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LEGAL REASONING



CONSTITUTIONAL LAW-III

Passage (Q.1-Q.5): As evident from the word “emergency”, it refers to the unexpected turn of events that causes the public authorities to take instant actions within their boundary. Human civil rights, except Articles 20 and 21 of the Indian Constitution, are removed from the state or Nation during an emergency. Most of the emergencies are brought about by breaking down administrative machinery. Emergency in the Indian Constitution can be differentiated as National Emergencies, State Emergencies, and Financial Emergencies. Part XVIII of the Constitution contains the emergency provisions in India.

Article 352 demarcates the National Emergency: According to Article 352, the President may declare an emergency when the region is under a state of attack, external intrusion, or armed rebellion (the term internal disturbance was changed to armed rebellion by the 44th amendment in 1978). Though such a declaration could only be made in the presence of the legislative house and further supported by each chamber, the emergency was withdrawn after a month of announcement. The emergency can be imposed on the entire country or any part of the country.

The first emergency in the Nation was declared during the war with China, which lasted between 1962 and 1968. After that, the most contentious emergency was declared due to internal conflict by Smt. Indira Gandhi.

State Emergency has been included in Article 356: Article 356 marks out that the President can declare a state emergency on receipt of briefs by the Governor of a particular state or by the President’s observation on degrading mechanisms of the state. Thirty-five instances of President’s rule have been recorded under the rule of Smt. Indira Gandhi.

Financial Emergency is provided in Article 360: The President can declare financial emergencies if convincing evidence of an unstable economy and credibility is encountered. Executive and legislative factors play a central role in declaring a financial emergency. Financial emergency has never been declared in India.

[Edited and extracted from; <https://blog.ipleaders.in/emergency-india/>]

1. A country B declared war with a country T. T being a hub for medical education, many students who were I nationals were there. After the declaration of war on T by B, I somehow managed to bring back its nationals from T. After the same, I felt a threat of being invaded by B as relations between I and B have never been good. Therefore, the president of I declared an emergency with respect to the same. Was the president justified in doing so?
 - (a) The president was definitely justified in taking this action as the situation has chances for a war.
 - (b) The president is definitely justified in doing so as it is clearly mentioned that the relations between the two countries were not good and hence, I by declaring emergency, took a step towards national security.
 - (c) The president is not justified in doing so as there was no declaration of war or huge chances of external intrusion by B on I.
 - (d) The president is not justified as he cannot issue emergency whenever he wants to as he has to consider the commoners problems as well.

2. A and B are two countries that are at conflict over their respective geographical boundaries. The contested land boundary in A was in X state, in the north western part. Whereas in B, it was located in the southwestern part of State Z. Out of aggression towards the nation A, the soldiers of B decided to breach the disputed boundary in order to obtain further ownership of the disputed land and to expand their army camps. This resulted in a disagreement between the soldiers of both countries, which resulted in an armed war between the countries soldiers in the disputed area. Seeing this, Country A's president issued an emergency declaration throughout the country. Was he justified in his actions?
 - (a) Yes, as it can clearly lead to war between the two countries because of which the entire country is under threat.
 - (b) No, as declaring emergency over the whole country is not justified as this took part only in one part of the country.
 - (c) No, as there was no threat or war declared by the country A to B.
 - (d) Yes, as this amounted to national threat and hence, declaring a national emergency was justified.

3. The constitution of India authorises the president to "*suspend the right to move to any court to enforce fundamental rights during a national emergency as the fundamental rights automatically gets suspended while emergency is declared*". Same was done when the president of India declared a national emergency in the country. X at the same time moved to the court as he was deprived of his rights under Article 14 of the constitution and went to seek remedy on the same on an urgent basis. The Court at the same time held the matter to be sensitive in nature and passed a judgement restoring his fundamental rights. After the emergency was over, Y challenged the courts judgment saying that it is not justified on the part of the court to pass such a judgment during emergency and hence, this stands null and void. Decide on the same.
 - (a) The court's judgment cannot be held null and void as it adjudged the matter looking at its sensitivity which can be an exception in the instant matter.
 - (b) Y is justified in challenging the courts judgment as the law does not permit the courts or any person to do so in emergency.
 - (c) Y is not justified in challenging the same as even in emergency, certain fundamental rights can be adjudged upon.
 - (d) The court's judgment can be held null and void citing that the courts don't have power to do so.

