



Total Time Alloted: 3 Hours

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.

Name: MANAV DHANETIYA

Subject: CONSTITUTION LAW

Phone: [REDACTED]

Criterion	Average	Good	Best
Presentation	✓	✓	
Content		✓	✓
Structure	✓	✓	

Teacher's Remark

- ① Give proper heading
- ② Give qⁿ heads max content/answer
- ③ at least 20 qⁿ do take



Law Optional Test Series No – 01
De Facto IAS



UPSC CSE 2022

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Q.1(A). The basic principle which, informs both Fundamental Right and Directive principle is equality and Protection against discrimination. Discuss (10 Marks) [150 words]

Under Part III of Indian Constitution Right to Equality is conferred by A.14 to A.18, and Social and Economic Equality is provided under Part IV from A.36 to A.51.

EQUALITY UNDER FRs

- A.14 states that State shall not deny to any person Equality before the law and Equal Protection of laws. Like shall be treated alike, and unlike shall not be treated alike [NM Thomas case]
- A.15 and A.16 protect Indian citizens from discrimination on grounds of Religion, Race, Caste, Sex, Place of Birth and Place of Residence [A.16(2) specific]



The constitution strives for Actual Equality when Reasonable classification is allowed by COI as held in Menka Gandhi case of Socially - Educationally Backward Classes under A-15(4)

EQUALITY UNDER DPSP

Under A-38(2) The state shall strive towards minimising inequality based upon opportunity, Income, facilities and status. The SC in

Anwar Judgment and Keshavnanda Stated that DPSPs are Goals, and FRs are means to achieve equality

The SC in Minerva Mills has stated that both DPSP and FRs are to be harmoniously construed and form bedrock of constitution.

The FRs promote Political Equality while DPSP propogate Social and Economic Equality



Q.1(B). Doctrine of equality under Article 14 of the Indian constitution have had an transformative journey since independence. Illustrate with help of case law. (10 Marks, 150 words)

Under A.14, the state shall not deny to any person Equality before the law and Equal Protection of the law. The constitution propagates actual equality [NM Thomas], and not IDENTICAL equality.

EQUALITY'S TRANSFORMATIVE JOURNEY

① Balaji v Madras. The SC in this case held that A.14 promoted equality for all, while A.15(1) and 16(1) were exceptions.

② Concept of Reasonable Classification in order to ensure like are treated alike.

2.1 Intelligible Differentia b/w distinguished sections

2.2 Nexus b/w Differentia & Purpose of law
[Bandan Choudhary Case]



③ EQUALITY IS ANTI-THESIS OF ARBITRARINESS.

Justice Bhagwati in EP Royappa stated that A-14 pervades ~~reasonableness~~ and a guarantee against arbitrary action.

④ In case of NM Thomas and Ajay Hasia opined that "arbitrary actions must be unequal, and in contravention of A-14".

⑤ Further it has been held that doctrine of reasonable classification is a judicial doctrine to identify whether action are arbitrary or not [RP Shetty]

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The concept of Equality in India according to J. PN Bhagwati is based upon actual equality wherein A-14 and 16(4) are seen as manifestations of A-14 instead of exception



Q.1(C). A constitutional value Secularism is implicit in the entire constitutional framework. What does secularism in the Indian Constitution mean? [10 marks, 150 words]

According to HOLYAKE Secularism means disassociation of State from Religion. But, in India we do not follow the Western concept of Secularism [ha etc], whereas we follow concept of Principle Distance [Prof Rajeev Bhargava].

SECULARISM IMPLICIT IN COI

A-15(1) and A-16(2) prohibit discrimination on the basis of religion. The concept of Secularism is found in A-28 to A-32 wherein all individuals have freedom of conscience, and right to preach, propagate and profess religion.

Secularism has been held as part of Basic structure of COI in SR Bommai case



MEANING OF SECULARISM IN INDIA.

In India Positive Secularism is followed wherein in the interest of Morality, Public order, health or Fundamental Rights the State

can interfere to regulate Religious Action @ Khatana (Female Genital Mutilation in Dawoodi Bohra [Shia] community)

The State and judiciary has regulated secular or non-essential practices of religion, recent example being Hijab in classrooms (2022).

