BLOGS

MCQs on Administrative Law for CLAT PG [Part 5]

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Insofar as the argument based on obligation of the Government to issue such a notification is concerned, a clear distinction is to be made between the duty to act in an administrative capacity and the power to exercise statutory function. If a public authority is foisted with any duty to do an act and fails to discharge that function, mandamus can be issued to the said authority to perform its duty. However, that is done while exercising the power of judicial review of an administrative action. It is entirely different from judicial review of a legislative action.

According to de Smith, the following legal consequences flow from the aforesaid distinction:

(i) If an order is legislative in character, it has to be published in a certain manner, but it is not necessary if it is of an administrative nature.
(ii) If an order is legislative in character, the court will not issue a writ of certiorari to quash it, but if an order is an administrative order and the authority was required to act judicially, the court can quash it by issuing a writ of certiorari.
(iii) Generally, subordinate legislation cannot be held invalid for unreasonableness, unless its unreasonableness is evidence of malafide or otherwise shows the abuse of power. But in case of unreasonable administrative order, the aggrieved party is entitled to a legal remedy.
(iv) Only in most exceptional circumstances can legislative powers be sub-delegated, but administrative powers can be sub-delegated.
(v) Duty to give reasons applies to administrative orders but not to legislative orders.

Issuance of a notification under Section 11C of the Act is in the nature of subordinate legislation. Directing the Government to issue such a notification would amount to take a policy decision in a particular manner, which is impermissible. This Court dealt with this aspect recently in the case of Census Commissioner and Ors. v. R. Krishnamurthy. Following discussion from the said judgment is useful and worth a quote:

‘Interference with the policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central Government to issue

Notification regarding the manner in which the census has to be carried out and the Central Government has issued Notifications, and the competent authority has issued directions. It is not within the domain of the Court to legislate… The courts are required to understand the policy decisions framed by the Executive… the courts are not to plunge into policy making by adding something to the policy by way of issuing a writ of mandamus.

Excerpt taken from the M/s Mangalam Organics Ltd v Union of India

Q1. The refusal of courts to issue mandamus directing the Government to frame a notification under a statute is grounded primarily in the idea that:

a. Courts lack jurisdiction over executive action
b. Policy-making lies outside the constitutional role of courts
c. Subordinate legislation enjoys absolute immunity
d. Legislative powers cannot be reviewed

Q2. The distinction drawn in the passage between administrative and legislative functions is significant because it determines:

a. Whether judicial review is available at all
b. Whether reasons must be supplied for the decision
c. Whether Parliament can override the action
d. Whether the action is subject to fundamental rights

Q3. If a subordinate legislative measure appears unreasonable, courts ordinarily invalidate it only when:

a. It lacks popular support
b. It contradicts executive policy
c. It evidences mala fides or abuse of power
d. It causes economic hardship

Q4. The passage implies that a key constitutional concern in compelling the Government to issue a notification is that such compulsion would:

a. Violate separation of powers
b. Undermine parliamentary sovereignty
c. Negate delegated authority
d. Eliminate executive discretion

Q5. Which of the following best captures why certiorari is generally unavailable against legislative action?

a. Legislative acts are immune from constitutional scrutiny

b. Legislative acts do not involve adjudication of rights

c. Legislative acts are politically sensitive

d. Legislative acts operate prospectively

Q6. The reference to Census Commissioner v. R. Krishnamurthy reinforces the proposition that courts should:

a. Ensure uniformity in executive policy

b. Replace administrative judgment in technical matters

c. Restrain themselves from entering policy domains

d. Compel executive transparency

Q7. The passage treats subordinate legislation as distinct from administrative orders primarily because it:

a. Is issued by political executives

b. Involves rule-making rather than case-specific decisions

c. Is always published in the Gazette

d. Affects fundamental rights

Q8. The doctrine limiting judicial interference with policy decisions reflects a deeper constitutional commitment to:

a. Parliamentary supremacy

b. Federal autonomy

c. Institutional competence

d. Popular sovereignty

Q9. The idea that legislative powers can be sub-delegated only in exceptional circumstances is rooted in the concern that:

a. Delegation dilutes democratic control

b. Sub-delegation causes administrative delay

c. Courts lose supervisory jurisdiction

d. Policy becomes inflexible

Q10. Which of the following inferences best aligns with the passage's understanding of judicial review?

a. Courts may direct outcomes but not methods

b. Courts supervise legality, not wisdom

c. Courts replace administrative discretion

d. Courts ensure policy uniformity

Q11. The refusal of courts to compel the executive to frame rules under an enabling statute primarily reflects which constitutional idea?

