

DEVANSH SARSWAT

Extra time taken
: 21 minutes



Law Optional Test Series No - 01
Answer Sheet

Total Time Alloted: 3 Hours

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Total Marks : 250

Question Paper Specific Instructions

- Please read each of the following instructions carefully before attempting questions.
- There are EIGHT questions divided in two sections.
- A candidate has to attempt FIVE questions in all.
- Questions no. 1 and 5 are compulsory and out of the remaining, 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.
- Word limit in questions, wherever specified should be adhered to.
- Attempts of questions shall be counted in chronological 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 answer book must be clearly struck off.

NOTE: Please take a printout of the answer Booklet and give answers in stipulate time. So that actual examination scenario is stipulated.

	Average	Good	Better
Presentation			
Structure			
Content			

Remarks:



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(Section -A)

Q.1(A). Life and personal liberty are inalienable to human existence. Discuss in light of article 14, 19 and 21 of the constitution. (10 Marks) [150 words]

Articles 14, 19 and 21 are part of the golden trinity of Indian constitution. These are the sepositories of Life and Personal liberty of any individual which are inevitable to sustain a healthy and dignified life for an individual.

Art. 14 in isolation or conjoint? Interpretation in isolation or conjoint?

Initially, the interpretation of these three provisions by the Constitutional Courts was limited and independent in their respective spheres or realms i.e.

Art. 14 for Equality, Art. 19 for Freedom and Art. 21 for Life.

The aforesaid approach was notoriously taken in the following landmark judgment:
→ ADM Jabalpur v. Shiva Kant Shukla
The Supreme Court in this case held that Art. 21 was the sole sepository of life and personal liberty.



However, Justice HR Khanna gave a famous dissent and observed that offsets of life and liberty also emanates from Article 19.

This dissenting opinion became the majority opinion in the following landmark case:

→ Maneka Gandhi v. U.P.T.

The Supreme Court ruled that Articles 14, 19 and 21 cannot be read in isolation and they form a golden trinity as famously remarked by Justice PN Bhagwati.

This Maneka Gandhi judgment paved way for an expansive and liberal approach for interpretation of life and personal liberty in terms of new rights such as right to healthy environment, rights of accused, right to privacy etc.

Finally, the importance and inevitability of life and personal liberty vis-a-vis human existence and in turn the golden trinity of Art. 14, 19 & 21 is evident from the fact that these trinity has been declared to be a part of the basic structure of the Constitution.



Q.1(B). What do you understand by 'religious practice', which are entitled to be protected under article 25 of the constitution? (10 Marks) [150 words]

Article 25 of the Indian Constitution provides the freedom of conscience and religion to persons subject to Public order, health, morality and other provisions of Part III.

However, not all religious practices are protected by Article 25, only such practices that are declared to be "essential" by the Supreme Court get the protection.

The Test of Essential Religious Practice/ERP. According to this test as given by the Supreme Court, the impugned practice will have to be shown to be essential based on the scriptures and tenets of the particular religion in question.

Practices held "not essential": Some instances

→ Anand Margis case

The Tandava dance performed by Anand Margi sect with skulls in hand was declared to be non-essential and hence not protected by Article 25.