4. "ETC", a very renowned NGO was protesting against the Government of India since weeks because of the newly policy which ETC contended was against the rights of Transgenders. The protest which started in January 2023, was becoming massive with each passing day. Slowly it was expanding in the whole country as the followers of "ETC" were countrywide. The protests slowly devolved into violence and huge losses were caused with respect to the governmental property and many people died during the same. The Prime Minister advised the President of India to issue an emergency in the country to stop all of this. On the Prime Minister's advice, the President issued an emergency nationwide on the ground of internal disturbance. Was he justified in doing so?
 - (a) Yes, as this clearly indicates that there was an internal disturbance in the country because of which emergency was declared. Hence, the President is justified in his actions.
 - (b) No, as emergency cannot be declared in case of internal disturbance but, in armed rebellion.
 - (c) The president is justified in his actions as there was a threat to national security.
 - (d) Emergency in this case cannot be declared as there was no war or declaration of war in this instance.

5. Consider the following scenarios and determine which one is true with respect to the passage.
 - (a) Indian armed forces, being disappointed with the governmental Armed Forces policies, organise a nation-wide protest which turns violent. Government declares emergency.
 - (b) All the RBI online portals get hacked by a foreign account which leads the country to declare digital emergency.
 - (c) China says that whenever India tries to get possession over the disputed border between the two countries without China's knowledge, China will declare war. Indian government declares emergency.
 - (d) Pakistan declares emergency as India declares war against it but, India steps back later on and even after that the emergency in Pakistan is continued.

Passage (Q.6-Q.10): The doctrine of proportionality emanates from the two key elements of a constitutional structure i.e., rule of law and democracy. Democracy entails rights and liberties, and on the other hand the rule of law empowers the state to sanction limitation on them to maintain the rule of law and order. In the simplest of terms, this doctrine means that the ambit of limitation on any right must be proportional to the purpose/objective sought to be achieved through the limiting law. It ensures that the encroachment on any right is not disproportionate to the objective of the law. This doctrine is meticulously defined by Arhon Barak, Former President of the Supreme Court of Israel, in his book titled "Proportionality: Constitutional Rights and their Limitation" where he proposes that the central philosophy that governs the proportionality doctrine is to shield the individual and his/her rights from the arbitrary brute power of the state, and conceives of the proportionality doctrine as having four components- namely- proper purpose, rationale connection, necessity and balancing. Where the chief focus of proper purpose is to look at the purpose for which the limitation on rights is brought, meaning that in a given constitutional setup the legislative intended purpose is rational

or not. In Modern Dental College and Research Centre, the Supreme Court designed four- part proportionality test that are- (i) that the measure is designated for a proper purpose (ii) that the measures are rationally connected to the fulfilment of the purpose and are not arbitrary in nature (iii) that there are no alternative less invasive measures, and (iv) that there is a proper relation between the importance of achieving the aim and the importance of limiting the right.

[Edited and extracted from: <https://www.livelaw.in/columns/universal-declaration-of-human-rights-constitution-national-security-185312>]

