



LAW Test-3

DTVF
OPT-22 **LAW-2203**

Time Allowed: Three Hours

Maximum Marks : 250

Name: _____

Mobile Number: _____

Medium (English/Hindi): English

Reg. Number: _____

Center & Date: Online

UPSC Roll No. (If allotted): _____

QUESTION PAPER SPECIFIC INSTRUCTIONS

Please read each of the following instruction carefully before attempting questions:

There are **EIGHT** questions divided in **TWO SECTIONS** which are printed in **ENGLISH**.

Candidate has to attempt **FIVE** questions in all.

Questions no. 1 and 5 are compulsory and out of the remaining, any **THREE** are to be attempted choosing at least **ONE** from each section.

The number of marks carried by a question/part is indicated against it.

Answers must be written in the medium authorized in the Admission Certificate which must be stated clearly on the cover of this Question-cum-Answer (Q.C.A.) Booklet in the space provided. No marks will be given for answers written in a medium other than the authorized one.

Word limit in questions, wherever specified, should be adhered to.

Illustrate your answers with suitable sketches/maps and diagrams, wherever considered necessary. These shall be drawn in the space provided for answering the question itself.

Attempts of questions shall be counted in sequential order. Unless struck off, attempt of a question shall be counted even if attempted partly. Any page or portion of the page left blank in the Question-cum-Answer Booklet must be clearly struck off

Q.No.	a	b	c	d	e	Total Marks	Q.No.	a	b	c	d	e	Total Marks
1	4½	5	4	4	4	21.5	5	4	5	4	4	4	21
2	9	7½	4½			21	6						
3	8	8	6½			22.5	7	11	7	8			26
4							8						
Grand Total												112	

मूल्यांकनकर्ता (हस्ताक्षर)
Evaluator (Signature)

परीक्षणकर्ता (हस्ताक्षर)
Reviewer (Signature)



Feedback

- | | |
|---|--|
| 1. Context Proficiency (संदर्भ दक्षता) | 2. Introduction Proficiency (परिचय दक्षता) |
| 3. Content Proficiency (विषय-वस्तु दक्षता) | 4. Language/Flow (भाषा/प्रवाह) |
| 5. Conclusion Proficiency (निष्कर्ष दक्षता) | 6. Presentation Proficiency (प्रस्तुति दक्षता) |
-

- * If you are writing such an answer without using any resources then you will get at least 320 marks.
- * Your writing style is amazing.
- * Make your introduction a little more informative.
- * Last time you were asked to write more about Articles, so this time you have focused only on that and left out the jurisprudential part.
- * Try to strike a balance between the flow.
- * Try writing headings while writing in points.

Best of luck

SECTION - A

1. Answer the following in about 150 words each:

10 × 5 = 50

(a) Discuss the Constitutional safeguards given to the civil servants?

Civil Servants form the permanent executive of India. They help the political executive in policy formulation and implementation. To discharge their duties effectively, they are provided with certain constitutional safeguards.

Clause 1 of Article 311 :- It provides that no person being a member of All-India Services or Civil Services of Union or State shall be dismissed or removed by an authority subordinate to the appointing authority.

Clause 2 of Article 311 :- It provides that no person being a member of All India Services

उम्मीदवार को इस
दृष्टि में नहीं लिखना
चाहिये।

(Candidate must not
write on this margin)

Try to
give heading
- while
writing
answers.

- No removal by
subordinate
authority.

- Reasonable
opportunity
to defend.

Exceptions to
ART-311(2)

- Exclusion of
Natural
Justice

mention the
provision
added by
42nd
Amendment.

or Civil Services of Union or States, shall be
removed, dismissed or reduced in rank except after
an inquiry in which he has been informed of the
charges against him and given a reasonable
opportunity of being heard in respect of those charges.

Article 320 → The appropriate Public Service Commission
must be consulted in all disciplinary matters affecting
civil servants.

These Constitutional safeguards are provided to
enable civil servants to remain politically neutral
and discharge their duties without any fear or favour.

41/2

(b) Write a short note on 'Eminent Domain'.

Eminent Domain is the inherent right of a sovereign to expropriate private property for public use, with payment of compensation.

Article 19(1)(f) provided for the fundamental right to acquire, hold and dispose property to all citizens, whereas Article 31 provided for compulsory acquisition of private property for public use, with payment of compensation, that is, eminent domain.

