

CONSTITUTION OF INDIA

JIGL (SYLLABUS 2017)

1. Rajasthan Legislature passed a law restricting the use of sound amplifiers. The law was challenged on the ground that it deals with a matter which falls in entry 81 of List-I under the Constitution of India which reads: “Post and telegraphs, telephones, wireless broadcasting and other like forms of communication” and therefore, the State Legislature was not competent to pass it. Examine the proposition in the light of “Pith and Substance Rule” referring the case law on this point. **DEC 2019 (4 MARKS)**

Ans:

- (i) When a legislature makes a law, sometimes its subject may appear to fall in another legislature’s list. In such cases, the Pith and Substance Rule is applied to see the real subject of the law.
- (ii) If the true nature of the law falls within the power of that legislature, the law is valid even if it incidentally touches another field.
- (iii) In the instant case, the Rajasthan Legislature restricted the use of sound amplifiers. Amplifiers fall under Entry 31, Union List and therefore only Parliament can make law on this matter.
- (iv) Applying the Pith and Substance Rule in the current scenario, the true subject of the law is public health and safety, public order, and control of noise pollution, which falls in the State List.
- (v) Thus, the law restricting sound amplifiers is within the ambit of the State Legislature, since its true subject is public health & order, not broadcasting or telecommunication.

2. Discuss the “Doctrine of Eclipse “under the Constitution of India. DEC 2020 (5 MARKS)**Ans:**

- (i) In accordance with doctrine of eclipse any law which is severed because it was inconsistent is not dead altogether, but rather it remains eclipsed or dormant and can become effective again if the prohibition is removed by a future amendment to the Constitution.
- (ii) This doctrine was evolved in the case of *Bhikhaji Narain Dhakras v/s The State of MP* in this case the central province and Berar Motor Vehicle Amendment Act 1947 was challenged as it empowered the government to take up the entire motor transport business.
- (iii) The Act was valid when it was enacted but after the commencement of the Constitution it was violative of the Article 19(1)(g) and hence it was declared invalid.
- (iv) However the first constitutional amendment permitted the creation of state monopoly and the eclipsed law became active again as the infirmity was removed.

3. Article 19 (1)(g) of the Constitution of India provides that all citizens shall have the rights to practice any profession, or to carry on any occupation, trade or Business. Explain. DEC 2020 (8 MARKS)**Ans:**

- (i) Article 19(1)(g) of the Constitution gives every citizen the right to practice any profession or to carry on any occupation, trade or business.
- (ii) Profession means work that needs skill and learning like doctors, lawyers or accountants, occupation is a wider term covering any regular work or job for livelihood, and trade or business refers to activities like buying, selling, producing or running a company.
- (iii) Although this freedom is not absolute and the State can make laws that put reasonable restrictions for the benefit of the public.
- (iv) The State can prescribe professional or technical qualifications like license for practicing medical profession, membership of bar council to practice law.
- (v) The State can also run certain businesses itself and exclude private citizens partly or fully from that field.

- (vi) Restrictions must be fair and in the interest of society, such as protection of public health or safety.
- (vii) This right ensures economic freedom to citizens but it must always be balanced with the needs of society.

4. Vijay, an accused, committed an offence of dacoity in 2015. At that time dacoity was punishable with imprisonment of 10 years. In 2016 during his trial, a law was passed which made dacoity punishable with life imprisonment. Which penalty would be applicable on accused Vijay'? Discuss the answer with reference to Article 20(1) of the Indian Constitution. **AUG 2021 (5 MARKS)**

Ans:

- (i) Article 20(1) of the Indian Constitution protects every person from being convicted under ex-post facto criminal laws.
- (ii) It states that no person shall be convicted for an act which was not an offence at the time it was committed, and no person shall be given a penalty greater than what was provided under the law at the time of committing the offence.
- (iii) In the instant case, the offence of dacoity was committed in 2015 the punishment for the same was 10 years imprisonment.
- (iv) In 2016 the punishment was increased to life imprisonment, but this cannot be applied in the above scenario because it came after the act was already committed.
- (v) Therefore, Vijay will only be liable for the punishment existing in 2015, i.e., imprisonment up to 10 years, as Article 20(1) prohibits retrospective punishment.

