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We are pleased to share that our latest research book is being published under the title:

“85 FAQs on Conservation of Foreign Exchange and Prevention of Smuggling Activities / COFEPOSA (Amendment) Act, 1976”

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2. *Prevention of Money Laundering Act (PMLA), 2002*
3. *FEMA, COFEPOSA, and other important statutes*

(II) Indian Enforcement Agencies

1. *Enforcement Directorate (ED)*
2. *Directorate of Revenue Intelligence (DRI)*
3. *Central Bureau of Investigation (CBI)*
4. *National Investigation Agency (NIA)*
5. *Serious Fraud Investigation Office (SFIO)*
6. *Directorate General of GST Intelligence (DGGI)*
7. *Directorate General of Income Tax (Investigation) and other agencies*

(III) Indian Regulatory Authorities

1. *International Financial Services Centres Authority (IFSCA)*
2. *Reserve Bank of India (RBI)*
3. *Securities and Exchange Board of India (SEBI)*
4. *Financial Intelligence Unit – India (FIU-IND)*
5. *National Company Law Tribunal (NCLT)*
6. *Central Vigilance Commission (CVC)*
7. *Intelligence Bureau (IB)*
8. *Research and Analysis Wing (R&AW)*
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Your comments and observations will be highly appreciated.

With warm wishes

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Dear Friend

I am publishing Research book under head 85 FAQs on Conservation of Foreign Exchange and Prevention of Smuggling Activities / COFEPOSA (Amendment) Act, 1976

This Research book is published under our awareness mission for Residents and Non-Residents for knowing about Conservation of Foreign Exchange and Prevention of Smuggling Activities COFEPOSA (Amendment) Act, 1976. COFEPOSA was enacted in 1974 to provide for preventive detention of persons involved in foreign exchange violations and smuggling activities to protect India's economy and foreign exchange resources. This research book's publication is inspired from thought process of Honorable Prime Minister of India.

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● ***With best wishes from CA. Satish Agarwal, New Delhi*** ●



85 FAQs on COFEPOSA (Amendment) Act, 1976

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Profile of Publisher for 85 FAQs on COFEPOSA (Amendment) Act, 1976



85 FAQs on COFEPOSA (Amendment) Act, 1976

Chapter - I - Preface of COFEPOSA Act, 1974

1. What is COFEPOSA Act, 1974?

- (i) *The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 was enacted by the Indian Parliament in 1974 during the Prime Ministership of Indira Gandhi.*
- (ii) *The Act was enacted with the objective of conserving foreign exchange and preventing smuggling activities, which were considered harmful to the country's economic stability.*
- (iii) *The COFEPOSA Act functioned as an economic counterpart to the preventive detention law, namely the Maintenance of Internal Security Act (MISA) enacted in 1971.*
- (iv) *The Maintenance of Internal Security Act (MISA) was repealed in 1978 after the end of the Emergency period, but the COFEPOSA Act, 1974, including amendments such as the COFEPOSA (Amendment) Act, 1976, continues to remain in force.*
- (v) *Under the COFEPOSA Act, the appropriate government (Central or State Government) is required to constitute an Advisory Board to review cases of preventive detention and provide recommendations to the government.*
- (vi) *The Advisory Board performs functions in accordance with Article 22(4)(a) and Article 22(7)(c) of the Constitution of India, which relate to safeguards and procedures concerning preventive detention.*

2. What are Objects of COFEPOSA Act, 1974?

- (i) **Preventing smuggling and conserving foreign exchange**
 - The Act was enacted to **prevent smuggling activities** and **protect India's foreign exchange resources**, which are important for the national economy.
- (ii) **Detention "without" trial in certain cases**
 - It allows the government to **detain individuals "without" a regular court trial** (preventive detention) if they are suspected of activities like smuggling or illegal foreign-exchange dealings that could harm the economy.
- (iii) **Power to issue detention orders**
 - **Detention orders** can be issued by:
 - (a) **The Central Government,**
 - (b) **State Governments**
 - (c) **Officers specifically empowered** by these governments.

3. What are Key provisions under COFEPOSA Act, 1974?

- (i) **Detainees are to be informed about grounds for their detention within 5 days.**
 - Under **Article 22(5)** and the **COFEPOSA Act**, the detained person must be informed of the grounds **as soon as possible**, ordinarily **within 5 days** of detention. In **exceptional circumstances**, this can be extended to **15 days**.
- (ii) **Advisory Board is required to review the detention's orders.**
 - According to **Article 22(4)**, an **Advisory Board (usually consisting of High Court judges)** reviews preventive detention cases to determine whether **sufficient cause for detention exists**.
- (iii) **Govt. is required to act based on Advisory Board's report for accessing "sufficient" cause of detention.**
 - (a) **The Advisory Board submits its opinion** to the government.
 - (b) **If Board finds no sufficient cause, the government must release detainee.**



- (iv) **Detained person is “not” permitted for seeking legal representation when matter is “before” Advisory Board.**
- (a) The detainee **has no absolute right to legal representation** before the Advisory Board.
- (b) However, if the **government is represented by a lawyer**, courts (e.g., in **A.K. Roy v. Union of India**) have held that **denying the detainee legal representation may violate fairness**. So, the statement is “not” **strictly correct**.
- (v) **COFEPOSA Act, 1974 was passed on Dec 13, 1974 and specified in 9th Schedule of Constitution of India (CoI) to protect “certain” laws from being challenged on the grounds of violating fundamental rights.**
- (a) The **COFEPOSA Act** was indeed enacted in **1974** to combat **smuggling and foreign exchange violations**.
- (b) However, it is “not” **placed in the Ninth Schedule of the Constitution of India**.
- (c) The Ninth Schedule was originally created by the **First Amendment to the Constitution of India** mainly to protect **land reform laws**, “not” COFEPOSA.

4. What is short title, extent and commencement of COFEPOSA Act, 1974 (Sec-1)?

(i) **Applicability Area**

- (a) The COFEPOSA Act extends to the **whole of India**, including Jammu and Kashmir (**J&K**).
- (b) Even though J&K previously had special constitutional provisions under **Article 370 of the Constitution of India**, this Act was specifically made applicable to the entire country.

(ii) **Date of Enforcement**

- The Act **came into force on 13 December 1974** after being enacted by the Parliament of **India**.



● **Definitions under COFEPOSA Act, 1974** ●

5. Who is Appropriate Government (Sec-2(a))?

- (i) **The Appropriate Government can be:**
- (a) **Central Government**
 - (b) **State Government**
 - (c) **Officers specially empowered by the Central or State Government.**
- (ii) **Specific officers who may be empowered**
- **Under Section 3 of COFEPOSA, detention orders may be issued by:**
 - (a) **Central Government, or**
 - (b) **State Government, or**
 - (c) **An officer of the Central Government “not” below the rank of Joint Secretary, specially empowered by the Central Government, or**
 - (d) **An officer of the State Government “not” below the rank of Secretary, specially empowered by the State Government.**
- (iii) **Meaning of “Appropriate Government”**
- **The Appropriate Government depends on who issued the detention order:**
 - (a) **If the order is issued by the Central Government or its empowered officer, the Central Government is the appropriate government.**
 - (b) **If the order is issued by the State Government or its empowered officer, the State Government is the appropriate government.**
- (iv) **Purpose of this concept**
- **The Appropriate Government is responsible for:**
 - (a) **Reviewing detention orders**
 - (b) **Confirming or revoking detention**
 - (c) **Referring the case to the Advisory Board**
 - (d) **Handling representations of the detenu.**



6. What are Detention's orders (Sec-2(b))?

- (i) **Section 3 of COFEPOSA Act, 1974 empowers the Central Government, State Government, or specified officers to issue orders for preventive detention.**
- (ii) **Purpose of Section 3 Detention**
 - **A person may be detained to prevent them from:**
 - (a) **Smuggling goods**
 - (b) **Abetting smuggling**
 - (c) **Engaging in transporting, concealing, or dealing with smuggled goods**
 - (d) **Activities that affect foreign exchange conservation**
- (iii) **Orders issued under Sec. 3 of COFEPOSA are legally treated as detention orders.**

7. Who is Foreigner (Sec-2(c))?

- (i) **Anyone "without" Indian citizenship is treated as a foreigner under Foreigners Act, 1946. It includes:**
 - (a) **Tourists or visitors from other countries**
 - (b) **Foreign workers or students in India**
 - (c) **Stateless persons present in India**
- (ii) **Foreigners Act, 1946 empowers the Government to regulate entry, stay, movement, and departure of foreigners in India.**

8. What are Indian customs waters (Sec-2(d))?

- (i) **Indian customs waters mean:**
 - (a) **The waters extending into the sea up to the limit of the contiguous zone of India, and**
 - (b) **Includes any bay, gulf, harbour, creek, or tidal river.**
- (ii) **Distance Limit**
 - **The contiguous zone of India extends up to 24 nautical miles from the baseline of the coast.**

(iii) **Purpose of this Definition**

- This definition allows **customs authorities to exercise control and enforcement** i.e. preventing smuggling **beyond territorial waters** but within the contiguous zone.

9. What is Smuggling (Sec-2(e))?

- (i) Smuggling is **to include an activity as defined under sec 2 (39) of Customs Act, 1962 (52 of 1962) and "all" its grammatical variations and cognate expressions**
- (ii) "Smuggling" means **any act or omission that makes goods liable to confiscation under Section 111, for imported goods or Section 113, for exported goods of Custom Act, 1962.**
- (iii) **Illegally imports or exports goods, conceals them, mis-declares them, or avoids customs duty, and that action makes the goods liable to confiscation, it is considered smuggling.**

10. What is State Govt. (Sec-2(f))?

- (i) **State Government:**
- (a) **Each state in India has its own government with a Governor as the constitutional head and a Chief Minister leading the elected government.**
- (b) **States have their own legislature and significant autonomy under the Indian Constitution under Part VI, Articles 152–237.**
- (ii) **Union Territory (UT) Administration:**
- (a) **Union Territories are directly governed by the Central Govt. of India.**
- (b) **Most UTs "don't" have a full-fledged legislature, "except" Delhi and Puducherry.**
- (c) **The President of India appoints an Administrator or Lieutenant Governor to oversee administration in a UT.**



- (d) *The Administrator acts as the executive authority on behalf of the Central Government, similar to a Governor in a state, but with powers largely under the Union Government's control.*

11. Who are Eligible for issuing detention's orders (Sec-3)?

(i) **Competent Authority**

- (a) *Only the Central Government or an officer specially authorized by it can issue detention orders.*
- (b) *Practically, this power is delegated to certain high-ranking officials in agencies involved with smuggling and foreign exchange violations.*

(ii) **Authorized Officers Typically**

- (a) *Director or Deputy Director of the Directorate of Revenue Intelligence (DRI)*
- (b) *Commissioners of Customs and Preventive Service*
- (c) *Officers of customs, excise, and other central government enforcement agencies "specifically" empowered by notification.*

(iii) **Purpose of Detention**

- (a) *To prevent a person from acting in a manner prejudicial to the conservation of foreign exchange or prevention of smuggling.*
- (b) *Detention is preventive "not" punitive. It is distinct from prosecution under the Indian Penal Code.*

12. What Areas are covered for issuing detention's orders (Sec-3(1))?

(i) **Smuggling-Related Activities**

- (a) *Engaging in, abetting, or being connected with smuggling of goods.*
- (b) *Smuggling includes import or export of goods "without" proper authorization or in violation of law, including customs violations.*

(ii) **Foreign Exchange Violations**

- *Acting in a manner prejudicial to the conservation of foreign exchange resources of India like:*

- (a) *Illegal remittance or transfer of foreign currency outside India.*
- (b) *Hoarding foreign exchange or manipulating currency transactions unlawfully.*
- (iii) **Threat to National Economy**
 - (a) *Conduct that could adversely affect India's economic stability like:*
 - (b) **Import-export regulation**
 - (c) **Foreign exchange reserves**
 - (d) **Revenue from customs duties**
- (iv) **Preventive Nature**
 - *Unlike criminal prosecution, **detention under Sec 3(1) is preventive like:***
 - (a) *The person may "not" have been convicted yet, but their actions pose a potential threat.*
 - (b) *Detention is intended to stop person from continuing harmful activities.*