However, the 44th Amendment to the Constitution in 1978, removed Article 19(1)(f) and Article 31 and added Article 300A stating that no person shall be deprived of his property save by the authority of law.

उम्मीदवार को इस
हार्शिय में नहीं लिखना
चाहिये।

(Candidate must not
write on this margin)

Salus
populi est
Suprema
lex.

write
down
purpose
separately

(c) Short note on residuary power of legislation in the Constitution of India.

उम्मीदवार को इस
खण्ड में वही लिखना
पड़िये।

(Candidate must not
write on this margin)

With the advancement of society, there emerges
new fields of legislations which could not have
been comprehended at the time of division of
powers under 7th Schedule.

Article 248 provides that Parliament shall have
exclusive powers to legislate on subjects not
enumerated in State List or the Concurrent List -
including the power to make a law imposing
a tax not mentioned in the two Lists.

Entry 97 of Union List provides for "any matter
not enumerated in the List II or List III"

Both these provisions together enables the Parliament
to legislate on subjects not enumerated in List II & III.

101 Constitutional
Amendment Act
2016, special
provision
with
respect to
- goods and
service tax

mention the
reason for
giving
residuary
powers to
parliament.

Second G.T.
officer V.
D.H. Nazam
1970 case

In Union of India v/s HS Dhillon (1972),

SC held that by virtue of Article 248, the
residuary powers are expressly and explicitly vested
in Parliament. However, Article 248 is only an

enabling provision. Whereas, Entry 97 of List I
provides the subject matter for residuary legislation.

Entry 97 is exclusive of List II, List III and
Entries 1-96 of List I.

By providing residuary powers to the Parliament,
the Constitution has envisaged a Strong Centre like
Canada. In order to check frissiparous Tendencies
and uniformalty in emerging legislations.

(4)

(d) Examine the doctrine of territorial nexus and its application in the Constitution.

Constitution of India has provided for federal division of powers between Union and States. The powers are divided not just on legislative matters but also territorially.

Article 245 provides that subject to the provisions of the Constitution, Parliament shall have the powers to make laws for any part or whole of territory of India and States shall have the power to legislate on whole or any part of territory of the state.

While laws made for extra territorial operations are generally not valid for want of territorial jurisdiction, The Theory of Territorial Nexus provides that where there is sufficient nexus between the

उम्मीदवार को इस
रुनिध में पढी निम्नलिखित
करिये।

(Candidate must not
write on this margin)

A.H Wadhwa
U. CIT, 1947

State of
Bombay

U. RMDL
1957 SC.

law and the object sought to be achieved, the law would not be deemed invalid for extra-Territorial operation.

While Article 245(2) explicitly provides that laws made by Parliament shall not be invalid for having extraterritorial operations. The same is not true for State laws.

Sufficiency
of the
territorial
connection
involved
consideration
of two
element

However, in TISCO v/s State of Bihar, the Supreme Court held that where there is sufficient and clear nexus between a State law and object to be achieved, the same would not be invalid for having extra-territorial operation.

After judicial interpretation and Article 245(2), both Parliamentary and State laws can have extra territorial operations if there is sufficient nexus with object.

(e) Write a short note on the Doctrine of harmonious construction.

Constitution has divided the legislative powers of Union and States into 3 lists in 7th Schedule.

But with liberal interpretation and absence of water-tight compartmentalisation, sometimes the entries on the lists overlap.

In order to avoid the laws made being invalidated under the "Non-obstacle Clause" of Article 246, Court has evolved the Doctrine of Harmonious Construction.

It holds that the laws made by competent legislatures should be given wide interpretation so as to be all encompassing and inclusive of ancillary matters. But these wide interpretations can also lead to conflict between laws of two legislatures.

उम्मीदवार को इस
हार्जिन में बही निम्नलिखित
वाक्यों में

(Candidate must not
write on this margin)

Duty of
Court to
ascertain
to what
degree, and
to what
extent,
authority to
deal with
matters
falling
within the
Jurisdiction of
even
legislature

In order to reduce the impact of such conflict,
the Court harmonises the two interpretations so

that both can coexist and neither is rendered

negatory. This is known as Doctrine of Harmonious Construction.

In ITC v/s APMC (2002),

the Supreme Court harmonised a Union law
and State laws to avoid the state law being
declared unconstitutional under Article 246.

