



Part V

The UNION

PYQ

Which of the following are envisaged by the Right against Exploitation in the Constitution of India?

1. Prohibition of traffic in human beings and forced labour
 2. Abolition of untouchability
 3. Protection of the interests of minorities
 4. Prohibition of employment of children in factories and mines
- Select the correct answer using the code given below.

- (a) 1, 2 and 4 only (b) 2, 3 and 4 only
(c) 1 and 4 only (d) 1, 2, 3 and 4

Practice Question

2. Article 30 of the Indian Constitution deals with the :

- (a) Freedom of conscience
- (b) Right to propagate religion
- (c) Cultural and educational rights of the majority community
- (d) None of the above

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Practice Question

3. Which of the following statements are true with regard to the Fundamental Rights of the minorities in educational matters?

1. The minority has only the right to administer the educational institutions.
2. The minority has the right to establish and administer educational institutions.
3. The right is absolute and not subject to any restriction.
4. Reasonable restrictions may be imposed to promote efficiency and prevent maladministration.

Select the correct answer using the codes given below:

- (a) 1, 2 and 3 (b) 2 and 4
(c) 2, 3 and 4 (d) 1 and 3

Practice Question

4. In India, if a religious sect/community is given the status of a national minority, what special advantages it is entitled to?

1. It can establish and administer exclusive educational institutions.
2. The President of India automatically nominates a representative of the community to Lok Sabha.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) 1 and 2 only
- (d) None of the above

Practice Question

5. Which one of the following pairs is correctly matched?

- (a) Writ of Habeas Corpus : Available against private individuals as well
- (b) Writ of Quo-Warranto : Available against subordinate courts only
- (c) Writ of Certiorari : Available against autonomous bodies only
- (d) Writ of Prohibition : Available against public servants only

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Primacy of Prime Minister in CoM

Supposing you have no Prime Minister; what would really happen? What would happen is this, that every Minister will be subject to the control or influence of the President. It would be perfectly possible for the President who is not *ad idem* with a particular Cabinet, to deal with each Minister separately, singly, influence them and thereby cause disruption in the Cabinet. Such a thing is not impossible to imagine. Before collective responsibility was introduced in the British Parliament you remember how the English King used to disrupt the British Cabinet. He had what was called a Party of King's Friends both in the cabinet as well as in Parliament. That sort of thing was put to a stop by collective responsibility. As I said, collective responsibility can be achieved only through the instrumentality of the Prime Minister. Therefore, the Prime Minister is really the keystone of the arch of the cabinet and unless and until we create that office and endow that office with statutory authority to nominate and dismiss Ministers there can be no collective responsibility.⁴⁰

PYQ

1. Instances of President's delay in commuting death sentences has come under public debate as denial of justice. Should there be a time limit specified for the President to accept/reject such petitions? Analyse.

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Governor

- Appointment and removal
- Terms and conditions
- Qualifications
- Why not an elected Governor
- Issues related to the office
- Sarkaria commission on the institution
- Matters of discretion for the Governor

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Governor

Why did India choose an appointed governor and not elected one?

- Elected governor defeats the very purpose of the institution of the Governor as it should be an independent constitutional office and not politicized.
- In case of an elected governor, a situation of political deadlock would have been created between the governor and the office of CM
- If the governor and the CM would have belonged to the same political party then governor could have not performed his discretionary function without bias
- It could have led to separatist tendencies as an elected governor may have tried to create his own sphere of influence

Governor

54. The provisions of the Constitution which expressly require the Governor to exercise his powers in his discretion are contained in articles to which reference has been made. To illustrate, Article 239(2) states that where a Governor is appointed an administrator of an adjoining Union territory he shall exercise his functions as such administrator independently of his Council of Ministers. The other articles which speak of the discretion of the Governor are paragraphs 9(2) and 18(3) of the Sixth Schedule and Articles 371A(1)(b), 371A(1)(d) and 371A(2)(b) and 371A(2)(f). The discretion conferred on the Governor means that as the constitutional or formal head of the State the power is vested in him. In this connection,

Governor

Constitutionally granted discretionary powers to Governors and their special responsibility