13. What Areas are "not" covered for issuing detention's orders (Sec-3(1))?

- *Detention order shall "not" be made on any of grounds specified under section 3(1) of COFEPOSA Act, 1974 in "certain" circumstances like:*
 - (i) *When detention order is "already" made under section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988*
 - (ii) *When detention order is "already" made under section 3 of Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988*

14. What is Timeline for forwarding report to Central govt. (Sec-3(2))?

- (i) *State govt. or officer empowered by State govt. is required to forward report against detention's orders issued under section 3 of COFEPOSA (Amendment) Act, 1976 to Central govt. within 10 days*
- (ii) *Central govt. is empowered to review the detention's orders and to decide to allow to continue or to revoke them.*

- (iii) **Officer empowered by Central govt. is “not” required to forward report against detention’s orders to Central govt.**

15. What are Rights of detainee under article 22(5) (Sec-3(3))?

- (i) **Right to Make Representation to the Detaining Authority**
- (a) The detainee has the **right to make a representation against detention order to the authority who issued the order** (the detaining officer).
- (b) That authority **must consider the representation**. Failure to do so violates the detainee’s constitutional rights.
- (ii) **Additional Right to Represent to Government**
- Apart from the detaining authority, the detainee can also **submit representation to the Central Government or State Government**, depending on who empowered the officer issuing the detention order.
- (iii) **Right to be Informed of this Representation Right**
- (a) The detainee **must be informed of the right to make representation** when the **grounds of detention are served**.
- (b) If this **right is “not” communicated**, it amounts to **denial of the constitutional safeguard under Article 22(5)**.
- (iv) **Right to Effective Representation**
- The detainee must receive **legible copies of “all” relevant documents and grounds relied upon** so that they can make an effective representation against detention.
- (v) **Constitutional Basis**
- These rights flow from **Article 22(5) of the Constitution of India** like:

(a) Communication of **grounds of detention**, and

(b) **Earliest opportunity to make a representation** against the detention order.



16. What is Execution of detention's orders (Sec-4)?

- **Detention's orders are required to be executed at "any" place in India in accordance with procedures provided for execution of warrants of arrest under Code of Criminal Procedure (CCP) 1973 (2 of 1974) or Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 like:**
 - (i) **Detention order executed like a warrant of arrest**
 - **A detention order issued under COFEPOSA shall be executed in the same manner as a warrant of arrest under the Code of Criminal Procedure, 1973 (CrPC) or Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023.**
 - (ii) **Who can execute it**
 - (a) **The order may be executed by any police officer or authorized officer.**
 - (b) **The government may direct a particular officer or authority to execute it.**
 - (iii) **Execution anywhere in India**
 - **The detention order can be executed at any place in India, not just in the state where it was issued.**
 - (iv) **Purpose of the provision**
 - **To ensure that a person against whom a preventive detention order is passed can be apprehended quickly and effectively, similar to a criminal arrest.**

17. What are Duties of detainee (Sec-5)?

- **A person detained under section 5 of COFEPOSA (Amendment) Act. 1976 is required to comply "certain" conditions imposed by the government:**
 - (i) **Obey conditions of detention**
 - (a) **The detainee is required to follow "all" conditions fixed by the Central or State Government for detention.**
 - (b) **These conditions may for maintenance, discipline, interviews, and communication.**

(ii) **Follow rules of discipline in the detention place**

- (a) The **detainee** is required to **comply with the rules of the detention centre, jail, or notified place.**
- (b) Any **breach of discipline may attract punishment** according to the prescribed rules.

(iii) **Restrictions on communication and interviews**

- The **detainee** is required to **follow restrictions** placed by authorities like:
 - (a) For **meeting** visitors
 - (b) For **communicating** with others
 - (c) For **sending** or receiving **letters**

(iv) **Compliance with transfer orders**

- The **detainee** is required to **accept transfer from one detention place to another**, including transfer **from one state to another**, if ordered by the appropriate government.

(v) **Follow maintenance conditions**

- The **detainee** is required to **adhere to conditions for food, accommodation, health, and general maintenance as prescribed by the govt.**

18. What are Duties of State govt. for removing from 1st place to 2nd place (Sec-5

- **State govt.** is “not” **permitted for removing detainee from 1st place to 2nd place** “without” **consent** of 2nd place’s state govt. like:
 - (i) **Issue a Proper Transfer Order**
 - (a) The transfer **order** is required **to be a written order** of the State Government or an authorized officer.
 - (b) The transfer **order** is required **to “clearly” mention the new place** of detention.
 - (ii) **Maintain Legality of Detention**
 - (a) The transfer **order** is “not” **permitted to change the legality of the original detention order.**

- (b) *The detainee is required to remain detained under the same COFEPOSA order.*
- (iii) **Inform the Authorities in Charge**
 - *The officer in charge of the new detention place is required to receive the transfer order and accept custody.*
- (iv) **Ensure Safe Custody During Transfer**
 - *The State Government is required to ensure the detainee's securely and lawfully transported.*
- (v) **Respect Detenué's Rights**
 - (a) *Transfer order is "not" permitted to deny the detainee's right to make representation against detention.*
 - (b) *Transfer order is required to allow the legal remedies and communication with family in reasonable restrictions.*
- (vi) **Follow Constitutional Safeguards**
 - *Requirements under Article 22(5) of the Constitution of India are required to be obeyed like:*
 - (a) *Communication of grounds of detention*
 - (b) *Opportunity to make representation.*
- (vii) **Report to the Central Government (if required)**
 - *In "certain" cases the State Government is required to inform the Central Government about detention orders and related actions.*

19. Whether Detention's grounds are dividable (Sec-5A)?

- (i) **Grounds of Detention are divisible**
 - (a) *Detention's orders made under section 3(1) of COFEPOSA (Amendment) Act, 1976 with minimum 2 grounds shall be deemed to have made "separately" on each ground*



(b) When **1 or 2 grounds are found to be invalid**, vague, irrelevant, or “non-existent” then **detention’s order will “not” automatically become invalid** where “remaining” grounds are **valid and sufficient** to justify the detention.

(ii) **Legal Principle**

- **Section 5A under COFEPOSA (Amendment) Act, 1976 is introduced as doctrine of “severability” of grounds.** Hence “each” ground is supporting preventive detention individually, “not” as composite.

(iii) **Objects of inserting Section 5A**

- **Section 5A under COFEPOSA (Amendment) Act, 1976 is inserted to protect detention’s orders from being quashed “entirely” due to minor defects in 1 ground i.e. preventive detention cases involving smuggling or foreign exchange violations.**

(iv) **Courts judgements on detention’s order are dividable**

- **The principle has been discussed in “certain” cases like:**

- (a) **Prakash Chandra Mehta v. Commissioner and Secretary, Govt. of Kerala**
(b) **State of Gujarat v. Chamanlal Manjibhai Soni**

20. Whether Detention’s orders are invalid with 2 grounds (Sec-5A)?

- **Detention’s orders shall “not” deem to be invalid or inoperative when 1 ground is invalid** where “other” grounds are **valid** like:
 - (i) **1 ground is vague but “other” ground(s) are valid**
 - (ii) **1 ground is “non” existent but “other” ground(s) are existent**
 - (iii) **1 ground is “not” relevant but “other” ground(s) are relevant**
 - (iv) **1 ground is “not” connected but “other” ground(s) are connected**
 - (v) **1 ground is “not” proximately connected but “other” ground(s) are proximately connected** with detained person
 - (vi) **1 ground is invalid for “any” other reason** whatsoever but “other” ground(s) are **valid**

21. Whether Govt. officer is responsible for passing order (Sec-5A)?

- (i) **Govt. officer is “not” responsible for passing order under section 3(1) of COFEPOSA (Amendment) Act, 1976 with minimum 2 grounds**
- (ii) **Govt. officer shall pass order “after” being satisfied when detention’s orders are passed under section 3(1) of COFEPOSA (Amendment) Act, 1976 with minimum 2 grounds**

22. What Detention’s orders are “not” invalid or inoperative (Sec-6)?

- (i) **Detention’s orders shall “not” invalid or inoperative in “certain” circumstances like:**
 - (a) **When “person” to be detained is outside the limit of territorial jurisdiction of govt. officer who is making detention’s orders.**
 - (b) **When “detention place” is outside the limit of territorial jurisdiction of govt. officer who is making detention’s orders**
 - (c) **When “some” detention’s grounds are unclear or vague the order can still stand where other grounds are valid.**
 - (d) **When “particular” ground mentioned actually does “not” existed, the detention order can still be valid where other grounds are valid.**
 - (e) **When “ground” is irrelevant for detention the order can still to continue where other grounds are valid**
 - (f) **When “some” grounds are “not” closely connected to the detention objective, the detention’s order can still to survive**
 - (g) **When “ground” is legally invalid, the detention order can still to operate based on other valid grounds.**
- (ii) **Key Legal principle**
 - **Section 6 of COFEPOSA is establishing the doctrine of “severability” of grounds. Hence “each” ground of detention is treated “separately” and the detention order can survive when “minimum” 1 ground is valid.**



23. What is Govt.'s powers for absconding persons (Sec-7(1))?

- **Section 7(1) of COFEPOSA (Amendment) Act, 1976 is dealing with powers of appropriate govt. for absconding persons against whom a detention order has "already" been issued like:**
 - (i) **Section's application**
 - When the appropriate **Govt. (Central or State)** has reason to believe that a person **against whom a detention order has "already" been passed has absconded or is hiding** where the **detention order can "not" be executed.**
 - (ii) **Appropriate govt.'s powers**
 - (a) The appropriate **govt.** is permitted to **send a written report to a Metropolitan Magistrate (MM) or Judicial Magistrate (JM) 1st Class** where the person ordinarily resides.
 - (b) The appropriate **govt.** is required to **apply provisions under section 82 to 85 of Code of Criminal Procedure (CrCP), 1973** when the **detention order was a warrant issued by the Magistrate.**
 - (iii) **Direction to appear through Official Gazette**
 - Appropriate **govt.** is permitted to **publish an order in the Official Gazette** directing the person to do "certain" things like:
 - (a) To appear **before a "specified" officer**
 - (b) To appear **at a "specified" place**
 - (c) To appear **within a "specified" time**
 - (iv) **Penal provisions' application**
 - Penal provisions are applicable **when person is failed to comply the abovementioned directions** like:
 - (a) Maximum **imprisonment 1 year**, or
 - (b) **Fine**, or
 - (c) **Imprisonment and fine "both".**



- (v) **Appropriate govt.'s powers when person is failed to comply directions**
- (a) **Appropriate govt. is permitted to send report to a Magistrate for absconding person.**
 - (b) **Appropriate govt. is permitted to apply Sec 82 to 85 of CrPC, 1973 when proceedings for proclamation and attachment of property are to be initiated.**
 - (c) **Appropriate govt. is permitted to issue a Gazette notification for directing the person to appear before an officer.**
- (vi) **Supreme Court judgments**
- (a) **2003's judgement in case of Union of India v. Paul Manickam for Limited judicial interference when detenu evades arrest.**
 - (b) **1990's judgement in case of Syed Farooq Mohammad v. Union of India for absconding justifies delay in execution.**
 - (c) **1989's judgement in case of Shafiq Ahmad v. District Magistrate, Meerut for "non" invocation of Section 7 "not" automatically fatal.**
 - (d) **1979's judgement in case of Bhawarlal Ganeshmalji v. State of Tamil Nadu for Delay due to absconding does "not" invalidate detention.**

24. Whether offences are cognizable (Sec-7(2))?

- **"All" offences under sec. 82 to 85 of CCP, 1973 or 87 to 89 of BNSS, 23 are cognizable**
- (i) **Section's application**
- **When offences are for absconding persons where person is failed to comply with the directions to appear against offence committed under section 7(1)(b) of COFEPOSA (Amendment) Act, 1976**
- (ii) **Action against cognizable offences**
- (a) **Police are permitted to register FIR.**

