude has further expanded the idea of reservation as a means of social justice and this has also led to the development of substantive equality which has helped to reduce various forms of discrimination faced by vulnerable sections of the society including women and children.

c) Distinguish between 'collective responsibility' and 'individual responsibility' of the council of ministers under the constitutional set up. Is the government responsible in the same manner in both these instances? Cite illustrations.

The concept of collective responsibility is prescribed under **Article 75(3)** which states that the council of ministers shall be collectively responsible to the Lok Sabha. Whereas the principle of individual responsibility can be found under **Article 75(2)** which states that the Ministers shall hold office during the pleasure of the President.

Principle of Collective Responsibility

- It represents ministerial accountability to the legislature. It means that the government must maintain a majority in the Lok Sabha as a condition for its survival.
- In our parliamentary setup, it is essential that the Prime Minister has the support of the majority in the Lok Sabha. The Council of Ministers along with their collective responsibility ensures the life of the government in power and also allows the Prime Minister to lead the government.
- According to the principle of Collective Responsibility, all ministers stand or fall together in Parliament and the government is dependent on constant support from the council of ministers.

- Collective Responsibility ensures that the Council of Ministers presents a united front to Parliament. Laski has said that Cabinet is by nature a unity and collective responsibility is the method by which it is secured. It is the Prime Minister who enforces collective responsibility amongst ministers through his ultimate power to dismiss them.
- **Article 75** rather than using the word cabinet has used 'Council of Ministers', which consists of Cabinet Ministers, Ministers of State and Deputy Ministers. They are responsible to the House of the People collectively, which is directly elected by the people.

Rationale of Individual Responsibility

- The principle of individual responsibility is underlined by **Article 75(2)** according to which ***"The Ministers shall hold office during the pleasure of the President".***
- Accordingly, the power to dismiss a Minister is to be exercised on the advice of the Prime Minister on whose recommendation a Minister is appointed.
- The Prime Minister can get rid of an undesirable minister by invoking the President's power under Article 75(2) as ministers hold office during the pleasure of the President. But, in practice, this power is invoked rarely for a Minister would ordinarily resign when asked to do so by the Prime Minister.

Practical Aspect of Individual Responsibility

- According to the Constitution and parliamentary set-up, the council of Ministers is collectively responsible for any action of individual Ministers.
- Prime Minister or other Ministers cannot escape the responsibility merely on the ground that there was no fault on their part. This does not however mean that the Minister at fault has no individual responsibility.
- All decisions are not taken by the Cabinet and many decisions are taken by the Ministers themselves at ministerial level without reference to the Cabinet, or by officials in the department without reference to the Minister based on transaction of business rules as per Article 77(3).
- Therefore, along with the principle of collective responsibility, there also works the principle of the individual responsibility of each Minister to Parliament, which is more positive in character. Each Minister is personally accountable for his actions.
- Mr. J. H. Thomas was guilty of revelation of some facts about the budget in 1936. He resigned from the office and also from membership of Parliament. If he had not taken the later step of resigning from membership perhaps expulsion would have been resorted to.

Supreme Court's Decision on Collective and Individual Responsibility

- **Sanjeevi v State of Madras (1970) –** Supreme Court observed that the Cabinet is responsible to the legislature for every action in any of the ministries. That is the essence of joint responsibility. That does not mean that each and every decision must be taken by the Cabinet. The political responsibility of the Council of Ministers does not and cannot predicate the personal responsibility of the Ministers to discharge all or any of the governmental functions. Similarly, an individual Minister is responsible to the legislature for every action taken or omitted to be taken in his Ministry. This again is a political responsibility and not personal responsibility.
- **State of Karnataka v. Union of India –** It is the duty of every Minister to accept responsibility for the work done by his department or any department subject to his authority. Responsibility in this context means that he has to satisfy two authorities, namely the Prime Minister and the Lok Sabha. If the individual Minister slips in his duty, then it is upto the Prime Minister whether to defend his action before the Lok Sabha or to ask his resignation. Thus, it is desirable from an individual minister either to take the house into confidence or resign from the post as this will also help the other council of ministers
- **Common Cause, A Registered Society v Union of India –** Supreme Court quashed the allotment of petrol pumps by the Central Minister for Petroleum in his discretion describing it as illegal, arbitrary and "atrocious". Supreme Court explained the meaning of individual responsibility as follows:
    - **First** - most common political meaning is that a certain minister will answer parliamentary questions on a given subject.

- **A second sense arises** when those in political circles appreciate that a particular policy is largely the idea of the minister, rather than the traditional policy of the party in power, and they may single out the minister for attack.
- **A third sense** is simply that a minister is responsible even if a policy is the work of the Cabinet as a whole but his colleagues choose to place the burden upon him. Another aspect that remains is the alleged obligation on a minister to resign when he or one of his subordinates has blundered.

- **Shiv Sagar Tiwari v. Union of India -** allotment of shops/stalls by the Minister of Housing and Urban Development to her own relatives/employees/ domestic servants out of the discretionary quota without following any policy or criteria was held by the Supreme Court to be "wholly arbitrary, mala fide and unconstitutional."
- **In 1962 V. K. Krishna Menon** had to resign on account of lapses in defence preparations. Sri Lal Bahadur Shastri resigned on account of disastrous train accidents during his tenure as Railway Minister. After the Chagla Commission found T. T. Krishnamachari responsible for investing a crore and a quarter of rupees belonging to L.I.C. in Mundhra shares he had to resign. He was again inducted in the Ministry by Pt. Jawahar La1 Nehru in 1962. But when Lal Bahadur Shastri became Prime Minister he desired to refer certain charges levied against Mr. T. T. Krishnamachari to a judge for preliminary inquiry. Mr. T. T. Krishnamachari then again resigned.

Therefore, along with the principle of collective responsibility, there also works the principle of the individual responsibility of each Minister to Parliament, which is more positive in character. Both these responsibilities collectively ensure smooth functioning of Parliamentary democracy in India.

Q.4) a) What are the legislative powers of the President? Are there any limitation imposed by the constitution or the judiciary on the exercise of such legislative powers? Cite case laws to support your answer.

Under Article 53, the executive power of the Union shall be vested in the President and correspondingly under Article 73, the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. Accordingly President under the constitution has been bestowed with some legislative functions as the Indian Parliament comprises the President, Lok Sabha and the Rajya Sabha.

Various Legislative Powers of the President Include:

- **Previous Sanction of President necessary -** There are certain Bills which cannot be introduced in the Parliament without the previous sanction or recommendation of the President: (a) creation or reorganization of States, (b) Money Bill, (c) a Bill involving expenditure from the Consolidated Fund of India, (d) a Bill affecting taxation in which States are interested, and (e) a Bill imposing restrictions on freedom of trade and commerce.
- **Article 111 -** No Bill can become an Act without the President's signature. When a Bill is sent to him after it has been passed by the Parliament, he can give his assent to the Bill or withhold his assent or return the Bill for reconsideration. Except for Money Bills, he can return the other Bills for reconsideration of the Parliament. If, however, the two Houses pass the Bill again with or without amendments (suggested by the President) and the Bill is presented to the President, he cannot withhold assent from the Bill. Thus, the 'veto power' of the President is limited.
- The Constitution ***does not prescribe any time limit within which the President should give or withhold his assent to a Bill presented to him.*** The President may thus keep the Bill pending with him indefinitely, which may be called as "Pocket Veto."
- **Article 200 -** When a Bill passed by a State legislature is reserved by the Governor for the President's consideration, the President can give his assent or withhold it or direct the Governor to return the Bill (if it is not a money Bill) for reconsideration of the State Legislature.

- **Article 123 -** The Constitution has empowered the President (Article 123) and Governor (Article 213) with legislative powers to promulgate ordinance to meet extraordinary situations which demands immediate enactment of laws when either of the two Houses of Parliament or State Assembly is not in session.
- **Article 80(1)(a) -** The President nominates 12 members to Rajya Sabha from persons having special knowledge or practical experience in respect of arts, science, literature or social services.

Constitutional Limitation

- Most of the above-mentioned legislative powers of the President are done based on the aid and advise of Council of Minister headed by the Prime Minister. This is a type of constitutional limitation on the powers of the President as the constitution of India has envisaged a Parliamentary form of government where President is merely a nominal head and real powers are enjoyed by the Cabinet.

Constitutional Limitations on use of Ordinance

- Under the Constitution, limitations exist with regard to the Ordinance making power of the executive:
  - **Legislature is not in session:** The President can only promulgate an Ordinance when either of the two Houses of Parliament is not in session.
  - **Immediate action is required:** The President cannot promulgate an Ordinance unless he is satisfied that there are circumstances that require taking 'immediate action'.
  - **Parliamentary approval during session:** Ordinances must be approved by Parliament within six weeks of reassembling or they shall cease to operate. They will also cease to operate in case resolutions disapproving the Ordinance are passed by both the Houses.
- An appropriation from out of Consolidated Fund cannot be made by an ordinance – Article 114(3).
- Ordinance can be made on entries under Union List (List I) & Concurrent List (List III) under Seventh Schedule but not on State List (List II). Ordinance can be made under Article 123 on List II only when proclamation of emergency is in operation.
- Like any other law made by Parliament, an ordinance is also subject to fundamental rights.

An ordinance comes to an end in the following situations:

- Resolution disapproving the ordinance are passed by both Houses of Parliament
- If the ordinance is not replaced by an Act within the stipulated period (maximum of 6 months + 1.5 months)
- If the executive lets it lapse without bringing it before the Houses of Parliament
- If it is withdrawn by the government at any time

If any of the above constitutional limitations are not followed, then the said ordinance can be subject to judicial review of the Courts.

Issue of Re-Promulgation of Ordinance

- Generally, the life of an ordinance comes to an end after 7.5 months. However, in the past, government in order to extend the life of an ordinance ended up re-issuing it again and again. Similar instance was observed in the ***D.C. Wadhwa*** case of Bihar when an ordinance was continuously re-promulgated without placing them before the legislature for approval.
- This was referred as the ordinance raj and it effectively amounted to law-making by an executive fiat instead of by the legislature. For example, ***The Bihar Sugarcane (Regulation of Supply and Purchase) Ordinance*** was kept in force for more than 13 years through re-promulgation without placing it before the legislature for approval.

Limitations on use of Ordinance by the Judiciary

- **DC Wadhwa vs. State of Bihar, 1987:** SC said that the legislative power of the executive to promulgate Ordinances is in the nature of an emergency power and is to be used in exceptional circumstances and not as a substitute for the law-making power.
  - **Re-promulgation for 14 years -** It was examining a case where a state government re-promulgated a total of 259 Ordinances and some of them for as long as 14 years.

- **Executive Cannot Usurp Legislature's Role -** The Court observed that the executive cannot by taking resort to Article 213 usurp the law-making function of the legislature as this would subvert the democratic process which lies at the core of the constitutional scheme.
- **People Governed by Laws made by Executive –** Re-promulgation would also mean that the people are governed by not by the laws made by the legislature as provided in the Constitution but by laws made by the executive.
- **Amounts to Colourable Legislation -** Such continuous re-promulgation would be a colourable exercise of power on part of the executive to continue an ordinance with substantially the same provision beyond the period limited by the Constitution by adopting the methodology of re-promulgation.
- **Re-promulgation Fraud on the Constitution -** Thus, the systematic practice of Bihar Government in promulgating ordinances successively without enacting them through the legislature was clearly unconstitutional and amounted to fraud on the constitution.

- **Krishna Kumar Singh v. State of Bihar, 1998:**
  - **Re-promulgation -** Bihar Government promulgated ordinance to take over private recognised Sanskrit schools receiving government grants. The ordinance was issued in 1989 and again re-promulgated in 1991 and 1992.
  - **The ordinance had a 'repeal and savings' clause** which effectively repealed the previous ordinance for fresh ordinance to be promulgated, although on the same matter.
  - **Supreme Court referred to D.C. Wadhwa case** and held the successive ordinances as unconstitutional and invalid. The Court held that in the absence of any compensation for taking over the properties of schools, all ordinances which took colour and from one another formed a chain were held to be fraud on the constitution.
  - **Supreme Court also held that the failure to place an ordinance before the legislature constitutes abuse of power and a fraud on the Constitution**. It makes mandatory for an ordinance to be tabled in the legislature for its approval.
- **K. Nagraj v State of Andhra Pradesh –** The power to issue an ordinance is not an executive power but power of the executive to legislate and hence an ordinance cannot be declared invalid for the reason of non-application of mind. An executive act is liable to be struck down on non-application of mind but not an act of legislature.
- **R.C. Cooper v Union of India -** The Supreme Court has held that the ordinance is promulgated in the name of the President and in a constitutional sense on his satisfaction: it is in truth promulgated on the advice of council of ministers and on their satisfaction. President's satisfaction can be questioned in a court on the ground of malafide. This means that the decision of the President to issue an ordinance can be questioned in a court on the ground that the President has prorogued one House or both Houses of Parliament deliberately with a view to promulgate an ordinance on a controversial subject, so as to bypass the parliamentary decision and thereby circumventing the authority of the Parliament.
- **AK Roy vs. Union of India, 1982:** Supreme Court held that an ordinance issued by the President partakes fully of the legislative character and is made in the exercise of legislative power. SC argued that the President's Ordinance making power is not beyond the scope of judicial review.
- **State of Orissa v Bhupendra Kuma Bose & T. Venkata Reddy v State of Andhra Pradesh -** held that insofar as the Ordinance exhibited an intention to create enduring (or permanent) effects, acts done during the pendency of the Ordinance would survive. The conceptual basis of these judgments was the assumption that an Ordinance was equivalent to a *temporary statute* (and that, in turn, was based on the premise that under the Constitution, Ordinances had the same "force and effect" as law, but were temporally limited). The Constitution Benches then followed the common law rule, which stipulated that temporary statutes could – and often did – create enduring rights. Thus, the Court by holding that the only way to prevent enduring effects of lapsed Ordinances was for Parliament to make a specific law to that effect, effectively placed Ordinances at a *higher* level than legislation.
- **Krishna Kumar Singh v State of Bihar (2017) on Effect of Lapsed Ordinance –**
  - **Overruled Venkata Reddy -** The theory of enduring rights which has been laid down in the judgment in ***Bhupendra Kumar Bose*** and followed in ***T. Venkata Reddy*** by the Constitution Bench is based on the analogy of

a temporary enactment. There is a basic difference between an ordinance and a temporary enactment. These decisions of the Constitution Bench which have accepted the notion of enduring rights which will survive an ordinance which has ceased to operate do not lay down the correct position. The judgments are also no longer good law in view of the decision in S R Bommai.