Indian Secularism is unique and maintains a balance b/w individual rights and

community rights. However recent concept of Judicialism [Nikhil Soni] needs to be dealt with wherein judiciary is going beyond its mandate of power.



Q.1(D). Fundamental right and DPSP are two sides of same coin, ultimately its objective is to achieve idea of welfare state. Discuss [10 marks] [150 words]

The SC in the case of Minnerva Mills held that Indian constitution is based upon the bedrock of balance b/w DPSPs and FRs

The Prime idea of both is to establish a welfare state promoting social order permeated by social, political and economic justice

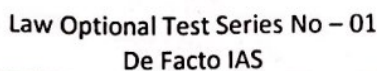
IDEA OF W.S. AND MEANS TO ACHIEVE

Welfare state: FR & DPSP

Both FRs and DPSPs aim toward minimising Inequality and to end discrimination. Under

A.14 Equality Before the law, and under A.38(2) minimising inequality based upon income and opportunity is permeated.

A.21A talks about Right to Education for children b/w 6-14 years of age.





Q.1(E). Right under article 19(1)(a), includes the right to disseminate information to a wide section society. Does internet as a such medium protected under constitution. Discuss in light of decided case. [10 marks, 150 words]

Under A.19(1)(a) all citizens shall have the
Right to freedom of speech and Expression,
which is further subjected to A.19(2)
reasonable restrictions of: Security of state, morality,
etc. *den* (1) not 2 ✓ ✓ ✓ ✓ ✓
(2) in no/each ✓ ✓ ✓ ✓ ✓
(3) ~~not~~ ✓ ✓ ✓ ✓ ✓

RIGHT TO DISSEMINATE INFORMATION

Under the case of Hamdard Raza Khanna
court held that right to disseminate
information is an part of A.19(1)(a).

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The court has opined that "Recipients
right to receive information is much
more important than Publishers interest,
since it can be of extreme importance.
Hence Right to Disseminate information is



protected under 19(1)(a) for the Representative
Interest of Cancer Drugs [Indian Express v UOI]

INTERNET AS A MEDIUM PROTECTED

The SC recently in the case of Anuradha
Bhasin and Gulam Nabi Azad case
held that Internet is an essential medium
to propagate expression and is protected
under A. 19(1)(a). *Amr...*

The SC opined that Internet shutdowns have
a severe **De Facto IAS** impact upon individuals right
and personal liberty and such actions in
21st CE are violation of A 19 & A 21

62 [J. Kailash] has recently emphasised in J. Puthur-
wamy case that Internet is the strongest
means of expression in 21st CE which shall
be provided to all.



Q.2(A) Approval by Governor of the state cabinet decision is merely a constitutional courtesy and it is binding under article 161 of the constitution. Substantiate (20 Marks, 300 Words)

The Governor under A.161 has the power to grant Pardon, Commutation, Remission, Respite and Reprieve to individuals who have been convicted for laws on which the State's executive power extends [Art 2 and Art 3 of Schedule VII]

The Governor under Article 163(1) shall act in aid and advice of the Council of Ministers except under circumstances where he has the discretion to do so under or by COI

The SC in Samsher Singh case held that government is bound to act



in aid and advice of the Council of Ministers who hold the mandate of people.

The SC in Somesh Singh clarified that power under A.161 is to be exercised under the advice of Council of Ministers, and to be exercised under the HOME MINISTRY.

Further, in Ram Savaya Kapur the SC has clarified that the PLEASURE of Governor means pleasure of Council of Ministers under Articles like A.161, 174, etc.

Further in Kihoto Holan the SC held that Governor is to act in the aid



and advice of the Ministers. The Governor's discretion under A-163(1) is limited and it can^{not} be used to establish a parallel government based upon DYARCHY.

In the case of Spuri Sudhakar the Governor's power to grant mercy was examined and court opined that such constitutional power is to be exercised by the council of ministers and there can be no INORDINATE delays, and Governor needs to act on advice at the earliest.