- (b) Police are permitted **to arrest** “without” **warrant**.
 - (c) Police are permitted **to start investigation** “without” **Magistrate’s prior permission**.
- (iii) **Delhi High Court’s judgments of Pawan Gupta v. Union of India (2024)**
- (a) Honorable High Court has **noted that Pawan Gupta is liable for punishment maximum for 1 year or fine because he has failed to comply with the order to appear before authority under section 7(1)(b) of COFEPOSA (Amendment) Act, 1976.**
 - (b) Hence **failure to obey the appearance order** under Section 7(1)(b) **attracts criminal liability and cognizable proceedings** under Section 7(2).
- (iv) **Delhi High Court’s judgments of Mohd. Nashruddin Khan v. Union of India (2020)**
- (a) Honourable Delhi High Court has **explained the scheme of Section 7 COFEPOSA, dealing with absconding persons**
 - (b) Honourable Delhi High Court has **further clarified that “non” compliance with the appearance order** under Section 7(1)(b) **constitutes an offence and Section 7(2) declares it cognizable, allowing police to investigate and arrest “without” warrant**
 - (c) **Section 7(2) of COFEPOSA (Amendment) Act, 1976 is overriding the CrPC and makes the offence cognizable “despite” normal procedural rules.**
- (v) **Kerala High Court’s judgments of Muhammed Faisal v. Union of India (2022)**
- (a) Honourable Kerala High Court has **observed that once the detenu is declared absconding and steps under Section 7 are taken, authorities are permitted to proceed with criminal action for “non” compliance**
 - (b) Honourable Kerala High Court has **relied on earlier precedents explaining the concept of absconding and concealment under Section 7**
 - (c) **Action under Section 7 is valid where the person evades execution of detention order.**

25. What is Combination of Advisory Board (Sec-8)?

(i) **Composition of Advisory Board**

- **The Advisory Board is consisting 3 members like:**
 - (a) **1 Chairman, a person who is or has been a Judge of a High Court.**
 - (b) **2 members, the persons those are qualified to be appointed as Judges of a High Court.**

(ii) **Govt. is to constitute the advisory board**

- **The Central or State Govt. is constituting Advisory Board whenever considered necessary.**

(iii) **Role of the Advisory Board**

- (a) **The Advisory Board is to review detention orders and to decide whether there is sufficient cause to continue detention.**
- (b) **The Advisory Board is to examine the material and to hear the detained persons were considered necessary within 5 weeks from the date of detention when appropriate govt. has referred the detention case**
- (c) **The Advisory Board is required to submit its report within 11 weeks from the date of detention**
- (d) **Appropriate govt. is permitted to confirm or to revoke the detention based on advisory board's opinion**

26. What is Timeline for approaching to Advisory Board (Sec-8)?

(i) **Communication of Grounds of Detention**

- (a) **Generally, detention's grounds are required to be communicated within 5 days from the date of detention under COFEPOSA.**
- (b) **Exceptionally, detention's grounds are required to be communicated within 15 days with recorded delay's reason in writing**

(ii) **Detenu's right to make representation**

- (a) The detenu is permitted **to submit representation** to the Detaining Authority or Central or State Govt. **"after" receiving the grounds.**
- (b) Practically, **lawyers are to file representation** immediately **"after" receiving grounds** to consider **"before"** the Advisory Board hearing.
- (iii) **Reference to Advisory Board (Section 8(b))**
 - **Appropriate Govt. is required to refer** the detention's case **to the Advisory Board within 5 weeks** from the date of detention.
- (iv) **Advisory Board Hearing**
 - The Advisory **Board is reviewing** **"certain" things** like:
 - (a) Detention's **order**
 - (b) Detention's **grounds**
 - (c) Detenu's **representation**
 - The advisory **board is permitted to give opportunity of being heard** to detenu when considered necessary.
- (v) **Advisory Board Opinion**
 - The Advisory **Board is required to give its opinion within 11 weeks** from the date of detention **for sufficient or "not" sufficient detention's cause.**
- (vi) **Actions "after" issuing Advisory Board's opinion**
 - (a) **Appropriate Govt. is permitted to detain "generally" for maximum 1 year** and **"exceptionally" 2 maximum years when sufficient cause is exists**
 - (b) **Appropriate Govt. is required to release when sufficient cause is "not" exists**

27. What is Timeline of Advisory Board for submitting report (Sec-8(c))?

- (i) The Advisory Board is required to submit its **report or opinion within 11 weeks from the date of detention**, stating whether there is **sufficient cause for the detention or not.**
- (ii) For this purpose, **after considering the reference and materials placed before it**, the Advisory Board may **call for further necessary information from the appropriate government or from any concerned person.**

- (iii) *The Advisory Board may permit a personal hearing if it is requested by any concerned person.*

28. What is Difference of opinion (Sec-8(d))?

- (i) *When the members of the Advisory Board differ in their opinions about whether there is sufficient cause for detention, the decision of the majority of the members will be treated as the opinion of the Board.*
- (ii) *The Advisory Board usually consists 3 members when they review the detention order:*
- (a) *When "all" members agree, that becomes the Board's opinion.*
- (b) *When members disagree, the majority view i.e. 2 out of 3 becomes the final opinion.*
- (c) *Hence 2 members agree, the majority opinion supports detention, and that becomes the Board's official recommendation.*
- (iii) *The Advisory Board can still give a final opinion even if there is disagreement.*
- (iv) *The process of reviewing detention orders does not get stuck due to differing views.*

29. What is Legal practitioner's role for detention order (Sec-8(e))?

- *Legal practitioner is "not" permitted to appear "before" Advisory Board on behalf of person against whom detention's orders is issued.*

30. What is Appropriate govt.'s role "after" Advisory Board report (Sec-8(f))?

- (i) *Appropriate govt. is permitted to confirm the detention's order and to continue person's detention for "necessary" period when Advisory Board has found sufficient cause for detention of concerned person*
- (ii) *Appropriate govt. is "not" permitted to confirm the detention's order and to continue person's detention when Advisory Board has "not" found sufficient cause for detention of concerned person*



31. Whether detention is permitted "without" board's opinion (Sec-9(1))?

- (i) **Detention's orders are permitted for maximum 6 months "without" obtaining opinion from Advisory Board when detention's orders are made by Central govt. or "any" officer of Central govt. "not" below the rank of an Additional Secretary to that govt., who is "specially" empowered under section 9(1) by the govt. against concerned person for preventing from "certain" activities like:**
- (a) **Smuggling** of goods
 - (b) **Abetting** smuggling of goods
 - (c) **Engaging** in transporting of smuggling of goods
 - (d) **Concealing** smuggling of goods
 - (e) **Keeping** smuggled goods
- (ii) **Important points for detention "without" board's opinion**
- **Generally, preventive detention is "not" permitted beyond 3 months "without" Advisory Board's opinion under Article 22 of Constitution of India (CoI)**
- (ii) **Exceptionally, preventive detention is permitted beyond 3 months but "not" permitted beyond 6 months "without" Advisory Board's opinion under Article 22 of CoI for preventing from "certain" activities like:**
- (a) **Smuggling** of goods
 - (b) **Abetting** smuggling of goods
 - (c) **Engaging** in transporting of smuggling of goods
 - (d) **Concealing** smuggling of goods
 - (e) **Keeping** smuggled goods
- (iii) **Maximum detention with Advisory Board's opinion:**
- (a) **Maximum 1 year from date of detention when section 9 of COFEPOSA (Amendment) Act, 1976 is "not" applicable**
 - (b) **Maximum 2 years from date of detention when section 9 of COFEPOSA (Amendment) Act, 1976 is applicable**



32. What are Circumstances for detention “without” board’s opinion (Sec-9(1))?

- **When Central govt. or “any” officer of Central govt. “not” below the rank of an Additional Secretary to that govt., who is “specially” empowered under section 9(1) by the govt. is satisfied that concerned person is likely to be involved in “certain” activities like:**
 - (i) **When concerned person is smuggling or likely to smuggle goods into or out of or through “any” area highly vulnerable to smuggling**
 - (ii) **When concerned person is abetting or likely to abetting smuggling of goods into or out of or through “any” area highly vulnerable to smuggling**
 - (iii) **When concerned person is engaging or likely to engage in transporting into or out of or through “any” area highly vulnerable to smuggling**
 - (iv) **When concerned person is concealing or likely to engage in concealing into or out of or through “any” area highly vulnerable to smuggling**
 - (v) **When concerned person is keeping smuggled goods or likely to keep smuggled goods into or out of or through “any” area highly vulnerable to smuggling**

33. What Areas are highly vulnerable for smuggling (Sec-9(1))?

- (i) **Indian customs waters contiguous to:**
 - (a) Goa
 - (b) Gujarat
 - (c) Karnataka
 - (d) Kerala
 - (e) Maharashtra
 - (f) Tamil Nadu
 - (g) Union territories of Daman and Diu and Pondicherry
- (ii) **Inland area 50 kilometers in width from the coast of India falling within territories of:**
 - (a) Goa
 - (b) Gujarat



- (c) Karnataka
 - (d) Kerala
 - (e) Maharashtra
 - (f) Tamil Nadu
 - (g) Union territories of Daman and Diu and Pondicherry
- (iii) **Inland area 50 kilometers in width from the India-Pakistan border in:**
- (a) Gujarat
 - (b) Jammu and Kashmir
 - (c) Punjab
 - (d) Rajasthan
- (iv) **Customs airport of Delhi**
- (v) **Indian customs waters or inland area "not" exceeding 100 kilometers in width from "any" other coast or border of India or other customs station as Central govt. may notify through notification in Official Gazette, specify in this behalf vulnerability of waters or area or customs station for smuggling.**

34. What is Airport (Sec-9(1) explanation)?

- **Airport to include a place as defined under section 7(a) of Custom Act, 1962 like:**
 - (i) **An airport is officially notified by the Central Govt. under the Customs Act, 1962**
 - (ii) **Where customs officers are posted and**
 - (iii) **Where import or export clearance of goods and passengers takes place.**

35. What is Customs station (Sec-9(1) explanation)?

- (i) **Customs station is to include a place as defined under section 2(13) of Custom Act, 1962 (52 of 1962) like:**
 - (a) **Customs port,**
 - (b) **Customs airport**
 - (c) **Land customs station.**
- (ii) **Customs station is officially notified areas where customs officers are checking and clearing the imported or exported goods and passengers like:**

- (a) **Sea ports** i.e. Mumbai Port and Chennai Port
- (b) **Airports handling international cargo or passengers** i.e. Delhi customs airport
- (c) **Land border checkpoints** i.e. Attari border customs station
- (iii) Customs station is to include the **areas where “certain” activities are being carried** like:
 - (a) Where **goods entering or leaving** India
 - (b) Where **customs duty is assessed**
 - (c) Where **smuggling can be occurred**
- (iv) Customs station is to include the identifying **areas declared by Central govt.** through notification **for highly vulnerable to smuggling**

36. What is Timeline for detention (Sec-10)?

- (i) Timeline for detention is minimum **3 months and maximum 2 years from date of detention or “specified period” whichever is later**
- (ii) Appropriate **govt. is permitted to remove or modify the detention’s order at “any” earlier time**
- (iii) **Preventive Detention**
 - (a) The COFEPOSA (Amendment) Act, 1976 is **allowing** preventive detention **of a person suspected of being involved in smuggling** or foreign exchange violations.
 - (b) The **maximum period** of preventive detention is **2 years and minimum 3 months.**
- (iv) **Authority for Detention**
 - (a) Detention is **ordered by the Appropriate Govt.** or an authorized officer.
 - (b) **Generally,** District Magistrate (**DM**) or Divisional Commissioner (**DC**) or an **officer** of Joint Secretary rank or above is **permitted to issue detention order.**

(v) **Initial Detention**

- (a) **Initial preventive detention for minimum 3 months** is permitted “without” **Advisory Board’s opinion** under **section 10** of COFEPOSA (Amendment) Act, 1976
- (b) Preventive detention for 3 months is **to be spent in a jail or any place** authorized by the **Appropriate govt.**

(vi) **Extended detention**

- (a) **Advisory Board**, headed by a **High Court judge or retired High Court judge** is **permitted to extend detention “after” 3 months**
- (b) **Appropriate govt.** is permitted **to extend detention for maximum 12 months** from the date of detention based on **Advisory Board’s opinion**

(vii) **Review and Legal Safeguards**

- (a) **Advisory Board** to ensures that **detention is “not” arbitrary.**
- (b) The **detainee is permitted to make representations** to the **appropriate govt. for limited judicial review** primarily on **legality of detention**, “not” on the merits.