5. "Any law which is inconsistent with the fundamental rights is void 'to the extent of inconsistency' and it is not necessary to strike down the whole Act as invalid, if only a part is invalid." Discuss. **AUG 2021 (4 MARKS)**

Ans:

- (i) As per Article 13 of the Indian Constitution any law which is violative of the fundamental rights shall be void to the extent of the invalidity.
 - (ii) It is here where the Doctrine of Severability steps in, which states that whenever any part of the law is violative of fundamental rights then only that part should be severed and not the entire law.
 - (iii) This rule further states that if after removing the inconsistent part, the remaining legislation can fulfil the intent of the legislature then only that part should be severed.
 - (iv) However if after separating the invalid part the remaining legislation cannot fulfill the intent of legislature then the entire legislation shall be declared void.
 - (v) So, the statement is correct that whenever there is a part of legislation which is inconsistent with the fundamental right then it shall be declared void to the extent of inconsistency and it is not mandatory to strike down the entire legislation.
6. "Under the Indian Constitution, Parliament is empowered to make law even on the subjects enumerated in the State List". Discuss the power of Parliament to make Laws on State List. **AUG 2021 (8 MARKS)**

Ans:

The parliament is empowered to pass legislation on any matter in the union list, however in the following cases it is also eligible to pass a legislation in a state list:

- (i) In National Interest:
 - (a) The Council of States may by passing a resolution, Supported by 2/3rd majority of the members present & voting declare in national interest that the parliament should make law on a particular matter in a state list.
 - (b) Such a declaration authorises the parliament to legislate on that matter for the whole or part of that country, as long as the declaration is in the force.

- (c) The law shall cease automatically after 6 months from the expiry of the resolution. [The resolution period is up to 1 year and can be further extended.]
- (ii) During a proclamation of Emergency:
- (a) Whenever there is a proclamation of emergency, article 250 removes all the restrictions on the union legislature in relation to all the subject matters in the state list.
- (b) During this proclamation the parliament shall have the power to legislate on any subject matter for whole or any part of the territory of india.
- (c) The laws so made shall cease at the expiry of 6 months after the proclamation cease to operate.
- (d) The proclamation stays in effect for a period of 6 months and can further be extended.
- (iii) Breakdown of Constitutional Machinery:
- (a) Whenever the governor of a State, reports to the President that he is satisfied that the government of a state cannot be carried as per the Constitution, then the president passes a proclamation to that effect.
- (b) By that proclamation President's Rule is imposed on that state, through which he gets all the power of the State legislature allowing him to legislate on any matter on the state list.
- (c) This action of the president can be judicially reviewed and if it is found without justification, the same can be quashed.
- (iv) Legislation for enforcing international agreement:
The parliament has the exclusive power with reference to foreign affairs and if they have signed any foreign treaty which requires national implementation, but the subject matter is in the state list then the constitution authorises the parliament to make a law in the state list without any restriction.
- (v) On the request of two or more States:
If two or more states request the parliament to make a common law for the States applying.
- (vi) To Implement International Agreements:
If India has to follow an international treaty or agreement, Parliament can make laws even on State List subjects to fulfil that obligation.

(vii) During President's Rule:

- (a) If a State is under President's Rule, Parliament can make laws for that State on matters in the State List then the Parliament can make a law on that subject matter for those states.
- (b) The same law can be adopted by other states as well, the only condition being that the power of state legislature on that subject matter would go to the Parliament and only they can further amend/repeal the law.

7. Briefly describe the Fundamental Rights against exploitation under Constitution of India. DEC 2021 (5 MARKS)

Ans:

- (i) The Constitution of India provides Fundamental Rights against exploitation under Articles 23 and 24.
- (ii) Article 23 prohibits traffic in human beings, begar which means forced labour without payment, and other similar forms of forced labour. Any contravention of this provision is an offence punishable by law.
- (iii) The term 'traffic in human beings' means dealing in men and women like goods, including sale and purchase.
- (iv) Article 24 prohibits the employment of children below the age of 14 years in factories, mines, or any other hazardous employment. This is to protect children's health and dignity.
- (v) Thus, the Constitution ensures protection of human dignity by abolishing forced labour and by safeguarding children from exploitation in dangerous jobs.