- **No express provision has been made in Article 123 and Article 213 for saving of rights, privileges, obligations and liabilities** which have arisen under an ordinance which has ceased to operate. Such provisions are however specifically contained in other articles of the Constitution such as Articles 249(3), 250(2), 357(2), 358 and 359(1A). This is, however, not conclusive and the issue is essentially one of construction; of giving content to the 'force and effect' clause while prescribing legislative supremacy and the rule of law.
- The question as to whether rights, privileges, obligations and liabilities would survive an Ordinance which has ceased to operate must be determined as a matter of construction. ***The appropriate test to be applied is the test of public interest and constitutional necessity.*** This would include the issue as to whether the consequences which have taken place under the Ordinance have assumed an irreversible character. In a suitable case, it would be open to the court to mould the relief.

Issues on Excessive use of Ordinance

The executive's power to issue ordinances, goes against the Philosophy of **separation of powers** between the Legislature, Executive and Judiciary. It bypasses the democratic requirements of argument and deliberation. Re-promulgation defeats the constitutional scheme under which a limited power to frame ordinances has been conferred on the President and the Governors. It poses threat to the sovereignty of Parliament and the state legislatures which have been constituted as primary lawgivers under the Constitution.

The Constitution has provided for Separation of Power where enacting laws is the function of the legislature. The executive must show self-restraint and should use ordinance making power only as per the spirit of the Constitution and not to evade legislative scrutiny and debates.

b) Critically examine the terms "superintendence, direction and control" as mentioned under Article 324 of the Constitution of India.

Article 324(1) vests "superintendence, direction and control" of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution to an independent Election Commission.

However, the powers vested in the Election Commission under Art. 324(1) are subject to any law made either by Parliament under Article 327, or by the State Legislatures under Article 328 of the Constitution. Accordingly Parliament has enacted the following legislation to vest superintendence, direction and control for the conduct of elections:

- **The Representation of People Act, 1951** - provide for conduct of elections, qualifications and disqualifications for membership from Houses
- **The Representation of People Act, 1950 -** provide for allocation of seats, delimitation of constituencies, qualifications of voters at such elections, preparation of electoral rolls, manners filling seats in Rajya Sabha to be filled by representatives of Union territories.
- **The Presidential and Vice-Presidential Elections Act, 1952** and the Presidential and Vice-Presidential Elections Rules, 1974, for conduct of election to the office of the President and Vice-President of India

Overall, the Constitution provides vast powers to the Election Commission through the term "*superintendence, direction and control*" under Article 324 which can further be categorised as: **Executive & Adjudicatory.** Thus, The Election Commission primarily exercises *Administrative Functions* but it also performs *Adjudicatory functions* from time to time.

Election Commission of India v. Ashok Kumar, (2000)

- **The words "superintendence, direction and control"** are of wide amplitude and include all powers necessary for the smooth and effective conduct of elections so that the will of the people may be expressed.
- **EC under Article 324** can order fresh poll in a constituency due to breakdown of law and order either at the time of polling or counting of votes.
- The term **"Election" used in Art. 329(b)** has a broad connotation:

START OF ELECTION PROCESS: **END OF ELECTION PROCESS**

- **Issue of a notification under RPA, 1951** ⟶ **up to the declaration of the result.**

In between, Art. 329(b) bars any interference by the Courts.

- **Mohinder Singh v Chief Election Commissioner (1978) -** EC should exercise its power of cancelling a poll according to the principles of natural justice.

Digvijay Mote v. Union of India (1993 AIR SCW 2895)

- Conduct of election is in the hands of the Election Commission which has the power of **superintendence, direction and control of elections** vested in it as per Article 324 of the Constitution.
- Consequently, if the Election Commission is of the opinion that having regard to the **disturbed conditions in a State**, or a part thereof, **free and fair elections cannot be held**, **it may postpone the same.** However, this power is not uncontrolled and is **subject to judicial review** as functions of EC affects public law rights.
- SC emphasized that the power conferred on the Election Commission by Article 324 has to be exercised not mindlessly nor mala fide nor arbitrarily nor with partiality but in keeping with the ***guidelines of the Rule of Law and not stultifying the presidential notification nor existing legislation.***

Mohinder Singh Gill v. Chief Election Commissioner (1978)

- Supreme Court has lucidly explained the scope of Article 324. This is a plenary provision vesting the whole responsibility for national and state elections and therefore, the necessary powers to discharge that function. Article 324 has however to be read in the light of the Constitutional Scheme and The Representation of the People Acts, 1950 and 1951.
- If competent legislation is enacted, as visualized by Art. 327, the Commission is bound by it. The Commission must act in conformity with, not in violation of the enacted law concerning elections.
- SC observed that EC cannot claim to exercise any power under Article 324 which may be in conflict with the enacted law. When, however, any situation arises for which the law does not provide for, the Commission can exercise power under Article 324. *"Article 324 operates in areas left unoccupied by legislation and the words 'superintendence, direction and control' as well as 'conduct of all elections', are the broadest terms".*
- Thus, when law is silent, "Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition.

A.C. Jose v. Sivan Pillai, (AIR 1984 SC 921)

- In May, 1982, during the elections for the Kerala State Legislative Assembly, Electronic Voting System was introduced at some polling booths in one constituency under the directions of the Election Commission issued under Article 324.
- After the completion of the election, the validity of the electronic voting system was challenged through an election petition.
- Supreme Court setting aside the election of the successful candidate, ordered re-poll in such polling booths where the machines had been used as use of machines fell outside EC's jurisdiction.

- **The Court ruled that EC did not have power to change the mechanism of voting process which could only be done by the Parliament.**
- The Court interpreted the word '**ballot**' used in the Representation of the People Act as not including the casting of votes by any mechanical process. ***The Court construed Article 324 as conferring only Executive, but not legislative, powers on the Election Commission.***
- Legislative powers in respect of elections to Parliament and the State Legislatures vest in Parliament and no other body and the Election Commission would come into picture only if no provision has been made by Parliament in regard to these elections.
- **The Supreme Court laid down the following propositions as regards the power of the Commission under Art. 324:**
  (1) When there is no law or rule made under the law, the Commission may pass any order in respect of the conduct of elections.
  (2) When there is an Act and rules made thereunder, it is not open to the Commission to override the same and pass orders in direct disobedience to the mandate contained in the rules or the Act. This means that the powers of the Commission are meant to supplement, rather than supplant, the law and the rules in the matter of superintendence, direction and control provided by Art. 324.
  (3) Where the law or the rules are silent, the Commission no doubt has plenary powers under Art. 324 to give any direction in respect of the conduct of elections.
  (4) In the absence of any specific provision to meet a contingency, the Election Commission can invoke its plenary power under Art. 324 – (***N. Krishnappa v. Chief Election Commissioner*, AIR 1995 AP 212**)

Adjudicatory Powers of Election Commission
Sadiq Ali v. Election Commission (AIR 1972 SC 187)

- The Election Commission has issued ***The Election Symbols (Reservation and Allotment) Order*, 1968**, under **Article 324** read with the ***Conduct of Election Rules*, 1961.**
- **The Election Symbols Order, 1968** has empowered the EC to
  - Allot symbols at elections in Parliamentary and Assembly Constituencies,
  - Provide recognition of political parties
  - Suspend or withdraw recognition of recognised or unrecognised political party for its failure to observe ***Model Code of Conduct* (MCC)** or *follow lawful instructions of* EC.
  - Delete names of Registered Unrecognised Political Party when they refuse to follow election rules
- **Legislative Character of the Election Symbols Order was Challenged -** The power to issue the Symbols Order is comprehended within the power of "**superintendence, direction and control**' of elections vested in the Election Commission.
- SC upheld the Order without characterising it as 'legislative' but treating it as "a compendium of directions in the shape of general provisions to meet the various kinds of situations appertaining to elections with particular reference to symbols", and the Election Commission has power to make such an order in its own right under Article 324.

In **Kanhiya Lal Omar Vs. R.K. Trivedi & Others,** Supreme Court held that Article 324 of the Constitution operates in areas left unoccupied by legislation and the words 'superintendence', 'direction' and 'control' as well as 'conduct of all elections' are the broadest terms which would include the power to make all such provisions". However, the Election Commission does not have the legislative mandate and its decisions must reflect adherence to principles of natural justice.

c) Has the enactment of 'The Lokpal and Lokayuktas Act, 2013' affected the functioning of Central Bureau of Investigation (CBI) and Central Vigilance Commission (CVC)? Explain.

The Central Bureau of Investigation (CBI), the Central Vigilance Commission (CVC) and the Lokpal and Lokayukta investigates into matters of corruption against public servants under the Prevention of Corruption Act, 1988. After constitution of Lokpal and Lokayuktas, the functions of these institutions have ben re-arranged to avoid overlapping of jurisdiction of each of these institutions.

The Lokpal & Lokayuktas Act, 2013

- A complaint under the Lokpal Act must pertain to an offence under the Prevention of Corruption Act against a public servant. When a complaint is received, the Lokpal may order a preliminary inquiry by its **Inquiry Wing,** or refer it for investigation by any agency, including the CBI, if there is a *prima facie* case.
- Thus, the Act provides for an **Enquiry Wing** and a **Prosecution Wing** headed by their respective Directors.
- **The inquiry Wing** conducts preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988.
- **The Prosecution Wing can file a case** in accordance with the findings of investigation report, before the **Special Court** for prosecution of public servants in relation to any offence punishable under the **Prevention of Corruption Act, 1988.**
- Jurisdiction of the Lokpal Act includes ***offices of Prime Minister, Ministers, members of Parliament, officers belonging to Group A, B, C and D and officials of Central Government.***

Central Bureau of Investigation (CBI)

- The government enacted ***The Delhi Special Police Establishment Act, 1946*** after the Second World War which provided for the constitution of special force for investigation of offences alleged to have been committed under the ***Prevention of Corruption Act, 1988.***
- A growing need was felt for a Central Police Agency at disposal of the Central Government which could investigate not only cases of bribery and corruption, but also violation of Central fiscal laws, major frauds relating to Government of India departments, public joint stock companies, passport frauds, crimes on the high seas, crimes on the Airlines and serious crimes committed by organised gangs and professional criminals. Therefore, the Union Government set up Central Bureau of Investigation by a resolution dated 1st April, 1963.
- ***The jurisdiction of CBI was extended to all the Union territories*** and the Act provided for its extension to States with the consent of the State Government.

RESTRUCTURING OF CBI AFTER VINEET NARAIN JUDGMENT

- Pursuant to the direction of Hon'ble Supreme Court in ***Vineet Narain and others vs. Union of India***, the existing Legal Division was reconstituted as the ***Directorate of Prosecution*** in July 2001.

VINEET NARAIN CASE – CBI PLACED UNDER CVC

- ***Vineet Narain and others vs. Union of India*** – it is about ***hawala scandal*** where a journalist Vineet Narain implicated numbers of high ranking politicians and bureaucrats of having financial irregularities and their alleged links with militants across the borders.
- The Supreme Court in the case observed that CBI had failed in its responsibility and has become a **caged parrot.** The Court laid down *guidelines to ensure independence and autonomy of the CBI* and ***ordered CBI to be placed under the supervision of the Central Vigilance Commission (CVC),*** to ensure that it remains free from executive control or interference.
- Thus, The CVC was made responsible for ensuring that allegations of corruption against public officials were thoroughly investigated regardless of the identity of the accused and without interference from the Government.
- Central Vigilance Commission was constituted by the Government in 1964 through an executive order on the recommendations of ***Committee on Prevention of Corruption, headed by Shri K. Santhanam.***

- The government then passed the ***Central Vigilance Commission Act, 2003*** to provide statutory status to the Central Vigilance Commission.
- With enactment of the **Central Vigilance Commission Act, 2003,** the superintendence of Delhi Special Police Establishment vests with the Central Government for investigations of offences under ***the Prevention of Corruption Act, 1988***, in which, the superintendence vests with the Central Vigilance Commission.
- As per the CVC Act, the Commission exercise superintendence, give directions and review the functioning of the Delhi Special Police Establishment in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988.

Prior to Enactment of Lokpal and Lokayuktas Act, 2013

- Prior to the enactment of **Lokpal & Lokayukta Act, 2013**, the Central Vigilance Commissioner (CVC) was the Chairperson of the selection committee as per Section 4B of DSPE Act, 1946.