37. What is Specified Period (Sec-10 explanation)?

- (i) The specified period is **to include the period when Proclamation of Emergency** is issued i.e. **on Dec 03, 1971** and **Proclamation of Emergency** is issued **on June 25, 1976.**
- (ii) The specified period is referred for **a historical timeframe.** Hence, it’s “not” a **current detention period** that changes with every case

38. What is Detention “before and after” COFEPOSA (Amendment) Act, 1976 (Sec-10A (1&2))?

- (i) **Maximum detention “before” COFEPOSA (Amendment) Act, 1976**
 - (a) Maximum detention is **permitted for 1 year** against **smuggling or foreign exchange violations.**

- (b) **1-year** maximum detention is **permitted subject to review by Advisory Board**. Hence **detention is “not” permitted beyond 3 or 6 months** as case may be “without” Advisory **Board’s review**
- (ii) **Maximum detention “after” COFEPOSA (Amendment) Act, 1976**
- (a) **2 years** maximum detention is **permitted** against smuggling or foreign exchange violations **in “certain” serious cases** like:
- **Smuggling** rackets
 - **Foreign exchange** rackets
 - **Smuggling** involving high value transactions
 - **Habitual** offenders
- (b) **2 years** maximum detention is **permitted subject to review by Advisory Board**. Hence **detention is “not” permitted beyond 3 or 6 months** as case may be “without” Advisory **Board’s review**.

39. What is Revocation of detention’s order (Sec-11)?

- **Central or State Govt.** is permitted to **revoke a detention order at any time** like:
 - (i) Beside the detention **order** is made **by a State Govt.**
 - (ii) Beside the detention **order** is made **by a Central Govt.**
 - (iii) Beside the detention **order** is made **by an AO** i.e. District Magistrate (**DM**)
 - (iv) Beside Advisory **Board has reviewed** the detention order

40. What are Circumstances for revocation of detention’s order (Sec-11)?

- **Central or State Govt.** is permitted to **revoke or modify a detention order at any time** **in “certain” circumstances** like:
 - (i) When Central or State govt. has **taken Suo motu decision**
 - (ii) When Central or State govt. has **taken decision based on representation/ request made by the detained person**
 - (iii) When Central or State govt. has **taken decision based on representation/ request made by the others**

41. Whether "Fresh" detention is permitted "after" detention's revocation (Sec-11)?

- (i) **Central or State Govt. is permitted to issue "fresh" detention order "after" detention's revocation based on "fresh" grounds**
- (ii) **Central or State Govt. is permitted to continue control on detention order's issue, detention order's revocation and detention order's modification whenever considered necessary**

42. What is "Temporary" release of person detained by Central govt. (Sec-12(1))?

- (i) **Central govt. or an authorized officer is permitted to allow "temporarily" release / grant parole to a person who has been detained under COFEPOSA (Amendment) Act, 1976**
- (ii) **Central govt. or an authorized officer is permitted to allow "temporarily" release / grant parole to a person who has been detained under COFEPOSA (Amendment) Act, 1976 for limited time under "certain" conditions like:**
 - (a) **To stay at "certain" place**
 - (b) **To report to police regularly**
 - (c) **"Not" to leave the city**
 - (d) **Etc.**
- (iii) **Central govt. or an authorized officer is permitted to allow "temporarily" release / grant parole to a person who has been detained under COFEPOSA (Amendment) Act, 1976 for "certain" reasons like:**
 - (a) **For medical emergencies**
 - (b) **For death or serious illness of a family member**
 - (c) **For other humanitarian grounds**
- (iv) **Central govt. or an authorized officer is permitted to "cancel" detained person's release when conditions are violated**

43. What is "Temporary" release of person detained by State govt. (Sec-12(1A))?

- (i) *State govt. is permitted to grant "temporary" release when State govt. has issued detention's order*
- (ii) *This is "not" a permanent release or cancellation of detention. It's only a "temporary" relaxation.*
- (iii) **Important conditions for temporary release like:**
 - (a) *Execution of a bond with or without sureties*
 - (b) *Restrictions on movement*
 - (c) *Requirement to report to appropriate authorities*
- (iv) **Reason for temporary release like:**
 - (a) *For medical treatment*
 - (b) *For family emergencies*
 - (c) *For other humanitarian grounds*
- (v) *State govt. is permitted to cancel the "temporary" release at any time accordingly person is required to return to detention*
- (vi) *State govt. is permitted to re-arrest when person violates the conditions or fails to surrender and to follow the legal consequences.*

44. What is Bond with sureties (Sec-12(2))?

- *Appropriate govt. is permitted to direct to enter into a bond with sureties for due observance of conditions as specified in "temporary" release order / direction like:*
 - (i) *To execute a bond (a legal promise) agreeing to follow "certain" conditions during "temporary" release*
 - (ii) *To provide sureties of 1 or more than 1 person who guarantee that the detainee will comply the "temporary" release's conditions*
 - (iii) *Bond is a signed written undertaking to obey "temporary" release's conditions like:*

- (a) **“Not” to leave the “certain” area**
- (b) **To report to authorities**
- (c) **To return to detention after “temporary” release period is completed**
- (iv) **Suretias is a guarantee compliance given by 3rd party i.e. family or friends like:**
 - (a) **3rd party may require to pledge money or property**
 - (b) **3rd party money or property can be forfeit against the pledge amount**
- (v) **Bonds and sureties are ensuring “certain” things like:**
 - (a) **The detainees do “not” abscond**
 - (b) **These are providing financial and legal safeguard for the govt.**
 - (c) **These are encouraging compliances specified for “temporary” release**

45. What are Released person’s duties (Sec-12(3))?

- **Released person under section 12(1) and 12(1A) is required to surrender himself at time, place and to the authority “specified” in order issued for releasing or cancelling his release like:**
 - (i) **To observe release’s conditions**

The person is required **to comply with “all” specific conditions** mentioned in the release order **i.e. restrictions on movement, activities or contacts.**
 - (ii) **To surrender on time**

The person is required to **return to custody on the exact date and time** specified in the release order.
 - (iii) **No Unauthorized Absence**

The person is “not” permitted **to remain outside custody** beyond the allowed period **“without” proper approval.**
 - (iv) **To maintain good conduct**

The person is “not” permitted **to engage in activities related to smuggling or any illegal acts during the release period.**

(v) **To report to authorities**

The person is **to report** “periodically” **to a police station** or designated authority **when it's required**.

46. What is Imprisonment for failure to surrender (Sec-12(4))?

- Person is **punishable with imprisonment for maximum 2 years or fine or imprisonment and fine** “both” **when he is failed** “without” **sufficient cause to surrender himself as** “specified” **under section 12(3) of COFEPOSA (Amendment) Act, 1976** like:

(i) **Meaning of failure to surrender**

When a detention order is issued and confirmed under COFEPOSA, **the person is required to voluntarily surrender to authorities** within a specified time **and the person do “not” surrender**. Hence this is considered an offence.

(ii) **Important points against failure to surrender**

This is a “separate” criminal offence, apart from the preventive detention itself.

47. What is Penalty for failure to fulfill conditions (Sec-12(5))?

- Person is **punishable with “specific” penalty for failure to fulfill the conditions** imposed or bond entered **when he is released** under **section 12(1) or 12(1A) of COFEPOSA (Amendment) Act, 1976** like:

(i) The **bond executed** by the person **can be forfeited**.

(ii) The **surety / guarantor** is also **become liable**. Hence guaranteed **money can be recovered**.

(iii) The **govt.** is permitted **to take action for recovering the penalty** amount as specified in bond.

(iv) The **person can be re-arrest** or to detain under the COFEPOSA (Amendment) Act, 1976 **based on the circumstances**.

(v) **Conclusion**

The **person is “not” automatically going to jail for breach of condition but responsible for “certain” actions** like:

- (a) **Bond amount’s forfeiture**
- (b) **The guarantor can be penalized**
- (c) **The authorities are permitted to detain again when it’s required.**

48. What is Release on bail or bail bond or otherwise (Sec-12(6))?

- **Person is “not” permitted to release on bail or bail bond or otherwise under other laws in force when detained under COFEPOSA (Amendment) Act, 1976. Hence COFEPOSA (Amendment) Act, 1976 is overriding other laws like:**
 - (i) **The person detained under COFEPOSA (Amendment) Act, 1976 is “not” permitted to release on bail, bail bond or otherwise “without” approval from Central Govt. or an authorized officer**
 - (ii) **Courts’ power is restricted for releasing on bail, bail bond or otherwise when the person is detained under COFEPOSA (Amendment) Act, 1976**
 - (iii) **Hence Central govt. has final authority for releasing the detained person**
 - (iv) **COFEPOSA (Amendment) Act, 1976 is stronger than normal criminal law like Code of Criminal Procedure, 1973**
 - (v) **This provision is inserted under COFEPOSA (Amendment) Act, 1976 for ensuring that the persons, suspected for smuggling or foreign exchange violations “not” to able to do harmful activities “after” release.**



● **Special provisions for emergency under COFEPOSA (Amendment) Act, 1976** ●

49. What are General provisions for dealing with emergency (Sec-12A (1))?

- **Emergency is to be deal under section 12A of COFEPOSA (Amendment) Act, 1976 like:**
 - (i) **Proclamation of Emergency issued under article 352(1) of CoI on Dec 03, 1971**
 - (ii) **Proclamation of Emergency issued under article 352(1) of CoI on June 25, 1976 or 24 months whichever is earlier.**
 - (iii) This provision is **operative when a Proclamation of Emergency** under the Constitution i.e. **related to security of India** or its territory.
 - (iv) The **govt. is permitted to detain a person for a longer period** “without” **obeying the normal procedural safeguards** under COFEPOSA (Amendment) Act, 1976.
 - (v) The **detenu is “not” to be informed the detention’s grounds** within usual time under section **12A(1)** of COFEPOSA (Amendment) Act, 1976
 - (vi) The **detenu is “not” permitted to make a representation** against detention or may be delayed or restricted
 - (vii) Advisory **Board’s review can be postponed** or modified accordingly allowing **detention to be continued** “without” **review** within the prescribed time.
 - (viii) **Detention period can be extended** “without” **the usual procedural checks**, depending on emergency’s notifications
 - (ix) **Central Govt. is permitted to enhance discretionary powers for deciding procedural safeguards** during the emergency’s notifications.

50. What are Special provisions for dealing with emergency (Sec-12A (2))?

- (i) **The govt. is permitted to issue detention’s order when satisfied that it’s necessary to detain the person** for effectively dealing with emergency
- (ii) **The govt. is required to make a declaration and to communicate a copy of declaration to the person** “after” commencement of COFEPOSA (Amend) Act, 1976

- (iii) *The **govt. is having enhance powers** for preventive detention and “certain” safeguards during an emergencies period.*
- (iv) *The **normal protections** as given to a detained person i.e. timely review of detention **can be delayed or suspended***
- (v) *Advisory Board’s **review timeline can be extended***
- (vi) *The **govt. is permitted to continue detention for a longer period** “without” **obeying standard** procedural safeguards as available during normal times.*
- (vii) ***Authorities** are permitted **to act more swiftly and strictly** against suspected smuggling or foreign exchange violations.*
- (viii) *The **detainee’s ability to challenge detention quickly is reduced** during the emergency period*
- (ix) ***Rights under Article 22** of the Constitution of India are **to be curtailed** during emergency*

51. What is Declaration’s review by appropriate govt. (Sec-12A (2))?

- (i) *Appropriate **govt.** is required **to review** “and also” **to confirm** “both” **within 15 days** from date of making of **declaration by officer***
- (ii) *This **declaration shall be seized when** “not” **confirmed by** appropriate **govt.** “after” **review within 15 days***
- (iii) *The **declaration is to be made** stating that a person is being preventively detained **for serious smuggling** or foreign exchange violations*
- (iv) *The Appropriate **govt.** is required **to decide that continued detention is necessary** or declaration is to be revoked*
- (v) *The **review is a safeguard** because normal Advisory Board’s **protections are diluted** / reduced during Emergency.*
- (vi) *The continued **detention will be invalid** when **govt. has** “not” **reviewed** within the time.*



- (vii) The **review is based on “certain” things** like:
- (a) The **materials placed** before appropriate govt.
 - (b) The **detention’s grounds**
 - (c) The **representation made** by detainee when its allowed

(viii) **Conclusion**

Provisions under section **12A(2)** of COFEPOSA (Amendment) Act, 1976 are **ensuring that** beside stricter Emergency condition, appropriate **govt. is “not” permitted for “indefinitely” continued detention “without” periodically rechecking** when considered necessity.