8. "Article 16 of the Constitution guarantees equal opportunity to all citizens of India in matters related to public employment. However, there are certain exceptions of the Article 16". Explain the reservation policy in India. DEC 2021 (4 MARKS)

Ans:

- (i) Article 16(1) guarantees to all citizens equality of opportunity in matters of public employment.
- (ii) Article 16(2) it prohibits the state from discriminating between its citizens on the basis of race, religion, caste, sex, descent, place of birth or residence.

(iii) Following are certain exceptions of article 16:

- (a) Parliament can make a law which requires the residence in that state a prior requirement before getting appointment in any particular class or classes of employment.
- (b) As per article 16(4), the parliament can make reservation for the appointment or post in favour of backward classes of citizens.
- (c) As per article 16(4)(a) the state may also reserve seats in matters of promotion with consequential seniority in class or classes of post under the State in favour of Scheduled Caste and Scheduled Tribes.
- (d) As per article 16(4)(b) also known as the carry forward rule, the state may consider any unfilled vacancy of any year to be filled up in the subsequent years as a separate class of vacancies, and the same would not come under the overall ceiling of 50% reservation.
- (e) A law will not be invalid if it requires the incumbent of an office with the affair of any religious institution should be a person professing that particular religion.
- (f) The state may make laws for reservation or appointment in favour of EWS subject to a maximum of 10% in each category.

9. Examine how far the essentials of federal polity is incorporated in Indian Constitution.

JUNE 2022 (5 MARKS)

Ans:

The Indian Constitution, though federal in structure, is often described as quasi-federal because it incorporates certain federal features along with strong unitary elements. The essentials of federal polity incorporated in India are as follows:

- (a) **Distribution of Powers:** The Constitution provides a clear division of powers between the Union and the States through Union List, State List, and Concurrent List. This ensures that both levels of government have authority at individual level, a core feature of federalism.
- (b) **Supremacy of the Constitution:** The Constitution is the supreme law of the land, and any law inconsistent with it can be declared void. This prevents arbitrary use of power.

- (c) Independent Judiciary: The Supreme Court and High Courts act as guardians of the Constitution and protect the federal balance in the country by adjudicating disputes between the Centre and States.
- (d) Written Constitution: India has a written constitution, which clearly defines the powers and responsibilities of the Centre and the States.
- (e) Rigid Constitution: Amendment of the Constitution requires special procedure for federal features, protecting states' interests.

10. Discuss the fundamental duties as enumerated in Article 51A of the Constitution of India. Can it be enforced through writs? Give reasons. JUNE 2022 (8 MARKS)

Ans:

- (i) The fundamental duties are as follows:
 - (a) To abide by the constitution and respect its ideals and institutions, the National Flag and the National Anthem,
 - (b) To cherish and follow the noble ideals which inspired our national struggle for freedom,
 - (c) To uphold and protect the sovereignty, unity and integrity of India,
 - (d) To defend the country and render national service when called upon to do so,
 - (e) To 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,
 - (f) To value and preserve the rich heritage of our composite culture,
 - (g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures,
 - (h) To develop the scientific temper, humanism and the spirit of Inquiry and reform,
 - (i) To safeguard public property and to abjure violence,
 - (j) 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,
 - (k) To provide opportunities for education to one's child or, as the case may be, between the age of six and fourteen years.
- (ii) Fundamental Duties cannot be enforced through writs in a court of law like fundamental rights as fundamental duties are moral obligations, not legal rights.

They are not enforceable by the courts and there is no legal penalty mentioned in the Constitution for not following them.

- (iii) Since citizens cannot be taken to court for not performing these duties, writs cannot be issued to enforce them.

11. Explain the test laid down by the Supreme Court of India for determining whether an entity is an instrumentality or agency of the state. DEC 2022 (5 MARKS)

Ans:

- (i) Whether a corporation is State or not was discussed in the case of *Ajay Hasia v/s Khalid Mujib* wherein the Supreme Court provided the following test:
- (a) Where the entire share capital of the corporation is held by the government.
 - (b) Where the financial assistance of the State is so much as to meet the entire financial.
 - (c) Where the corporation enjoys monopoly Status.
 - (d) Presence of deep and pervasive State control.
 - (e) Where the functions performed by the corporate are of public importance and are related to government functions.
 - (f) When a department of government is transferred to a corporation.
- (ii) In all the above cases, it would go a long way towards indicating that the corporation is an instrumentality or agency of a State.