6. Armaan was the prime minister of the state of Zunia with a very thin majority who declared an emergency in the state citing internal disturbance on suspicion that the opposition would demand a floor test and suspended all fundamental rights, imprisoned opposition party leaders, and imposed media censorship. Decide the validity of Armaan's actions.
 - (a) The actions of Armaan are valid as the constitution of Zunia provides powers to its prime minister to proclaim emergency when he is satisfied.
 - (b) The actions of Armaan are not valid as the measure taken by him is arbitrary in nature.
 - (c) The actions of Armaan are valid as limiting the rights in the security interest of nation are valid.
 - (d) The actions of Armaan are not valid as nothing could take away the fundamental rights of an individual.
7. The security agencies informed the Indian government that X community followers are planning to use the farmers demonstration to cause mayhem in India. It was also brought to the administration's attention that these X supporters are using the Internet to propagate rumours, slander the government, and encourage violence. Based on these inputs, the Indian government decided to temporarily ban internet use in the state. Decide?
 - (a) The actions of government are not valid as right to internet is a fundamental right inherent under right to life and personnel liberty thus could not be taken away.
 - (b) The actions of government are valid as the measures taken are proportional to the purpose.
 - (c) The actions of government are not valid because the measures taken are not proportional to the purpose.
 - (d) The actions of government are valid as government is empowered to limit the fundamental rights of an individual.
8. X has been with the company A for 15 years and there had never been an accusation of wrongdoing levelled against him. A disciplinary investigation, however, was launched against him for misplacing a document entrusted to him. Following the completion of its investigation, the committee granted him a letter of permanent termination of service. Decide the adequacy of the actions taken by the committee?
 - (a) The actions of the committee are valid as X was proven guilty of for misplacing a document entrusted to him
 - (b) The actions of the committee are not valid at all.
 - (c) The action of the committee is valid as suspension from service is adequate disciplinary action for misplacing a document entrusted to him
 - (d) The action of the committee is not valid as permanent termination from service is an extreme measure for misplacing a document entrusted to him
9. Due to the uncertainties and significant dangers associated with crypto currency exchange, the state of X's central bank issued a circular barring licensed banking and non-banking financial institutes from providing any banking services to businesses involved in crypto currency exchange. Decide?
 - (a) The circular of central bank of state of X is valid as crypto currency exchange involves uncertainty and high risk
 - (b) The circular of central bank of state of X is not valid at all.
 - (c) The circular of central bank of state of X is valid as prohibiting Banking Institutes from providing any banking services to the business involved in crypto currency exchange is an adequate measure.
 - (d) The circular of central bank of state of Z is not valid as prohibiting Banking Institutes from providing any banking services to the business involved in crypto currency exchange is extreme measure.
10. In order to protect one of its contentious or troubled districts, government of X passed legislation granting the military exceptional powers. The military was empowered under this legislation to arrest and detain anybody in any district they suspected of being suspicious in order to maintain public order, and they were not accountable to anyone for exercising such power. Decide?
 - (a) The laws are valid as they are enacted to meet with the state of exigency in the disputed land.
 - (b) The laws are valid as the law enacted is proportional to the purpose.
 - (c) The laws are not valid because the power given to the military under the act are not proportional to the purpose.
 - (d) The laws are valid as government is empowered to limit the fundamental rights of an individual in the security interest.

Passage (Q.11-Q.16): In its judgment upholding restrictions on Muslim women wearing hijabs in educational institutions, the Karnataka High Court held that wearing the headscarf is not an “essential religious practice” in Islam. This was the first question the court answered, and its answer formed the basis for the rest of the judgment. Article 25 of the Constitution guarantees the “freedom of conscience and the right freely to profess, practise and propagate religion”. However, this right isn’t absolute and is subject to public order, morality, and health. While Article 25 itself does not read any other condition into the protection of this right, courts, over the years, have ruled that the right would protect only “essential religious practices” and not all religious practices.

As for the Karnataka High Court judgment, it has held that wearing the hijab does not constitute an essential religious practice under Islam which means it can be regulated by the state. To reach this conclusion, the court referred to a commentary on the Quran and held that there is no “Quranic injunction” or mandate on wearing the hijab. It found that “there is sufficient intrinsic material within the scripture itself to support the view that wearing hijab has been only recommendatory, if at all it is”. “It is not that if the alleged practice of wearing hijab is not adhered to, those not wearing hijab become the sinners, Islam loses its glory and it ceases to be a religion,” the court said.

Rejecting the ERP test for a test of this kind would allow courts – especially in contentious cases of this kind – to actually respect the agency and choice of the claimants. Dress and clothing are aspects of individual and often social expression (especially when it comes to community symbols), and therefore – regardless of whether the motivation to wear them is religious or otherwise – they are protected under the rights to free speech and privacy (as decisional autonomy), and the part of Article 25 that speaks of freedom of conscience. In that sense, the hijab case presents the quintessentially “good case” before the courts: it is difficult to imagine another case where the problems with the ERP test are so stark and clear, and where the arguments for jettisoning it in favour of a more constitutionally grounded and just approach are so evident.