Post Enactment of Lokpal and Lokayuktas Act, 2013

- The Central Government shall appoint the Director of CBI on the recommendation of the Committee consisting of –
  - **Prime Minister** – as Chairperson
  - **The Leader of Opposition** recognised as such in the House of the People or where there is no such Leader of Opposition, then the Leader of the single largest Opposition Party in that House – as Member
  - **Chief Justice of India or Judge of Supreme Court** nominated by CJI
- **Tenure of CBI Director -** The CBI Director shall continue to hold office for a period of not less than two years from the date on which he assumes office. The Director shall not be transferred except with the previous consent of the Committee.

Procedure in Respect of Preliminary Inquiry and Investigation under Lokpal Act

- Section 20 of Lokpal and Lokayuktas Act, if the Lokpal on receipt of a complaint decides to proceed further, then it may order:
  - preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a prima facie case for proceeding in the matter;
  - investigation by any agency (including the Delhi Special Police Establishment) when there exists a prima facie case
- The Lokpal then shall refer the complaints against public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission to conduct further inquiry under the CVC Act.
- The CVC after making preliminary inquiry in respect of public servants belonging to **Group A** and **Group B,** shall submit its report to the Lokpal who shall then ask its Inquiry Wing or CBI to conduct further inquiry.
- **A Bench** consisting of **not less than three Members of the Lokpal** shall consider every report received by the Inquiry Wing and after giving an opportunity of being heard to the public servant, decide whether there exists a prima facie case, and proceed with one or more of the following actions, namely:–
  a) investigation by any agency or the Delhi Special Police Establishment, as the case may be;
  b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;
  c) closure of the proceedings against the public servant and to proceed against the complainant
- In case the Lokpal decides to proceed to investigate into the complaint, it shall direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order.
- A bench consisting of not less than three Members of the Lokpal shall consider every report received by it and after obtaining the comments of the competent authority and the public servant may–
  a) grant sanction to its Prosecution Wing or investigating agency to file charge-sheet or direct the closure of report before the Special Court against the public servant;

b) direct the competent authority to initiate the departmental proceedings or any other appropriate action against the concerned public servant.

- Whereas in case of public servants belonging to **Group C** and **Group D**, the Commission shall proceed in accordance with the provisions of the Central Vigilance Commission Act, 2003.

Thus, enactment of the Enactment of Lokpal and Lokayuktas Act, 2013 has provided for an elaborate procedure for inquiry and investigation against public servants belonging to Group A, B, C and D involving the Central Vigilance Commission and the Central Bureau of Investigation.

Section – B

Q.5) a) Article 136 confers a special jurisdiction on the Supreme Court and opens with a non-obstante clause. Elaborate.

Supreme Court under Article 136 has very wide appellate jurisdiction over all Courts and tribunals (other than military tribunals) in India and in its discretion grant special leave to appeal under Article 136. The jurisdiction under Article 136 cannot be limited or taken away by any legislation subordinate to the Constitution.

Importance of Notwithstanding Clause

Since Article 136 starts with a notwithstanding clause, hence its appellate jurisdiction under Article 136 overrides its appellate powers under Article 132, 133, 134 and 134A to hear appeals from High Courts in civil and criminal matters. The appellate power under Article 136 is not to be confused with ordinary appellate power exercised by appellate courts or tribunals.

- **Delhi Judicial Service Association v State of Gujarat (1991) -** SC under Article 136 can even disregard the limitations contained in **Articles 132 to 134** on its appellate jurisdiction and hear appeals which would have been rejected otherwise. Under Article 136(1),
- **Durga Shankar v. Raghu Raj (1954) -** SC observed that the powers given under **Article 136** are in the nature of **special or residuary powers** which are exercisable outside the purview of ordinary law, in cases where the needs of justice demand interference by the Supreme Court of the land. The article itself is worded in the widest terms possible starting with a notwithstanding clause and vests plenary jurisdiction in the matter of entertaining and hearing appeals by granting of **special leave** against any kind of judgment or order made by a court or tribunal in any cause or matter and the powers could be exercised in spite of the other specific provisions for appeal provided in the Constitution or other laws. The Constitution did not choose to limit the powers exercisable under this article in any way.
- **Ramakant Rai v Madan Rai (2004) -** Supreme Court held that where an accused is acquitted by the High Court and no appeal against the acquittal is filed by the State, a 'private party' can file appeal under Article 136 against the acquittal order of the High Court.

Order must be Judicial or Quasi-Judicial Order

- It may also be noted that an "**order**" against which appeal is maintainable under Article 136 must be a **judicial or quasi-judicial order** (**and not a purely executive or administrative order**) and must be passed by a court or tribunal in the territory of India. An adjudicatory order is "an order that adjudicates upon the rival contentions of parties and it must be passed by an authority constituted by the state by law for the purpose in discharge of the State" obligation to secure justice to its people."
- **Union of India v Swadeshi Cotton Mills (1978) -** The word 'order' in Art. 136(1) has not been qualified by the adjective 'final' as is the case in Arts. 132, 133 and 134. The Supreme Court thus has power to hear an appeal even from an interlocutory or an interim order. In practice, however, the Court does not ordinarily grant leave to appeal from an interlocutory order, but it can do so in an exceptional case. Ordinarily, the parties are directed to approach the High Court for the recall, stay or modification of the interim order.

- **Union of India v Era Educational Trust (2000) -** The term 'determination' in Article 136 signifies an effective expression of opinion which ends a controversy or a dispute by some authority to whom it is submitted under a valid law for disposal. Determination or order must be judicial or *quasi*-judicial and **a purely administrative or executive direction cannot be the subject matter of appeal to the Supreme Court.** As the Supreme Court has observed: **The essence of the authority of this Court being judicial, this Court does not exercise administrative or executive powers**, i.e. character of the power conferred upon this court original or appellate, by its constitution being judicial, the determination or order sought to be appealed from must have the character of a judicial adjudication.

Plenary & Residuary Power of Judicial Superintendence

- **Delhi Judicial Service Association v State of Gujarat (1991) -** SC has plenary jurisdiction to grant leave and hear appeals against any order of a court or tribunal. This confers on the Supreme Court power of judicial superintendence over all courts and tribunals in India including subordinate courts of magistrate and district judge.
- **Rajendra Kumar v. State (1980) -** Supreme Court heard an appeal from the decision of the Chief Judicial Magistrate as the appellant approached Supreme Court without going to the High Court. The Supreme Court did however observe that it does not ordinarily entertain such petitions. The Court held that it has special residuary power to entertain appeal against any order of any court in the country. The plenary jurisdiction of this Court to grant leave and hear appeals against any order of a court or tribunal, confers power of judicial superintendence over all courts and tribunals in the territory of India including subordinate courts of Magistrate and District Judge. This Court has, therefore, supervisory jurisdiction overall courts in India.

Power to Used Sparingly

- **Pritam Singh v State (1950) -** Supreme Court held that power under Article 136 is to be exercised sparingly and in exceptional cases only where substantial and grave injustice has been done and the case warrants a review. Court also held that a uniform standard should be adopted in granting special leave in the wide range of matters arising under Article 136 - civil cases, in criminal cases, in income-tax cases, in cases which come up before different kinds of tribunals.

Grounds of filing SLP under Article 136 include:	Grounds of Rejection of SLP under Article 136 include:
➔ Substantial question of law of general importance ➔ Errors in the interpretation and application of laws ➔ Violation of Fundamental Rights ➔ Miscarriage of Justice ➔ Conflict in decisions of different High Courts ➔ Cases involving significant public interest	➔ the petition is time-barred; defective presentation ➔ petitioner lacks locus standi to file the petition ➔ conduct of the petitioner disentitles him to any indulgence by the court; ➔ the question raised in the petition is not considered fit for consideration by the Court, or does not deserve to be dealt with by the Apex Court.

New Matter Cannot be Raised - M/s. Badrikedar Paper Pvt. Ltd. v Electricity Regulatory Commission (2009) - In appeal under Article 136, the Supreme Court did not allow the appellant to raise the new plea for the first time.

b) What was the rationale to include Fundamental Duties through the Constitutional (Forty-second Amendment) Act, 1976? Are fundamental duties justiciable in themselves?

A new PART-IVA titled Fundamental Duties under Article 51A was added by the **Constitution 42nd Amendment** in 1976 on the recommendation of **Sardar Swaran Singh Committee.**

The need for fundamental duties was felt during the internal emergency (1975-1977) when the government believed citizens were not fully aware of their responsibilities towards the nation. The rationale for including Fundamental Duties in the

Indian Constitution was to instil a sense of responsibility and commitment towards the nation among its citizens in addition to their fundamental rights. Fundamental duties should serve as a constant reminder to every citizen that, while the constitution conferred on them certain fundamental rights specifically, it also requires citizens to observe certain basic norms of democratic conduct and behaviour because rights and duties are correlative.

Initially, **Article 51A** provided for 10 fundamental duties of every citizen of India from **Article 51A (a) to (j). Eleventh Fundamental Duty** was added by the **Constitution 86th Amendment in 2002** which added **Article 51A (k)** which states that every parent or guardian must provide opportunities for education to his child between the age of six and fourteen years.

Fundamental Duties include abiding the Constitution and respect its ideals and institutions, the National Flag and the National Anthem, to cherish and follow the noble ideals which inspired our national struggle for freedom, to uphold and protect the sovereignty, unity and integrity of India, to defend the country and render national service when called upon to do so, promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, to renounce practices derogatory to the dignity of women, to value and preserve the rich heritage of our composite culture, to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures, to develop the scientific temper, humanism and the spirit of inquiry and reform, to safeguard public property and to abjure violence, to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement and who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

Enforceability of Fundamental Duties

- Some of our Fundamental Duties are legally enforceable and their disregard is punishable. **For eg: Article 51A (a)** - *It shall be the duty of every citizen of India* – *(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.*
- Now, this duty is legally enforceable as the Union Government has legislated **The Prevention of Insults to National Honour Act, 1971.** Its provision highlights that any insult to National Flag or Constitution of India is punishable with imprisonment for a term which may extend to three years along with fine or both. Further, whoever intentionally prevents the singing of the Indian National Anthem or causes disturbances to any assembly engaged in such singing shall be punished with imprisonment for a term, which may extend to three years, or with fine, or with both.
- However, there are other Fundamental Duties which are not legally enforceable. Example – **Article 51A (b)** - *to cherish and follow the noble ideals which inspired our national struggle for freedom.*

Judgments on Fundamental Duties

- **M.C. Mehta Cases -** In several cases related to environmental protection, the Supreme Court has cited the Fundamental Duty to protect and improve the natural environment (Article 51A(g)) to justify its decisions and actions, such as closing down polluting industries or imposing restrictions on polluting activities.
- **AIIMS Students Union vs. AIIMS (2001) -** The Supreme Court stated that Fundamental Duties are as important as Fundamental Rights, though not directly enforceable.
- **Balaji Raghavan v Union of India (1995) -** The Court upheld the constitutional validity of National Awards such as the Bharat Ratna, Padma Vibhushan, Padma Bhushan, and Padma Shri. The Judgment stressed that conferring these awards is not violative of the principles of equality as these awards recognized merit. Article 51A(j) of the Fundamental Duties chapter exhorts citizens to strive towards excellence in all activities. A system of instituting awards is necessary to incentivise citizens and to recognise excellence in the performance of these duties.
- **M.C. Mehta v Kamal Nath (2000) –** The Court determined the fine that the hotel developers were to pay for harming the environment and ecology of the region. Court emphasised that **Article 51A(g)** imposes a duty on every citizen

to protect and improve the natural environment and to have compassion for living creatures. This duty must be read in conjunction with Article 48A.

- **Shri Ranganath Mishra v Union Of India (2003) -** The Supreme Court directed the Centre to implement the recommendations of Justice Verma Committee with respect to disseminating information on Fundamental Duties to the public.

Justice Verma Committee listed in brief some of the legal provisions already available in regard to enforcement of Fundamental Duties -

- In order to ensure that no disrespect is shown to the National Flag, Constitution of India and the National anthem, the Prevention of Insults to National Honour Act, 1971 was enacted.
- The Emblems and Names (Prevention of Improper Use) Act 1950 was enacted soon after independence to prevent improper use of the National Flag and the National Anthem.
- Flag Code of India – embodies correct usage and display of National Flag
- Section 153A of the Indian Penal Code - Promoting enmity between different groups on grounds of religion, race, place of birth, residence. language, etc., and doing acts prejudicial to maintenance of harmony.
- Section 153 B of the IPC - Imputations and assertions prejudicial to the national integration constitute a punishable offence
- Unlawful Activities (Prevention) Act 1967 - Communal organization can be declared unlawful association
- Sections 295-298 of the IPC - Offences related to religion
- Provisions of the Protection of Civil Rights Act, 1955 – punishes untouchability
- Sections 123(3) and 123(3A) of the Representation of People Act, 1951 declares that soliciting of vote on the ground of religion and the promotion or attempt to promote feelings of enmity or hatred between different classes of citizens of India on the grounds of religion, race, caste, community or language is a corrupt practice.
- Section 8A of the Representation of People Act, 1951 - A person indulging in a corrupt practice can be disqualified for being a Member of Parliament or a State Legislature.

Addition of Fundamental Duties brought our Constitution in sync with **Article 29(1) of the Universal Declaration of Human Rights (UDHR)** which states that everyone has duties to the community in which alone the free and full development of one's personality is possible.

c) The Doctrine of Territorial Nexus is rooted in the Constitution of India. Explain with the help of illustrations.

Article 245 under Chapter I (Legislative Relations) of PART XI [RELATIONS BETWEEN THE UNION AND THE STATES] provides for territorial Jurisdiction for Parliament to legislate. **Article 245(2)** provides for extra-territorial application of laws was adopted from the Government of India Act, 1935. Thus, based on Article 245(2) emerges the Doctrine of Territorial Nexus.