12. State the justifiable grounds for Parliament & State Legislature to pass law of prevention detention and briefly explain safeguards against such preventive detention laws. DEC 2022 (4 MARKS)

Ans:

- (i) Preventive detention as the name suggests is detaining someone without trial where the objective is not to punish rather prevent the happening of an unlawful event.
- (ii) So in this case, the person detained has no charges against himself but is detained, because he is likely to commit any offence.
- (iii) Since this power can be abused article 22 provides certain safeguards against preventive detention:

- (a) The person detained must be made aware of the grounds on which his detention has been made.
- (b) The person detained must be provided with an opportunity to make a representation against the order
- (c) Such person cannot be detained for a period exceeding 3 months.
- (d) If the person needs to be detained beyond three months then the advisory board (consisting of persons who are or have been competent to become high court judge) before the expiry of 3 months extend this period.
- (e) The parliament may prescribe the maximum period of detention.
 - 1. An Advisory Board, consisting of individuals who are qualified to be High Court judges, gives its opinion that there is sufficient reason for such detention.
 - 2. Parliament may make a law to specify the maximum period for which a person can be detained and also lay down the procedure for the same.
- (f) The authority that orders preventive detention must:
 - 1. Inform the person of the grounds for their detention.
 - 2. Give the person an opportunity to make a representation against the detention order.

13. "Trade, commerce and intercourse throughout the territory of India shall be free". Critically examine this statement with reference to Indian Constitution. JUNE 2023 (5 MARKS)

Ans:

- (i) As per Article 19(1)(g), all citizens shall have the right to practice any profession or carry on any occupation, trade or business.
- (ii) Here the word trade has the widest scope which includes buying, selling, barter, or any other skilled work. The word business is a more comprehensive word than trade.
- (iii) A profession is a special type of occupation which requires intellectual skills as well as manual skills.
- (iv) Trade, Commerce and intercourse throughout the territory of India shall be free, however these are also subject to reasonable restrictions, which are as follows:

- (a) To carry any profession the person must have professional / technical qualification which is necessary to practice that particular profession.
- (b) The carrying on of any trade/industry exclusively by State may exclude the citizens from partially or completely venturing into that business.
- (c) Further this freedom can be controlled by imparting reasonable restrictions in the interest of general public.

14. Discuss the principle of protection against compulsion of self-incrimination embodies Article 20 (3) of the Constitution of India with the help of judicial decisions. JUNE 2023 (4 MARKS)

Ans:

- (i) Article 20 guarantees to all persons whether citizens or non-citizens three rights, namely:
 - (a) protection against ex-post facto laws.
 - (b) Protection against double jeopardy.
 - (c) Protection against self-incrimination.
- (ii) As per Article 20(3), no person accused of any offence shall be compelled to be a witness against himself. An accused cannot be compelled to state anything which goes against him.
- (iii) Following three conditions are to be fulfilled for a person to be entitled to this protection:
 - (a) He must be accused of an offence.
 - (b) There must be a compulsion to be a witness.
 - (c) Such compulsion should result in his giving evidence against himself.

15. Discuss the rules with respect to permissible classification as evolved in various decisions and have been summarised by Supreme Court in Ram Kishan Dalmiya V. Justice Tendolkar, AIR 1958 SC, 538. DEC 2023 (5 MARKS)

Ans:

- (i) Article 14 of the Indian Constitution provides for equality before the law or equal protection of laws, wherein equality before the law signifies absence of any special privilege in front of law and equal protection of laws states that equals should be governed equally as against unequals.
- (ii) Article 14 allows classification however it forbids class legislation. In order to be a valid classification, following are the rules which were given in Ram-Kishan Dalmiya v/s Justice Tendulkar:
 - (a) A permissible classification must fulfill following two conditions:
 - 1. Intelligible differentia.
 - 2. The differentia must have a rational nexus to the object which is to be achieved.
 - (b) In permissible classification perfect equality / mathematical nicety is not required, the people must be intelligibly differentiated.
 - (c) Even a single individual can be a subject matter of law, in which case he shall be treated as a class by himself.
 - (d) Article 14 condemns discrimination both in substantive as well as procedural law.
 - (e) There is always a presumption in the favour of law as to its constitutionality and it shall be upon the person who attacks to prove that there has been a violation.

