

# CONSTITUTION OF INDIA

MCI-102

**External marks: 60**

**L T P**

**Internal marks: 40**

**2 0 0**

**Total marks : 100**

## **PART A**

### **1. Constitution of India, 1950-**

Characteristics of the Indian Constitution, Salient Feature, Preamble, Federal Structure, Form of the Government

### **2. Citizenship-**

Constitutional Provision and Dual Citizenship, Citizenship of Corporations.

### **3. Parliamentary Form of Government in India**

The constitution powers and status of the President of India

### **4. Union and State Executive-**

The President, His Powers, viz., Executive, Legislative and Judicial, and Position including Ordinance Making Power, Prime Minister and Council of Ministers, Governor and his Powers.

## **PART B**

### **5. Legislative Relations-**

Distribution of Powers between Union, and the States, Extent of Legislative Powers, Doctrine of Territorial Nexus, Doctrine of Pith Substance, Doctrine of Colorable Legislation and Doctrine of Repugnancy, Residuary Powers.

### **6. Emergency Provision-**

National Emergency, Failure of Constitutional Machinery, Civil Liberties and Emergency, Financial Emergency.

### **7. Amendment of the Constitution**

## **TEXT BOOKS**

1. Prof. GS, Pandey: Constitutional Law of India.

2. V.N. Shukla: Constitution of India.
3. M.P. Jain: constitutional law of India (Eng. A Hindi)
4. D.D. Basu: Introduction of the Constitution of India.

#### **REFERENCE BOOKS**

1. ParasDiwan: Constitutional of India.
2. M.CJ. Kagzi: Constitution of India.

**REFERENCE:Constitution of India as amended up-to-date.**

**On completion of the course, the student will have the ability to:**

<b>CO#</b>	<b>Course Outcome</b>
CO1	Understand the constitutional design, frame and their
CO2	Realise the role and importance of citizenship
CO3	Create awareness among engineers about the
CO4	Have an in-depth knowledge on union and state
CO5	Figure out the significance of Emergency provisions in Indian constitution.
CO6	acquaint the students about the amendments of the

Q 1 'Freedom is in peril, defend it with all your might' from its masthead." comment and explain.

Q2 Under the color or guise of power given for one particular purpose the legislature cannot seek to achieve some other purpose which is either wise not competent to legislate on. Comment and explain.

Q3 "Law and order are the medicine of the body politic and when the body politic gets sick, medicine must be administered." Comment and explain.

Que 1 -

Ans - Freedom is in peril, defend it with all your might 'from its masthead means freedom is in serious and immediate danger and we must do effort to defend it from those who try to destroy our freedom. To begin with the ruling party has nothing to do with achieving independence. Its founding ideology choose not be take part in the fight against british rule when we know that Indian civilization is the sum total of the countless influences - religions, languages ways of life and streams of thought that have gone into the making of it. Indian civilization is alive and vibrant today because of its flourishing diversity. There are no outsiders among us we all are Indian.

In failing to recognize the meaning of India which gives every Indian the fundamental right to live, think, eat and worship as he chooses, this regime has remained silent over atrocities against those who do not think like them. The shocking travesty of justice should not surprise us when the murder of Mahatma Gandhi has hailed by some people and his killer is hailed by them as a hero. It does seem as if common sense itself has gone into reverse gear and madness rules the streets.

The freedom to be what one chooses to be is not negotiable. But now the freedom is now in peril and we must defend it all cost.



Que 2 -

Ans - Under the colour or guise of power given for one particular purpose the legislature can not seek to achieve some other purpose which is either wise not competent to legislate on". This doctrine is for the 'Legislative' organ which is out of the three organs of the state.

The doctrine of colorable realms defined. Legislation means where the constitution of a state distributes the constitutional realms defined by specific legislative entries or where there are limits on the legislative authority in the sense of fundamental rights, questions arise as to whether the legislature has not, in a particular case, the subject matter of the legislation or the process of activation. The policy does not require any issue on the part of legislature about bonafide or malafide purpose.

In India, 'colorable Legislation theory' implies only a restriction of the legislature's law making power. Colorable Legislation Theory says, " "

"whatever the government is unable to do directly, it can not do indirectly while the government purports to act within its authority, it appears to realize but in fact, it has transgressed certain powers. So, the doctrine becomes valid

Whenever a state tries to do what it can not do specifically in an indirect manner.

To understand this concept in a much better way, one of the most cogent and lucid explanations relating to this doctrine was given in the case of *K.C. Gajapati Narayana Deo and others v. The State of Orissa*.

If the constitution of a state distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers.

A legislature does not operate on outside thought. But a legislative action based on malafide can not be struck down for lack of legal integrity or for being unreasonable.