The doctrine of territorial nexus implies that the object to which the law applies **need not be physically located within the boundaries of the State.** It is enough if it has sufficient territorial connection with the State. The doctrine is applied to find out whether a particular State law has **extra-territorial operation.** Thus, a **State may levy a tax on a person, property, object or transaction** not only when it is situated within its territorial limits, **but also when it has a sufficient and real territorial connection with it.** The doctrine has generally been invoked in tax cases.

Case Laws with Illustrations

Wallace Vs Income Tax Commissioner (1948) - A company was incorporated in the United Kingdom and had its control and management exclusively situated there. A member of it carried on business in India. The company made an overall

profit of which a major part accrued from India. It was held that India could levy an income-tax on the entire income of the company, and not only on the portion accruing from India, for there was a sufficient territorial nexus between the company and India for this purpose. The sufficiency of nexus involves consideration of two elements: **(1)** The connection between the object sought to be taxed and the State seeking to tax must be real and not illusory; and **(2)** The liability sought to be imposed must be pertinent to that connection.

State of Bombay v. R. M. D. C (1957) - the then State of Bombay levied a tax on lotteries and prize competitions in the State. The tax was extended to a newspaper printed and published in Bangalore, but had wide circulation in Bombay. The respondent conducted the prize competition through this paper for which entries were received from Bombay through agents and depots established in the State to collect entry forms and fees. Thus, all activities which the competitor is to undertake took place mostly in Bombay (viz. the standing invitations, filling up of the forms and the payment of money). The Court held that a sufficient territorial nexus exist for the State of Bombay to tax the newspapers. If there is a "sufficient nexus" between the person sought to be charged and the State seeking to tax him, the taxing statute would be upheld. But, the connection must be real and not illusory (i.e. it should be on the basis of a valid law) and the liability sought to be imposed must be pertinent to that connection (i.e. law selects some fact which provide some connection with the State).

State of Bombay v Narayandas Mangilal (1958) - The Bombay State Legislature enacted a law prohibiting a bigamous marriage and made it a criminal offence to enter into such a marriage. Marriages contracted outside the State by people domiciled within the State were also prohibited. The High Court declared the Act ultra vires as there was no territorial nexus between the State and the marriage performed or crime committed outside the State, even when it was done by a person domiciled in the State.

Tata Iron and Steel Co. v State of Bihar (1958) - In this case, the appellant company had its registered office in Bombay, factory and works in Bihar and its head sales office in West Bengal. *The Bihar Sales Tax Act, 1947*, imposed a sales tax on the company's goods in the State of Bihar. Under the Act, Government imposed the liability to pay tax under the Act on sales, which have taken place in Bihar. Supreme Court did not agree with Tata Steel's contention and held that the provisions of ***Bihar Sales Tax Act (Amendment) Act, 1948*** were within the legislative authority of the legislature of Bihar. The Court observed that in a sale of goods, the goods must of necessity play an important part, for it is the goods in which as a result of sale, the property will pass. The presence of goods at the date of agreement for sale in the taxing State or the production and manufacture in that State of goods, the property wherein eventually passed as a result of sale. Wherever that might have taken place, it constituted a sufficient nexus between the taxing State and sale.

Thus, to decide whether or not a State law has an extra-territorial operation, the doctrine of *territorial nexus* is invoked and the connection must be real and not illusory as highlighted in above judgments.

d) Is strict adherence of the Doctrine of Separation of Power possible under a parliamentary form of government? Discuss with the help of relevant case laws.

Parliamentary form of government generally focus on balance of powers between the legislative and executive organ (India and U.K.) rather than strict separation of power to ensure check and balance.

The Prime Minister and his Council of Ministers are both part of the executive and legislature and function in an amalgamated manner. In the parliamentary set up, the legislature exercises control over the executive through various parliamentary tools such as voting, deliberations, parliamentary committees, use of various cut motions etc. The Indian Constitution itself does not indicate a separation of powers as is commonly understood. There is, to a large extent, a parallelism of power, with hierarchies between the three organs in particular fields. It is this balance of hierarchies which must be maintained by each organ subject to checks by the other two.

The Constitution of India has provided legislative, executive and judicial powers to the three organs.

Legislative Powers of the Central Executive

(a) Participation of the Executive in the Legislative Process –

- Council of Ministers being an integral part of Parliament participates closely in the legislative process and discharges several important functions as the President is part of the Parliament.
- Executive's power to summon, convene and prorogue both houses of Parliament (Article 85)
- Dissolve Lok Sabha
- Right of President to address and send messages to Houses under Article 86
- Special Address by the President under Article 87
- Call for Joint Sitting of Parliament by the President under Article 108
- Prior recommendations of the President is required to:
    - Introduce a Bill in either house for formation of new states or alteration of areas, boundaries or name of existing states – Article 3
    - Introducing Money Bill in Lok Sabha – Article 117(1)
    - Consideration by the house of a Bill involving expenditure from Consolidated Fund of India – Article 117(3)
    - Introducing any Bill in either House affecting any tax in which States are interested – Article 274

(b) Power of Rule Making under the Constitution

- Authentication of Orders and instruments made and executed in the name of the President – Article 77(2)
- More convenient transaction of government's business – Article 77(3)
- Power to make rules by the President for condition of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the CAG – Article 148(5)
- Power of President to make regulations as to conditions of service of members and staff of the Union and Joint Public Service Commission (Article 318)

(c) Ordinance Making Powers

- The Constitution has empowered the President (Article 123) and Governor (Article 213) with legislative powers to promulgate ordinance to meet extraordinary situations which demands immediate enactment of laws when either of the two Houses of Parliament or State Assembly is not in session.

Legislative and Administrative Powers of Judiciary

- Supreme Court under Article 145 can frame rules for regulating generally the practice and procedure of the Court. Further, the Chief Justice of India performs administrative role as he is the master of the roster and constitute and allocate Bench to decide cases.
- Similarly High Courts under Article 227 has power of superintendence over all courts and tribunals under its jurisdiction. Further, the judiciary has framed Memorandum of Procedure which provides elaborate procedure for selection and appointment of Judges of High Courts and supreme Court.

Parliament and State Legislature other than legislative powers also enjoys administrative and adjudicatory powers. Speaker and Chairman of respective Houses have power to decide on matters of Anti-defection, breach of privilege and also has power to suspend members for their unruly behaviour in Parliament or State Assembly.

- **Ram Jawaya Kapur v State of Punjab (1955) –** Court observed that the federal principle or doctrine of separation of powers is not incorporated in the Indian Constitution in the strict and rigid form.
- **Common Cause, A Registered Society v. Union of India (1999)** - Where there is inaction even by the executive for whatever reason, the judiciary can step in and in exercise of its obligations to implement the Constitution provide a solution till such time as the legislature or the executive act to perform their roles either by enacting appropriate legislation or issuing executive orders to cover the field.
- **I.R. Coelho (Dead) By Lrs vs State Of Tamil Nadu & Ors (1999)** - The principle of constitutionalism advocates a check and balance model of the separation of powers, it requires a diffusion of powers, necessitating different independent centres of decision making.

The American system on the other hand is based on the doctrine of separation of powers between the executive and the legislative organs, whereas the Indian system is based on the principle of co-ordination and co-operation of the two organs.

e) Examine the powers and functions of Union Public Service Commission. Do you think the Commission has ensured impartiality in its functioning? Give reasons.

The Union Public Service Commission (UPSC) is a constitutional body in India authorized to conduct examinations for appointment to the various civil services of the Union. The Indian Constitution (Part XIV - Services Under the Union and the states - article no. 315 to 323) provides for a Public Service Commission for the Union and a Public Service Commission for each state.

The Union Public Service Commission exercises the following functions under Article 320:

1) It conducts examination for appointments to services of the Union.
2) If requested by two or more states, the Union Public Service Commission assists them in framing and operating schemes of joint recruitment for any service for which candidates possessing special qualifications are required.
3) It advises the President on
   a) all matters relating to methods of recruitment to civil services and for civil posts;
   b) the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;
   c) all disciplinary matters affecting a person servicing under the government of India or the Government of a state in a civil capacity including memorials or petitions relating to such matters;
   d) any claim by or in respect of a person who is serving or has served under the Government of India in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of this duty should be paid out of the Consolidated Fund of India;
   e) any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India in a civil capacity and question as to the amount of any such award;
   f) any other matter which may be referred to it by the President for advice.
      - **It is usually obligatory for the Government of India to consult he Union Public Service Commission in respect of all the above matters.** However, the President has the power to make regulations specifying the matters in which, either generally or in particular circumstances, the commission may not be consulted. Similarly, there is no need to make a reference to the Union service commission regarding the reservation of posts in favour of backward classes, scheduled castes and scheduled tribes. ***However, these regulations must be placed before the parliament for its approval.***
      - **Under Article 321,** An Act made by Parliament or State Legislature may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution.

Opinion on Impartiality: UPSC as a constitutional body enjoys autonomy in its functioning without any political control and has been considered as a benchmark for impartial conduct of examination. Constitution of India under **Article 322** has also ensured financial autonomy as its expenses including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, is charged on the Consolidated Fund of India. Over the period of years, UPSC as an institution has maintained very high credibility for conducting merit based recruitment for various posts including that of civil servants. However, it has been observed that some students are misusing the reservation criteria for backward class and economically weaker sections.

Recent incident of IAS officer Pooja Khedkar who is accused of wrongly claiming benefits meant for candidates under the Other Backward Classes (OBC) and Persons with Benchmark Disabilities (PwBD) categories and is being investigated by the Delhi Police. Thus, UPSC should look into the loopholes which are misused by some students as it excludes the meritorious from selection.

Q.6) a) Principles of natural justice can be excluded either expressly or by necessary implication subject to the provisions of Article 14 and 21 of the Constitution of India. Discuss.

Though the normal rule is that a person who is affected by administrative action is entitled to claim natural justice, the requirement may be excluded under certain exceptional circumstances. There are exceptional situations which demand exclusion of the principles of natural justice. Principles of natural justice can be excluded either expressly or by necessary implication subject to the provisions of Article 14 and 21 of the Constitution of India.

- **Maneka Gandhi v UOI (1978) -** Exclusion of the principle of audi alteram partem has been accepted in certain cases not by way of an exception to "fair play in action" but because nothing unfair can be inferred by not affording an opportunity to present or meet a case.
- **Karnataka Public Service Commission v B.M. Vijay Shankar (1992) –** Principles of Natural Justice are ultimately weighed in the balance of fairness and hence the Courts have been circumspect in extending these principles to situations where it would cause more injustice rather than justice.
- **Avinash Nagra v Navodaya Vidyalaya Samiti (1997) –** Where a teacher of Navodaya Vidyalaya was dismissed on gross moral turpitude without giving exhaustive hearing as per Central Civil Services (Classification, Control and Appeal) Rules, the Court held the termination valid on the ground that fairness cannot be made counter-productive.
- **Rash Lal Yadav v State of Bihar (1994) –** The Ordinance provided for hearing before taking over non-govt. schools. However, the legislation which followed the ordinance deliberately omitted it. SC held that by implication the legislature excluded the rule of hearing

EXCLUSIONS OF NATURAL JUSTICE

(1) STATUTORY EXCLUSION - Where a statute excludes the application of any or all the rules of natural justice, then the Court cannot ignore statutory mandate and read into the concerned provision the requirement of natural justice.

- **Union of India V. J.N. Sinha**, the competent authority acting under Rule 56 (J) of the Fundamental Rules passed an order compulsorily retiring a government servant. It did not provide for giving any opportunity to the government servant concerned to show cause against the proposed action. The Supreme Court upheld the said decision. However in India, Parliament is not supreme and therefore statutory exclusion is not final and the statute must stand the test of constitutional provisions. Even if there is no provision under the statute for observance of the principles of natural justice, Courts may read the requirement of natural justice for sustaining the law as constitutional.

(2) LEGISLATIVE FUNCTION - Legislative action, plenary or subordinate, is not subject to the rules of natural justice. This is so because these rules lay down a policy without reference to a particular individual. A legislative action, for example, price fixing, is a direction of general character, not directed against a particular person or individual manufacturer or trader. There is no question of invoking principles of natural justice in such cases.

- **Charan Lal Sahu v. Union of India** (Bhopal Gas Disaster case), Constitutionality of Bhopal Gas Disaster (Processing of Claims) Act, 1985 was challenged because the provisions of the Act took away rights of victims to establish their own right which was a denial of access to justice without a procedure established by law. Moreover, it was also violative of the requirements of natural justice. Rejecting the contention, the Supreme Court held that the State had taken over the rights and claims of the victims in the exercise of sovereign power in order to discharge the Constitutional obligations.
    - **Union of India v Cynamide India Ltd. (1987) –** SC held that no principles of natural justice has been violated when the govt issued a notification fixing prices of certain drugs. The Court reasoned that the decision flowed

from a legislative act and not an administrative act and hence the principles of natural justice would not apply.

(3) EMERGENCY - In exceptional cases of urgency or where prompt and preventive action is required for public welfare, then the principles of natural justice need not be observed. According to **Justice Krishna Iyer**, "If to condemn unheard is wrong, it is wrong except where it is overborne by dire social necessity." Some Examples:

- Where a dangerous building is required to be demolished to save human lives – Nathubhai Dhulaji v Municipal Corp. (1957)
- Where a Banking company is required to be wound up to protect the interest of depositors – Joseph Kuruvilla v RBI (1962)
- Where a person dangerous to peace is required to be externed or detained, or where a passport is required to be impounded in public interest – Maneka Gandhi v UOI (1978)
- Trade dangerous to society is to be prohibited – Cooverjee v Excise Commissioner (1954)
- Dire social necessity requires exclusion of the elaborate process of pre-decisional hearing.