16. Discuss the writ of quo warranto. JUNE 2024 (4 MARKS)

Ans:

- (i) Article 32 and Article 226 empower the supreme court and high court to pass a writ of quo warranto, whenever they want to enquire into the legality of the claims which any person makes on any public office and to oust him if he has made a false claim.
- (ii) The person holding the office on who has made the claim has to show the court under what authority he claims or holds the office.
- (iii) This writ is generally issued when:
 - (a) The office in dispute is a public office.
 - (b) Created by constitution or any statute.
 - (c) And any person has asserted any claim over the office.
 - (d) The basis of this writ is that the public has an interest to see if a person is an unlawful claimant.

17. Raj has been wrongfully detained in custody by Yogesh, a police officer. What remedy is available to Raj's family in such a case under Indian Constitution? Discuss. JUNE 2025 (5 MARKS)

Ans:

- (i) The Indian constitution provides with various remedies to a person who has been wrongfully detained of which habeas corpus is one remedy.
- (ii) If any person has been wrongfully detained, then he himself or any of his relatives or friends may apply to the high court under article 226 or to the supreme court under article 32 for a writ of habeas corpus.
- (iii) In the present case Mr. raj has been wrongfully detained by Mr. Yogesh in this case his family can apply to either of the courts.
- (iv) As soon as a case has been made for the issue of this writ, the court issues a rule nisi upon the authority to show cause why the arrest has been made and why this writ should not be passed.
- (v) This is in national order to let the court know about the grounds of arrest and to set the person free if he has been wrongfully detained.
- (vi) So, in this case if Mr. Yogesh is unable to justify the arrest, the court will release Mr. Raj who has been wrongfully detained.

18. In the latest decision, Supreme Court of India in the case Satender Kumar Antil vs. Central Bureau of Investigation and Ors (2022) took note of the continuous seeking bail after filing final report on a wrong interpretation of Section 170 of the Code of Criminal Procedure (Cr.P.C.) and thus made an endeavor to categorize the types of offenses to be used as guidelines for the future. It issued directions for the investigating agencies and also for the courts, however it cleared that these directions may be subject to State amendments. Is right to bail is on touchstone of Article 21 of Indian Constitution? State the direction issued under this case. **DEC 2023 (5 MARKS)**

Ans:

- (i) In Satender Kumar Antil v. CBI , the Supreme Court clarified that “bail is the rule and jail is the exception.”
- (ii) this principle is protected under Article 21 of the Constitution, which guarantees the right to life and personal liberty.
- (iii) in this case, the Supreme Court issued certain directions, however they maybe subject to State Amendments. The key directions are:
 - (a) Government may consider a Bail Act.
 - (b) Police must follow Sections 41 & 41A CRPC
 - (c) Courts must ensure compliance, otherwise bail must be granted.
 - (d) Bail applications should be decided within two weeks, and anticipatory bail within six weeks.
 - (e) Undertrial prisoners to be considered under Sections 440 & 436A Cr.P.C.; special courts to be set up quickly.
- (iv) Thus, the Supreme Court held that the right to bail is on the touchstone of Article 21.

19. Indian Constitution is considered as federal Constitution. There distribution of powers between Union and States regarding enactment of Laws. Both authorities are independent of each other. Indian Constitution covers the legislative relationship between the Union and State. The Union legislature, i.e., Parliament has the power to make laws for the whole of the territory of India or any part thereof, and the state legislature have the power to make laws for the whole or any part of the territory of the respective State. In distributing the subject on which legislation can be made, the Indian Constitution draws three long lists of all the conceivable legislative subjects. These lists are contained in the 7th schedule to the Constitution. List I is named as the Union List. List II as the State List and III as the Concurrent list. Each list contains a number of entries in which the subjects of legislation have been separately and distinctly mentioned. Legislative function is done by the parliament or state legislature for their respective subjects through passing the bills. Legislature is empowered to make laws but it shall not make any law which takes away or abridges the fundamental rights. It shall be void to the extent to which it curtails any such right. Laws which were in force before the commencement of the Constitution are void to the extent to which they are inconsistent with the fundamental right.