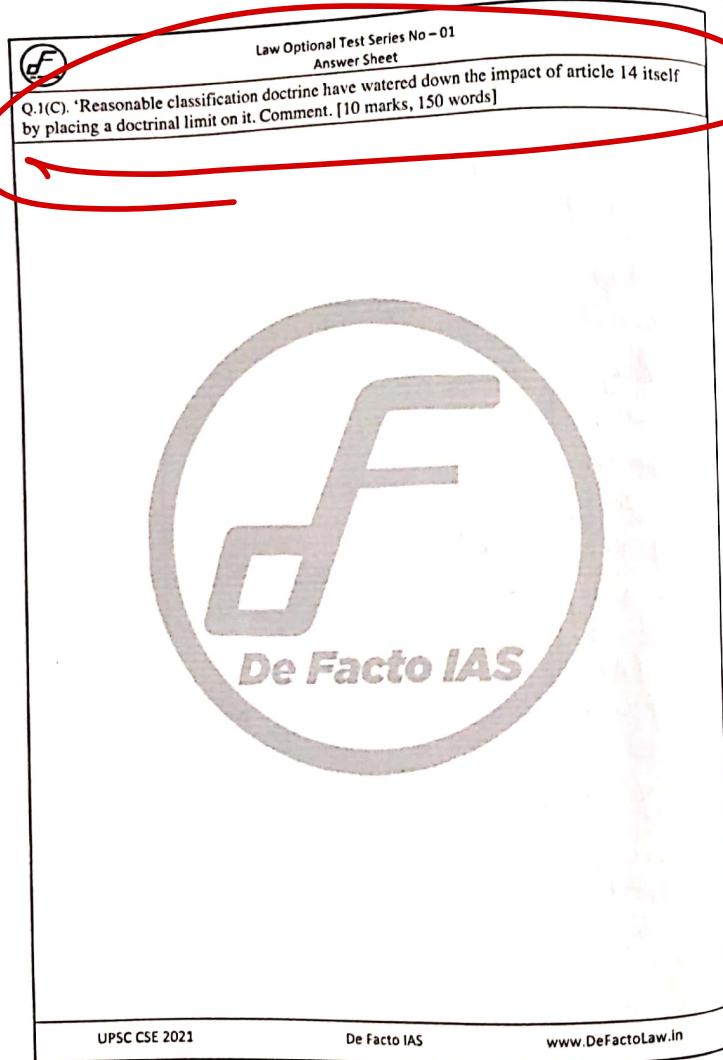
→ Ismail Faruqui v. Union of India
The practice of Namaj in Muslims,
Supreme Court held that offering Namaj
in a mosque is not an ERP.

Instance of a Practice held to be an
ERP

→ Rizoe Immanuel v. State of Kerala

In this case the dispute was with
regard to Tehorah's witnessess not Singey
singing the national anthem. The
Supreme Court held that worship →
it's a part of their religious tenet
that they don't sing any national
anthems hence as long as they pay
respect to it by standing respectfully
even without singing is protected
by Article 25 of the Indian Constitution.

However, in recent times the test of ERP
is under critical scrutiny owing to the
reasoning that a secular court of the country
may not be the judge as to decide what
practice is essential to a religion and what not.





Q.1(D). The constitution must be subjected to fundamental constitutional limitations and Fundamental right provided therein, is not at the exclusion of basic human rights. Discuss [10 marks] [150 words]

The Constitution is a comprehensive document enshrining multiple fundamental laws and doctrines essential for the effective functioning of the democratic polity. One such fundamental part provided therein is of Part III, that is of Fundamental Rights.

~~Fundamental Rights as repository of Basic Human Rights~~

The rights granted as part of this includes varied rights in the form of Equality, Freedom, Life, Religion, Education etc. which form the core of any basic human rights regime, the most prominent being the Universal Declaration of Human Rights (UDHR).

~~Fundamental Rights as 'Fundamental'~~
These are called fundamental because these are inevitable for fundamental



human existence and also these are not gifts to people rather they are bestowed upon them owing to the very fact that they have taken birth as human Beings.

Constitutional Limitation

The Part II of the Constitution acts as a limitation on the exercise of powers by the legislative and the executive wings of the state. As

(6) Art. 13 points out that no law abridging can be made the fundamental rights can moreover the immutability and inherent nature of this fundamental limitation on the state lies in the very fact that some of these rights constitute basic structure of the constitution as enunciated by the Supreme Court in Keshavananda Bharati v. State of Kerala.



Q.1(E). Preamble is key to the heart and mind of the constitution. Discuss its main features and purpose. [10 marks, 150 words]

Dr. Bhim Rao Ambedkar remarked in the Constituent Assembly that Preamble is the key to the Constitution.

Preamble as Part of the Constitution

The Supreme Court in Rishwananda Bharati case held that Preamble indeed is a part of the Constitution, and it is a guiding force for the legislature and executive while formulating laws and policies.

Moreover, Art. 37 itself declares that features of the Preamble

- Declares the People as the source of the Constitution.
- Declares India to be a socialist, secular, democratic Republic.
- Enshrines the three core ideals of our democracy in liberty, Equality and Fraternity.
- Strives to achieve the ideals of social, economic and political justice.



The Purpose and Usage of the Preamble

The Preamble acts as a guiding light for the state, as it gives insight into the mind of the constitutional makers as to what they had envisioned while framing a particular provision in the constitution.