Hence, the theory of harmonisation operates upon
wide interpretation of competent legislations to
resolve any overlap and ensure that neither is
left redundant.

Amity University
U. S. Sri
Krishna Rangarath
Mudholkar.

u

2. (a) Discuss the constitutional validity of 97th Constitutional Amendment in the context of *Rajendra N. Shah v Union of India & Another*, 2021 SC. 20

उम्मीदवार को इस
हार्जिन में नहीं लिखना
चाहिये।

(Candidate must not
write on this margin)

97th Constitutional Amendment Act, 2011 inserted

Part IX B, Article 43B to Part IV and the word
cooperatives to Article 19(1)(c), to provide
Constitutional status to organisation of cooperatives.

Use the
word
Ultra vires
the
constitution
of India

97th Amendment was challenged in the case of
Rajendra N. Shah v/s Union of India, 2021

The Supreme Court held that "co-operatives"
are part of List II of the 7th Schedule and
as such State legislature shall have the exclusive
powers of legislation under Article 246 (3).

But when it comes to multi-state cooperatives,
the State legislature shall have no power to legislate
as the same can be traced to wide interpretation

Entry - 45
of List - I

of Entry 44 of List I, multi-state corporations,
where Parliament has exclusive powers of legislation
under Article 246(1).

As the case presents, the 97th Amendment has
provisions related to List I and List II, so the
the same had to be ratified by not less than
one half of State legislatures.

mention
Keshwanand
Bharati
case

In the absence of such ratification, the Amendment
stands invalid for procedural defects under
Article 368.

But the Court adopted the Doctrine of Severability,
and only partially struck down the 97th Amendment
to include only those provisions which related to
single state cooperatives. The provisions related to

multi-State cooperatives were held to be valid
owing to liberal interpretation of entries -

As a result of the judgement, the power of
Parliament to amend the Constitution is limited
by the Constitution and scheme of distribution of
legislative powers. There has to be a balance between
liberal interpretation and division of legislative powers.

write
down
observation
of
IR Coelho
v
State of
Tamil
Nadu
case

9

Try
write
judgement
in points.

(b) What are the Constitutional safeguards to ensure independence and impartiality of the Election Commission of India?

15

उम्मीदवार को इस
हाथिचे में नहीं लिखना
चाहिये।

(Candidate must not
write on this margin)

Start with
introducing
the significance
of election
commission of
India in
Indian
democracy.

The Constitution of India provides for an independent and impartial Election Commission under Article 324 for direction, superintendence and control of the electoral rolls and conduct of elections to the office of President, Vice-President, members of Parliament and State Legislature.

An independent and impartial Election Commission is necessary to hold free and fair elections and uphold democracy, following Constitutional safeguards are available for independence of Election Commission

① Though the Chief Election Commissioner is appointed by the President, he does not hold his office during the pleasure of the President.

② Though his tenure and conditions of service are determined by the President, they cannot be varied to his disadvantage after his appointment.

③ The Chief Election Commissioner (CEC) can be removed from his office in the same manner and on the same grounds as the judge of Supreme Court; that is, through a special majority of the Parliament (both houses).

④ The other Election Commissioner can be removed only upon the recommendation of the CEC.

Despite these provisions, there are other recommendations to strengthen the independence and impartiality of the Election Commission:

① The expenditure of the ECI should be charged

maininder
Singh
will k
Ans v/a
chief
election
commissioner
and others
1977.

explain
the limitation
in its
working
with
examples

please
read
question
properly
it is asking
about
how it
insures
independence
and
impartiality
so give
more
focus on
this

Upon the Consolidated fund of India, as is done for Supreme Court.

उम्मीदवार को इस
हार्डिग में नही लिखना
चाहिये।

(Candidate must not
write on this margin)

② A permanent secretariat and dedicated cadre of officers should be provided.

③ There should be a bar on post-retirement employment as for UPSC members.

④ CEC and other ECs should be appointed by a High Powered Committee like Director of Central Vigilance Commission.

⑤ Other ECs should be equal to CEC, who shall only be primus inter pares.

By strengthening the office of Election Commission, it would be empowered to take impartial action and strengthen democracy by holding free and fair elections.

good

7 1/2

be more
comprehensive
while writing
conclusion

(c) What are the different situations when repugnancy can arise under Article 254 of the Constitution?