ApoorvaManddhani, ‘What is an ‘essential religious practice’, and why hijab didn’t make the cut for Karnataka HC’ (*The Print*, 21 March 2022) < <https://theprint.in/theprint-essential/what-is-an-essential-religious-practice-and-why-hijab-didnt-make-the-cut-for-karnataka-hc/880827/>> as accessed on 20 December 2022.

11. Ministry of Health and Family Welfare issued a notification that owing to the recent outbreak of influenza, bodies of the infected deceased shall be cremated directly instead of being given to the family, in order to contain the further spread of the disease. A family makes a petition before the court, holding the same to be against their religious customs & practices and thus their fundamental right to religion. They plead that as per the religious customs & practices if the body is not brought home and not adorned with jewelleries and flowers, the gatekeepers of heaven will not let them through, and they shall be forced into hell. Choose the correct option.
 - (a) The petition shall not be allowed as it would pose considerable health risk for which the ministry has issued the notification in the first place.
 - (b) The petition shall be allowed as the same prevents an essential religious practise which is a violation of article 25 for the petitioners.
 - (c) The petition shall not be allowed as it is not an essential religious practise which would receive the protection of article 25.
 - (d) The petition shall be allowed as deceased have the right to an equal opportunity to heaven for which government shall in fact take affirmative action instead of preventing the same.
12. Which of the following is the most precise gist of what author indicates in the above passage?
 - (a) The Karnataka High Court relied on the wrong reasoning while making the correct order, which could have been reached using more constitutional reasoning rather than assuming the role of Islamic theological authority.
 - (b) Right to one’s cultural identity to religion under article 25 prevails over the State’s power to dictate the uniforms in educational institutions.
 - (c) In absence of any religious backing to support the mandate of wearing Hijab by women, the lawyers of the petitioner have a weak case establishing Hijab to be essential religious practise.
 - (d) Instead of considering Hijab being an essential religious practise it makes more sense to see it as an individual right to choice and privacy which Constitution protects.
13. To ward off the evil that had plagued the world in the form of Corona virus, Shakti resolved to fast absolutely for the nine days of Navratri. On the ninth day she broke her fast with offerings and organised a Kanyabhoj inviting hundreds of girls to her house to feed them. When the congregation was disallowed by the authorities, she filed petition before the High Court that her right under article 25 has been violated as Kanyabhoj has been a mandatory custom since the inception of the festival. Decide:
 - (a) Shakti will succeed in the petition as Kanyabhoj forms an essential religious practise and is protected under article 25.
 - (b) Shakti will not succeed in the petition as the case falls in the exception to the article 25.

- (c) Shakti will succeed in the petition as her right under article 25 cannot be violated except for the compelling reasons of State interest, which has not been established by the authorities yet.
- (d) Shakti will not succeed in the petition as essentiality of the practise cannot be decided by the court without referring to scriptures commenting religious mandate of the same.
14. Faiza, a lawyer-activist, has filed a PIL before the Supreme Court challenging the Muslim intestate succession laws as per which males are given share of two women, meaning, naturally a woman getting half the share than that of a man in their deceased parents' property. She argues that such orthodox religious laws perpetuate discrimination, and use religion as a tool to prolong patriarchy which does not stand the test of constitutionality in today's world. The respondents in the form of Islamic religious organisations submitted before the court, that the Quran itself dictates such share and it cannot be meddled in by the court, and article 25 comes to the rescue of the provision. Decide in the light of the order given high court ruling.
- (a) The PIL shall not succeed as unequal share in the property does not perpetuate discrimination or patriarchy, it is a religious mandate by which followers abide very respectfully.
- (b) The PIL shall succeed as the giving unequal share is discriminatory and violative of the constitutional principles, despite it being a religious mandate.
- (c) The PIL shall not succeed as it is an essential religious practise which receives the protection of article 25.
- (d) The PIL shall succeed as the courts tend to reform religions and allow petitions when filed against a regressive religious practise.
15. A community in Andhra Pradesh practices Devdasi, under which some parents dedicate their daughters to the local temples. These girls are married to the deity, and are forbidden to enter into a real marriage. The end result is often that they are forced into prostitution even before they reach puberty. The practise is enforced using local and customary laws, and use of force by the local Brahmins. When challenged before the Supreme Court, the supporters contended that the practise has huge religious significance, and the claims of forced prostitutions are false. They argue that the practise is a religiously essential one, and therefore cannot be prohibited. Decide on the basis of the arguments made by the author.
- (a) The practise is protected under article 25 as it is an essential religious practise as claimed by the respondents and court cannot overreach its power in holding it unconstitutional.
- (b) The practise is not protected under article 25 as violates the individual rights of the girls by means of curtailing their choices in serving the deity or waiving their right to marry.
- (c) The practise is protected under article 25 as it does not fall within any exception to article 25 and there is no exploitation of the Devdasis as alleged.
- (d) The practise is not protected under article 25 as Devadasi system is an exploitative practise which is not essential as it does not form the foundation of the community.
16. Realising that people have been unable to wake up in the morning in the winters, a mosque started using loudspeakers in reciting Azaan so that the intensity and the range of the sound increases. However, a group of Hindu extremists raised objections contending that the loudspeakers cause nuisance and disturb their sleep. The case reached before the court, where the mosque defended the practise contending that Azaan is one of the foundational practices of Islam and thus protected under article 25 of the Indian Constitution, which has been established before the court. Choose the correct option.
- (a) The court can order prohibition on the use of loudspeakers as such use itself is not protected under article 25.
- (b) The court cannot order prohibition on the use of loudspeakers as Azaan is an essential religious practise which is protected under article 25.
- (c) The court can order prohibition on the use of loudspeakers as essential practices cannot be upheld at the cost of causing nuisance to others.
- (d) The court cannot order prohibition on the use of loudspeakers as court is bound to set examples of tolerance towards the traditions of other religions to preserve secularity of the nation.