The recent controversy related to Governor's



decision was also dealt in Rajashankar's
State Legislative Assembly Case (2021) where
SC held that the Governor's discretion
is limited to few acts such as:

- (1) Emergency under A-356
- (2) Reservation of Bill for President's considera-
tion A-200
- (3) Administration of Scheduled Areas (V.M.)

The Governor's discretion does not extend
to A-161 and Governor is required
to act in aid and advice of Ministers
at the earliest because inordinate
delays are held arbitrary and
unconstitutional under A-161 [Khar Singh
case & Epuru Sudhakar]



Q.2(B). it is desirable to have some level of friction, some amount of state contestation, some deliberation-generating froth in our democratic system. Discuss in light 'cooperative' and 'uncooperative' federalism in India. . (15 Marks, 250 Words)

According to Prof. KC Wheare Federalism is division of power b/w central & regional government to ensure independence in their spheres

COOPERATIVE FEDERALISM according to AUSTIN is horizontal relation b/w Govt. of India & Govt of States for Public Interest

COOPERATIVE FEDERALISM:

The GST Council under A. 279A of COI

postulates cooperative Federalism as the centre and state are represented

to take decisions [Minerals v/SOOI]

The Inter-State Councils established by President under A. 263 promote cooperation



by providing a platform for deliberation
and discussion

The Interstate Water Council under A-262
provides scope for centre's guidance to
resolve inter state water disputes b/w
2 or more states

UNCOOPERATIVE FEDERALISM OR COMBATIVE FED.

Centres VETO power under AST Council
where all decisions are to be taken by
3/4 majority while Union has 33% power.

The Centres intrusion in list 2 w/o
justification. Example: Recently SC in
Rajendra N Shah held 97th CA partly
unconstitutional as centre did not have
power to make laws for MULTI-STATE cooperative



The conflict b/w Union and Centre wrt to measure of A-271 by Union [Cus & Surcharges] to reduce financial devolution

Withdrawal of General Consent by states for CBI investigation has lead to huge friction b/w centre & union.

Recent controversy wrt TN's NEAT Bill 2022 being sent by Governor T. Ravii for Reconsideration fuelled debate b/w union and government wrt A-254(2) [Doctrine of Repugnancy].

The SC in SR Bommai stated that Union is powerful than states, however such power does not make states mere appendages as both derive their power from same source [BOT]



Q.2(C). Articles 14, 15 and 16 form part of a scheme of the Constitutional Right to Equality. Article 15 and 16 are incidents of guarantees of Equality, and give effect to Article 14. Comment (15 Marks, 250 Words)

A.14 States that "The State shall Not deny Equality before the law and Equal Protection of law to any person."

A.15 Prohibits discrimination on the grounds of Religion, Race, Caste, Sex or Place of Birth. However, special provisions can be made for women & children (15[3]), socially & educationally backward classes (15[4]).

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A.16 Provides Equality of opportunity for all in matter of Public employment. No one shall be barred from holding public office on the basis of Religion, Race, Caste, Sex, Gender, Residence or Place of Birth.



Though A.16(4), 16(4A) and 16(4B) provides
Procedural Discrimination for Backward Classes
who are inadequately represented in public
service.

A.15 & A.16 INCIDENTS OF GUARENTEE UNDER A.14

A.15 & A.16 ~~are not~~ GIVE EFFECT TO A.14

During the early 1950s in cases like
Balaji and Champakam Dorairaj and

A.14 was seen as
exclusive in nature. The doctrine of exclusivity
compartmentalised Articles of constitution.

Features of A.15 like Procedural Discrimination
were seen as exceptions to A.15 & A.16

However, taken on in cases like Indira
Sawhney, NM Thomas and EP Royappa



court held that A.14 was the parent provision, A.15 and A.16 helped in attainment of equality.