15

उम्मीदवार को इस
हाशिये में नहीं लिखना
चाहिये।

(Candidate must not
write on this margin)

Article 246(2) provides for concurrent powers of
legislation to Parliament and State legislatures
with respect to matters enumerated in List III
of 7th Schedule.

- meaning
of repugnance
- inconsistency
or contradiction
between
two laws.

Article 254 of the Constitution provides for two situations
where a repugnancy can arise between laws made by
two competent legislatures :

- ① Where any provision of a law made by State legislature is repugnant to any provision of a law made by Parliament, which the Parliament was competent to enact, and
- ② Where the repugnancy is with respect to any existing law with respect to any subjects mentioned in the concurrent list.

In Hoechst Pharmaceuticals case, the Supreme Court restricted the interpretation of Article 254 to include only those matters of repugnancy where the Union law and State law are for the same subject matter i.e. in Concurrent List.

Court held that as per Article 246, supremacy is provided to Union list over Concurrent list and State list. Hence, there cannot be any repugnancy between the State law and Union law in Union list. If a State law contravenes a Union law on ~~State list~~ Union list, the State law would become unconstitutional rather than being "void to the extent of repugnancy" as envisaged by Article 254.

For Article 254 to apply, two conditions are needed:

Test of
repugnancy
is applied
on
M. Karimuddin
v. Union of
India.
This is the
core case
for this
concept

write
down
the
normal
rule
that in
the event
of a
conflict
between
a union
and
state
law

① The Union law and the State law must be
with respect to the same subject matter, that is,
in the Concurrent list.

② There must be a repugnancy between the two
laws.

Only then the State law would be, to the extent
of repugnancy, void.

However, Article 254(2) provides that if the State
law has been reserved for Assent of the President
and has received the assent, the same would be
applicable to the territory of the State.

But nothing prevents Parliament from passing a
subsequent law on the same subject matter to render
the exemption provided to the State law, as void
and void.

4½

1
low mark
just because
of the
case
law.

3. (a) In normal times, under what circumstances Union can control the State?

20

उम्मीदवार को इस
मार्गदर्शक में नहीं लिखना
चाहिये।

(Candidate must not
write on this margin)

Constitution of India provides for federal division
of powers where Union and States are supreme in their
own spheres. But Constitution also provides for a
stronger centre which can, under certain circumstances,
control the States.

Circumstances under which Union can control the States:

① Control over Executive powers of State under
Article 256 and 257:-

Executive powers of the State shall be so
exercised to ensure compliance with the laws
made by Parliament and so as to not impede
upon the Executive powers of Union.

Union can give such direction to States to ensure
compliance with Article 256 and 257.

Direction
by the
Union to the
State govt.

Mention
Art. 312
All
Judicial
Services

② Under Article 254, if there is any repugnancy between any law made by State and any law of Union under Concurrent List, the State law shall be void to the extent of repugnancy.

③ Governor can reserve Bills passed by State legislature for the assent of President under Article 200.

Write
about
grant in
aid

④ Under Article 293, State cannot borrow ~~the~~ without the consent of Union.

⑤ Though States have been granted fiscal autonomy but Union holds an indirect veto over GST-
Council deliberations under Article 279A.

full faith
and
credit
clause
Art-261

⑥ Scheme of financial distribution of funds are recommended by a finance Commission established

by President under Article 280. However, the
recommendations are not binding.

Delegation
of Union
Functions
to the
States.

⑦ Parliament can entrust functions upon the State
Government under Article 258 and consent of
State government is not mandatory.

⑧ Under Article 246, Constitution provides for
the primacy of Union list and Concurrent list
over State list.

Dispute
relating
to war
Art 262

However, in abnormal circumstances like Proclamation
of Emergency or failure Constitutional Machinery in
States, the State goes under Total control of the
Union and the polity turns into a unitary system
without any constitutional amendment.

⑧

(b) Discuss the circumstances in which Parliament can legislate on the Subject of a State List?

15

उम्मीदवार को इस
खाने में गंदी लिखना
नाहिद।

(Candidate must not
write on this margin)

In the scheme of distribution of legislative powers between Union and State under Article 246, clause 3 of Article 246 provides that State legislature shall have the exclusive powers to make laws on the subjects enumerated in List 2 of 7th Schedule.