Passage (Q.17-Q.21): A Constitution Bench of the Supreme Court ruled in favour of Passive Euthanasia, holding that the Right to Life under Article 21 includes easing the process of dying in case of a terminally ill patient or a person in persistent vegetative state with no hope of recovery. The Court facilitated Passive Euthanasia by allowing enforcement of an 'Advance Directive', which has been synonymously used with the term "living will". In its judgment the Court held, "A failure to legally recognize advance medical directives may amount to non-facilitation of the right to smoothen the dying process and the right to live with dignity."

Passive Euthanasia relates to withdrawal of life support measures or withholding of medical treatment meant for artificially prolonging life. An Advance Directive is a document that persons with deteriorating health or the terminally ill can execute in advance, whereby such a person can choose not to remain in a vegetative state on a life support system if she goes into a state when it will not be possible to express her wishes.

The physician/hospital where the executor has been admitted for medical treatment shall then constitute a Medical Board consisting of the Head of the treating department and at least three experts from different fields. This Medical Board shall visit the patient in the presence of his guardian/close relative and form an opinion whether or not to certify carrying out the instructions of withdrawal or refusal of further medical treatment.

If permission to withdraw medical treatment is refused by the Medical Board, the executor of the Advance Directive or his family members or even the treating doctor or the hospital staff can approach the High Court by way of writ petition under Article 226 of the Constitution. If such an application is filed before the High Court, the Chief Justice of the said High Court shall constitute a Division Bench to decide upon grant of approval or to refuse the same. The High Court will be free to constitute an independent Committee consisting of three doctors or medical practitioners. An individual may withdraw or alter the Advance Directive at any time she has the capacity to do so, and by following the same procedure as provided for recording of Advance Directive. Withdrawal or revocation of an Advance Directive must be in writing.