52. What is Declaration’s reconsideration by appropriate govt. (Sec-12A (3))?

- (i) Appropriate **govt. is permitted to “re-consider” declaration within 4 months** from date of making of declaration **when detention is necessary** for effectively dealing with emergency
- (ii) Appropriate **govt. is permitted to “revoke” declaration within 4 months** from date of expiry of abovementioned 4 months **when detention is “not” necessary** for effectively dealing with emergency.
- (iii) Appropriate **govt. is required to “re-consider” the declaration** made under section **12A** of COFEPOSA (Amendment) Act, 1976 **for extending detention period beyond the normal limit**
- (iv) Appropriate **govt. is required to “re-consider” within prescribed time frame** in accordance **with constitutional safeguards** under **Article 22** of Constitution of India
- (v) Appropriate **govt. is required to ensure that sufficient cause is existed for** continuing the declaration and **extended detention’s justification.**
- (vi) **Provisions of section 12A(3)** of COFEPOSA (Amendment) Act, 1976 are **safeguarding** against:

- (a) **Arbitrary “prolonged” detention**
- (b) **Appropriate *govt.* is required to re-evaluate its decision**
- (c) **Constitutional protections for “periodic” review of detention under Article 22 of the Constitution of India**

(vii) **Conclusion**

Appropriate govt. is required to re- evaluate its decision and to justify that decision for longer period's detention within a limited time, ensuring fairness and legality

53. What is Against the public interest (Sec-12A (4))?

- *Appropriate govt. is permitted to act “other than” based on information and material in its possession “without” disclosing the facts or giving opportunity of making representation to the person when consideration or review or re-consideration under section 12A (2) or (3) of COFEPOSA (Amendment) Act, 1976 is considered against public interest like:*
 - (i) *Against the public interest is to include situation when disclosing “certain” information or following normal procedures can be harmful to the nation or society at large*
 - (ii) *Appropriate govt. is permitted to withhold the facts, grounds or materials related to a detention order when same is harmful to nation or society at large like:*
 - (a) *When revealing confidential intelligence sources*
 - (b) *When exposing ongoing smuggling investigations*
 - (c) *When threatening national economic security*
 - (d) *When helping other offenders evade law enforcement*
 - (e) *When affecting foreign exchange stability*
 - (iii) **Conclusion**
 - (a) *Appropriate govt. is required to ensure that full transparency is “not”*



compromised enforcement efforts therefore permitted to allow *limited secrecy* to protect larger societal interests

- (b) Hence **detained person** is “not” permitted to get complete details of the grounds of detention therefore **this can limit their ability to challenge the detention** immediately

54. What is Detention’s ground “not” to be disclosed (Sec-12A (5))?

- *Appropriate govt. is “not” required to disclose the ground for detention’s order issued under section 12A (2) of COFEPOSA (Amendment) Act, 1976 during the declaration of emergency like:*
 - (i) Normally, **detained person** is permitted to know detention’s grounds under Article 22(5) of Constitution of India to enable him to challenge the detention.
 - (ii) However, the **authority is permitted to refuse to disclose the facts or detention’s grounds when it’s considered necessary in public interest** under section 12A(5) of COFEPOSA (Amendment) Act, 1976
 - (iii) “Not to be disclosed” **in public interest** like:
 - (a) When disclosure is **relating to national security concerns**
 - (b) When disclosure is **relating to protection of confidential intelligence sources**
 - (c) When disclosure is **relating to ongoing investigations for smuggling or foreign exchange violations**
 - (iv) **Conclusion**
“Not to be disclosed” **is referred to sensitive facts**, forming part of the detention’s grounds **and the appropriate govt. has considered necessary to keep secret in public interest beside** normally a **detainee has the right to know** them.

55. What is Computation of period spent during declaration in force (Sec-12A (6))?

- (i) *Appropriate govt. is “not” required to compute period spent during declaration in force under section 12A of COFEPOSA (Amendment) Act, 1976 for computing period under “certain” sections like:*

- (a) **Period “specified” under section 8(b) and (c) of COFEPOSA (Amend.) Act, 1976**
- (b) **Period “specified” under section 8(b) for 1 year and 5 weeks**
- (c) **Period “specified” under section 8(c) for 1 year**
- (d) **Period “specified” under section 9(1) for 6 months**
- (ii) **Appropriate govt. is permitted to exclude the period of declaration emergency under section 12A of COFEPOSA (Amendment) Act, 1976 while computing “normal” time limits for detention.**
- (iii) **Appropriate govt. is permitted to compute “maximum” period for detention and time limit for Advisory Board’s review “excluding” the period of declaration emergency under section 12A of COFEPOSA (Amendment) Act, 1976**
- (iv) **Usual safeguards for early Advisory Board’s review timeline may be delayed during period of declaration emergency under section 12A of COFEPOSA (Amendment) Act, 1976**
- (v) **Usual detention’s period shall be “comparatively” longer due to period of declaration emergency under section 12A of COFEPOSA (Amendment) Act, 1976 because declaration period is excluded for counting “normal” timelines**
- (vi) **Conclusion**
Authorities are permitted under section 12A (6) to get “additional” procedural flexibility during period of declaration emergency under section 12A of COFEPOSA (Amendment) Act, 1976 over and above “normal” time limits

56. What is Protection of action taken in good faith (Sec-13)?

- (i) **No suit or other legal proceeding shall lie against Central govt. or State govt.**
- (ii) **No suit or other legal proceeding or prosecution shall lie against “any” person for “anything” done or intended to be done in good faith in pursuance of COFEPOSA (Amendment) Act, 1976**
- (iii) **Hence, provisions of section 13 are providing legal protection to govt. officials for their actions taken under COFEPOSA (Amendment) Act, 1976 when their actions are done in good faith.**

- (iv) “No” **legal case** i.e. lawsuit or prosecution **can be filed against** “certain” **govt. officials** for their actions done with honesty and good intention **while enforcing COFEPOSA (Amendment) Act, 1976** like:
- (a) The Govt. **officials of Central govt.**
 - (b) The Govt. **officials of State govt.**
 - (c) The Authorize **officers or authorities of Central or State govt.**
- (v) **Conclusion**
- (a) “No” **suit** or other legal proceeding **shall lie against govt. officials for their actions done** “with” **honesty** and good intention **while enforcing COFEPOSA (Amendment) Act, 1976**
 - (b) **Suit** or other legal proceeding **shall lie against govt. officials for their actions done** “without” **honesty** and good intention **while enforcing COFEPOSA (Amendment) Act, 1976**

57. What is Repeal (Sec-14)?

- **Maintenance of Internal Security (Amendment) Ordinance, 1974** (11 of 1974) **shall “after” commencement of COFEPOSA Act, 1974 stand repealed and accordingly amendments made in Maintenance of Internal Security Act, 1971 (20 of 1971) by the said Ordinance shall ceased “after” commencement of COFEPOSA (Amendment) Act, 1976** like:
 - (i) Hence “certain” **earlier laws for preventing detention** against smuggling and foreign exchange violations **are repealed** (cancelled) “after” commencement of **COFEPOSA Act, 1974**
 - (ii) However, **actions already taken “before” COFEPOSA Act, 1974** i.e. detention’s orders **shall be considered valid** beside old laws are repealed (cancelled)
 - (iii) **Saving clause is ensuring continuity** and preventing legal gaps to prevent confusions and legal loopholes when transitioning **from older laws to COFEPOSA Act, 1974**

(iv) **Conclusion**

Saving clause is ensuring that offenders could “not” escape from their liability “after” commencement of COFEPOSA Act, 1974

58. What is difference between COFEPOSA 1974 and COFEPOSA (Amendment) Act, 1976?

- *Main difference between COFEPOSA Act, 1974 and COFEPOSA (Amendment) Act, 1976 where amendments in 1976 are “significantly” strengthened comparative to COFEPOSA Act, 1974 through “certain additional” measures like:*
 - (i) *Extending detention up to 2 years under COFEPOSA (Amendment) Act, 1976*
 - (ii) *Introducing specialized provisions for “vulnerable areas” under section 12A of COFEPOSA (Amendment) Act, 1976*
 - (iii) *Strengthening government's power for handling detentions during emergency under COFEPOSA (Amendment) Act, 1976.*
 - (iv) *COFEPOSA Act, 1974 was introduced to combat smuggling and preserve foreign exchange “only”.*
 - (v) *COFEPOSA (Amendment) Act, 1976 is introduced to address legal loopholes “and also” to make it stricter for detention terms “both”*

S.No	Under Head	COFEPOSA Act, 1974	COFEPOSA (Amendment) Act, 1976
(i)	Object	(a) <i>Enacted for preventing smuggling and conserving foreign exchange.</i> (b) <i>Allowed preventive detention of individuals suspected of:</i> <ul style="list-style-type: none"> ● <i>Smuggling goods</i> ● <i>Engaging in foreign exchange violations</i> 	(a) <i>Introduced during Emergency period (1975-77)</i> (b) <i>Aimed to make the original Act stricter and more powerful</i>
(ii)	Detention Powers	<i>Allowed preventive detention with “certain” procedural safeguards</i>	(a) <i>Expanded govt.'s detention powers.</i>



			(b) Allowed detention “with-out” immediate grounds’ disclosure
(iii)	Safeguards for Detainees	(a) Required to communicate detention’s grounds within a specified time (b) Allowed detainees to make a representation against detention	Diluted safeguards: (a) Delayed or restricted of grounds’ disclosure in public interest. (b) Limited the detainee’s ability to challenge detention effectively
(iv)	Advisory Board Review	Cases had to be reviewed by an Advisory Board within a “certain” timeframe	(a) Extended timelines and given more flexibility to authorities. (b) Reduced strict judicial oversight in practice.
(v)	Duration of Detention	Provided a maximum detention period, subject to review	Allowed “longer” detention periods in “certain” situations.
(vi)	Emergency Context	Passed in a “normal” constitutional environment.	(a) Passed during Indian Emergency (1975-1977) (b) Reflected “more” authoritarian legal approach
(vii)	Overall Difference	Created the legal framework for preventive detention against smuggling	• Strengthened and tightened the law by: (a) Increasing govt.’s power (b) Reducing procedural safeguards (c) Allowing “longer” and “less” challengeable detentions



● Chapter-II-Special provisions under COFEPOA (Amendment) Act, 1976 ●

59. What is detention under COFEPOSA 1974 and COFEPOSA (Amendment) 1976?

- (i) Generally, **detention** under COFEPOSA is permitted **up to 1 year**, but in “certain” **serious cases**, it may go **up to 2 years**.
- (ii) Specifically, **detention** is permitted under COFEPOSA **up to 2 years** in “certain” **serious cases** and the COFEPOSA (Amendment) Act, 1976 has **strengthened** the law by permitting **stricter detention and reducing** “procedural” **safeguards**, especially during the Emergency
- (iii) **Detention under COFEPOSA, 1974**
- The appropriate **govt.** is permitted to **detain a person** “without” **trial** when it’s satisfied that the **person is likely to:**
 - (a) **Smuggle goods**
 - (b) **Engage in illegal foreign exchange transactions**
 - (c) **Abet or assist such activities**
 - This is called **preventive detention**, “not” **a punishment**
 - **Key features:**
 - (a) **Detention** is based on **subjective satisfaction** of authorities.
 - (b) The **detained person** required to **be informed** detention’s **grounds**.
 - (c) The **person has a right to make a representation** against the detention.
 - (d) An **Advisory Board** required to **reviews the detention**.
 - (e) Generally, **detention** is permitted **up to 1 year**, depending on circumstances.
- (iv) **COFEPOSA (Amendment) Act, 1976**
- (a) The COFEPOSA (Amendment) Act, 1976 has **strengthened** the original law, **making detention stricter** and more stringent.
 - (b) **Key features**
 - **Section 12A** is introduced during emergency conditions i.e. notably around the time of the Indian Emergency (1975-1977).