- Article 239 (2): the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers
- Schedule VI
- Article 371A (1)(b): In the case of Nagaland
- Article 371F(g): For Sikkim
- Article 371H(a): For Arunachal Pradesh
- Article 371 J: For Karnataka

Governor

Situational discretionary powers of the governor

- Appointment of CM
- Dismissal of minority Government
- Dissolution of Legislative Assembly in case of a minority government
- Reconsideration of the advice of CoM
- Veto with respect to state legislation

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Governor

Issues with the appointment of the governors

- Spoils system introduced for this position
- Even the former IAS and judges are now being appointed as governors
- Became a post for the rehabilitation of the rejected politicians
- Appointment done without any consultation with the elected state government

Governor

Sarkaria Commission recommendations on the appointment of governors

Governor should satisfy the following criteria:-

- (i) He should be eminent in some walk of life.
- (ii) He should be a person from outside the State.
- (iii) He should be a detached figure and not too intimately connected with the local politics of the State; and
- (iv) He should be a person who has not taken too great a part in politics generally and particularly in the recent past.

Other suggestions:

- These recommendations were also reiterated by the Supreme Court in the Rameshwar Prasad case.
- The National Commission to Review the Working of the Constitution has recommended that the Governor's tenure of office must be guaranteed and should not be disturbed except for extremely compelling reasons

Governor

Issues with the removal of the governors

- Wholesale removal of the governor as per the pleasure of the president: compromises the independence of the position of Governor
- Untimely removal with malafide intention
- Removal purely because the government at the center got changed

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Governor

B.P. Singhal Vs UoI (2010)

The President of India, acting upon the advice of the Council of Ministers removed the Governors of Goa, Gujarat, Haryana and Uttar Pradesh on 02 July 2004. In response to which, a writ petition was filed in the form of a Public Interest Litigation seeking the reinstitution of the said Governors of the States.

The petitioner, in the current case, firstly, requested the production of documents, files and facts which led to the order of removal of the Governors. Secondly, a Writ of Certiorari was filed requesting the quashing down of the same order and a Writ of Mandamus was filed requesting that the four Governors be allowed to hold office for their remaining term of five years. A four-judge, constitutional bench in the supreme court of India heard this matter.

Governor

Court's Observations

In a constitutional set up, when the Doctrine of Pleasure is provided in certain scenarios without any restrictions of any sort, it should be used responsibly and not be confused to be an instrument or means providing any unchecked discretion to act arbitrarily, capriciously or unreasonably in any case. Even though, it is not made mandatory by the court to provide reasons for the removal of the Governor, the removal can only be done for valid reasons and not because of any personal prejudice or invalid reasons.

A Governor cannot be removed for ulterior motives as to make way for another Governor or merely because his personal ideologies don't fall in sync with the Union of Ministers or because of the President losing confidence in him.

B.P Singhal Case

SUPREME COURT : NO ARBITRARY REMOVAL OF THE GOVERNORS

The Supreme Court on 7th May, 2010 held that a Governor cannot be removed on the ground that he/she is out of sync with the policies and ideologies of the Union government or the party in power at the Center. Nor can he/she be removed on the ground that the Union government has lost confidence in him/her.

A five-judge Constitution Bench, comprising Chief Justice K.G. Balakrishnan and Justices S.H. Kapadia, R.V. Raveendran, B. Sudershan Reddy and P. Sathasivam was disposing of a petition filed by the former Member of Parliament, B.P. Singhal.

The Bench said that as a Governor was neither an employee nor agent of the Union government, it was rejecting the contention that a Governor could be removed if the Union government or party in power lost 'confidence' in him.

It held that a change in government at the Center was not a ground for removal of Governors holding office to make way for others favoured by the new government.

Writing the Judgment, Justice Raveendran said, "What Article 156 (1) of the Constitution [under which a Governor holds office during the pleasure of the President] dispenses with, is the need to assign reasons or the need to give notice, but the need to act fairly and reasonably cannot be dispensed with by Article 156 (1).

The Bench said : "The President, in exercising power under Article 156 (1), should act in a manner that is not arbitrary or unreasonable. In the event of challenge of withdrawal of the pleasure, the Court will necessarily assume that it is for compelling reasons. Consequently, where the aggrieved person is not able to establish a *prima facie* instance of arbitrariness or *mala fides*, in his removal, the Court will refuse to interfere.