However, immediacy' does not exclude duty to act fairly because even an emergent situation can co-exist with the canons of natural justice. Thus, even in the case of an emergency where precious rights of the people are affected, post-decisional hearing has relevance to administrative fairness.

(4) PUBLIC INTEREST - The requirement of notice and hearing may be excluded where prompt action is to be taken in the interest of public safety, public health or public morality. In cases of pulling down property to extinguish fire, destruction of contagious plant or animal life, destruction of unwholesome food; etc., action has to be taken without giving the opportunity of hearing. Nevertheless, hearing may be given in some of these situations after the action has been taken as a corrective measure to see whether a mistake has been committed.

- **Maneka Gandhi v. Union of India**, the Supreme Court conceded that a passport may be impounded in public interest without compliance with the principles of natural justice but as soon as the order impounding the passport has been made, an opportunity of post decisional hearing, remedial in aim, should be given to the person concerned. In this case it has also been held that "public interest" is a justiciable issue and the determination of the administrative authority about it is not final.

(5) IMPRACTICABILITY - Judicial approach in applying the rules of natural justice to fact-situations is not theoretical but pragmatic. Where the number of persons is so large that it is not practicable to give all of them the opportunity of being heard, the Court does not insist on observance of the principles of natural justice.

- **Bihar School Examination Board v. Subhash Chandra,** the candidates at the Secondary School Examination of the Board at one Centre indulged in mass-copying. The Board cancelled the examination of all subjects at the Centre concerned and permitted the examinees to re-appear at a supplementary examination. The candidates challenged the order on the ground that no opportunity had been given to them to show cause before passing the order. The Supreme Court held that it was obvious from the results that the candidates concerned had indulged in mass copying and the examination as a whole had been vitiated by use of unfair means on a mass scale, it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had used unfair means.
- **R. Radha Krishanan V. Osmania University,** the entire M. B. A. entrance examination was cancelled by the University because of mass copying, the Court held that notice and hearing to all the candidates is not practicable in such situation.

(6) ACADEMIC EVALUATION - Where a student is removed from an educational institution on grounds of unsatisfactory academic performance, the requirement of pre-decisional hearing is excluded. Thus, in **Jawahar Lal Nehru University v. B.S. Narwal**, a student of the University was removed from the rolls because of unsatisfactory academic performance without giving any hearing. The Supreme Court held that the very nature of academic evaluation appears to negative any right to hearing. The Court observed that the instant case was "merely one of assessment of academic performance of a student which the prescribed authorities of the

(7) INTERIM DISCIPLINARY ACTION - Where disciplinary action is preventive in nature, the observance of the rules of natural justice is excluded. Thus, in **Abhay Kumar V. K. Srinivasan**, the institution passed an order debarring the student from entering the premises of the institution and attending classes till the criminal case against him for stabbing a co-student is under consideration. The validity of this order was challenged on the ground of denial of the principles of natural justice. Rejecting the contention, the Delhi High Court ruled that such an order could be compared with an order of suspension pending enquiry which is preventive in character in order to maintain peace on the campus and therefore the principles of natural justice not attracted

(8) CONTRACTUAL TRANSACTION – In **State of Gujrat v. M.P. Shah Charitable Trust**, the Supreme held that the principles of natural justice are not attracted in case of termination of an arrangement in any contractual field. The reason is clear that termination of an arrangement/agreement is neither a quasi-judicial nor an administrative act. hence the question of duty to act judicially does not arise.

b) Define and distinguish between 'Constituent power', 'Amending power' and 'Legislative power' of the Parliament. Give illustrations.

Constitution of India has provided these different powers to the Parliament. Article 13 provides the legislative powers also referred as the ordinary law-making powers of the Parliament. Whereas Article 368 is the source of both constituent power and amending powers of the Parliament.

Constituent Powers

In the context of political theory and constitutional law, constituent power refers to the supreme authority to establish a constitution or fundamentally amend an existing one. It's often associated with the people's ability to create their own laws and governance framework, and it is considered superior to ordinary legislative power.

The assembly of indirectly elected people representing different sections and regions of the country participated in the constitution making process was referred as Constituent Assembly. Thus, constituent powers of Parliament means either making the Constitution or amending the provisions of the constitution.

Amending Powers of Parliament

The marginal heading of Article 368 reads "**Power of Parliament to amend the Constitution and procedure therefor". I**t further says that notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article. Thus, Article 368 has not only provides constituent Power to the Parliament to amend the constitution but has also laid down the procedure for amending it.

Under Article 368, an amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill. Further there are **entrenched provisions**, amendment of which shall also require to be ratified by the Legislatures of not less than one-half of the States by simple majority. **Entrenched Provisions under Article 368 are:**

- Manner of election of President
- Extent of executive powers of union and states
- Supreme Court & High Courts
- Distribution of Legislative, Administrative & Taxing Powers – Union & States
- Representation of States in Parliament
- Amendment in Article 368 itself

Legislative Powers of the Parliament

This can be traced from **Article 13(3)(a)** which defines the term **"law"** and it includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law. Earlier judgment of **I.C. Golak Nath** held that Article 13 and 368 both are source of constituent powers of the Parliament. However, the Supreme Court in **Kesavananda Bharati** judgment overruled **Golak Nath on this point** and held that **Article 13 is the source of ordinary law making power of the Parliament** and not its constituent power which can be found under Article 368. Under Article 13, judiciary has powers of **judicial review** over laws made by the Parliament and can declare them unconstitutional if they violate any fundamental rights and such laws needs to be re-enacted again.

Parliament is general times is empowered to make laws on entries under Union List and Concurrent List as provided in the Seventh Schedule (Article 246). However, in times of emergency or in national interest, Parliament can make laws even under State List.

Together, Constituent power, Amending power and Legislative power gives life and meaning to the Parliament and in essence ensures Parliamenatry democracy in India. However, under the Constitution of India, the judiciary has the final say and can review the functions of Parliament under Article 13 and 368.

c) Elaborate upon the various impacts of proclamation of Emergency under Article 352 of the Constitution of India.

The Constitution of India generally provides for a federal set up but in certain circumstances can become completely unitary in its functioning. Article 352, 353, 354, 355, 358 and 359 deal with this kind of emergency.

Under **Article 352 (1)** if the President is satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened due to war or external aggression or armed rebellion, he may by proclamation make a declaration to that effect in respect of the whole of India or such part of the territory thereof as may be specified in the proclamation of emergency.

The proclamation issued by the President under Article 352 converts the political set up into a unitary one. The following can be said to be the impact of Article 352:

1. Transformation in the nature of Indian Federalism

- Affects Normal Distribution of Legislative, Executive and Taxing Powers
- Parliament can make law on any matter under State List during such emergency. Such a law operates till **6 months** after the proclamation ceases to operate – **[Article 250]**
- State Legislature continue to operate as usual; can make law under List-II & List-III
- Parliamentary law if made under **Article 251** during emergency on State List, will override State Law
- After 6 months of ending of emergency, normal distribution of legislative power is fully restored

2. Centre empowered to issue Directions to the States under Article 353

- In normal times Union executive has the power to give directions to a State which includes only matters specified in **Articles 256-257**.
- **Under Article 353(a) –** Centre can direct states as to the manner in which it intends to exercise its executive powers
- Centre can give directions to states even for laws made under State List by the states
- Parliament under **Article 353(b)** can confer powers and impose duties upon Centre or its officers even though the law is not within the legislative entry under Union List

3. Centre can issue directions even to States where proclamation not issued – [Proviso to A-353]

- When emergency is declared only in part of India, then:
    1) Executive Power of Centre to give Directions; &

2) Power of Parliament to make laws

- Can extend even to states where proclamation is not issued under Article 352 and whose security is not threatened.
- This makes the proclamation effective even for such states by restricting undesirable activities.

4. Centre not obligated distribute revenue to States during proclamation – Article 354

- President may by order direct that any provisions of **Article 268-279** regarding revenue distribution shall take effect subject to certain exceptions or modifications.
- It frees the centre from any obligations to transfer revenue to states during emergency to ensure its own financial capability to deal with the emergent situation.
- Order suspending distribution of revenue is to be laid down before both Houses of Parliament – **Article 354(2)**
- Such suspension would not remain in force beyond the end of financial year in which the proclamation ceases to operate.

5. Parliament can also levy any tax which ordinarily falls under State List to fulfil financial needs – Article 250

6. Life of Lok Sabha can be extended beyond its period of 5 years period by Parliament by law for 1 year each time up to a period not exceeding beyond 6 months after the emergency ceases to operate – Proviso to Article 83(2)

7. Parliament by law can also extend the life of State Legislature by 1 year each time subject to a maximum period of 6 months after the emergency has ceased to operate – Proviso to Article 172(1)

8. Suspension of Article 19 During Emergencies – Article 358

- As soon as the emergency is proclaimed on the ground of war or external aggression, ***all the freedoms guaranteed by Article 19 are automatically suspended.***
- **Article 358** make it clear that in the case of Proclamation under Art. 352, ***Article 19 shall not restrict the power of the State to make any law or to take any executive action abridging or taking away the Fundamental Rights guaranteed by Article 19.***
- ***The Constitution 44th Amendment excluded the ground of 'armed rebellion'.*** Thus, if emergency is declared on this ground, freedoms guaranteed by Art. 19 cannot be suspended. Further, the amendment made it clear that **Article 358** will **only protect 'emergency laws' from being challenged in a court of law** and ***not other laws which are not related to the emergency.***

9. Suspension of Enforcement of Other Fundamental Rights – Article 359

- **Article 359 (1)** provides that when proclamation of emergency is in operation the President may declare by an order that right to move any court for the enforcement of the fundamental rights mentioned in the order ***(except rights under Articles 20 and 21)*** and proceedings pending in courts for enforcement of such rights shall remain suspended for the period during which proclamation remains in force or for shorter period as may be mentioned in the order.
- Thus, ***Article 359 does not automatically suspend any right.*** It only authorises the President to suspend the enforcement of rights, which he chooses to specify in the order. Even the rights specified in the Presidential order are not themselves suspended and only their enforcement is suspended.
- **The Constitution 44th Amendment**, besides saving **Articles 20 and 21** from the purview of emergency also provides that **those laws that are not related to the emergency can be challenged in a court even during the emergency.**
- The main difference between **Articles 358 and Article 359** is that Fundamental Rights are automatically suspended during emergency (Art. 358), while under Art. 359 it is President who gives the order.

The President can declare emergency after receiving a **written communication** about cabinet's decision in its favour. ***Every proclamation of such emergency is required to be laid before each House of Parliament.*** If both houses of Parliament do not approve the proclamation at the expiry of one month from the date of proclamation, it will cease to operate. ***The proclamation (after being approved by both Houses of Parliament) will cease to exist after expiration of six month from the date of proclamation.*** It can be extended for another six months. A resolution for proclamation of emergency must be approved by a majority of total number of members of a House and not less than two-third of the members present in the House and voting.

Q.7) a) Critically evaluate the present system of appointment of Judges of High Courts and Supreme Court based on judicial decisions. Do you think the "Memorandum of Procedure" has eased the process of appointment of judges. Comment.

Appointment of Judges of Supreme Court under **Article 124(2)** and High Court under **Article 217(1)** is done by the President based upon the recommendations of a Collegium of Supreme Court and High Court Judges. The process of appointment is provided in the Memorandum of Procedure for respective judges. Appointment of Judges based on collegium's recommendation which are binding started after the Third Judges Case in 1999 where the President sought advisory opinion of the Supreme Court on this matter under Article 143.

This matter needs to be understood based on the old version of Article 124(2) prior to the Constitution 99th amendment which introduced National Judicial Appointments Commission to replace the collegium and appointment of Justice A.N. Ray and Justice Beg as Chief Justice of India by going against the seniority principle.

The Historical Context

Chief Justice of India (CJI) is appointed on the seniority rule and this was followed as a constitutional convention prior to the laying down of Memorandum of Procedure. In 1973, Justice A.N. Ray was elevated as CJI in defiance of the seniority principle by Indira Gandhi where he superseded Justice Shelat, who was in line to become the next CJI and two other senior Judges namely Justice AN Grover, and Justice K.S. Hegde. This was seen as a frontal attack on the principles of judicial independence. At that time, Law Minister Mohan Kumaramangalam formulated the "committed judiciary theory" stating that the government was bound to consider not just judicial integrity, but the philosophy and outlook of Judges in its appointments. This meant that the government expected a pliant judiciary who would favour the government in important cases.

After Chief Justice Ray's retirement in 1977, he was succeeded by Justice Beg who was also appointed by the Indira Gandhi Government. Justice beg superseded Justice Khanna, who formed the sole dissenting voice in ADM Jabalpur v Shivkant Shukla, also known as the habeas corpus case. Thus, appointment of Chief justices was used as a political tool by the government based on the understanding of old version of Article 124(2).

Old Article 124(2)	**New Article 124(2) – After Const. 99th Amendment**
Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after **consultation** with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years: Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted:	Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal on the recommendation of the National Judicial Appointments Commission referred to in article 124A and shall hold office until he attains the age of sixty-five years:

Now the appointment of Judges was to be made by the President and this decision was executed based on the aid and advice of the Cabinet headed by the Prime Minister. Thus, the question which arose were:

1. Was consultation with the judges of Supreme Court and High Court mandatory?
2. Since the appointment was to be made by the President, what role could the Cabinet headed by PM play?
3. Could the government appoint a Judge going against seniority level?