Que 3 -

Ans - "Law and order are the medicine of the body politic and when the body politic gets sick, medicine must be administered."

— B.R. Ambedkar

The chief draftman and one of the eminent intellectuals who framed our constitution. Dr B.R. Ambedkar could not be more far-sighted in this respect than to make the above statement, and his words have become more than relevant in the present national as well as international scenario. Good government, which all governments promise to achieve, is not possible without peace and irrespective of how efficient the government machinery is, peace is not possible without adequate laws and order as being the medics. Given the problems, shortcomings to it and issues of a nation are like a disease to it and that these diseases sought to be cured by administrative measures which in turn are the responsibility of the government, a straight line could be drawn from such issues reviving a nation to law and order inside that nation.

Thus when and if the truly political, i.e. the driving force of nations policies get sick, it is more often than never that the element is a result of deteriorating law and order within the nation.

MSE-II

Constitution Of India

Subject Code

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MCI-102

Answers

Answer 1! My freedom to disagree!:- 'Freedom is now in peril, we must defend it with all our might.'

Author of nine novels, free thinker, grande dame of Indian writers in English, Nayantara Sahgal, the Dehradun-based 89-year old returned the Sahitya Akademi award in 2015 against "increasing intolerance & supporting the right to dissent" following the killings of rational and the lynching at Dadri.

Let me tell you why I am not able to celebrate the 69th Anniversary of India's Independence. The India we live in today is ironically, a rejection of all that India has stood for. To begin with, the ruling party had nothing to do with achieving independence. Its founding ideologues chose not to take part in the 26-year fight against British rule led by Mahatma Gandhi. It was their policy to have nothing to do with it. They chose to stay home while



Other Indians suffered hardship, persecution & imprisonment. So it is not surprising that they have no understanding of, or commitment to the ideas & ideals that brought our nation birth. Of this, there has been abundant evidence in the past two years.

It begins with the fallacy that India is a Hindu <sup>fastness</sup>. From there, it goes on to the fallacy that Indian civilisation means Hindu, and all other Indians are "outsiders" when we know that Indian civilisation is the sum total of the countless influences - religions, languages, ways of life & streams of thought - that have gone into the making of it. Indian civilisation is alive and vibrant today because of its flourishing diversity. Our daily life celebrates all these influences in our literature, art, music, sport, food, dress, festivals & manners. There are no outsiders among us. We all are Indians.

In failing to recognise the meaning of India which gives every Indian the fundamental right to live, think, eat & worship as he or she chooses, this regime has remained silent over atrocities against those who do not think like them. Dissent has been punished by murder. The killing and hounding of writers has expanded to the lynching of a helpless blacksmith for supposedly eating beef and the killing of teach drivers transporting cattle. Defenceless men who

were doing their job skinning the carcass of a dead cow have been stripped and thrashed on the skin of their naked backs. The vengeance that has called for an eye has now become a skin for a skin. Armed squad do these criminal deeds in the public gaze, without fear of punishment.

The cow is sacred, human life is not. In the murdered blacksmith Mohammad Akhlag's case, the guilty roam free while the bereaved family is being victimised. This shocking travesty of justice should not surprise us when the murder of Mahatma Gandhi has been hailed by those who subscribe to ~~to~~ Hindutva, and his killer is hailed by them as a hero. It does seem as if common sense itself has gone into reverse gear and madness rules the street.

Answer 2: Under the colour or guise of power given for one particular purpose the legislature cannot seek to achieve some other purpose which it is otherwise not competent to legislate on. This doctrine is for 'legislative' organ which is out of the three organs of state. If an thing is prohibited directly then it is also



prohibited indirectly. This is called  
Doctrine of colourable Legislation.

Article 246 of Indian constitution has separate subjects for law making in three lists under VII schedule. That is, it has segregated numerous subject matters, each subject matter is associated with State, Centre or Both following are the lists under schedule VII of Indian constitution:-

- 1) Union List (List I)
- 2) State List (List II)
- 3) Concurrent List (List III)

This is where the Doctrine of colourable legislation comes into the picture. If the ~~legislature~~ legislature tries to legislate upon such matter which is outside the scope of its power, and it does not indirectly so that it does not indirectly so that it does not look like that is legislated upon a law outside of its scope, then such instance is called colourable legislation.

In such a situation, constitutional courts like the Supreme Court or high court can invalidate such law by the usage of this doctrine.



Eg:- under union list, Entry 2A, deployment of armed forces come under the purview of Central Government, State Government cannot legislate upon such subject matter. In state list, Entry, makes 'public order' under the state list. Non state cannot make a law for public order, which involves deployment of armed forces. It will become a colourable legislation. In such situation, constitutional court like supreme court or high court, by virtue of this doctrine, will invalidate such law.