- Allowed **longer detention periods**, beyond “normal” **limits**.
- Allowed **delay in providing detention’s grounds** to the detainee.
- Allowed **restrictions on the right to representation** in “certain” cases.
- Reduced **procedural safeguards** “temporarily” **during emergency situations**.

(v) **Conclusion**

(a) **Under COFEPOSA Act, 1974**

- Allowed preventive **detention to stop smuggling** and foreign exchange violations.

(b) **Under COFEPOSA (Amendment) Act, 1976**

- **Made the law more stringent “specifically” during emergencies** by extending detention powers and limiting safeguards.

60. What is Section 12A of COFEPOSA (Amendment) Act, 1976?

- **Section 12A of COFEPOSA (Amendment) Act, 1976 is empowering govt. for detaining individuals “without” communicating the detention’s grounds i.e. up to 15 days or longer when a “detention” is made during emergency like:**

(i) **Objects for introducing Section 12A**

(a) Section 12A was **introduced during the emergency period (1975–77)** to **give the govt. “extraordinary” powers of preventive detention** in matters related to:

- **Foreign exchange conservation**
- **Smuggling activities**

(b) Section 12A is **overrides “normal” safeguards and natural justice rules** during an Emergency.

(ii) **When does it apply?**

- (a) **During a Proclamation of Emergency under Article 352, and**
(b) **For a limited period i.e. up to 24 months from June 25, 1975.**



(iii) **Key Provisions**

(a) **Special declaration for detention**

- **Govt. is required to decide “certain” things** when detaining a person
- **Whether detention is necessary to deal with the Emergency?**
- **If yes, govt. can issue a special declaration to deal with the Emergency.**

(b) **Reduced procedural safeguards**

- **Authorities are required to act on confidential information**
- **Authorities are required “not” to disclose facts to the detainee**
- **Authorities are permitted to deny opportunity of representation in “certain” cases**
- **This is a “major” departure from “normal” principles of natural justice.**

(c) **Non-disclosure of grounds**

- **The detained person may “not” be informed of the grounds of detention while the declaration is in force.**

(d) **Suspension of time limits**

- **The period during which the declaration is active is to be excluded when calculating time for advisory board review and maximum detention period. Hence effectively allows longer detention “without” usual checks.**

(e) **Periodic review**

- **Govt. is required to review the necessity of detention every 4 months**
- **Govt. is required to revoke when “no” longer needed**

(iv) **Overall Effect**

(a) **Strengthens executive power during Emergency**

(b) **Weakens individual safeguards i.e. right to know grounds, representation and etc.**

(c) **Allows preventive detention with “minimal” judicial scrutiny**

(v) **Conclusion**

- Section 12A of COFEPOSA provides “special” emergency powers allowing preventive detention **with** “curtailed” procedural safeguards, including “non” **disclosure of grounds** and extended detention, to deal effectively **with an Emergency**.

61. What is Specified period under COFEPOSA (Amendment) Act, 1976?

- Specified period is to include detention period during emergency i.e. from **June 25, 1975 to March 21, 1977**
- (i) Specified period is to include period “not” exceeding 6 months from the date of detention as **declared by the appropriate govt.**
- (ii) **During this specified period**
 - (a) The case need “not” to be referred to the Advisory Board within the “usual” 5 weeks.
 - (b) The **detention can continue** “without” early review, giving authorities more time **in serious cases**.
- (iii) **Conclusion**
Specified period up to 6 months is **allows extended preventive detention** “without” immediate Advisory Board **review in specific high-risk cases**

62. What is Strengthening powers under COFEPOSA (Amendment) 1976?

- Appropriate **authority’s powers are strengthened through** “certain” powers **under COFEPOSA (Amendment) Act, 1976 like:**
- (i) Appropriate **authority is permitted to issue** “new” detention’s order beside “original” **detention’s order is “already” revoked**
- (ii) Appropriate **authority is “additionally” empowered against detainee’s release on bail**

(iii) **Meaning of Strengthening powers**

- The COFEPOSA (Amendment) Act, 1976 has **expanded and hardened the detention provisions**, mainly to make it easier for the government to **detain smugglers and foreign-exchange offenders for longer periods** with fewer procedural constraints.

(iv) **Key Strengthening Provisions**

● **Extension of detention period**

(a) The amendment introduced Section **10A, allowing longer detention “without” normal limits.**

(b) **Detention could continue:**

- Up to 1 year or **even 2 years, depending on the case**
- More than up to 1 or 2 years **during the “specified period” (Emergency)**
- **Increased** appropriate authority’s **power** to keep a person detained **for extended durations.**

(v) **Relaxation of Advisory Board review**

(a) **Normally**, preventive detention laws require **review by an Advisory Board within a fixed time.**

(b) **During the “specified period” (Emergency):**

- These **safeguards** were **diluted** or bypassed
- This **reduced judicial/independent scrutiny.**

(vi) **Link with “specified period” (Emergency)**

(a) The amendment tied **detention powers** to the Emergency proclaimed in **1971 and 1975.**

(b) **During this “specified period”:**

- Extraordinary **detention powers** operated **automatically**
- Fundamental **safeguards** were **weakened.**

(vii) **Retrospective validation of detentions**

● **Detentions already made “before” the amendment:**

- (a) Were **validated** and continued **under the new extended limits**
- (b) **Prevented release of detainees** due to earlier procedural defects.

(viii) **Greater executive discretion**

● **The government retained wide powers like:**

- (a) Continue, revoke, or **modify detention orders** at its discretion
- (b) **Strengthened executive control** over detention decisions.

(ix) **Conclusion**

● **The “strengthening powers” under the 1976 amendment means:**

- (a) Longer **detention** “without” **trial**
- (b) **Reduced safeguards** (like Advisory Board review)
- (c) **Special powers** during Emergency
- (d) **Validation of past detentions**
- (e) **More control** to the executive

63. What is Property’s forfeiture under COFEPOSA (Amendment) Act, 1976?

- (i) (a) The **COFEPOSA, 1974** is primarily a **preventive detention law**.
- (b) **It authorizes detention of persons** involved in smuggling or foreign-exchange violations **to prevent future harmful activities**.
- (ii) (a) The **forfeiture** of property power is **not contained in COFEPOSA** itself.
- (b) It was **introduced through** a separate but **connected law**, the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act (**SAFEMA**) **1976**, enacted in 1976.
- (c) **SAFEMA applies**, among others, **to certain persons** detained under **COFEPOSA whose detention orders satisfy** the statutory **conditions**.

64. How property forfeiture works under SAFEMA 1976?

- (i) An **Appropriate Authority** appointed by the Central Govt. **investigates** whether **property is "illegally acquired."**
- (ii) The **Appropriate Authority** may **issue a notice of forfeiture** requiring the person **to explain the lawful source of the property.**
- (iii) After hearing the person and examining the evidence, the **Appropriate Authority** may **declare the property forfeited to the Central Govt. when it is found to be illegally acquired.**
- (iv) The **burden of proving** that the property is **not illegally acquired is placed on the affected person.**

65. Whether forfeiture is additional to detention under COFEPOSA 1976?

- (i) **Yes**
 - **Forfeiture under SAFEMA is an additional and independent consequence, separate from preventive detention under COFEPOSA.**
 - (a) **COFEPOSA → preventive detention** of the person.
 - (b) **SAFEMA → investigation and forfeiture of illegally acquired property.**
- (ii) A **person who falls within SAFEMA's scope** because of a qualifying COFEPOSA detention may **therefore face both:**
 - (a) **Preventive detention, and**
 - (b) **Forfeiture proceedings regarding illegally acquired assets.**

66. What are changes made under COFESSA (Amendment) Act, 1976?

- (i) The **COFEPOSA (Amendment) Act, 1976 made the 1974 law more stringent by curtailing procedural safeguards and enabling longer preventive detention of suspected economic offenders.**
 - **COFEPOSA Act, 1974 – Original Position**

- (ii) The **COFEPOSA, 1974** authorized preventive **detention** of persons **involved in:**
- (a) **Smuggling** activities
 - (b) **Abetting** smuggling
 - (c) **Foreign-exchange violations**
 - (d) **Activities prejudicial to conservation** or augmentation of foreign exchange.

67. What are detainee's constitutional rights under Article 22?

- (i) A detainee's **case had to be referred to an Advisory Board** within prescribed **timelines**.
- (ii) Continued **detention beyond 3 months** ordinarily **required Advisory Board scrutiny**.

68. What are changes Introduced by COFEPOSA (Amendment) Act, 1976?

- The 1976 amendment, enacted during the **Emergency period**, strengthened the preventive-detention regime **in several respects like:**
 - (i) **Extended detention "without" early Advisory Board review**
 - A new **Section 9** created a special category of smugglers and foreign-exchange offenders **for whom detention could continue beyond the ordinary 3 months period "without" 1st obtaining the opinion of the Advisory Board.**
 - (ii) **Longer maximum detention periods**
 - (a) The amendment **enabled detention for substantially longer periods** i.e. up to **2 years** in specified cases.
 - (b) **When the statutory requirements** were **satisfied.**
 - (c) **Existing detentions** were also protected and **continued under the amended framework.**
 - (iii) **Reduced procedural protections**
 - The **declaration mechanism under Section 9** allowed the executive to **invoke a special procedure** in certain smuggling-related cases,

thereby postponing the safeguard of Advisory Board review that normally acts as a check on preventive detention.

(iv) **Harsher treatment of economic offender**

- The amendment reflected the Emergency-era policy that large-scale smuggling and foreign-exchange violations were serious threats to the national economy and therefore justified stronger preventive-detention powers.

69. What are changes between COFEPOSA Act 1974 and COFEPOSA (Amend) Act 1976?

S.No	COFEPOSA Act, 1974	COFEPOSA (Amendment) Act, 1976
(i)	Preventive detention law against smugglers and foreign-exchange offenders	Made the law more stringent
(ii)	Advisory Board review was the normal safeguard	Allowed certain detainees to be kept longer "without" immediate Advisory Board review
(iii)	Ordinary detention framework	Created special categories for enhanced detention
(iv)	Relatively greater procedural protection	Curtailed some procedural safeguards
(v)	Focus on prevention	Stronger executive powers and longer detention periods

- The COFEPOSA (Amendment) Act, 1976 was essentially a tougher, Emergency-era version of the 1974 Act that expanded executive detention powers, permitted longer detention of specified economic offenders, and diluted some procedural safeguards i.e. early Advisory Board review



70. What is Diff. between COFEPOSA (Amendment) Act, 1976 and SAFEMA 1976?

S.No	Basis	COFEPOSA (Amendment) Act, 1976	SAFEMA, 1976
(i)	Full Name	Amendment to the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974	Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976
(ii)	Objective	To strengthen preventive detention laws against smugglers and foreign-exchange offenders.	To deprive smugglers and foreign-exchange manipulators of their illegally acquired properties.
(iii)	Nature	Preventive detention law.	Property forfeiture/confiscation law.
(iv)	Main Focus	Detention of persons suspected of smuggling or foreign-exchange violations to prevent future offences.	Identification and forfeiture of illegally acquired assets of such persons.
(v)	Action Against Person	Restricts personal liberty through detention.	Targets wealth and assets acquired through illegal activities.
(vi)	Authority Involved	Detaining authorities/Central or State Government.	Competent Authority and Appellate Tribunal for Forfeited Property.
(vii)	Burden of Proof	Government must justify detention under the Act.	Person concerned must prove that the property was legally acquired.
(viii)	Persons Covered	Persons involved in or suspected of smuggling and foreign-exchange violations.	Persons convicted of specified customs/FERA offences and persons detained under COFEPOSA (subject to statutory conditions), along with certain relatives and associates.
(ix)	Result	Preventive detention.	Forfeiture of illegally acquired property to the Government.