So the laws and policies although may not be directly dumped as violative of the Preamble yet it may prove to be a guiding factor and basis in case of dilemma before the different organs of the state.

Some instances of Preamble's utility

→ AIIMS Student Union v. Union of India
A provision relating to reservation was struck down as not in consonance with the ideal of 'equality' in the Preamble.

→ Similarly, taxing statutes are held to be in consonance with equality goal of Preamble.

Hence, Preamble in this way and fairly so acts as the key to the minds and hearts of the constitution makers.

Click next on Content

Govt Governor



Q2(A) Governors are not the agent of the President except when constitution so provides. Critically analyse the statement in light of federal setup of India. (20 Marks, 300 Words)

The office of the Governor is an important constitutional office in the context of Indian Federal structure as it represents the Centre in the States so as to keep the spirit of cohesion between the two levels of government.

Article 153 of the Constitution provides that Governor acts as the source of executive power of the State.

Position of Governor: Agent of President
Although it is true that Governor is appointed by the President and works under the pleasure of President but still except for the Constitutional provisions that require the Governor to represent the centre and protect its interests, it remains an independent constitutional office.

Constitutional provisions vis-a-vis Governor as Agent of Centre:



- Provisions relating to failure of Constitutional machinery in states (Art. 356), Governor reports to the President regarding the same.
- Article 200 : Reserving certain bills for the consideration of the President which have a bearing on the centre. Governor as independent Constitutional Functionary

Apart from the aforesaid provisions, Governor functions in his own realm based on the powers granted by the Constitutional provisions.

These powers are independent of the President and the Central Government to be exercised in his own capacity as the head of the state. Some of these powers are as follows :

- Head of state executive : all executive decisions to be taken in the name of Governor. [Art. 154]
- Appointment of Chief Minister and other ministers. [Art. 163]



- Ordinance Making Powers [Art. 213]
- Clemency Powers [Art. 161]

moreover, Supreme Court in multiple judgments, has namely :

→ S.R. Bommai v. Union of India

→ B.P. Singh v. Union of India

has held that the Post of Governor is not an employment under Central Government, and is an independent constitutional office.

Hence, it is evident from the aforesaid provisions and instances that except

where the Constitution itself provides so, Governor is not an agent of the President, rather it is an important constitutional functionary acting as a bedrock of cohesive and integrated federal set up of our democratic polity.

(ii) role in light of
Federal Set up



Q.2(B). Executive clemency cannot be arbitrary and whimsical, it must follow rule of law. In light of above statement discuss pardoning power of governor. (15 Marks, 250 Words)

Art. 161 of the Constitution gives the governor the power to grant pardon, suspense, remission, respite to any person convicted of any offence against law of a state.

Governor's decision

It is actually the decision of the Council of Ministers who advise the governor as per Art. 163.

Factors to be considered

~ No guidelines as such are provided, however the only factor is justice that is to be ensured.

However, the governor's decision cannot be arbitrary, whimsical.