There are certain limitations on this doctrine of colourable legislation. This doctrine of colourable legislation. This doctrine ~~of~~ will not work on such instances, where legislature has no constitutional limitation. It is not applicable to subordinate legislation. Not concerned if the law is relevant or irrelevant.

The presumption is always in the favour of constitutionality of law and the burden to prove is upon the petitioner. Case laws on the doctrine of colourable legislation were!

1) K.C. Gajapati Narayana Deo and O.R.S V The State of Orissa.

2) State of Bihar V. Kameshwar Singh.

Answer 3! Equal Access to opportunities!:-

When there is proper law in ~~place~~ <sup>place</sup> that allows every human being to exist as equals it becomes very easy for everyone to pursue the opportunities that they want.

(2) - Provides security:- The best ingredient that guarantees proper development is safety when people know they are safe, and the same applies to their properties, it becomes easier to focus on innovation rather than worrying and focusing all their resources on protecting what they have.

(3) - Respect resolution:- The law is very critical when it comes to conflict ~~resolati~~ resolution, and ensuring that everyone gets the best judgement. When people have a dispute, without a proper system in place, they tend to use violence as a means to resolve, and in all the cases, the outcome in it usually fails.

(4) Culture of fairness - When people know they have the law on their side, it becomes very easy for them to focus on ~~is~~ what is important.

# Legislative Relations

## ▼ Distribution of Powers between Union and the States

### ▼ Union List

The Union list contains 97 items which comprise of the subjects having national significance. This list admits uniform laws that are applicable over the entire Indian territory, and only the Indian Parliament is capable of legislating upon them.

- Defense
- Central Bureau of investigation
- Foreign Affairs
- Banking
- Census
- Corporation Tax
- Atomic energy and necessary mineral resources
- Preventive Detention
- Diplomatic, consular, and trade relations
- War & peace
- Citizenship
- Highways and Railways, etc

### ▼ State List

The State list contains 66 items that comprise subjects relating to local interest or the interest of the State. The State legislature is thus competent in legislating over these subjects. Some of the subjects in this List-II are as follows:

- Public Order
- Local Government
- Public health & Sanitation



- Agriculture
- Fisheries
- Libraries, museums, and other resembling institutions
- Markets & fairs
- Gas & allied works

#### ▼ **Extent of legislative power**

1. Subject to the provisions of this Act, the Legislative Assembly of 1[the Union territory] may make laws for the whole or any part of the Union territory with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution in so far as any such matter is applicable in relation to Union territories.
2. Nothing in sub-section (1) shall derogate from the powers conferred on Parliament by the Constitution to make laws with respect to any matter for 1[the Union territory] or any part thereof.

#### ▼ **Doctrine of Territorial Nexus**

- According to the Doctrine of Territorial Nexus, laws made by a state legislature are not applicable outside that state, except when there is a sufficient nexus between the state and the object.
- This doctrine derives its authority from Article 245 of the Indian Constitution.
- The doctrine states that in order for a state law to have an extraterritorial operation, there must be a nexus between the object and the State.

#### ▼ **Doctrine of Pith Substance**

- The Doctrine of Pith and Substance states that if the substance of legislation falls within a legislature's lawful power, the legislation does not become unconstitutional just because it impacts an issue beyond its area of authority.
- "*True nature and character*" is what the phrase "pith and substance" signifies.
- The infringement of the constitutional delimitation of legislative powers in a Federal State is the subject of this concept.

- The Court uses it to determine whether the claimed intrusion is just incidental or significant.
- Thus, the 'pith and substance' concept holds that the challenged statute is fundamentally within the legislative competence of the legislature that enacted it but only incidentally encroaches on the legislative field of another legislature.
- The present article discusses this doctrine majorly highlighting the same on how the Indian Constitution has perceived this doctrine.

#### ▼ **Doctrine of Colorable Legislation**

- India has a federal form of government and has been a united country for over seven decades with power being divided between the Centre and the States on the account of federal structure of governance.
- Federal form of government has two or more levels of government.
- Each level of government has its own jurisdiction (area of control). The jurisdiction of the respective levels of government is specified in the Constitution.
- The main feature of federalism is the segregation of power between the Centre and the states.
- The fundamental provisions of the Constitution cannot be unilaterally changed by one level of government.
- Federal system has the objective to safeguard and promote unity and accommodate regional diversity.

#### ▼ **Doctrine of Repugnancy**

- Article 254 of the Indian Constitution establishes the doctrine of repugnancy in India.
- Before getting to this doctrine, it is quintessential to understand the legislative scheme and the Centre-State relations set out by the Constitution.
- Article 245 empowers the Parliament to make laws for the whole or any part of India and the State legislature to make laws for the whole or any part of the State.