- **Relationship between the 2 Acts**

- The COFEPOSA Act against the person, whereas SAFEMA acts against the property of such persons.**
- In many cases, a detention order under COFEPOSA can provide the basis for proceedings under SAFEMA, though the two statutes operate independently.**



● Chapter-III-Impact of Judicial Judgements under COFEPOSA ●

71. What are Judicial Judgements under COFEPOSA (Amendment) Act, 1976?

- (i) Under the **COFEPOSA Act, 1974** and the **COFEPOSA (Amendment) Act, 1976**, the **Supreme Court** and **High Courts** have repeatedly held that preventive detention is an “exceptional” power and must be exercised in strict conformity with constitutional safeguards, particularly **Article 22(5) of the Constitution of India**.
- (ii) The judicial trend has been that **detention orders** are liable to be quashed when procedural safeguards are violated, beside the allegations against the detenu are serious.

72. What are Key Judicial Principles under COFEPOSA (Amendment) Act, 1976?

- (i) **Delay in Communicating Grounds of Detention**
 - (a) The grounds of detention and the documents relied upon must be supplied promptly.
 - (b) Unexplained delay may invalidate the detention because it impairs the detenu's ability to make an effective representation against the order.
- (ii) **Failure to Supply Vital Documents (Violation of Article 22(5))**
 - (a) Article 22(5) guarantees that the detenu must be informed of the grounds of detention and afforded the earliest opportunity to make a representation.
 - (b) The Courts have consistently held that all documents relied upon by the detaining authority must be supplied in a language understood by the detenu.
 - (c) Non-supply of essential documents or translations violates this constitutional right.



(iii) **Delay or Failure in Considering Representation**

- (a) A **representation** made by the detenu must **be considered expeditiously** by the Government.
- (b) Any unexplained **delay in processing** or deciding the representation may **render the continued detention unconstitutional**.

(iv) **Preventive Detention Is a Drastic Power Requiring Strict Scrutiny**

- (a) Courts have repeatedly **emphasized that preventive detention is not punitive** but preventive in nature.
- (b) Since it involves deprivation of personal liberty without trial, **procedural safeguards must be strictly observed and detention orders are subject to rigorous judicial scrutiny**.

(v) **Timely Processing of Objections and Grounds**

- (a) The **constitutional requirement of fairness demands** prompt communication of grounds, **prompt supply of supporting material**, and prompt **consideration of objections** or representations **made by detenu**.
- (b) **Failure at any of these stages may vitiate the detention**.

● **Important Court's Judgements** ●

73. What is Ibrahim Ahmad Batti v. State of Gujarat (1982)?

- **This is a leading COFEPOSA decision on Article 22(5).**

(i) **Facts of the case**

- (a) The detenu was **supplied with some documents in time, but translations of many relied-upon documents were supplied after a substantial delay**.
- (b) **Several documents were not supplied in a language understood by the detenu**.

(ii) **Decision of Supreme Court**

- (a) The Supreme Court **held that all documents** relied upon by the detaining authority **must be furnished** within the **prescribed period and in a language understood** by the detenu.
- (b) **Delayed supply** of translated documents **and non-supply** of certain relied-upon **materials deprived** the detenu of his **constitutional right** to make an effective representation.
- (c) The detention **order was quashed**.

(iii) **Principle Established**

- Non-supply, delayed supply, or **supply in an unintelligible language** of vital documents **violates Article 22(5)** and invalidates preventive detention.

74. What is Alpesh Navinchandra Shah v. State of Maharashtra (2007)?

(i) **Facts of the case**

- (a) The petitioner **challenged a COFEPOSA detention** order after proceedings **before the Settlement Commission** under the Customs Act.
- (b) The Court examined **whether continued** preventive **detention** remained **justified** in the circumstances.

(ii) **Decision of Supreme Court**

- (a) The Supreme Court **emphasized that** preventive **detention** affects personal liberty and **must be justified** by a genuine necessity **to prevent** future **prejudicial activities**.
- (b) The Court **quashed** the detention **order**, stressing that preventive **detention cannot be** sustained **mechanically** and **must be supported** by relevant **material** demonstrating the need **for** such “extraordinary” **action**.



(iii) **Principle Established**

- (a) Preventive **detention** is an “exceptional” **measure** and **must satisfy** constitutional standards of **reasonableness**, fairness, and necessity
- (b) **Courts will** closely **scrutinize whether** detention genuinely **serves a preventive purpose**.

(iv) **Conclusion**

- **Judicial decisions under COFEPOSA** demonstrate that courts **insist upon**:
 - (a) Prompt **communication of detention grounds**.
 - (b) **Supply of all** relied-upon **documents** and translations.
 - (c) Effective **opportunity to make a representation** under Article 22(5).
 - (d) **Expeditious** consideration of **representations**.
 - (e) Strict **judicial scrutiny** because preventive **detention** is a drastic **encroachment upon personal liberty**.
- Cases such as *Ibrahim Ahmad Batti* and *Alpesh Navinchandra Shah* illustrate the **judiciary's** consistent **approach** that even **technical** or procedural **violations** of constitutional safeguards can **invalidate** a detention **order** under COFEPOSA.



● **Key Principles established from Court Judgements** ●

75. What is Right to represent?

- *The **Right to Representation** in the context of preventive **detention under Article 22(5)** of the Constitution of India means that a **detainee must be given a real and effective opportunity to make a representation** against the detention order **to** the appropriate government or **authority**.*
- (i) ***Constitutional right to make an effective representation under Article 22(5)***
- ***Article 22(5) provides that when a person is preventively detained:***
 - (a) *The **authority must communicate the grounds** of detention as soon as possible.*
 - (b) *The **detainee must be afforded the earliest opportunity to make a representation** against the detention order.*
- ***Courts have consistently held that this is not a mere formality. The right must be meaningful, effective, and practical, enabling the detainee to challenge the legality and factual basis of the detention.***
- (ii) ***Prompt supply of all relevant documents***
- ***To make an effective representation, the detainee must receive:***
 - (a) *The **grounds** of detention.*
 - (b) ***Copies of all documents, statements, reports, and materials relied upon by the detaining authority.***
 - (c) *These **documents must be supplied promptly** and, in a language, understood by the detainee.*
- ***When relevant relied-upon documents are withheld, supplied incompletely, supplied belatedly, or supplied in an unintelligible form, the detainee cannot effectively challenge the detention. Courts have therefore held that such failure violates Article 22(5) and may render the detention invalid.***



(iii) **Conclusion**

● **The Right to Representation under Article 22(5) consists of:**

- (a) A constitutional **right to make an effective representation** against preventive detention, and
- (b) A corresponding **right to receive promptly and fully** all relied-upon relevant **documents** and materials necessary **to understand, contest, and challenge the detention order.**

76. **What is Procedural Fairness?**

● **Procedural fairness**

Its also called **fair procedure** or **natural justice** in many legal contexts, means that **when the govt. exercises a power that affects** a person's rights or **liberty** i.e. preventive detention, **it must strictly follow the procedures** established by **law** and provide **a fair opportunity** to the affected person.

In the context of preventive detention, **all 3 statements reflect** aspects of procedural **fairness**:

(i) **Avoiding any delay in communicating grounds or processing objections**

- (a) A **detainee must be informed** of the **grounds** of detention as soon as possible and be **able to challenge the detention** effectively.
- (b) Unnecessary **delay can deprive** the detainee of a **meaningful opportunity** to make a representation against detention.

(ii) **Invalidating detention orders even for minor mistakes**

- (a) **Courts often require strict compliance** with procedural safeguards **because personal liberty is at stake.**
- (b) Even seemingly **small errors**—when they **affect the legality** of the detention or the **detainee's rights**—can **render** a detention **order invalid.**



- (iii) **Promoting the earliest opportunity to the detainee**
 - (a) **Constitutional** and statutory **safeguards** generally **require** that the detainee be given the **earliest possible opportunity** to make a representation **against the detention**.
 - (b) Any avoidable **delay in** providing this **opportunity** may **violate** procedural fairness and **constitutional protections**.
- (iv) **Conclusion**
 - (a) **Procedural fairness in preventive detention encompasses all 3 principles**
 - (b) **Prompt communication** of grounds, strict **adherence to procedural requirements**, and providing the detainee the earliest **effective opportunity** to challenge the detention.

77. What is Strict Judicial Review?

- (i) **Strict Judicial Review under the COFEPOSA (Amendment) Act, 1976** refers to the **approach adopted by courts in examining preventive detention orders made under the COFEPOSA (Amendment) Act, 1976**.
- (ii) Preventive **detention** directly **affects** a person's **personal liberty**; courts **do not simply accept the detaining authority's decision at face value**. Instead, they **rigorously scrutinize**:
 - (a) **Whether the detention order is based on valid and relevant grounds**.
 - (b) **Whether all statutory and constitutional procedural safeguards have been followed**.
 - (c) **Whether the detainee was informed of the grounds of detention properly**.
 - (d) **Whether the detainee was given a meaningful opportunity to make a representation against the detention**.
 - (e) **Whether there was any mala fide action, non-application of mind, or procedural irregularity**.

(iii) **Strict judicial review**

That **courts** carefully **examine** both the **grounds** and the **procedure** of detention **to ensure** that the “extraordinary” **power** of preventive detention is **not misused**, when the required **safeguards** are **violated**, the **court** may **quash** the detention **order**.

(iv) **Conclusion**

Beside the govt. has the power to detain a person under COFEPOSA, the **courts** closely **check whether** that **power** has been **exercised** lawfully and **fairly**, so as to **protect** the individual's **liberty**.

78. What is Draconian power?

- **Draconian power** in the context of the COFEPOSA (Amendment) Act 1976 is a non-technical **expression used by courts** and commentators **to describe** the very wide and **stringent** preventive detention **powers granted to the State** under this law.

(i) **What it means in COFEPOSA context**

- COFEPOSA is a **preventive detention law**, it allows authorities **to detain** a person **not for a past crime** after trial, **but to prevent future activities** i.e. smuggling or **foreign exchange violations**. The “draconian” **label comes from** features such as:

(a) **Detention without trial**

A person **can be detained based on suspicion** of future conduct, not proven guilt in court.

(b) **Limited procedural safeguards**

Normal criminal law protections i.e. full trial, cross-examination, etc. do **not apply** at the same level.

(c) **Restricted judicial review**

Courts generally do **not examine the merits** of “satisfaction of the detaining authority,” **only procedural legality**.

(d) **Advisory Board review instead of full court trial**

Detention is reviewed by an advisory board, **not** a criminal court deciding guilt.

(e) **Possibility of extended detention**

Detention can continue for up to **1 year** and sometimes **more** under extensions **subject to approval** mechanisms.

(ii) **Why courts call it “draconian”**

(a) It is an **exception to Article 21** i.e. right to life and liberty **under** the Indian **Constitution**.

(b) It allows **curtailment of personal liberty** on preventive grounds, which is a serious **departure from normal criminal justice principles**.

(c) It **must be strictly** construed and strictly **complied** with.

(iii) **What courts are emphasizing**

(a) **Authorities must follow** every **procedural safeguard** precisely i.e. grounds of the detention, **communication of reasons**, timely representation, etc.

(b) Any **minor procedural violation can invalidate** detention.

(c) Preventive **detention cannot be used** casually or **arbitrarily**.