These questions were answered in the **THREE JUDGES CASE.**

First Judges Case – S.P. Gupta vs. Union of India (1982) – (In Favour of Executive)

- **SC held** - opinions of Chief Justice of India (CJI) and Chief Justice of respective High Courts were merely "consultative" and the power of appointment resides solely and exclusively with the Central Government. Central government "could" override the opinions given by the Judges. Thus, the opinion of Chief Justice of India in matters of appointment was not given primacy in matters of judicial appointments under Article 217(1).

Second Judges Case – Supreme Court Advocates on Record Association v. Union of India (1993) – (Primacy of Judiciary) – Decision of Nine Judge Constitution Bench

- The Court considered the question of **"Primacy of opinion of CJI in regard to appointment of Supreme Court Judges".** The Court said that the question had to be considered in the context of achieving constitutional purpose of selecting the best so as to ensure the independence of judiciary and thereby preserving democracy.
- Referring to **'Consultative Process'** as envisaged in **Article 124(2),** SC emphasized that **Government does NOT enjoy primacy or absolute discretion in matters of appointment of Supreme Court judges.**
- Court said that **provision for consultation with Chief Justice** was introduced as **CJI is best equipped to know and assess the worth and suitability of a candidate** and it was also necessary to eliminate political influence.
- Selection should be made as a result of **'Participatory Consultative Process'** where Executive has the power to act as a mere check on the exercise of power by CJI to achieve constitutional purpose.
- SC held that initiation of the proposal for appointment of a Supreme Court Judge must be by the Chief Justice.

Third Judges Case - (1999) – In Re: Presidential Reference (Emergence of Collegium)

- Supreme Court on a reference made by the President under **Article 143** has laid down the following proposition with respect to appointment of Supreme Court judges:
  - While making recommendation, **CJI shall consult four seniors most Judges of Supreme Court.** This led to the emergence of present Collegium System.
  - The opinion of all members of collegium regarding their recommendation shall be in writing.
  - The views of the senior-most Supreme Court Judge who hails from the High Court from where the person recommended comes must be obtained in writing for Collegium's consideration.
  - If majority of the Collegium is against the appointment of a particular person, that person shall not be appointed.
  - Even if two of the judges have reservation against appointment of a particular Judge, CJI would not press for such appointment.
  - A High Court Judge of outstanding merit can be appointed as Supreme Court Judge regardless of his standing in the seniority list.

The Memorandum of Procedure (MoP)

MoP was fixed for different judges mentioned in the Constitution based on the Third Judges Case. It has helped to define the process, participation of number of judges in the appointment of Judges of High Courts and Supreme Court and also defined the involvement of government at various stages of appointment. **MoP** has provided certainty and clarity in the appointment process. The MoP has not fixed timelines and this at times delays the appointment process as reports of inquiry by the Intelligence Bureau (I.B.) is shared with the collegium and then they are asked to take their decisions. Now, in the present system of MoP, government expects greater participation in the appointment process and have suggested to make suitable changes the MoP. The government have also raised concerns on the opaque system of selection of judges by the collegium. This led to the enactment of the **The Constitution (Ninety-Ninth Amendment) Act, 2014** providing for appointment of Judges of High Courts and Supreme Court.

MoP for Judges of Supreme Court

- **CJI –** to appointed based on seniority principle
- **Other Judges of SC –** Appointment process initiated by CJI, recommendation of 5 Senior Most Judges of SC

MoP for Judges of High Court

Transfer of HC Judge including Chief Justice – Article 222	Appointment of Chief Justice of HC - Article 217	Appointment of Permanent Judges of High Court
Proposal to be initiated by CJI whose opinion is determinative **Transfer of HC Judge Other Than Chief Justice –** CJI to take views of Chief Justices of two HCs - current HC and HC where HC Judge is to be transferred **CJI also takes views of another SC Judge** **Views on transfer to be considered by CJI and Four Judges of SC in writing**	**Elevation as CJ of HC to be based on seniority** **Proposal Initiated by CJI** to appoint CJ of HC. Suitability to be ascertained by CJI based on views of SC Judge Recommendations for Appointment as Chief Justice of HC Sent by **CJI and Two Senior Most SC Judges** Views of SC Judges to be sent to Union Law Minister by CJI	**HC Chief Justice to Communicate to CM about vacancy** at least 6 months before the date of occurrence of the vacancy **CJ of HC to Consult Two Senior Most Judges of HC** before forwarding names of suitable candidates **Proposal for Appointment of HC Judge to be initiated by Chief Justice of HC** **Consultations of HC Collegium to be sent to CM in writing along with the recommendations.** Consultations to be sent to State **Governor** as he is bound by CM's advice on this matter, **CJI** and **Union Law Minister** simultaneously to expedite the process **CJI and Two Senior Most Judges of SC to forward their opinion for appointment as Judge of the High Court** **Note* SC Collegium (1+2) to Consider Views of HC Collegium (1+2)** **CJI to send his recommendations in writing to Union Law Minister within 4 Weeks**

Constitution 99th Amendment Act, 2014 amended Article 124(2) and 217(1) and replaced the collegium with National Judicial Appointment Commission. It also introduced **Article 124A** providing for **Composition of National Judicial Appointments Commission** - (a) the Chief Justice of India, Chairperson, ex officio; (b) two other senior Judges of the Supreme Court next to the Chief Justice of India––Members, ex officio; (c) the Union Minister in charge of Law and Justice––Member, ex officio; (d) two eminent persons to be nominated by the committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People.

Constitution 99th Amendment Act, 2014 Declared Unconstitutional

Supreme Court in the Fourth Judges Case – **Supreme Court Advocates on Record Association V. UoI**, declared the **Constitution 99th Amendment Act, 2014** and the National Judicial Appointment Commission Act as unconstitutional due to the following reasons:

- **Violation of Basic Structure -** Five Judge Bench of Supreme Court [4:1] declared the Constitution 99th Amendment Act and the National Judicial Appointment Commission Act, 2014 as ***unconstitutional*** as it violated the Basic Structure of the Indian Constitution.
- **Inclusion of Members of Executive -** Constitution 99th Amendment introduced Article 124A which provided for the constitution and composition of the National Judicial Appointments Commission (NJAC) which apart from members of Judiciary also included Union Minister of Law & Justice and two Eminent Persons to be appointed by the Central Government.
- **Violation of Independence of Judiciary -** SC held that Article 124A was insufficient to preserve the primacy of the judiciary, in the matter of selection and appointment of Judges to the higher judiciary as inclusion of members of

executed violated independence of judiciary and the aspect of separation of powers. Accordingly, Article 124A (a) to (d) was set aside by the Constitution Bench as being ultra vires.

- **Collegium System to Continue –** The judgment officially allowed Collegium System for appointment and transfer to continue.

Memorandum of Procedure (MoP) has become an important document especially for the centre after Supreme Court declared the Constitution 99th Amendment Act and the National Judicial Appointment Commission Act, 2014 as unconstitutional. Despite the elaborate procedure laid down in the MOP, concerns still remains with the collegium system of selection of Judges for appointment by the President.

Concerns on Collegium

Now, the Collegium system of Appointment emerged due to clash between the executive and judiciary in judicial appointments. However, concerns have been raised against the collegium process of appointment.

- **Lack of transparency and Accountability in the appointment process –** The decisions of the Collegium is published on website of Supreme Court ***but does not reveal:***
  - methodology or reasons provided for transfer or promotion of judges;
  - ground to select senior lawyers for appointment as Judges of SC or HC.
  - **Lack of Consensus among members of Collegium** results in delay or even reversal of decisions at times.
  - **Nepotism** – Accusations of favouritism and preferential treatment to members from judicial fraternity.
  - **Nepotism impacting Quality of Judgment** - especially in High Courts.
  - **Politicization of judiciary:** Lack of transparency in selection criteria especially for High Courts leads to politically motivated appointments.
  - **Absence of Permanent Commission:** Law Commission's 121st Report proposed to set up a National Judicial Service Commission for appointment of Judges. Even NCRWC in its 2002 Report highlighted the need for National Judicial Commission for the purpose of appointments to higher judiciary.
  - **SC declaring NJAC Act and Constitution 99th Amendment as unconstitutional.**

Despite the concerns on the collegium system, Memorandum of Procedure has eased the appointment process by providing elaborate details. One major concerns which still remains is fixing of timelines for appointment of Judges. In this regard, the Supreme Court has prescribed judicially mandated timeline for the Union government to expedite the appointment process and ensure timely filling of judicial vacancies.

b) Discuss the doctrine of 'Pith and Substance' relating to the distribution of legislative powers between the Centre and the States with the help of the judicial decisions.

The Doctrine of Pith and Substance is a legal principle used to determine the true nature and purpose of a statute, especially when its legislative competence is challenged under the Seventh Schedule, focusing on the core purpose rather than incidental overlaps with other jurisdictions. The rule thus adds a further dimension to the legislative power of a legislature and mere incidental overlaps does not render the statute unconstitutional.

Parliament or a State Legislature should keep within the domain assigned to it under the Seventh Schedule based on Article 246, and not trespass into the domain reserved to the other. A law made by one which trespasses or encroaches upon the field assigned to the other is invalid. If a subject falls exclusively in List II, and in no other List, then the power to legislate exclusively vests in the State Legislature. But if it also falls in List I as well, then the power belongs to the Centre. Similarly if it falls within List III also, then it is deemed to be excluded from List II. The dominant position of Parliament in List I and List III is thus established.

To examine pith and substance of a legislation, the enactment as a whole, its main objects and the scope and effect of its provisions must be considered. Where the question for determination is whether a particular law relates to a particular

subject mentioned in one list or the other, the Courts look into the substance of the enactment. Thus, if the substance of enactment falls within the Union List then the incidental encroachment by the enactment on the State List would not make it invalid.

Supreme Court Judgments

- **Prafulla Kumar v. Bank of Commerce, Khulna (1947) -** the doctrine of Pith and Substance was applied in interpreting provisions of various Lists of VII Schedule - Government of India Act, 1935. **Entry 27 of List II** empowered Provincial Legislature to enact laws with respect to "money lending and money lenders" in the Province. On the other hand, **Entry 28 of the List I** gave power to Federal Legislature over "cheques, bills of exchange and promissory notes etc., The Bengal Legislature passed Bengal Money Lenders Act, 1946 which provided for limiting the rate of interest recoverable by a lender on loans advanced. It was contended that the Act was invalid in so far as it affected the rights of promissory note holders. This contention was rejected by the Privy Council as it held that the **pith and substance of the Act was money lending** and, therefore, it came within **Entry 27 of the List II.** It could not be invalid merely because it incidentally affected promissory notes.
- **State of Bombay v Narottamdas (1951) -** The validity of legislation is not determined by the degree of invasion into the field assigned to the other legislature. Though, it is a relevant factor to determine its 'pith and substance'. Once it is found that a law falls within the permitted field, any incidental encroachment by it on a forbidden field does not affect the competence of the concerned legislature to enact the law. Effect is not the same thing as subject-matter.
- **State of Bombay v. F. N. Balsara (1951) -** validity of **Bombay Prohibition Act** was challenged. The Act was passed in exercise of powers by State Legislature under **entry 8 of List II** which empowers State Legislatures to legislate with respect to "intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of liquors" It was contended that the prohibition would affect the **import**, which is within the power of the Union Legislature under Entry 41 of the List I. The Court upheld the validity of the Act and held that the **pith and substance of the Act fell in Entry 8 of the List II** and the encroachment on the power of the Union Under Entry 41 of List I was merely incidental.
- **Krishna v State of Madras, 1957 -** Supreme Court upheld the Madras Prohibition Act is valid even though it also deals with some aspects of evidence and criminal procedure which fall in the Concurrent List. This is because in substance, the law deals with prohibition of intoxicating liquors and only incidentally touches upon the areas of evidence and criminal procedure.
- **Prem Chand Jain v R.K. Chhabra (1984) -** Supreme Court held that as long as the legislation is within the permissible field in pith and substance, objection would not be entertained merely on the ground that while enacting legislation, provision has been made for a matter which though germane for the purpose for which competent legislation is made, it covers an aspect beyond it. In a series of decisions this Court has opined that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the Legislature enacting it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature.
- **Sajjan Singh vs State of Rajasthan (1965) -** Constitutional validity of the Constitution (Seventeenth Amendment) Act, 1964 was challenged by the Amendment many statutes were added in IX Schedule to keep them immune from judicial review. Supreme Court held that pith and substance of the amendment was to help States to carry out agrarian reforms and any impact on powers of judicial review of High Courts under Article 226 was only insignificant, incidental and indirect.
- **O.N. Mohindroo v Bar Council (1968) -** The object of the Advocates Act, 1961, is to constitute one common Bar for the whole country and to provide machinery for its regulated functioning. Though the Act relates to legal practitioners, in its pith and substance it concerns itself with the qualifications, enrolment and discipline of the persons entitled to practise as advocates before the Supreme Court or the High Courts. The Act thus falls under items 77 and 78 of List I. The power to legislate in regard to such persons is excluded from entry 26 of List III.