- It also states that a law made by the Parliament shall not be deemed invalid due to its extraterritorial application.
- Further, Article 246 provides the subject-matter of laws that can be made by the Parliament and Legislature of the States.
- The Parliament has exclusive powers to make laws for all matters given in the Union List or List I of the Schedule VII of the Indian Constitution.
- The Legislature of the State has powers to make laws for such State for all matters given in the State List or List II of Schedule VII.
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#### ▼ **Residuary powers of legislation**

1. Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List
2. Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists



# Emergency Provision

## ▼ National Emergency

- Article 352 of the Constitution provides for the provision of National Emergency which can be applied if any extraordinary situation arises that may threaten the security, peace, stability and governance of the country.
- Whenever any of the following grounds occur, an emergency can be imposed:
  - War,
  - External aggression; or
  - Internal rebellion.
- Article 352 provides that if the President is 'satisfied' on the grounds that the security of India is threatened due to outside aggression or armed rebellion, he can issue a proclamation to that effect regarding the whole of India or a part thereof.
- However, sub-clause (3) states that when a piece of written advice is given by the Union Cabinet then only the President can make such a proclamation.
- Such a proclamation must be placed before each house of the parliament and must be approved within one month of the declaration of the proclamation otherwise it will expire.
- Furthermore, it is not necessary that for the proclamation of National emergency, external aggression or armed rebellion should actually happen.
- Even if there is a possibility that such a situation can arise, a national emergency can be proclaimed.

## ▼ Failure of Constitutional Machinery

- The role of government in maintaining law and order is immense. The executive wing is responsible solely to the union or state ministerial heads, as we usually witness that an "IAS is responsible to ministers, and is under boundless work pressure".

- When the government fails in its duty to regulate the tranquility in the states, the role of the judiciary surmounts in tackling the soaring offence rates.
- However, the judicial burden is also substantial to keep the environment orderly.
- Article 365 of Indian Constitution deals with the breakdown of constitutional machinery. According to Article 356, Failure of Constitutional Machinery is demarcated as the situation in which a state cannot be carried on in accordance with the provisions laid in the Constitution.
- Specifications have been laid down to deal with circumstances when there is no government in terrain due to non-attainment of majority or is highly impotent to assure a smooth administration.
- As per Article 355 of the Constitution, it is the sole duty of the Union Government to assure that the government of every state is carried on in accordance with the provisions of the Indian Constitution.\
- “Failure of Constitutional Machinery in the States”, a disaster in disguise, has proved to be a mootable and alienating procedure for decades. The causes of the failure are described below-
  - Political Crisis – Crisis is deemed to be cynical changes in security when they are unanticipated with little or no warning
  - Internal Subversion
  - Physical Breakdown
  - Inability to maintain law and order

#### ▼ Financial Emergency

- Article 360 provides that if the President is satisfied that the financial stability or credit of India or any of its part is in danger, he may declare a state of Financial Emergency.
- It has to be approved by the Parliament and must be approved by both Houses of Parliament within two months.
- Financial Emergency can operate as long as the situation demands and may be revoked by a subsequent proclamation.

- Article 360 provides that if the president is satisfied that a situation has arisen whereby the financial security of India or the credit of India or of any part of India is threatened, he may make a declaration to that effect.
- Under such a situation, the executive and legislative powers will go to the centre. This article has never been invoked.

# Amendment of the Constitution

## ▼ Amendment of the Constitution

- The constitution of Indian is one of the most fascinating documents on this planet. No other country has a constitution as comprehensive as ours and is the largest constitution in the world.
- But despite being so comprehensive, the reason why this document is so interesting is due to the fact that it is extremely flexible.
- The fathers of our constitution made it so, they wished that the constitution would not only aid the country to grow but it would also grow alongside it.
- Thus, the government can amend the constitution depending on various issues brought up. These powers are given by Article 368.
- There is a reason why the fathers of our constitution made the constitution as flexible as it is today.
- This is to ensure that the document evolves and grows along with the nation.
- Thus, under Article 368, the powers of the Parliament to amend the constitution is unrestricted with regards to sections of the constitution they wish to amend.
- But the Parliament having absolute power over amending the constitution is dangerous.
- Instead of being the backbone of our democracy, the constitution will be reduced to a tool to establish Parliament's totalitarianism.
- The government will amend various provisions to make sure it's powers are unfettered.
- While this is a scary thought, it is not far away from the truth.
- The government in multiple amendments such as the 39th Amendment and in the second clause of the 25th Amendment has tried to establish a state where the legislative is supreme.
- That is why the judiciary through various landmark cases has established The Basic Structure Doctrine of The Indian Constitution.