~~Substantive Equality~~

The SC gave prominence to Actual Equality

which was to be achieved via effective implementation of A.15(4) & 16(4), 16(4A) & 16(4B). The SC held that substantive discrimination was not exception to equality, instead they ENABLED equality and were manifestations of A.14

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A.14 guarantees equality in actual sense according to HM Seervai and IS & 16 are means to attain equality in

society. Upliftment of unequals like women,

physically handicapped and Backward Classes is a manifestation of equal protection of law



Q.3(A) Examine the scope of administrative relations between the Union and the States of India. Cite various provision of the constitution for the same. (20 marks, 300 Words)

Under COI [A. 256 to A. 261] deal with administrative relations b/w Union and States of India

ADMINISTRATIVE RELATIONS

Under A. 256 the States shall exercise Administrative Actions in such a manner that laws of Parliament are not breached or such actions are in contravention.

Under A. 256(2) the Union can issue directions for the same the breach of which is reasonable ground for assuming breakdown of constitution and imposition of A. 356.

Similarly under A. 257 the State



shall exercise its Executive Power in such a manner that it prejudices the Executive Power of the Union. Under

A. 257(2) the Union can issue directions the breach of such directions have coercive backing wherein Union can impose A. 356 if such directions are disregarded.

Further under A. 258 the Union can confer Executive Power upon the State.

Such power can conferred by State Governor's consent.

However, under 258(2)



The Parliament can confer such power upon the state with their consent.

Further under A-258 A the state can entrust the union with executive power with the president's consent.

The Executive Power of Union extends to laws made under Art 1 according to A-73 while state's executive power extends to Art 2 and 3 in normal circumstances A-162

Though under doctrine of Repugnancy under A-254 the primary wt



law making lies with the Union government,
under Executive action, it is no state
with which executive power of concurrent
subject vests.

Though Parliament via a specific clause
under legislation can confer Executive
Power w/ not not 3 with the Union
Government.

The SC in De Facto IAS has held that
both Executive power of Union &
State shall be exercised harmoniously
for welfare of people.

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Q.3(B). Discuss review jurisdiction of Supreme Court under article 137 of Constitution. Is there any remedy available when review is dismissed? (15 Marks, 250 Words)

The SC has power to review its own judgments, decrees and orders under A. 137.

original

The court is not bound by its previous judgments and has power to proceed with review. Such review of court is exercised under the following grounds:

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- ① To avoid miscarriage of justice
- ② To deal with question of law which has arisen
- ③ If new evidence is found. In Zabara v UOI case a juvenile



was given capital sentence however later it was discovered that such person was minor and review was allowed.

④ The SC in case of Ajay Hasia discussed about how there can't be set guidelines for review of judgment and that to be decided case by case.

In case Review of Judgment is denied by the Supreme Court the following Remedy lies:

① Special leave Petition can be filed against any court/tribunal's order,



judgment or decree under A.136

② Cruachan Rektion to avenge Miscarriage
of Justice or abuse of Due Process.

Such remedy is available under Rules
of SC under A.145

③ Court can be approached under A.142
to ensure complete justice is achieved
and individuals are protected.

④ If the individual has power to approach
President or Governor under A.72 &

A.161 elementary. in limits

"The Doctrine of Stare Decisis does not apply

upon SC, it has power to review
its own judgment." J. Bhagwati

A.145 → recall of some work



Q.3(C). Examine the provisions of the Constitution regarding appointment of Judges of the Supreme Court of India. Should judge appoint judges? Give reasons. (15 Marks, 250 Words)

Under A.124(2) and A.217(2) the Judges of SC and HC are to be appointed by President after consultation with such Judges of HC & SC as it deems necessary.

THE FOUR JUDGES CASES

→ SP Gupta v UOI: Under this case the SC opined that primacy laid with the executive in appointments, and the Judiciary could provide only opinion.

→ SCADRA v UOI: The SC held that primacy laid with PLURALITY



of Judges instead of the Executive.

The collegium consisting SC and
2 Senior most judges was to be considered

→ In the Special Case: The collegium was
enlarged to 4 Judges in case of
SC appointment & Transfers (A.222)
& 2 Judges in HC (217)
consultation means concurrence.

→ SC ADRA v UOI (2015): held the
NJAC Act & Rules unconstitutional
because it violated independence
of Judiciary [part of B.S.D.]