Thus, applying the doctrine, if a State law, otherwise valid, has effect on a matter in List-I, it does not cease to be a legislation with respect to an entry in List II or III. Supreme Court in ***D.N. Banerjee v P.R. Mukherjee* (1953)** has held that the Industrial Disputes Act enacted by Parliament, even though it applies to employees of municipalities, is valid as in substance it deals with 'industrial and labour disputes' (Entry 22, List III), and not with 'local government' (Entry 5, List II).

c) What are the major challenges in the functioning of local bodies in India? How far has the Finance Commission helped in ensuring financial autonomy to the local bodies?

Constitution 73rd and 74th Amendment has provided constitutional status to Panchayats and Municipalities and yet they struggle to function as models of decentralisation as envisaged by Mahatma Gandhi on various fronts. One of the major reason is that devolution of powers, functions and finance has been substituted by delegation of such functions by state officials.

Devolution of Power by State Govt.

- **Article 243-G and 243-W** empowers State Legislatures to endow by law to the Panchayats and Municipalities respectively with such powers and authority as may be necessary to enable them to function as institutions of self-government.
- Such law under **Article 243-G and 243-W** may contain provisions for the **devolution of powers and responsibilities upon Panchayats and Municipalities at the appropriate level** subject to certain conditions with respect to– (a) the preparation of plans for economic development and social justice; (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those matters listed in the **Eleventh and Twelfth Schedule** respectively.

Financial Powers of Panchayats and Municipalities

Under Article 243H and Article 243X, State Legislature may by law

(a) authorise a Panchayat/Municipality to levy, collect and appropriate such taxes, duties, tolls and fees

(b) Assign Panchayat/Municipality to collect taxes, duties, tolls and fees

(c) provide for making such grants-in-aid to the Panchayat/Municipality from the Consolidated Fund of the State;

(d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.

One of the major challenge in democratic decentralisation is lack of implementation of these constitutional provisions uniformly by all states. Further, delay in election process has led to manning of local institutions by state officials. Thus, the devolution of funds and functions for socio-economic development which is constitutional transfer of powers and functions has mostly been substituted by delegation of functions to the local bodies by state officials. This has further degenerating the functioning capacity of the local bodies.

Thus, concerns of the local bodies can summarised under the heads of FUNDS, FUNCTIONS & FUNCTIONARIES

FUNDS

Insufficient Grants/Funds

- Despite the constitutional empowerment, the local bodies face problems of inadequate finance to carry out various activities assigned to them.
- Transfers made through the State Finance Commissions are also meagre in most States.

- In most of the states, most of the Gram Panchayats are found reluctant to raise their own source of revenue (OSR). Only a few Gram Panchayats are able to generate OSR in the form of tax or non-tax revenue by renting shops, house tax and clean water fee.

FUNCTIONS

- **Lack of Human Resource for PRIs –** has prohibited actual devolution of functions as most resources functions under the control of the State Government. In order to make devolution functional, the matters listed in the **Eleventh Schedule** of the Constitution needs to be clearly bifurcated from state government's jurisdiction.
- **Lack of Effective Devolution**
  - Overlap of functioning of Panchayats and Municipalities with state government w.r.t. implementing various developmental schemes. Only minor civic functions are exclusively assigned to the local government.
  - Local government is a state subject in the Constitution, and consequently, the devolution of power and authority to panchayats has been left to the discretion of states.
  - Some of the important subjects like fuel and fodder, non-conventional energy sources, rural electrification including distribution of electricity, non-formal education, small scale industries including food processing industries, technical training, and vocational education have not been devolved in certain states.
- **Infrastructural Challenges**
  - Some of the GPs do not have their own building and they share space with schools, anganwadi centres and other places. Some have their own building but without basic facilities like toilets, drinking water, and electricity connection.
  - While GPs have internet connections, they are not functional in many cases. For any data entry purposes, panchayat officials have to visit Block Development offices which delay the work.
- **Lack of Convergence of Various Government Programmes**
  - There is a clear lack of convergence of various development programmes of the Center and state governments.
  - For example, roads in two different patches are constructed utilizing two different sources of funding (e.g. Fourteenth Finance Commission and MPLAD), but it is difficult to find one large activity with funding from multiple sources.
  - Different guidelines by different departments are cited as a major constraint for lack of convergence of activities.

FUNCTIONARIES

- **Lack of Support Staff**
  - The Standing Committee on Rural Development (Chair: Dr. P Venugopal) in July 2018 observed that there is severe lack of support staff and personnel in panchayats, such as secretaries, junior engineers, computer operators, and data entry operators. This affects their functioning and delivery of services by them.
- **Creation of Parallel Bodies (Parastatalas)**
  - Often, Parallel Bodies are created for supposedly speedy implementation and greater accountability. However, there is little evidence to show that such parallel bodies have avoided the evils including that of partisan politics, sharing of spoils, corruption, and elite capture. Parallel bodies usurp the legitimate space of Panchayati Raj Institutions and demoralize them by virtue of their superior resource endowments.
  - For example, ***Khap Panchayats*** act as a parallel body in different parts of the country and it usually encroaches into the functions of Panchayati Raj Institutions.

Role of State Finance Commission

- The Governor of a State appoints a Finance Commission, every five years under Article 243-I and 243-Y for the Panchayats and Municipalities respectively.
- The Governor makes recommendations on the principles governing:

- distribution of revenue between the State and the Panchayats/Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State;
- determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayats/Municipalities
- grants-in-aid to the Panchayats from the Consolidated Fund of the State
- measures needed to improve the financial position of the Panchayats/Municipalities.

Role of Finance Commission

- Under Article 280(3)(bb) and 280(3)(c), Finance Commission shall recommend to the President as to the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats and Municipalities respectively in the State on the basis of the recommendations made by the Finance Commission of the State.
- The 15th Finance Commission (XV-FC) recommended a total of ₹2,36,805 crore for Rural Local Bodies (RLBs) from 2021-26, with 60% earmarked for national priorities like drinking water, sanitation, and rainwater harvesting (tied grants) and 40% for general purposes (untied grants).

Recommendations of 15th Finance Commission includes:

- The total size of the grant to local governments should be **Rs. 4,36,361** crore for the **period 2021-26.**
- Of these total grants, **Rs. 8,000** crore is **performance-based grants** for incubation of new cities and Rs. 450 crore is for shared municipal services.
- A sum of **Rs. 2,36,805 crore** is earmarked for **rural local bodies**, **Rs.1,21,055 crore** for **urban local bodies** and **Rs. 70,051 crore** for **health grants** through local governments.
- Urban local bodies have been categorised into two groups, based on population, and different norms have been used for flow of grants to each, based on their specific needs and aspirations.
- Basic grants are proposed only for cities/towns having a population of less than a million.
- **For Million-Plus cities**, 100 per cent of the grants are performance-linked through the **Million-Plus Cities Challenge Fund (MCF).**

Limitation of State Finance Commission (SFC):

- It is mainly dominated by the presence of bureaucrats and not academicians and experts. The SFCs face a crucial problem of reliable data. Since local governments lack a proper budgetary system they face problems while collecting data and, as a result, evaluating the local government's financial situation.
- Many states have seen a discrepancy between the State Government's actual money transfers to the local bodies as suggested by the State Finance Commission. For example, Manipur has seen such a discrepancy.
- Local governments and SFCs are thought to have a lower Constitutional status than the Union Finance Commission. The empowerment and finances of local bodies have been impacted by these changes.

Thus, what is required is real devolution of powers and finance for the local bodies for their autonomous functioning. Despite the challenges faced by local bodies, recommendations of the Fifteenth Finance Commission under Article 280 and respective State Finance Commissions will help to improve the financial constraints faced by the local bodies.

Q.8) a) Examine the important role played by the Governor in suggesting the President to impose Article 356 in a state. What are the consequences of imposition of Article 356 in the state? Is the decision of the Governor or President subject to judicial review?

Governor of States play vital role under Article 356 in providing report to the President through the Cabinet about the situations of constitutional breakdown in states based on which decision is taken to invoke Article 356. Governor do not consult his council of ministers in arriving at such decision and acts in a discretionary way.

This role of Governor as a limb of the centre has been criticised in the past as it opens room for dismissal of elected state governments. Sarkaria Commission and S.R. Bommai judgment has provided elaborate guidelines against abuse of such powers by the Governor under Article 356. Though state emergency is imposed by the President, it is the Governor of the state who acts as representative of the President or the centre and hence his role become extremely important in not only suggesting to invoke Article 356 but also thereafter.

The marginal note of Article 356 reads **"Provisions in case of failure of constitutional machinery in States"** and under Article 356, report of failure of constitutional machinery in states are forwarded by the Governor without the advice of his cabinet. Hence it becomes crucial to understand different categories under which **failure of constitutional machinery** can be grouped. These groupings are based on **Report of Sarkaria Commission** on **Emergency Provisions.**

1. PPOLITICAL CRISIS

A constitutional break-down may be the outcome of the political crisis or dead-lock. This may occur where

- after general election in state, no political party or coalition of parties is able to secure majority in the Legislative Assembly and despite exploring other possible alternatives by the Governor, forming a government seems impossible.
- Government resigns or is dismissed on loss of its majority support in the Assembly and no alternative government commending the confidence of the Assembly can be formed.
- The party having a majority in the Assembly refuses to form or continue the Ministry and all possible alternatives explored by the Governor to find a coalition Ministry commending a majority in the Assembly have failed.

In all the above situations, one or more alternatives may be available to the **Governor** before he recommends Proclamation of President's rule under Article 356. He may dissolve the Assembly so that fresh elections may be held, thereby leaving the political deadlock to be resolved by the electorate. Normally, the power of dissolution of the Assembly is to be exercised by the Governor on the advice of his Ministry. But such advice ceases to be binding on him as soon as the Ministry loses majority support and the requirement of **Article 164(2)** that the Ministry shall be collectively responsible to the Legislative Assembly is no longer fulfilled.

In **S.R. Bommai Judgment,** Supreme Court held that question whether the incumbent State Chief Minister has lost his majority support in the Assembly has to be decided not in the Governor's Chamber **but on the floor of the House.** There should be test of strength between the government and others on the floor of the House before recommending imposition of the President's rule in the State. The Court ruled that the Karnataka High Court was wrong in holding that floor test was neither compulsory nor obligatory nor a pre-requisite to sending the report to the President recommending action under Article 356(1) and the Governor should explore the possibility of installing an alternative Ministry, when the erstwhile Ministry loses support in the House. **This judgment has reduced politicisation of the office of Governor.**

2. INTERNAL SUBVERSION

- Where state government although having majority support in the Assembly, has been deliberately conducting their government in **blatant disregard of the Constitution and the law.**
- Where the Government of the State deliberately creates a dead-lock, or pursues a policy to bring the system of responsible government envisaged by the Constitution, to a stand-still.
- Where the State Government, although ostensibly acting within the constitutional forms, **designedly flouts principles and conventions of responsible Government** to substitute for them some form of dictatorship.
- Where the State Government is **fomenting a violent revolution or revolt** with or without the connivance of a foreign power.

3. PHYSICAL BREAKDOWN

- Where a Ministry, although properly constituted, either refuses to discharge its responsibilities to deal with a situation of **'internal disturbance', (Article 355)** or is unable to deal with such a situation which paralyses the administration, and endangers the security of the State.
- Where a **natural calamity** such as an earthquake, cyclone, epidemic, flood, etc. of unprecedented magnitude and severity, completely paralyses the administration and endangers the security of the State and the State Government is unwilling or unable to exercise its governmental power to relieve it.

4. NON-COMPLIANCE WITH CONSTITUTIONAL DIRECTIONS OF THE UNION EXECUTIVE

- Where a direction issued by the Union in the exercise of its executive power under any provision of the Constitution, such as, **Articles 256, 257 and 339(2)** or, **during an Emergency** under **Article 353**, is not complied with by the State Government despite adequate warning and opportunity, and the President thereupon holds under Article 365 that a situation, such as that contemplated in Article 356, has arisen.
- If public disorder of any magnitude endangering the security of the State, takes place, it is the duty of the State Government to keep the Union Government informed of such disorder. If the State fails to do so, such failure may amount to impeding the exercise of the executive power of the Union Government and justify the latter giving appropriate directions under **Article 257(1).** If such a direction given to the State by the Union Executive under **Article 257(1)** is not complied with despite adequate warning, the President thereupon may hold that a situation such as contemplated in Article 356, has arisen.

In various instances of political instability in the States, the Governors in the past recommended President's rule under Article 356 without exhausting all possible steps under the Constitution to induct or maintain a stable government. The Governors neither gave a fair chance to contending parties to form a Ministry, nor allowed a fresh appeal to the electorate after dissolving the Legislative Assembly. Almost all these cases have been criticised on the ground that the Governors, while making their recommendations to the President, behaved in a partisan manner. Further, there has been no uniformity of approach in such situations.

Effects of Proclamation of Emergency and its Impact

1) Exercise of Legislative Powers by Parliament – Article 357

- Proclamation under Article 356 may declare that the powers of the State Legislature shall be exercisable by or under the authority of Parliament. By virtue of Article 357, Parliament may confer that legislative power on the President and authorise him to further delegate it to any other authority.
- By the Proclamation, the President may assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State.
- The administration of the State, for all practical purposes, is taken over by the Union Government.
- Consequently, executive power of the State becomes exercisable by the Union Government, and the legislative power of the State is exercised by or under the authority of Parliament.

2) Imposition of President's Rule brings to an end, for the time being, a government in the State responsible to the State Legislature. Indeed, this is a very drastic power. Exercised correctly, it may operate as a safety mechanism for the system. Abused or misused, it can destroy the constitutional equilibrium between the Union and the States.