However, the Constitution envisages 5 circumstances in which Parliament can legislate on the Subject of State Lists :

- ① Under Article 249, when Rajya Sabha (Council of States) passes a resolution that it is necessary or expedient in national interests that Parliament legislate on a matter in State List, the resolution can empower Parliament to legislate on that particular matter in State List.

power of
parliament
to legislate
in the
national
interest

② Under Article 250, Parliament has powers to legislate on any matter in the State List if Proclamation of Emergency under Article 352 is in place in any part or whole of territory of India.

③ Under Article 356, the President can empower the Parliament to discharge functions of State legislature including legislating on matters in State List, while there is failure of constitutional machinery in State.

④ Under Article 252, two or more States can pass a resolution empowering the Parliament to legislate on the matter mentioned in the resolution. Any such law made by Parliament will be applicable in the State passing such resolution.

During a
proclamation
of Emergency

Failure of
constitutional
machinery

with the
consent of
State

effect to
international
treaties
and
agreements.

⑤ Under Article 253, Parliament has the powers
to make law for any part or whole of the territory
to give effect to any international agreement.

The laws made by Parliament under Article 250
are temporary and ends 6 months after Proclamation
of Emergency ceases to operate, where as laws made
under Article 249 and 356 are semi-permanent
in nature. However, the laws made under Article
252 and 253 are permanent laws and can be
repeated or amended by Parliament only.

Try
to
give
readings
to the
para's
it will
save your
efforts.

(c) Discuss the constitutionality of Article 323A (2)(d) and 323B (3)(d) of the Indian Constitution. Substantiate your answer with judicial decisions. 15

उम्मीदवार को इस
हाशिये में नही लिखना
चाहिये।

(Candidate must not
write on this margin)

42nd Constitutional Amendment Act, 1976 inserted

Part XIV A and Articles 323A and 323B to

provide Constitutional status to Tribunals.

Article 323A (2)(d) and 323B (3)(d) sought to

exclude the jurisdiction of all court except that

of Supreme Court under Article 136.

The question whether Article 323A(2)(d) and 323B(3)(d) are constitutional or not, came up in the judgement of

K. Chandra Kumar vs UoI, 1997 :

Supreme Court held that power of judicial review

of Supreme Court and High Courts under Article 32

and Article 226 respectively are part of the basic

structure of the Constitution and hence cannot be

Write some
jurisprudential
part of
these articles

S.P. Sampat
Kumar v.
Union of
India 1997

excluded by way of a Constitutional Amendment.

These powers are necessary for the Courts to discharge their duties as final arbitrator of the Constitution and the guardian of the fundamental rights.

The tribunals under Article 323A and 323B cannot by way of Amendment to the Constitution escape the judicial review of higher courts.

Moreover, the powers conferred on all High Courts under Article 227 to exercise superintendence over all courts and tribunals within their territory is also a part of the basic structure of the Constitution and the tribunals established under Article 323A and 323B cannot exercise as parallel jurisdictions.

Any appeal ~~by~~ against the order of these tribunals

mention
about
Swarn
Singh
committee
and
42nd
amendment

Cannot by pass the authority of the High Courts.

The appeal must, in the first instance, lie to the High Courts and then to the Supreme Court under Article 136.

Tribunals have
lost their
status but
not
jurisdiction
conclude on
this note.

Hence, Judicial review of Constitutional Courts and the power of superintendence of High Courts over all courts and Territories within their jurisdictions are part of the basic structure. As a result the Clause 2(d) of Article 323A and Clause 3(d) of Article 323B are declare unconstitutional.

62

SECTION - B

5. Answer the following in about 150 words each:

10 × 5 = 50

- (a) Only an impartial and independent judiciary can protect the rights of individual without fear and favour. In the light of the above statement discuss the various provisions made by the Constitution to ensure the independence of judiciary.

उम्मीदवार को इस
प्रश्न में नही लिखना
चाहिये।

(Candidate must not
write on this margin)

An independent judiciary is necessary to resolve federal disputes as well as to protect the rights of individuals without fear and favour.

elaborate
it more
comprehensively

Constitution has ensured independence of judiciary in the following manner:

Security
of
tenure

* Fixed
Salary

* No
curtailment
on the
judgement
or
power of
Supreme
Court

① Appointment of judges is done by executive in consultation with the members of judiciary itself (Article 124).

② Removal only on grounds mentioned in the Constitution and through strict parliamentary procedure.