**In reference to the above statements answer the following questions: JUNE 2024
(2 MARKS EACH)**

- (i) Explain the term "judicial review".**
- (ii) What do you understand by bill?**
- (iii) Procedure wise, what are the types of bills.**
- (iv) what does the word 'law' include according to Article 13 of the Indian Constitution?**

Ans:

- (i)**
 - (a) Judicial review is the power of the courts to check if the laws passed by the government or the actions taken by officials follow the rules of the Constitution and particularly the fundamental rights.**
 - (b) If the courts find that any law violates these constitutional rules, they have the authority to declare it void. Essentially, it helps in making sure all government agencies stay within the boundaries set by the Constitution.**

- (ii)
- (a) A Bill is the draft of a legislative proposal which must go through various stages before it ultimately becomes an Act of Parliament.
 - (b) All legislative proposals are introduced before the Parliament or State Legislature in the form of Bills.
 - (c) It must be passed by both Houses or the State Legislature and then assented to by the President or Governor for it to become law.
- (iii) Procedure wise the bills can be classified as:
- (a) Ordinary Bills
 - (b) Money and Financial Bills
 - (c) Ordinance Replacing Bill and
 - (d) Constitution Amendment Bills.
- (iv) The word 'law' according to the definition given in article 13 of the constitution includes "any ordinance, order, bye-laws, rules, regulations, notification, custom or usage having the force of law in the territory of india.

20. Mahendra is an accused in a high-profile murder case. The investigating authorities want to conduct a narco-analysis test without his consent to obtain evidence. Mahendra's advocate argues that the use of this test violates his fundamental rights. With reference to Selvi v. State of Karnataka, AIR 2010 SC 1974, discuss as to whether the use of narco analysis test on Mahendra, without his consent, constitutes a violation of his fundamental rights. Is this right available to all persons? DEC 2024 (5 MARKS EACH)

Ans:

- (i) As per Article 20(3), no person accused of any offence shall be compelled to be a witness against himself. An accused cannot be compelled to state anything which goes against him.
- (ii) Following three conditions are to be fulfilled for a person to be entitled to this protection:
 - (a) He must be accused of an offence.
 - (b) There must be a compulsion to be a witness.

- (c) Such compulsion should result in his giving evidence against himself.
- (iii) In *Selvi v. State of Karnataka*, the Supreme Court held that narco-analysis, polygraph, and similar scientific tests conducted without consent violates the protection under Article 20(3).
- (iv) In the above case, the investigating authorities wanted to conduct a narco-analysis test without his consent. This clearly violates his fundamental right under Article 20(3).

21. The Municipal Corporation of Indore has a legal obligation to provide clean drinking water to its residents as per the Madhya Pradesh Municipal Corporation Act, 1956. However, for the past six months, the residents of Ward 12 have been complaining about the lack of clean drinking water supply. Despite repeated complaints to the municipal authorities, no action has been taken to rectify the situation. Patel, a resident of Ward 12, decides to take legal action. He wants to file a writ petition in the Madhya Pradesh High Court to compel the Municipal Corporation to fulfil its statutory duty of providing clean drinking water to the residents of Ward 12. What type of writ Patel can file with the High Court in this case? Discuss and give reasons for your conclusions. DEC 2024 (5 MARKS EACH)

Ans:

- (i) Article 226 of the Constitution empowers High Courts to issue writs for enforcement of legal rights and public duties.
- (ii) The writ of Mandamus literally means “we command”.
- (iii) Mandamus is issued to direct any public authority, corporation, or government body to perform a duty which they are already legally bound to perform.
- (iv) Mandamus is used when a public authority fails to discharge its statutory duty that directly affects the rights of people.
- (v) In this case, the Municipal Corporation of Indore has a legal duty to provide clean drinking water to the public, failure of which has violated the legal rights of the people.
- (vi) Therefore, Mr. Patel can file a writ of Mandamus before the High Court.