"However, where a *prima facie* case of arbitrariness or *mala fides* is made out, the Court can require the Union government to produce records/materials to satisfy itself that the withdrawal of pleasure was for good and compelling reasons. What will constitute good and compelling reasons, would depend upon the facts of the case.

The Court said if the aggrieved person was able to demonstrate *prima facie* that his or her removal was arbitrary, *mala fide*, capricious or whimsical, it would call upon the Union government to disclose to it the material upon which the President took the decision to withdraw the pleasure. If the Union government did not disclose any reason, or if the reasons disclosed were found to be irrelevant, arbitrary, whimsical, or *mala fide*, it would interfere in such a decision.

Governor

"Power under Article 156(1) cannot be exercised in an arbitrary, capricious or unreasonable manner and only in rare and exceptional circumstances for valid and compelling reasons." "Court can call upon the Union Government to disclose, the material upon which the President had taken the decision to withdraw the pleasure if prima facie the removal was either arbitrary, malafide, capricious or whimsical."

Governor

Punchhi Commission

- The phrase “during the pleasure of the President” should be deleted from the Constitution
- This is because a Governor should not be removed at the will of the central government
- Instead, he or she should be removed only by a resolution of the state legislature.

Venkatachaliah Commission

- Ordinarily, Governors should be allowed to complete their five-year term.
- If they have to be removed before the completion of their term, the central government should do so only after consultation with the Chief Minister.



Part XVIII

Emergency Provisions

Emergency Provisions

- Emergency provisions in the Indian constitution are borrowed from the Weimar Republic of Germany
- Purpose: to meet certain exigencies that affect the governance of the country

Three types of emergency:

- Article 352: Nation emergency “Proclamation of emergency”
- Article 356: President’s rule or state emergency
- Article 360: Financial emergency

Safeguards against emergency provisions

Constitutional

Judicial pronouncements

Emergency Provisions

General effect of emergency provisions

- Affects the Union-state relations i.e make the set-up unitary in nature
- Impact on FRs
- Suspension of certain constitutional provisions

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Emergency Provisions

Article 352: Proclamation of Emergency

- Grounds: War, external aggression, armed rebellion
- 44th CAA 1978: Changed “Internal disturbance” to “Armed rebellion”
- Could be imposed on Entire country or some parts of it
- If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether, by 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 of such part of the territory thereof as may be specified in the Proclamation].

Emergency Provisions

Constitutional safeguards:

1. written advice of the cabinet
2. Proclamation of emergency (PoE) can be done only on limited grounds
3. Any such PoE shall be approved by both the houses of the Parliament within a month of the issue of such PoE by a special majority

Note: If LS is dissolved during PoE then RS has to approve within 1 month, and LS should approve it within 1 month after its reconstitution

4. Duration of emergency in one instance is only 6 months (introduced via 44th CAA)

Emergency Provisions

Conditions when PoE can be Revoked

- Parliament does not do anything for 30 days
- Subsequent proclamation issued by the President for removal of emergency
- Parliament disapproves the emergency
- It can be revoked by a resolution in this regard passed by a simple majority in Lok sabha

Emergency Provisions

Effects of national emergency (article 353)

1. Center-State relations

Legislative:

- Parliament gets the power to legislate over state subjects
- States continue to enjoy the power to legislate on state subjects. In case there is a conflict, Parliamentary law will prevail.
- Any such law enacted by the parliament: 6 months after the emergency is over
- Article 250
- Parliament can also impose duties and gives powers to the officers of the union on matters not mentioned in the Union list.