③ Conduct of judges cannot be discussed in legislature.



drishti



* No discussion
in Legislature
on the
conduct
of the
judge.

* Power to
punish for
contempt

* ~~So~~
* Separation
of judiciary
from
Executive
(Art 50)

except upon their motion of removal. (Article 121)

④ Salaries, allowances and pension are charged
and not subject to annual vote of legislature.

⑤ Higher courts are provided with Contempt Powers
as a Court of Record. (Article 129)

⑥ The officers of the Supreme Court are exempted
from the Doctrine of Pleasure under Article 310.

⑦ The terms and conditions of service cannot be
waived to their disadvantage after appointment
as a judge.

The independence of judiciary has been described as
a basic feature of the Constitution and the bulwark
of personal liberty of individuals.

उम्मीदवार को इस
रजिस्ट्रार में नहीं लिखना
चाहिये।

(Candidate must not
write on this margin)

(b) After dismissal of a writ petition, Special Leave petition and Review Petition, the petitioners approach the court for relief pointing out inherent legal defect vitiating the earlier decisions. Whether the Court can grant relief in such a case.

उम्मीदवार को इस
हार्डिक में नहीं लिखना
चाहिये।
(Candidate must not
write on this margin)

An aggrieved person can file a writ petition to Supreme Court under Article 32, a Special Leave Petition under Article 136 and a Review Petition under Article 137.

give a
brief
introduction
of both
SLP and
Review
petition.

After the closure of Review Petition, the decree is considered as res judicata, that is, the matter has been finally heard by a competent court and hence closed.

But in Rupa Hurra v/s Ashok Hurra, 2002 Supreme Court held that while certainty of a decision is important, but it cannot be at the cost of justice. If after a review petition has been decided, and the petitioner approach the Court for relief by pointing out inherent legal defect vitiating

the earlier decisions, it would be within the
inherent powers of the Court to entertain a Curative
petition to cure a gross miscarriage of justice.

But the jurisdiction must be exercised in the rarest
of the rare cases, upon happening of certain conditions:

- ① Violation of principles of natural justice.
- ② Error apparent on the face of record.
- ③ Non-disclosure of the scope of bias by the judge.

The court has however, not defined the conditions
exhaustively but would depend upon the facts of
the case. Care has to be taken that the case
reaches finality while ensuring that justice is done.

AKARVUS
Lakra
V
Union of
India

discuss
more points

5

(c) Explain 'Parliamentary Privilege' referring to the provisions of the Constitution of India.

उम्मीदवार को इस
हाशिये में नही लिखना
प्राहिणे।

(Candidate must not
write on this margin)

Parliamentary Privileges are certain special rights,
exemptions and immunities granted to members
of legislatures, the House and its committees to enable
them to discharge their duties effectively.

Define the
term
'Privilege'

Under Article 105 and 194, two privileges are
explicitly provided :

Clause 1 of Article 105 and 194 provides that

Subject to provisions of the Constitution and
Rules regulating the procedure of the House, there shall
be freedom of speech in the Parliament and State
legislature.

Furthermore, 105 (2) provides that no member
shall be liable in any proceedings in any court for

anything
said in
parliament
the
word
'anything'
is
equivalent
to
everything.

anything said or any vote given during the proceedings of the House or its committees.

Clause 2 of Article 105 and 194 further provides that no person shall be liable for any publication by or under the authority of the House for any report or proceedings.

Under 105(4), these Parliamentary privileges are available to all persons who have the right to speak and take part in proceedings of the House and its committees.

(example → Attorney General and Ministers under Article 88).

Further, the legislature is empowered under Clause 3 of Article 105 and 194 to legislate and provide for further privileges.

45

www.drishtiias.com

Contact: 8750187501, 8448485517

Copyright © Drishti The Vision Foundation

Discuss some more points other than constitutional points about privileges.

Conclude more comprehensively

4

(d) Discuss about the superintendence power of the High Court under Article 227.

Article 227 provides that every High Court shall have the power of superintendence over all courts and tribunals within its territory except courts and tribunals established under the laws of Armed forces.

This power of superintendence under Article 227 is wider than the writ powers provided under Article 226

as :

① Under Article 226, the High Court issues a writ of certiorari to the subordinate court to check the misuse, abuse or excess use of jurisdiction, even for violation of principles of natural justice, whereas the supervisory powers under Article 227 are reversionary in nature. The High Court may not only quash the proceedings of a lower court

write about the limitation of the authority.