79. What are Grounds and Documents?

- **Under the COFEPOSA Act, 1974, as amended including 1976 practice developments, the terms “grounds of detention” and “documents” have distinct legal meanings, and courts have consistently insisted on strict compliance because preventive detention affects personal liberty under Article 21 of the Constitution.**



(i) **Grounds of Detention (COFEPOSA)**

- **Grounds mean the basic factual basis and reasoning on which the Detaining Authority forms its subjective satisfaction that detention is necessary like:**

(a) **Alleged smuggling activities** or violations of foreign exchange laws

(b) **Role of the detenu in the alleged offence**

(c) **Nature of goods/currency involved**

(d) **Circumstances showing likelihood of continued prejudicial activity**

(e) **Nexus between past conduct and need for preventive detention**

- **Key point:**

The **grounds are the core explanation** of why detention is being ordered. They are **not mere allegations**; they **must clearly communicate the reasoning** so the detenu **can make an effective representation**.

(ii) **Documents in COFEPOSA Detention**

- Documents are the **supporting materials relied upon by the Detaining Authority** to arrive at the grounds. **Courts have repeatedly held that** under Article 22(5), the detenu **must be supplied** all “relied-upon documents” so that the **grounds can be meaningfully challenged**.

- **These include (as you noted and expanded):**

(a) **Seizure memos**

- **Records of seized goods, currency, or contraband**

(b) **Statements**

- **Recorded statements under customs or enforcement provisions**

(c) **Panchanamas i.e. spot/memo records**

(d) **Confessional or inculpatory statements (if relied upon)**

- (e) **Investigation reports** or intelligence summaries (if relied upon)
- (f) **Correspondence** or bank/transaction records **used** in forming satisfaction

(iii) **Constitutional Requirement**

- Under Article 22(5) the detenu must be:

- (a) **Communicated the grounds** of detention, and
- (b) **Supplied all documents** relied upon in the grounds

(iv) **Judicial Emphasis**

- **Courts** including the Supreme Court have consistently **held**:

- (a) **When** even one relied-upon **document is not supplied**, the detention can be invalid.
- (b) The **right to make a representation is meaningless** without full disclosure.
- (c) The authority **cannot withhold documents** that influenced its satisfaction.

- **Key principle:**

Failure to supply relied-upon documents vitiates detention as it violates Article 22(5).

(v) **Important Distinction**

Subject	Meaning
Grounds	Reasons + narrative forming basis of detention
Documents	Evidence relied upon to support those reasons

80. What is Essence of judicial Judgements?

- **Core judicial principles evolved by courts**

Indian courts, especially the Supreme Court have consistently **interpreted COFEPOSA provisions** in a way **that protects individual liberty** while allowing preventive **detention only in strict circumstances** like:



(i) **Strict compliance with Article 22(5)**

● **Article 22(5) guarantees that a detenu must be:**

- (a) **Communicated the grounds** of detention “as soon as may be”
- (b) Given earliest **opportunity to make a representation** against detention

● Courts have **held that this is not a formality**, it’s a fundamental **constitutional right**, and **any delay, vagueness, or non-supply of documents can invalidate detention.**

(ii) **Procedural safeguards are mandatory, not optional**

● Though **COFEPOSA deals with economic security and smuggling prevention**, courts have **stressed:**

- (a) Preventive **detention laws** are “drastic and exceptional”
- (b) **Strict procedural compliance** is required
- (c) Any **non-supply of relied-upon documents**, translations, or material evidence **violates due process**

(iii) **Subjective satisfaction is reviewable on limited grounds**

● The detaining **authority has “subjective satisfaction,” but courts can still interfere** when:

- (a) Relevant **material was not considered**
- (b) Relevant material was **irrelevant** or extraneous **material was relied upon**
- (c) There is **non-application of mind**
- (d) The **satisfaction is mala fide or arbitrary**

(iv) **Right to effective representation**

● Courts have emphasized **that the detenu’s right to representation under Article 22(5) must be:**

- (a) **Real and meaningful**, not illusory
- (b) **Supported with complete and legible documents**
- (c) **Not frustrated by delay in supply of material**

(v) **Delay can vitiate detention**

● **Unexplained delays in:**

(a) **Passing detention orders**

(b) **Confirming detention orders**

(c) **Deciding representations**

- This can **indicate that the “live and proximate link” between alleged activity and detention has been broken.**

(vi) **Preventive detention is not punitive**

● **Courts consistently reiterate:**

(a) **COFEPOSA is preventive, not punitive**

(b) It is meant **to prevent future smuggling activity, not punish past conduct**

(c) The **detention must be justified** by continuing necessity

(vii) **Harmonising national interest and liberty**

● **The judicial “essence” is a balance:**

(a) **Protecting economic security of the state**

(b) While ensuring individual **liberty is not sacrificed “without” strict constitutional compliance**



● **Chapter-IV- Supreme Court's judgments under COFEPSA (Amendment) Act, 1976** ●

81. What is Supreme Court's judgement on Joyi Kitty Joseph versus Union of India?

- The Supreme Court of India **allowed** the **appeal** and **set aside** the preventive **detention** order under the COFEPSA Act, 1974. The key reasoning was centred on **non-application of mind** by the detaining **authority**, particularly **regarding bail conditions** imposed by the **Magistrate**.
- (i) **Core issue raised**
 - The appellant **argued that the detention order was unsustainable** because the **authorities failed to properly consider**:
 - (a) **Whether the alleged acts fell within the scope of Section 3(1)(i)-(iii) of the COFEPSA Act, 1974 like**:
 - **Abetment of smuggling**
 - **Transporting, concealing, or keeping smuggled goods**
 - **Dealing in smuggled goods**
 - (b) **Whether the allegations were properly linked to statutory grounds of preventive detention.**
 - (ii) **Supreme Court's findings**
 - **The Court held that**:
 - (a) The detaining **authority failed to consider relevant bail conditions** imposed by the **Magistrate** while granting bail to the detainee.
 - (b) It is **mandatory for the detaining authority to apply its mind** to whether such **bail conditions** are **sufficient to prevent** the person **from** engaging in further **smuggling activities**.
 - (c) **Failure to consider these material facts** indicates **non-application of mind**, which vitiates the detention order.
 - (d) Preventive **detention cannot be justified when relevant safeguards**



already **exist under** judicially imposed **bail conditions, unless** specifically assessed and **found inadequate**.

(iii) **Final decision**

(a) The Supreme Court **allowed the appeal**

(b) The detention **order** was quashed/**set aside**

(c) The detinue was **granted relief** on the ground **that the detention did not meet** the constitutional and statutory **requirements of** preventive detention **law**.

82. What is Supreme Court's judgement on Shabna Abdulla versus Union of India?

- The **judgment** in *Shabna Abdulla v. Union of India* decided by the **Supreme Court of India on August 20, 2024** can be summarised as follows:
 - (i) **Outcome**
 - The Supreme Court **allowed the appeal** filed by Shabna Abdulla and:
 - (a) Quashed and **set aside** the detention **order** dated **August 24, 2021** passed **by** the COFEPOSA Wing of the Central Economic Intelligence Bureau (**CEIB**)
 - (b) Quashed and **set aside** the **confirmation** order dated **May 24, 2022** relating **to** the same **detention**
 - (ii) **Core reasoning as reflected in the arguments and acceptance by the Court**
 - The **Court found merit** in the challenge **that the detention** was legally **unsustainable** like:
 - (a) **Failure to properly consider binding** and relevant **precedent**, including the earlier **decision in** *Nushath Koyamu v. Union of India* **vide** Supreme Court **order** dated **June 03, 2022** which **dealt with similar** COFEPOSA **detentions**

- (b) Parity with **other co-detenus** like *Biju V. Joy* and others whose detention orders had **already been set aside by the High Court** in similar circumstances
 - (c) **Procedural defects in the detention process**, including issues like **non-supply/consideration of relevant materials** i.e. WhatsApp chats and **connected evidence** which were **treated as vital** to the detenu's right to make an effective representation
- (iii) **Effect of the ruling**
- As a result, the **detention** was **declared invalid**, and *Shabna Abdulla* was entitled to **relief from** the preventive **detention** under COFEPOSA.

83. What is Supreme Court's judgement on Union of India versus Nisar Aliyar?

- *Union of India v. Nisar Pallathukadavil Aliar* reached the Supreme Court of India **through** a Special Leave Petition (SLP) **challenging** the **High Court's decision**.
- (i) **What the Supreme Court held**
- The Supreme Court of India **did not interfere with** the **High Court's judgment**:
 - (a) **Dismissed the Special Leave Petition (SLP) filed** by the Union of India **on August 21, 2019**.
 - (b) The High Court **order quashing the detention order** dated May 17, 2019 **remained in force**.
- (ii) **Legal effect of the decision**
- (a) The Supreme Court's **order** was **not a detailed judgment** on merits; it was a **non-speaking dismissal of SLP**, meaning it did **not lay down any new legal principle**.
 - (b) **Practically, this meant:**

- The detention **order** under COFEPOSA was **invalidated** as **already held by the High Court**.
- The **detainee**, Nisar Aliyar, **remained released** due to quashing of detention.

(iii) **About the arguments you mentioned**

- The **petitioner** (Union of India) **challenged** the High Court's view on:
 - (a) **Compliance** with **Section 8** of COFEPOSA Act i.e. **Advisory Board report requirements**.
 - (b) **Reliance on earlier case law** i.e. **A.K. Roy v. Union of India**.
- The **Supreme Court** did **not re-examine** these issues **in detail**, since it dismissed the SLP at the threshold.

(iv) **Conclusion**

- (a) There is **no substantive** "Supreme Court judgment laying down new law" **in this case**.
- (b) High Court **quashing of detention upheld**, SLP dismissed by the Supreme Court.

84. What is Supreme Court's judgement on Union of India versus Dimple Dhakad?

- In *Union of India v. Dimple Happy Dhakad* (2019), the Supreme Court **restored** the preventive **detention** orders **and set aside** the **High Court's interference**.
- (i) **Supreme Court's decision, Judgment dated July 18, 2019**
 - (a) **Allowed the appeal filed** by the Union of India
 - (b) **Set aside the High Court judgment** dated **June 25, 2019** which had quashed the detention orders
 - (c) **Upheld the validity of detention** orders passed against Dimple Happy Dhakad
 - (d) **Dismissed the detainee's appeal**

(ii) Key reasoning of the Supreme Court**(a) No violation of Article 22(5)**

The Supreme Court **held that there was no breach of the constitutional requirement of communicating grounds of detention and supplying relied-upon documents.**

(b) Sufficiency of material & application of mind

The Supreme Court **rejected the argument that passing multiple detention orders in 1 day “after” examining voluminous material in 2364 pages necessarily showed non-application of mind.** It held that:

- Complexity or **volume of records alone does not invalidate detention**
- What matters is whether **relevant material was considered**

(c) Parity of documents, pari passu argument rejected

The Supreme Court **did not accept the contention that detention orders were invalid because all documents were not served exactly simultaneously in the manner argued by the respondent.**

(d) COFEPOSA compliance upheld

The Supreme Court **found no fatal violation of the COFEPOSA guidelines or procedural safeguards sufficient to invalidate the detention.**

(iii) Conclusion

- (a) High Court order quashing detention → set aside**
- (b) Preventive detention orders → restored and upheld**
- (c) Detenu’s challenge → dismissed**

85. What is Supreme Court’s judgement on Ranya Rao?

- (i) The most significant recent development is decision of the Supreme Court of India in April 2026 upholding preventive detention orders under COFEPOSA in a major gold-smuggling case involving Ranya Rao and another accused.**

(ii) **The Court clarified that:**

- (a) **A COFEPOSA detenu does not have an absolute right to be represented by a lawyer before the Advisory Board unless the government itself is represented by legal counsel.**
- (b) **Minor procedural irregularities will not automatically invalidate detention when the detenu had a meaningful opportunity to make a representation.**
- (c) **Courts will generally defer to the government's "subjective satisfaction" for preventive detention when there is sufficient material linking the person to smuggling activities.**

(iii) **Conclusion**

The latest Supreme Court rulings have largely strengthened the government's ability to sustain COFEPOSA detention orders, provided core procedural safeguards are followed.



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