Emergency Provisions

Effects of national emergency (article 353)

1. Center-State relations

Executive:

Central executive can issue directions to the state executive on any matter

Financial: Article 354:

Centre can suspend/modify the distribution of resources (under article 268 to article 279)- between center and states for that particular financial year (in which emergency has been imposed)

Emergency Provisions

2. Effect on Fundamental Rights (Art 358, 359)

- Article 358: Article 19 gets suspended automatically
- When a National emergency is imposed on grounds of war or external aggression then article 19 is suspended automatically (and not on the grounds of "armed aggression")
- Article 359: Effect on other Fundamental Rights
- Except for article 20 and 21, all other FRs can be suspended through a Presidential order

Emergency Provisions

Article 358

Automatic

affects article 19

suspends the right

**Can be issued on
grounds of war +
external
aggression only**

Article 359

**Issued in proclamation order
of President**

suspends any FR except 20,21

**suspends the remedy to move
court**

**can be issued on all grounds
(war, external aggression,
armed rebellion)**

Emergency Provisions

A.D.M. Jabalpur Vs. Shivkant Shukla

“The President issued orders under the Constitution of India, art. 359(1) suspending the right of any person to move any court for enforcement of fundamental rights under arts. 14, 21 and 22, and 19 for the duration of the emergency. Following this declaration, hundreds of persons were arrested and detained all over the country under the swoop of the Maintenance of Internal Security Act, 1971. Various persons detained filed petitions in different high courts for the issue of the writ of habeas corpus.”

“The high courts broadly took the view that the detention may be challenged on the grounds of ultra vires, rejecting the preliminary objection of the government. Aggrieved by this the government filed appeals.

Despite every high court ruling in favour of the detenus. The Supreme Court ruled in favour of the government. What the court except for Khanna, J. failed to realize is that the right to personal life and liberty are human rights and is not a gift of the Constitution.” Article 4 recognizes the right to life and personal freedom as an inalienable right in emergency situations, even in the Universal Declaration on Civilian and Democratic Life.

Emergency Provisions

Duration of Lok Sabha

- It can be extended till a year up to a time.

Effects of 44th CAA

1. Approval (written) of cabinet
2. armed rebellion has replaced internal disturbance
3. Art 19 can only be suspended in two circumstances:
4. The majority required for approval of PoE changed from simple-> special
5. Approval from the Parliament ↓ to 1 month (from 2 months)
6. Duration: 6 months at a time
7. Art 20 and 21 cannot be suspended (Art 359)

Emergency Provisions

The extent of Judicial Review power w.r.t. A.352-

This involves examining:

- whether relevant material was available to proclaim emergency under Art 352 to form the satisfaction of the President
- whether there was a malafide intention or not

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Emergency Provisions

Effects of the imposition of Article 356

Executive:

- State government gets dismissed and all executive powers come into the hands of the President.
- President could exercise his/her powers through governor or a person appointed by him

Legislative:

- Parliament gets the power to legislate on state subjects
- State assembly can either be suspended or dissolved.

Emergency Provisions

44th CAA of 1978:

- Introduced a new provision to put a restraint on the power of Parliament to extend a proclamation of President's Rule beyond one year.
- It provided that, beyond one year, the President's Rule can be extended by six months at a time only when the following two conditions are fulfilled:
- 1. a proclamation of National Emergency should be in operation in the whole of India, or in the whole or any part of the state; and
- 2. the Election Commission must certify that the general elections to the legislative assembly of the concerned state cannot be held on account of difficulties.

Emergency Provisions

Revocation of Article 356

- A proclamation of President's Rule may be revoked by the President at any time by a subsequent proclamation.
- Such a proclamation does not require parliamentary approval.

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Emergency Provisions

Issues associated with article 356

1. 'Failure of constitutional machinery': vague
2. Misused several times to dismiss popularly elected governments in states by Opposition party at the Center.
3. Governor's reports have been manipulated to the advantage of the political party in power in the center.
4. In the case of a hung assembly, provisions under A.356 have been misused to dissolve the legislature to deny a chance to opposition parties to explore the possibility of formation of a govt.

Emergency Provisions

Recommendations of Sarkaria commission:

- Any abuse or misuse of this drastic power would damage the democratic fabric of the Constitution.
- Article 356 should be used sparingly, as a last measure, when all available alternatives had failed to prevent or rectify a breakdown of constitutional machinery in a State.
- It further recommended that a warning be issued to the errant State, in specific terms that it is not carrying on the government of the State in accordance with the Constitution. Before taking action under Article 356, any explanation received from the State should be taken into account.
- In a situation of political breakdown, the Governor should explore all possibilities of having a Government enjoying majority support in the Assembly.