Discusses about Waryam Singh v. Amar Nath.

but also make such directions as the circumstances
warrant.

② The jurisdiction under Article 226 is judicial in
nature whereas under Article 227, it is judicial
as well as administrative.

③ The powers under 226 are exercised only upon a
petition by affected party, whereas under 227,
supervisory jurisdiction is suo-motu.

Supreme Court in L. Chandra Kumar case (1997)
held that, the power of superintendence of High
Courts over courts and Tribunals within their
jurisdiction is part of basic structure and cannot
be removed by way of amendment. It is necessary
for the Court to help it discharge its functions
under the Constitution.

Concluded with
~~D.A. Atrekar~~
D.N. Banerji
U.
P.R. Mukherji

④

(e) The jurisdiction of the Supreme Court under article 142 supersedes the executive and legislature. Comment.

उम्मीदवार को इस
मार्गदर्शक में नहीं लिखना
पड़िये।
(Candidate must not
write on this margin)

Article 142 provides that the Supreme Court may pass a decree or an order as is necessary to do complete justice between parties in any matter pending before it.

For doing
'complete'
justice"
in any
case
pending
before it

The powers conferred under Article 142 read with Article 141 (law declared by Supreme Court shall be binding on all Courts) and Article 144 (all civil and judicial authorities shall act in aid of Supreme Court) provides for a comprehensive exercise of powers.

Olga Tellis
case.

Supreme Court has used Article 142 to supersede the executive and legislature in the following instances:

- ① Cancellation of Coal blocks in 2014.
- ② Guidelines passed in Vishakha Judgement (1994).
- ③ Compensation provided in Union Carbide case (1985)

ban on
liquor
Sale on
highways
case

Mil Kumar
Jain

V
Maya Jain

Bandhua
mukti
marcha
case.

Though the jurisdiction under Article 142 read with Article 32 provides wide liberty to Supreme Court to exercise jurisdiction, the same has been a cause of concern due to arbitrariness to act, lack of accountability and liberal use of Article 142 to supersede legislature and executive.

Due to these concerns, the issue of judicial overreach emerges.

Supreme Court in Vineet Narain judgement (1998) held that though the powers under Article 142 are wide and comprehensive, the same shall be exercised sparingly.

another
side of
power
* Unaccountability
* Judicial
under-reach.

7. (a) Explain the various jurisdictions of the Supreme Court.

20 उत्तीर्ण करने वाले
हस्ताक्षर से नहीं लिखना
चाहिये।
(Candidate must not
write on this margin)

Constitution has established the Supreme Court as the final interpreter of Constitution, arbiter of federal disputes, the guarantor of fundamental rights and the final court of appeal in India.

It has been vested with 5 main jurisdictions :-

① Original Jurisdiction under Article 131 :-

↓
to hear federal disputes between Union and one or more States or between two or more states.

However, Parliament may by law exclude the jurisdiction of Supreme Court from inter-state river water dispute under Article 262.

Supreme Court also has original exclusive jurisdiction to hear election disputes to office of President and Vice President.

Original
Jurisdiction
* Appellate
Jurisdiction
* Advisory
Jurisdiction.

Party
Subject
matter

adjustment
of certain
expenses
between
Union
and
state.

matters
referred
to the
Finance
Commission

SC also has original concurrent jurisdiction under
Article 32 with High Courts under Article 226.

② Appellate Jurisdiction under Article (132 + 135) = 136

- Criminal, Civil and Constitutional matters
which requires interpretation of substantial
question of law.
- Against the order of a High Court in certain
criminal matters reversing the acquittal order
of a lower Court.

explain
them in
at least
one
line.

and
Special
leave to
appeal

Janak Singh
v. State
of U.P.

③ Special Appeal Jurisdiction under Article 136

↳ against any judgement, order or decree
passed by any court or tribunal throughout the
territory of India except military tribunals.

- The power under Article 136 is discretionary
and cannot be claimed as a matter of right.

Pritam
Singh
✓
State

it is
part of
appellate
Jurisdiction

④ Review Jurisdiction under Article 137

↳ power to review its own orders and decisions
due to emergence of new evidence, or error
apparent on the face of record or any other
substantial reason.

- This is not an inherent power but exclusively
vested on Courts.