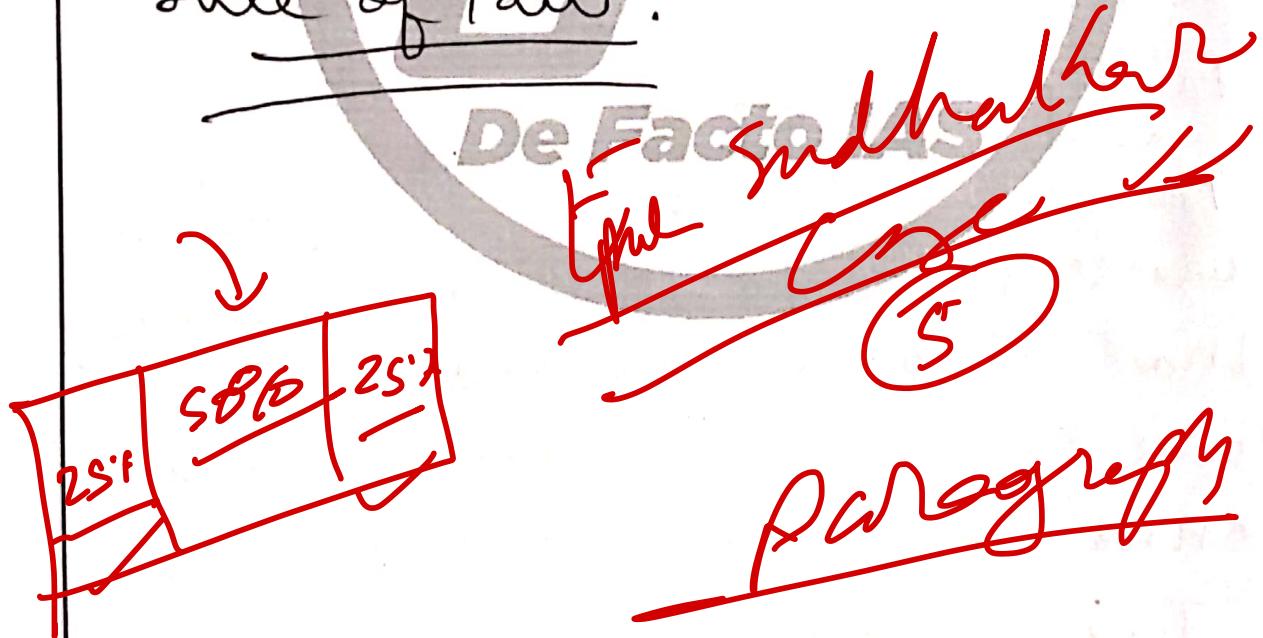
Judicial Review

→ Manu Ram v. UOI & Kehar Singh Case



The Supreme Court held that if the governor's decision is mala fide, whimsical or arbitrary, judicial review can be exercised.

Moreover in Shatsughan Chauhan's case the Supreme Court held that inordinate delays in decision on clemency should go in favour of the accused and relief must be given hence promoting rule of law.





Q.2(C). Fundamental right merely aims to achieve what preamble intends to for our citizen. Critically evaluate, how far it have been achieved, discuss in light of supreme court judgments (15 Marks, 250 Words)

The Preamble outlines the broad goals of the Constitution in the name of Justice : Political, liberty, Equality, Faternity and also Freedom.

So the Fundamental Rights chapter is a mere extension of the framework by which the said goals in the Preamble are to be achieved. The implementation of these are to be seen from the following cases:

→ Maneka Gandhi v. Union of India
Equality and arbitrariness are sworn enemies according to Justice PN Bhagwati.
Also, Art. 14, 19 and 21 were declared to be bulwarks of liberty and life.



of individuals.

Based on this judgment various new expansive rights emanated.

The recent and most prominent example is of :

→ Justice (Retd.) K S Puttaswamy v. Union of India

Right to Privacy was held to be a part of the basic structure of the Constitution. Art. 21

Similarly, cases of Narjeet Singh Johar (Art. 377) etc. represent the broad ideals of Preamble in motion.

Although our proactive judiciary is going great so as to implement the ideals of Preamble, we still have a fairly long way to go.

Mem
Observe

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→ bread → →

Q.3(A). Article 142 is manifestation of constitutional trust vested by our founding father in the apex court. It provides supreme court with unlimited discretion which should be rarely exercise. Comment (20 marks, 300 Words)

Article 142 is one of the most powerful / power source for any Supreme Court in the world.

The words say it all, "to do complete justice", no statutory or legal requirement can prevent the Supreme Court from passing any judgment, order, direction etc.

However, time and again Supreme Court has cautioned itself against using this power often.

- it can't be invoked to override a clear and specific legislative clause
- must be used sparingly to prevent gross injustice.
- can't be used as a primary power



Instances of "complete Justice"

→ Ram Jammabhoomi case

The Supreme Court invoked Art 142 to grant a separate piece of land to Wakf board so as to protect communal harmony.

→ Best Bakery Case

The Supreme Court ordered sets trial of exonerated accused in a different state using Art. 142.

So, cases like above are the instances where the framey had bestowed on the Supreme Court this sweeping power.

~~gratuitous legal imports based on~~

(6)
2

~~gratuitous legal imports based on~~

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Q.3(B). "A review jurisdiction of the Supreme court is not appellate jurisdiction in disguise and its purpose is to ensure that justice was not defeated". Discuss article 137 of Constitution. (15 Marks, 250 Words)

Article 137 of the Indian Constitution grants the Supreme Court power to review its own judgment.