Judicial review under Article 356

- **State of Rajasthan v. Union of India (1977) –** Seven Judge Constitution Bench ***observed that the 'satisfaction' of President under Article 356 cannot be questioned except on the grounds that it has been exercised mala fide and is based on wholly extraneous and irrelevant grounds, because in that case it would be no satisfaction of the President.*** Thus, unless and until resort to Article 356 in a particular situation is "grossly perverse and unreasonable" as to constitute "patent misuse of this provision or an excess of power on admitted facts", judicial review is not possible. Article 356 can be used by the Centre for securing compliance with democratic norms by the States.

S.R. Bommai v. Union of India (1994)

- The validity of the proclamation issued under Art. 356(1), is justiciable on such grounds as whether it was issued on the basis of any material at all, or whether the material was relevant, or whether the proclamation was issued in the mala fide exercise of the power, or was based wholly on extraneous and/or irrelevant grounds.
- There should be material before the President indicating that the Government of the State cannot be carried on in accordance with the Constitution. The material in question before the President should be such as would induce a reasonable man to come to the conclusion in question.
- **Once such material is shown to exist**, **'the satisfaction' of the President based on such material will not be open to question.** But if no such material exists, or if the material before the President cannot reasonably suggest that the State Government cannot be carried on in accordance with the Constitution, the proclamation made by the President is open to judicial challenge.
- The provisions in **Art. 356(3)** are intended to be a check on the powers of the President under **Article 356(1).** If the proclamation is not approved within two months by the two Houses of Parliament, it automatically lapses. This means that the President ought not to take any irreversible action till the proclamation is approved by the Houses of Parliament. Therefore, the State Assembly ought not to be dissolved.
- The dissolution of the Assembly prior to the approval of the proclamation by the Parliament under **Article 356(3)** will be per se invalid. **The State Legislative Assembly should be kept in suspended animation in the meantime.** Once the Parliament has put its seal of approval on the proclamation, the State Assembly can then be dissolved. The Assembly which was suspended will revive and get reactivated if the proclamation is not approved by Parliament.

Considering the important role of Governor under Article 356 and its impact on his decision making under the circumstances in his discretion, **Sarkaria Commission** in its report has suggested that Governor must explore all possible alternatives in instances of constitutional breakdown before dismissing the state assembly.

b) The Constitution of India lays down a flexible and permissive, and not a rigid, scheme of allocation of administrative responsibilities between the Centre and the States. Examine with the help of suitable illustrations and case laws.

The Constitution lays down a flexible and permissive, and not a rigid, scheme of allocation of administrative responsibilities between the Centre and the States. The scheme is so designed as to permit all kinds of co-operative administrative arrangements between the two levels of government.

The general principle followed in this connection is that the executive power of Union and States are coextensive with their legislative powers according to **Article 73 and 162** respectively.

The executive power of a State extends

1) to matters with respect to which the State Legislature has power to make laws
2) provided that in a matter with respect to which both Parliament and State Legislature have power to make laws, the executive power of a State is subject to, and limited by, the executive power expressly conferred by the Constitution, or by any law made by Parliament, upon the Union or its authorities.

The scope and extent of the executive power of the Centre extends:

1) to the exercise of rights, authority and jurisdiction available to the Government of India under a treaty or agreement; and

2) to the matters with respect to which Parliament has power to make laws. However, the executive power with respect to the matters in the **Concurrent List** ordinarily remains with the States unless the Constitution or Parliament by law expressly provides otherwise.

Distribution of Executive Powers

- The executive power of the Centre extends to the whole of India in respect of matters in **List I – Union List.** However, the Centre is not obligated to administer by itself all matters in its exclusive domain. It can, if it so desires, entrust administrative responsibility in any matter to the States **[Art.154(2)(b)].**
- A State's executive power extends to its territory in respect of matters in **List II – State List.**
- In respect of matters in which both the Centre and the States have legislative powers (which means **List II and List III** in cases falling under **Articles 249, 250, 252, 353 and 356**), ordinarily, the executive power rests with the States except when either the Constitution, or a law of Parliament, expressly confers it on the Centre.

Distribution of Executive Powers Under Concurrent List

- A law on a **concurrent subject**, though enacted by the Parliament, is to be **executed by the states** except when the Constitution or the Parliament has directed otherwise.
- In exceptional cases, however, Parliament may prescribe that the execution of a Central law shall be with the Centre alone, or shared between the Centre and the States.
- In this field, even after the centre assumes executive power under its law, **the residuary execution power under the entry may still rest with the States.**

While there may be centralization in the sphere of legislation, there is lot of decentralisation in the area of administration.

- ✓ Under **The Electricity (Supply) Act, 1956,** enacted by Parliament under entry 38, List III, administrative powers have been left wholly with the State Governments.
- ✓ Under **The Industrial Disputes Act, 1947** enacted by Parliament under entry 22, List III, administrative powers rest with both the Centre and the States.
- ✓ Under **The Essential Commodities Act, 1955** enacted by Parliament under entry 33, List III, the whole of the power is vested in the Central Government which, however, delegate power to the States to any extent it deems desirable. In actual practice, Centre has delegated a good deal of power under this Act to the States.
- ✓ Under **The Forest (Conservation) Act, 1980,** the Centre has assumed the entire responsibility for administration of the Act.

Cases

- ✓ **Ram Jawaya Kapoor -** If there is no enactment covering a particular aspect, the government can carry on the administration by issuing administrative instructions until the legislature chooses to make a law in that behalf.
- ✓ **A. S. Narayana v State of West Bengal –** A State Government can establish a bureau of investigation for investigation of cases of tax evasion or create a new district or prescribe syllabus or text book for schools in the exercise of its executive power.

Centre-State Administrative Co-ordination

- One of the major reason for decentralisation in the area of administration is that the Centre has not established a separate machinery of its own to execute most of its laws. Only a few subjects in the Union list, such as, defence, foreign affairs, foreign exchange, posts and telegraphs, All India Radio and Television airways, railways, currency, customs, union excises, income-tax, etc. are administered by the Centre directly through its own machinery. Administration of a number of matters in the Union list and most of the matters relating to them, is secured through the machinery of the States.

- It is possible to use the state machinery for implementing Central laws. Such an arrangement is not only economical but also promotes cooperative federalism as well as national integration.
- **Mutual or Inter-Governmental Delegation of Functions Under Article 258 and 258A -** to mitigate rigidity and avoid a situation of deadlock. Accordingly, the President may, with the consent of the state government, entrust to that government any of the executive functions of the Centre under **Article 258.** Conversely, the Governor of a state may, with the consent of the Central government, entrust to that government any of the executive functions of the state under **Article 258A.**
- **Functions of the Central Government have been entrusted to various State Governments** under the Registration of Foreigners Rules, 1939, the Foreigners Act, 1946, and the Foreigners Order, 1948, vide a notification issued under Article 258(1) subject to two conditions:
    1) in exercising these functions, the State Governments are to comply with such general or special directions of the central government
    2) notwithstanding the entrustment, the Central Government may itself exercise any of these functions should it deem fit to do so in any case.
- **Bararee Coke Plant v Their Workmen (1968) -** Under Section 10(1)of the Industrial Disputes Act, the Central Government has jurisdiction to refer a labour dispute to a tribunal in respect of certain industries, *e.g.*, mines, major ports, etc., but it can delegate this power to a State Government under Article 258(1).
- **Zubeda Begum v Union of India (1971) –** Power to acquire land under the Land Acquisition Act can be transferred to the State Government by the centre under Article 258(1). Similar view was expressed in **Jayantilal Amrat Lal v F.N. Rana (1964).**

Delegation of Function to State under Article 258(2)

- **Where State had no power to Legislate -** According to Art. 258(2), a law made by Parliament, even if it relates to a matter in the Union List, with respect to which the State has no power to legislate, may confer power and impose duties, or authorise the conferring of powers and the imposition of duties, upon a State, its officers and authorities. Therefore, a Central law, whether pertaining to a matter in List I or List III, may confer powers and impose duties on the States, their officers and authorities.
- **Consent of State not Needed -** Unlike Article 258(1), **under Article 258(2),** the conferment is made by Parliament by law and no consent of the State Government is required for the purpose. Whenever, Parliament needs State assistance to enforce a law made by it, necessary provisions are introduced therein for the exercise of the requisite powers and duties by the State administration or, in the alternative, it can empower the Central Government to entrust such powers and duties to the States.

Based on the constitutional provisions and illustrations, it can be said that unlike the strict division of legislative functions between centre and states, there is enough room for flexibility to carry out administrative responsibilities between the centre and state.

c) What steps has the Parliament taken to ensure constitutional limits on the powers of subordinate legislation?

Parliamentary control over subordinate legislation starts with the parent legislation which itself provide for the power to make rules for the government and regulations for the corporations and these rules and regulations shall be laid before Parliament. For example, under the SEBI Act, Section 30 mandates that rules and regulations shall be laid before both houses of Parliament. This ensures legislative scrutiny at the initial stage.

Further, the **Committee on Subordinate Legislation** of **Lok Sabha and Rajya Sabha** ensures that the subordinate legislation stay within the vires of parent legislation and other constitutional limitations.

The major problem of subordinate legislation is not whether it is necessary but how this process can be reconciled with democratic consultation, scrutiny and control. The Lok Sabha exercises this scrutiny and control over subordinate legislation by asserting itself at any one or all of the following stages:

- when the legislative measure in the form of a Bill delegating the powers is under consideration of the House, the scope and character of these orders as well as their purpose can be debated, precisely defined and limited; or
- when the orders themselves are proposed or made, the Lok Sabha may specify that they shall be laid in draft or final form for Parliament to approve or annul them; or
- after the orders are made, the House may revoke or vary them by subsequent legislation or question their propriety or adequacy through the machinery of questions or motions in the House;
- and above all, through the medium of the **Committee on Subordinate Legislation.**

Committee on Subordinate Legislation

All Rules made by the Government, whether laid on the Table or not, are scrutinised by the Committee on Subordinate Legislation in order to see that the Rule-making power, wherever conferred on the Government, has been exercised within the scope of the delegation.

- **Constitution -** For the first time the Committee was constituted in December, 1953 and has been constituted since then from year to year.
- **Composition -** The Committee shall consist of not more than fifteen members who shall be nominated by the Speaker and members have a tenure of 1 year
- **Rules -** The functioning of the Committee on Subordinate Legislation, Lok Sabha is largely governed by the Rules 317 - 322 of ***Rules of Procedure and Conduct of Business in Lok Sabha and Directions*** 103 – 108 of Directions by the Speaker, Lok Sabha.
- **Functions -** The Committee on Subordinate Legislation (Rules 317-322 of Lok Sabha + Rules 204-205 of Rajya Sabha) looks into every order made by the Executive to satisfy itself that there has been no executive excess or trespass in the exercise of its delegated rule-making power. The Committee shall scrutinize and report to the House whether the powers to make regulations, rules, subrules, bye-laws etc., conferred by the Constitution or delegated by Parliament are being properly exercised within such delegation.
- On the recommendation of the Committee, the bills are generally accompanied with Memoranda of Delegated Legislation in which states:
  - full purpose and effect of the delegation of power to the subordinate authorities,
  - the points which may be covered by the rules,
  - the particulars of the subordinate authorities or the persons who are to exercise the delegated power, and
  - the manner in which such power has to be exercised, are mentioned.

Examination of Orders by the Committee on Subordinate Legislation (Rule 320)

The Committee shall, in particular, consider–

- whether it is in accord with the general objects of the Constitution or the Act pursuant to which it is made;
- whether it contains matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament.
- whether it contains imposition of any tax;
- whether it directly or indirectly bars the jurisdiction of the courts;
- whether it gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
- whether it involves expenditure from the Consolidated Fund of India or the public revenues;
- whether it appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;

- whether there appears to have been unjustifiable delay in its publication or in laying it before Parliament; and
- whether for any reason its form or purport calls for any elucidation.

Rule 321 - If the Committee is of opinion that any Order should be annulled wholly or in part, or should be amended in any respect, it shall report that opinion and the grounds thereof to the House.

Case Laws

- **Bhushan Lal v. State (1952) -** In order to be valid, subordinate legislation must be intra vires of the statute, which authorized the making of the orders by the executive and should not violate any provision of the Constitution. Further, the orders made under a power conferred by the Legislature must be reasonable. Moreover, to be valid or effective, these orders must be duly and properly published.
- **In Re. Delhi Laws Act Case, (1951) -** Where the statute violates some provision of the Constitution, or instead of delegating the power of making orders the Legislature parts with its essential legislative functions to others, the statute itself becomes void, and with it, the subordinate rules made thereunder.
- **Edward Mills Co. Ltd. v. State of Ajmer, (1955) -** When a legislature is given plenary power to legislate on a particular subject, there must also be an implied power to make laws incidental to the exercise of such power. A legislature cannot certainly strip itself of its essential functions and vest the same on an extraneous authority. The primary duty of law making has to be discharged by the legislature itself but delegation may be reported to as a subsidiary or ancillary measure.
- **Hari Shankar Bagla v. State of Madya Pradesh (1954) - Justice Mahajan Observed:** "The Legislature cannot delegate its functions of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The legislature must declare the policy of the law and the legal principles which are to control and given cases and must provide a standard to guide the officials of the body in power to execute the law"
- **Vasantlal Maganbhai Sanjanwala v. State of Bombay (1961) -** The extent to which delegation is permissible is well settled. The legislature cannot delegate its essential legislative policy and principle and must afford guidance for carrying out the said policy before it delegates its delegates its subsidiary powers in that behalf.

Thus, Parliament through the Committee on Subordinate Legislation and judicial review of subordinate legislation has ensured constitutional limits on subordinate legislations in India.