a. Parliamentary supremacy

b. Executive privilege

c. Functional separation of powers

d. Federal autonomy

Q12. When a statute uses permissive language such as "may" in relation to rule-making, the court ordinarily interprets this as:

a. Creating a mandatory duty upon the executive

b. Grantting conditional discretion subject to judicial timelines

c. Conferring policy discretion on the executive

d. Imposing a constitutional obligation to act

Q13. Judicial intervention in subordinate legislation is most justified when:

a. The rule causes economic hardship

b. The court disagrees with policy priorities

c. The rule travels beyond the scope of the parent Act

d. The rule is politically unpopular

Q14. The distinction between "power to legislate" and "duty to legislate" is crucial because it determines whether:

a. Parliament can amend the Constitution

b. Courts may issue directions to frame rules

c. Executive action is immune from review

d. Delegation becomes unconstitutional

Q15. Which of the following best captures the court's constitutional posture towards executive inaction in rule-making?

a. Inaction is always arbitrary

b. Inaction is immune from all scrutiny

c. Inaction may be reviewed only when it defeats the statute's purpose

d. Inaction is equivalent to repeal of the statute

Answers

1. Correct Answer: B – Policy-making lies outside the constitutional role of courts

Explanation: Mandamus cannot be issued to compel the executive to exercise legislative or policy discretion. Framing a notification under a statute is a form of delegated legislation. Courts supervise legality, not the content or timing of policy choices, which constitutionally belong to the executive.

2. Correct Answer: A – Whether judicial review is available at all

Explanation: The administrative–legislative distinction determines the intensity of review. Administrative decisions are amenable to full judicial scrutiny, while legislative functions—primary or delegated—are reviewed only on limited grounds such as lack of power, arbitrariness, or mala fides.

3. Correct Answer: C – It evidences mala fides or abuse of power

Explanation: Courts do not test the "wisdom" of subordinate legislation. Unreasonableness becomes a ground of invalidation only when it crosses into arbitrariness, colourable exercise, or abuse of power, not merely because hardship results.

4. Correct Answer: A – Violate separation of powers

Explanation: Compelling the executive to legislate would collapse the constitutional boundary between adjudication and governance. The separation of powers requires courts to respect that rule-making belongs to the executive under legislative delegation.

5. Correct Answer: B – Legislative acts do not involve adjudication of rights

Explanation: Certiorari lies to quash quasi-judicial determinations affecting rights. Legislative acts create norms of general application and do not decide individual rights, making certiorari conceptually inapposite.

6. Correct Answer: C – Restrain themselves from entering policy domains

Explanation: Census Commissioner v. R. Krishnamurthy underscores judicial self-restraint in policy matters, particularly where technical or expert assessment is involved. Courts lack institutional competence to substitute policy judgment.

7. Correct Answer: B – Involves rule-making rather than case-specific decisions

Explanation: Subordinate legislation lays down norms of general application. Administrative orders apply law to specific facts. This structural difference explains why rule-making attracts narrower judicial control.

8. Correct Answer: C – Institutional competence

Explanation: Judicial restraint in policy reflects recognition that different branches possess different capacities. Courts are suited to adjudication, not governance. Respecting institutional roles preserves constitutional balance.

9. Correct Answer: A – Delegation dilutes democratic control

Explanation: Excessive sub-delegation risks distancing law-making from elected accountability. The doctrine protects democratic legitimacy by ensuring that essential legislative choices remain with the legislature or the primary delegate.

10. Correct Answer: B – Courts supervise legality, not wisdom

Explanation: Judicial review is concerned with power, process, and purpose. It does not assess whether a policy is good or bad. The court's role is to ensure that authority is exercised lawfully and constitutionally, not optimally.

11. Correct Answer: C – Functional separation of powers

Explanation: Courts refrain from directing the executive to frame rules because governance functions are constitutionally allocated. Rule-making is an executive-legislative function. Judicial compulsion would collapse the boundary between adjudication and administration, violating functional separation.

12. Correct Answer: C – Conferring policy discretion on the executive

Explanation: The use of "may" ordinarily signals discretion. It indicates that the legislature has left the timing, manner, and necessity of rule-making to executive judgment. Courts respect this legislative choice unless non-exercise frustrates the statute.

13. Correct Answer: C – The rule travels beyond the scope of the parent Act

Explanation: Subordinate legislation is vulnerable when it exceeds the authority granted by the enabling statute. Judicial review is concerned with legality—whether the delegate has stayed within bounds—not with the desirability of the policy.

14. Correct Answer: B – Courts may issue directions to frame rules

Explanation: If a statute imposes a *duty* to legislate, courts may enforce performance. But where only a *power* is conferred, courts cannot convert discretion into obligation. The distinction defines the limits of mandamus.

15. Correct Answer: C – Inaction may be reviewed only when it defeats the statute's purpose

Explanation: Executive inaction is not per se unconstitutional. However, if failure to frame rules renders the statute nugatory or defeats legislative intent, courts may intervene to prevent frustration of the law, while still avoiding policy substitution.