Conditions:

The power cannot be used like an appeal and must be only used sparingly in the following cases:

- ~ Gross miscarriage of justice
- ~ Mistake of fact
- ~ Judge's bias

Also, reappreciation of evidence is not done.

Plus, any point not raised in the original arguments can't be raised in review application.

As far as practicable, the judge



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who passed the original judgment
should hear the review application.

If found frivolous, exemplary
costs to be awarded.

(S)

~~less Control~~





Q.3(C). Ordinance making power is intended for being used as a last resort when legislature is not sitting. It cannot be used to subverts the legislative process. Examine critically the above statement in the light of judicial pronouncements. (15 Marks, 250 Words)

The President and the Governor under the Constitution have been bestowed with multitude of powers under the legislative, executive and judicial sealum. One such prominent power under the legislative sealum is of the Ordinance making or Promulgation of ordinances.

Article 123 and : Conditions :-

- The Houses of Parliament (either one or both) must not be in session.
- An immediate requirement / urgency so as to show the ineffectiveness of waiting for the house to reassemble.
- The ordinance must be repromulgated within six adopted / approved by the Houses within 6 weeks of their reassembly.
validity : six months

The misuse of Ordinance Making Power :
The Repromulgation Rule



Although the power is a merely supplement in case of urgency, however, governments have had used this to bypass the legislative scrutiny by way of reformulation of ordinances every six months, as happened in the case below:

→ DC Wadhwa v. State of Bihar

It was found out that Bihar government in a fixed time period had reformulated some ordinances to the tune of 300 times. The Supreme Court held this to be unconstitutional and exercise to subvert legislative process.

→ Krishna Kumar Singh Case (2017)

Justice DY Chandrachud called the exercise of multiple reformulation as a 'fraud on the Constitution'. The Supreme Court disallowed the use of reformulation more than once.

Hence, the Supreme Court has come down heavily on this subversion of legislative process by the Governor / President by way of reformulation. Yet the practice is common. A setback needs to be given regarding this power because no large democratic constitution except India provides for it.

*Separate
legislature*

*b1
b2*



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Q.4(A). Discuss with reference to case law in which circumstance in which writ of mandamus is issued by Supreme Court. (20 marks, 300 Words)



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Q.4(B). The prime minister is lynch pin of Westminster form of government. Discuss the constitutional position of prime minister. (15 Marks, 250 Words)

In the Parliamentary form / Westminster form of government, the office of Prime Minister is in fact the most important office as it is the 'head of government' in contrast to President / monarch who is the 'head of the state'.

Prime Minister under the Constitution

Art. 74 enshrines that there shall be a Council of ministers headed by the Prime Minister to aid and advise the President in exercise of its executive power.

- Position of PM .
- head of ~~the Council of~~ IAS Ministers
- Advises the President to appoint/ remove any minister



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Q.4(C). Law declared by Supreme Court in binding on all courts throughout the territory of India. What do you understand by 'law' in above statement? (15 Marks, 250 Words)





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Section - B

Q.5(A). Bring out the difference between article 226 and 227 with regard to their scope and applicability. [10 marks. 150 words]

Article 226 and 227 are two of the most important provisions as far as the powers of the High Court under the scheme of ~~Judiciary in the Constitution~~.

The Power of Subsistence [Art. 227]

The High Courts exercises these powers to exercise their supervision over the subordinate courts under them.

They act as the 'friend, philosopher' and 'guide' of the courts under their authority

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The Writ Jurisdiction [Art. 226]

Under this the High Court is empowered to issue writs in the nature of Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo Warranto within the state for the exercise of any rights against any authority.



The Difference b/w Art. 226 and Art. 227

- | | |
|--|---|
| <ul style="list-style-type: none">• <u>Art. 227</u> | } • <u>Art. 226</u> |
| <ul style="list-style-type: none">~ represents or connotes three powers against one authority i.e. <u>legislative</u> - to frame rules for better functioning, <u>executive</u> - to appoint officers, & <u>judicial</u> - to give direction in a particular case and the authority is the <u>lower judiciary</u>. | <ul style="list-style-type: none">~ it represents one <u>Power</u> to issue <u>writs</u> against <u>3 authorities</u>, i.e. legislature - mandamus, executive - quo warranto, judiciary - certiorari / prohibition. |
| <ul style="list-style-type: none">~ apart from prohibiting the lower court to try a case [Writ], under Art. 227 the High Court can give further directions as well. |) whereas under Art. 226 nothing more than Writ directing not to proceed with a case could be ordered. |

Overall, the two articles represent the never cease of High Courts' authority to exercise superintendence and supervision over the other organs of the state and also constitutes the basic structure of the Indian Constitution per L. Chandra Kumarcas.