⑤ Advisory Jurisdiction under Article 143 ÷

↳ President may seek the opinion of Supreme
Court on any matter of public opinion.

- Neither the Supreme Court is bound to give
advise, nor the President is bound by the
advise tendered.

in re
Kerala
Education
Bill

⑪

Owing to these powers, the Supreme Court of India
has one of the widest jurisdictions in the world,
further aided by judicial devices like PIL.

(b) Explain what is meant by the expression "failure of constitutional machinery in a State under Article 356 of the Constitution of India".

15

उम्मीदवार को इस
हार्जिन में नहीं लिखना
चाहिये।

(Candidate must not
write on this margin)

Article 356 provides for provisions in case of failure
of constitutional machinery in a State. It provides
for President to overtake the powers of State
government except that of State Legislature.

Write about
the duration

Give more
Focus
to the
Article
356
only
and discuss
Art 357
also

Though the phrase "failure of constitutional machinery"
has not been defined, various provisions of Constitution
and judicial pronouncements provides for such instances:

- ① Article 365 → Where a State fails to give
effect to or comply with any directions issued
by the Union, it shall be lawful for the
President to hold that the government of the
State cannot be carried on in accordance with
the provisions of the Constitution.

② House ~~Hung~~ : Where no group of members of the legislature can command the majority of the Assembly to form the executive.

③ In S.R. Bommai case (1994), Supreme Court held that secularism is a basic feature of the Constitution and any government doing anti-secular activities would amount to failure of constitutional machinery.

④ Corruption and gross mismanagement of the affairs of the State.

⑤ Insurgency in the State and inability of the State government to tackle it.

⑥ Acting against any provision of the Constitution.

Sarkaria
Commission
report
and
meaning
of the
failure
of
constitutional
machinery
according
to that

Discuss
this
case
more
comprehensively

role
of
44th
amendment

conclude
with some
point of
Sarkaria
commission's
report
it will
enhance
your
answer.

Article 355 prescribes a special duty upon the Union to ensure that the government of every state is carried on in accordance to the provisions of the Constitution. When that is not possible and the President is satisfied, whether on report of Governor or otherwise, that the government of the State cannot be carried on in accordance to the provisions of the Constitution, he may by Proclamation assume to himself the powers of government of the State except legislative powers.

①

(c) Compare the freedom of speech of a citizen given to him under Article 19(1)(a) with the freedom of a member of Parliament under Article 105 (1) of the Constitution of India.

15

उम्मीदवार को इस
हाशिये में नहीं लिखना
चाहिये।

(Candidate must not
write on this margin)

Freedom of Speech has been recognised as a
fundamental Right (FR) to all citizens under
Article 19(1)(a) as well as a Parliamentary Privilege
available to all members of the legislature under
Article 105 (1).

Article 19(1)(a) - All citizens shall have the
right to freedom of speech and expression.

Article 105 (1) - Subject to provisions of the Constitution
and rules regulating the procedure of the House,
there shall be freedom of speech in the House.

Comparison of the Two is

Article 19 (1) (a)

- Available to all citizens

Article 105 (1)

- Available to members
of Parliament as well

Write more
in introduction
about both
the
articles

MSM
Sharma
V.
SK. Sinha
case.

as to all persons entitled
to speak or take part in
proceeding of a House of
Parliament, including
non-Citizens.

② Article 19(1)(a) is
only subject to 8 (eight)
restrictions mentioned
in Article 19(2).

Article 105(1) is
subject to other provisions
of the Parliament as
well as rules governing
the procedure of the
House

③ Article 19(1)(a) is
automatically suspended
with Proclamation of
Emergency on grounds of
War or external aggression.
(Article 358)

Article 105(1) is not
automatically suspended.
but can be regulated
by legislature under
Article 105(3).

by
the
constitution
of India
infringement
leads to
the
issuing
of
writ.

④ Enforcement of
Article 19(1)(a) is
done directly by the
Supreme Court under
Article 32.

The House itself is the
arbiter of the breach
of its privileges.

⑤ To role of Article 19(1)(a)
is to protect the liberty
of the citizens.

105 (1) is available
to help legislatures discharge
their duty to hold the
executive accountable

- Don't
create
random
or
forcibly
comparison

Both the Articles provide for freedom of speech
but exist in different spheres - to uphold the
liberty of individual as well as to help discharge
the duties entrusted by the Constitution itself.

Overall
good

⑧