17. As per the above judgment of the Supreme Court, which of the following can be logically deduced?
- (a) Right to life under article 21 includes right to die.
 - (b) The court recognizes passive euthanasia under Article 21 but fails to enforce it in order to prevent its abuse.
 - (c) Right to life includes an unrestricted smoothening of the process to die.
 - (d) Right to life includes smoothening of the process to die subject to certain conditions.
18. Ashish, a businessman, has been in a vegetative state for the past 5 years as a consequence of a car accident. His entire body has paralyzed, however, he can listen to others and can shed tears. His family has been convinced by the doctors to make an application for passive euthanasia, before the appropriate authority. After his due examination, passive euthanasia was granted by the committee. All the machines and life support system, Ashish was subjected to, were removed and everyone prayed an easy death for him. Ashish had not died for several months and suffered due to absence of a life support system. The doctors decided to administer fatal drugs to Ashish, to give him easy death. Decide whether the act of injecting drugs was valid in the above context.
- (a) Injecting drugs was valid, as the smoothening the dying process has now been recognized as a fundamental right in the constitution, which was granted after demand for necessary reliefs by the family of Ashish.
 - (b) Injecting drugs was valid, as the order to proceed with the euthanasia was granted after due examination of Ashish and complying with all the procedural requirements.
 - (c) Removing the life support system was invalid, as the same did not smoothen the dying process for Ashish and he instead suffered as a consequence of this act.
 - (d) Injecting drugs was invalid, as passive euthanasia which was permitted only includes withdrawing of life support system and not administering drugs for causing death..
19. Asad, after reaching great heights and earning a lot of fortune, is now ready to leave the business for his family, and is thus looking for an heir. He gradually realized that to claim his property, his family members have already made several attempts to kill him or affect his health. This made Asad think of withdrawing the advance directive that he has signed, and express his wish to his lawyer. Before the lawyer could complete the papers, Asad had a paralysis attack due to some drug injected in his body. He has been in vegetative state for over ten years now. His will cannot come to force until he dies, so the family makes an application for grant of passive euthanasia on the basis of the directive. The medical board has approved so and all the formalities have been completed. The lawyer makes a representation before the court, to contest the euthanasia on grounds of directive been withdrawn. Which of the following is the correct option?
- (a) Passive euthanasia cannot be granted on the basis of the advance directive, as Asad will to withdraw it before he went into vegetative state and thus the same cannot be relied upon after its withdrawal.
 - (b) Passive euthanasia can be granted on the basis of the advance directive, as the directive was not duly withdrawn in written, as warranted by law.
 - (c) Passive euthanasia cannot be granted on the basis of the advance directive, as the vested interest of the family for making such an application is prima facie evident and the board shall take the same into consideration.
 - (d) Passive euthanasia can be granted on the basis of the advance directive, as the same is the absolute determinant of the intentions of Asad and not the mere statements of his lawyer.
20. Samita and Aruna are colleagues at a reputed hospital in Mumbai. One day on Aruna's night shift, she was strangled by a sweeper and raped, due to the strangulation her brain severely damaged and lost its connection with the rest of her body thus making her immobile for the rest of her life. Samita, as her nurse, takes care of Aruna who has been in vegetative state for over 30 years. After the court read right to easing the dying process into right to life, Samita applied for grant of passive euthanasia to Aruna, and filed writ before the High Court after decline of request by the Board. The Union of India being the respondent in the case questions the locus standi of Samita for filing the application and argues that only the family of Aruna can make such an application. Choose the correct option:

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- (a) Samita cannot make a petition, as only friends and family under the guidelines can make such an application requesting grant of passive euthanasia for a person.
- (b) Samita cannot make a petition, as the board has already rejected it once and assailing the order further would be nothing but overburdening the judiciary.
- (c) Samita can make a petition, as along with the family even the medical staff of the hospital can make a writ petition before a high court against the board's order.
- (d) Samita can make a petition, as she had been friends with Aruna before she went into vegetative stage which gives her the authority to make a petition on Aruna's behalf.
21. When Rahim was immobile and out of senses, his doctor made an application to the hospital for constituting a Medical Board. The board rejected the request, as Rahim was recovering, however, slowly. The doctor filed a writ before the High Court, which after listening to both the sides directly granted the request. The order of the division bench has been assailed by an appeal in the Supreme Court, on the ground that the High Court has not acted lawfully in granting the euthanasia. Decide the lawfulness of the order as per the context above.
- (a) The order of the high court was unlawful, as it could have not have made an order of granting euthanasia directly without constituting a board of three doctors to examine the patient.
- (b) The order of the high court is lawful, as it can grant or decline the request for passive euthanasia, and requirement of constituting the board or committee is purely discretionary.
- (c) The order of the high court is unlawful, as it could not have directed the grant of passive euthanasia without conducting any proper examination of the patient.
- (d) The order of the high court is lawful, as when a petition is made under article 226 of the constitution, the High Court assumes complete authority and exercises unfettered discretion in every matter.