(b-2)

Good
J-BM



Q.5(B). Transfer and appointment of Judges in Higher courts of India violates the constitutional norms of mutual respect and accountability between different organ of state. Elucidate. [10 Marks, 150 Words]

The Appointment and Transfer of the judges are regulated by Article 124 and 215 of the Constitution.

According to the same, the President in consultation with the Chief Justice of India appoints the judges and similarly transfers them.

However, the Supreme Court citing independence of judiciary has vested these powers in the Collegium consisting

of CJ + and 5 Senior most judges of the Supreme Court through its judgment in Supreme Court AOR Association v. Union of India.

Arbitrary Transfers and Appointments as antithesis to Mutual respect and accountability

However, in the recent times we have seen deadlocks between the executive and judiciary over appointment /



transfer of some judges.

Reasons:

- Lack of transparency in the functioning of collegium
- Government's delays / reservations for certain names
- No proper consultation with the judge in question

The Constitution makers had envisaged a balanced scheme of appointment of judges involving both the executive and the judiciary, however the dilution of the above scheme has led to denigrating norms of mutual respect and accountability amongst the two organs of the state.

(b) 2

Q.5(C). Power to cede territory is majorly in parliament domain. Do you agree? Explain with reference to relevant constitutional provision and case law. [10 marks, 150 words]

The Preamble to the Constitution of India declares India to be a sovereign state. ^{Q4} is about art. 2

In furtherance to the same, Article 3 provides that Parliament may add or alter the territory by way of an amendment by simple majority.

Power to alter whether includes Power to cede

→ In re Berubari Union case
It was held by the Supreme Court that the government had no power to cede a territory.

However, subsequently the Supreme Court in Maganbhai v. Union of India held that in order to cede a territory



an amendment has to be made and it can't be ceded merely by way of an executive action. Hence, recently for the land boundary agreement between India and Bangladesh for transfer of comlars, a constitutional amendment had to be passed, denoting the fact that ceding territory is in the exclusive domain of Parliament.

(Q)

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Q.5(D). What is repugnancy? what are different situations when repugnancy can arise under article 254 of the constitution? [10 marks, 150 words]

The Indian Constitution demarcates the legislative power of the Centre and State by dividing it into 3 lists under VIIth Schedule.

These are List I (Union), List II (State), List III (Concurrent).

In case of conflict between the law made by Parliament and state, Art. 254 provides for repugnancy related provisions, which are as follows

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- In case of a conflict between a union law and a state law, the (List I) (List II)
Union law prevails.
- Similarly, in case of a Union law under Concurrent list, it prevails over a state law in the same list.
However as long as there is no



contradictory state law under Union law,
state law under list III prevails.

- Even in case of a contradictory Union law, the state law may prevail if it was assented to by the President or having reserved by the Governor for his consideration.

However, even in such a case the Parliament may override the state law by enacting a law on the same subject.

Hence, the doctrine of repugnancy favours the Union list/law over the state law ~~not~~ directly but conspicuously.

(ii) Open the doctrine



Q.5(E). What do you mean by Eminent Domain? How it reconciles its conflict with the right to property under Article 300A? [10 marks, 150 words]

The Doctrine of Eminent Domain is an ancient principle wherein state being the supreme sovereign body could take the property of its citizens.

It is based on the maxim :

① "salus populi suprema lex"

i.e. welfare of the people is of the supreme consideration.

② Eminent Domain v. Art. 300 A

Article 300A provides people the right to their property which can't be abridged except by authority of law.

So this phrase 'authority of law' aims to reconcile the right to property vis-a-vis eminent domain power of the state.



This implies that, the property could be taken away in furtherance to power of eminent domain and Art. 31c, however, it could only be via the force of law.

Moreover, the law has to be fair and reasonable providing proper compensation, rehabilitation etc. to the owners so that a mutually reconciliable exercise between these two conflicting principles achieved.