Emergency Provisions

S.R. Bommai vs. Union of India Case Judgement

- The power conferred by Article 356 upon the President is a conditioned power. It is not an absolute power. The existence of material - which may comprise of or include the report(s) of the Governor - is a pre-condition. The satisfaction must be formed on the relevant material
- The President shall exercise the power of dissolving of the Legislative Assembly only after the Proclamation is approved by both Houses of Parliament and not before. Until such approval, the President can only suspend the Legislative Assembly. It should be resorted to only where it is found necessary for achieving the purposes of the Proclamation.

Emergency Provisions

S.R. Bommai vs. Union of India Case Judgement

- In case both Houses of Parliament disapprove or do not approve the Proclamation, the Proclamation lapses at the end of the two month period. In such a case, Government that was dismissed revives. The Legislative Assembly, which may have been kept in suspended animation gets reactivated.
- Article 74(2) merely bars an inquiry into the question of whether any and if so, what advice was tendered by the Ministers to the President. It does not bar the Court from calling upon the Union Council of Ministers (Union of India) to disclose to the Court the material upon which the President had formed the requisite satisfaction.

Emergency Provisions

S.R. Bommai vs. Union of India Case Judgement

- The Proclamation under Article 356(1) is not immune from judicial review. The Supreme Court or the High Court can strike down the Proclamation if it is found to be mala fide or based on wholly irrelevant or extraneous grounds.
- If the Court strikes down the proclamation, it has the power to restore the dismissed Government to the office and revive and reactivate the Legislative Assembly wherever it may have been dissolved or kept under suspension.

Emergency Provisions

Guidelines provided by the court in a nutshell

- The court will not ask what advice the ministry has given to the president but the court can ask for the material evidence to be produced.
- The material should be a speaking document that can allow any rational person to take a decision
- No immediate dissolution of the assembly till the resolution has been approved by the parliament.
- The only test of the majority is the floor test
- The decision can be reversed and subject to judicial review if the malafide intention is present.

4. The Prime Minister of India, at the time of his/her appointment
- (a) need not necessarily be a member of one of the Houses of the Parliament but must become a member of one of the Houses within six months
 - (b) need not necessarily be a member of one of the Houses of the Parliament but must become a member of the Lok Sabha within six months
 - (c) must be a member of one of the Houses of the Parliament
 - (d) must be a member of the Lok Sabha

5. Which of the following is/are among the Fundamental Duties of citizens laid down in the Indian Constitution?

- 1.To preserve the rich heritage of our composite culture
- 2.To protect the weaker sections from social injustice
- 3.To develop the scientific temper and spirit of inquiry
- 4.To strive towards excellence in all spheres of individual and collective activity

Select the correct answer using the codes given below :

- (a)1 and 2 only (b)2 only
(c)1, 3 and 4 only (d)1, 2, 3 and 4

PRACTICE Question

1. Which one of the following cases prompted the Parliament to enact 24th Constitutional Amendment Act ?

- (a) Golaknath case
- (b) Shankari Prasad case
- (c) Kesavananda Bharati case
- (d) Minerva Mills case

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PRACTICE Question

2. Which of the following provisions of the constitution can be changed by an ordinary law?

1. Creation of Council of ministers for UTs

2. Defining parliamentary privileges under article 105

3. Changing the salaries, allowances of president, vice president etc

Select the correct answer using the codes given below:

(a) 1 and 2 only (b) 2 and 3 only

(c) 1 and 3 only (d) 1, 2 and 3

PRACTICE Question

3. The Constitution of India establishes parliamentary form of Government, and the essence of this form of government is its responsibility to the:

- (a) People of India (b) President
- (c) Prime Minister (d) Legislature

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PRACTICE Question

4. In a parliamentary form of Government, ministers are appointed by:

- (a) The head of the state at his discretion
- (b) The head of the government
- (c) The legislature
- (d) None of the above

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PRACTICE Question

5. Which one of the following is/are essential feature(s) of the parliamentary system?

1. Fusion of the Executive and the Legislature

2. Elected head of the state

3. Collective responsibility

4. Fixed tenure of the executive

a) 1 and 3 only b) 1,3 and 4 only c) 1,2 and 3 only d) All of the above

“If you cannot do great things, do small things in a great way.”

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THANKS!

Any questions?

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