(b)

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Q.6(A). What are the principles of interpretation are to be applied when subject matter falls in concurrent list? Discuss in the light of various judgment. (20 marks, 300 Words)





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Q.6(B). Legislative privileges under Indian constitution is not absolute. How its conflict with fundamental right have been reconciled? Discuss with decisions of Supreme court. (15 Marks, 250 Words)





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Q.6(C). Regulatory measures and compensatory taxes are covered under article 301 of the constitution? Discuss with reference to decided cases. (15 Marks, 250 Words)





Q.7(A). Directive principle are nothing but intended fundamental right, which was not included under chapter - III due to limited economic capacity of state. Elucidate (20 marks, 300 Words)

The Constitutional framers while discussing the chapter on Directive Principles of State Policy (Chapter IV) had explained that these principles are aimed at envisaging a social and economic democracy, but at that of time were reluctant to part point it under Part III because they were conscious of the fact that these goals would require considerable economic resources which were not there initially.

Hence, they left it to the wisdom of the legislature of future to implement them as and when they become economically capable to do so.



However, they still managed to write in Article 37 that though these are not directly enforceable but still are fundamental in the governance of the country.

Laws representing DPSPs

Over the course of time Parliament has made various laws inspired by these Directive Principles in the wide domain of Environment, legal Aid, Welfare of Workers, etc. hence proving right the visionary opulence of the constitutional framers.

Ans Content

B

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Q.7(B). Constitutionalism protects democracy and disallow trivialization of constitutional norms. Comment (15 Marks, 250 Words)

Constitutionalism is a doctrine that promotes or strives to uphold the spirit of the constitutional values by limiting the authority of the executive and furthering the democratic spirit.

The Roots of Constitutionalism were seen right from Magna Carta to doctrines of Locke, Rousseau, Montesquieu.

Features of Constitutionalism vis-a-vis trivialization of constitutional norms:

- Idea of limited government
- Independent judiciary
- Rule of law
- Separation of Powers
- Fundamental Rights
- Equality



Move towards Transformative Constitutionalism

the original or the old concept of constitutionalism connotes negative prohibition on the state, however in the modern times, the idea of transformative constitutionalism wherein not just limiting the state's power but also taking positive steps towards achieving substantive equality and welfare of people is promoted.

The recent judgments in Narnej Johar NALSA, Sabarimala etc. all represents this thread of transformative constitutionalism and in essence it does something more than protecting democracy and disallowing trivialization of constitutional norms.

Ques

81₂



Q.7(C). Article 1 of the constitution describes India as a union of states, rather than as a federation of states, comment critically on the nature of Indian federation in the light of constitutional provisions and decided cases. (15 Marks, 250 Words)

Article 1 of the Indian Constitution
India to be a Union of States

Why not federation?

Dr. B. R. Ambedkar cited two reasons:-

1. There is no agreement between the States
2. States do not have the authority to secede.

India : Quasi-federal or federal

As per various constitutional thinkers like Jennings, Cross, Austin, India is a Quasi-federal state with centralising tendencies.

Federation sui generis

However, if we look at Indian federalism from the viewpoint of our peculiarities and not from USA's perspective, then the picture points to a federal polity:



- Demarcation of Powers between Centre and states [Art. 246, Schedule VII]
- Single integrated Judiciary [Art. 32, 226, 136]
- Independence of Judiciary
- Supremacy of the Constitution
- Representation of states in the Parliament

Moreover, the Supreme Court in judgments like State of West Bengal v. Union of India has held India to be Federal, similarly in SR Rammai v. Union of India,

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federalism was held to be a part of the basic structure of the Constitution.

Hence, based on the aforesaid observations, it is clear that India is a 'holding together' federation rather than 'coming together as in USA', and any bias in favour of Union is to protect the integrated and unity fabric of our nation.

CJG Speravai *87*



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Q.8(a) Public Interest litigation do not follow traditional paradigm of adversarial judicial process which allow it to be used as a transformational tool by the courts. Comment. (20 marks, 300 Words).





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Q.8(B). Article 74(1) and Article 163(1) are substantially the same still they differ in their scope. Comment and bring out the contrast. (15 Marks, 250 Words).





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Q.8(C). Discuss critically the power, position and influence of Indian President in the light of provisions of Constitution and various landmark decisions. (15 Marks, 250 Words)