The court opined that primary
law with Primacy of Judges

A person
M.O.P



SHOULD JUDGES APPOINT JUDGES?

- (A) YES
- ① It ensures Executive doesn't interfere in matter of Judiciary
 - ② Protects Independence of Judiciary

- (B) NO
- ① Blue - Blood Syndrome where certain families have monopolised power
 - ② Lack of Transparency & accountability [J. Chelameshwar (NJAC) SC Judgment]
 - ③ Had to a Closed Door Affair

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J. Chelameshwar in his dissenting judgment stressed upon need of NJAC as Judiciary act of suspending Executive's power to appoint has impacted its image and credibility



Q.5(A). Articles 25, 26, 27 and 28, provides religious freedom to all citizens of India. The objective of these right is to sustain the principle of secularism in India. Discuss [10 Marks, 150 Words]

Under A. 25 to A. 28 Right to Religion has been provided to all individuals.

RELIGIOUS FREEDOM TO ALL

- (1) Article 25: Subject to Health, Morality, Public Order all shall have freedom of conscience and right to profess, propagate and practice their choice of religion.
 g: Religious Festivals
- (2) Article 26: Subject to Public Order, Morality and Health religious communities shall have freedom to ADMINISTER INSTITUTIONS
 g: Madrasahs
- (3) Article 27: Freedom against imposing



religious instructions in schools.

→ Article 28: Freedom from being taxed for
religious purpose. *It's own*

OBJECTIVE TO PROMOTE SECULARISM:

The rights available to all people in
India be at citizens on non citizens. State
can undertake to regulate activities which
affect Part III (Shayra Bano Case)

In SR Bommai and Shivaji Maharaj case the
SC has stated that Art. 28 propagates
Secularism based upon Principle of Doctrine
of Principle Distance.

The Articles 25-28 promote secular principles
by guaranteeing all individuals right to
religion. *Comment with*



Q.5(B). Write short notes on Meaning of the term 'Other Authorities' under Article 12 of the Constitution. [10 marks, 150 Words]

The State under A-12 of the Indian Constitution includes the following:

- ① The Parliament and Government of India
- ② The State Legislative Assembly and Government of States
- ③ Local and OTHER Authorities

~~Meaning of OTHER AUTHORITIES "UNSTATE"~~

Doctrine of Ejusdem Generis was adopted by the court in Shanta Bai vs University of Madras. Since "Other Authority" is residuary in nature those organs which perform sovereign functions were to be considered as State.

However, in Sukdev Singh the SC introduced the concept of Instrumentality of the State by rejecting Ejusdem Generis.

Further in Ajay Hasia and RD Shetty case



Instrumentality Test was further reaffirmed. Court stand following principles are to be identified while looking into Instrumentality:

- ① Deep and Pervasive control
- ② financial aid and support
- ③ State sponsored or conferred majority/monopoly.
- ④ Administrative presence of state.

The court in Pradeep Kumar Biswas opined that the above mentioned principles were to be seen together to identify the term "other Authorities". **De Facto IAS** patronage was financial, functional or administrative an organ would be considered as other authority under A.R.

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Q.5(C). What do you mean by Eminent Domain? Does it is in conflict with modern notion of welfare state. Cite constitutional provisions. [10 marks, 150 Words]

Under the concept of Eminent Domain the government can take an Individual's property for Public Purpose.

The Two core principles behind Eminent Domain are:

- ① Public Rights triumph over Private Rights
- ② For Public Welfare and Interest, private individual is required to wave their rights

The SC in Kedarnath v West Bengal case held that the concept of Eminent Domain shall not be misused, and shall be used as Last Resort. The court opined that such a doctrine has an adverse impact on individuals who need to be



rehabilitated. Prior to 44 CA, A.31 stated that no one shall be deprived of his/her property except by Procedure Established by Law. Under such regime the government was needed to provide ADEQUATE compensation to the citizens. However under current regime of A.300A there is no need of adequate compensation, and it is upto state's discretion as to what amount is to be given.

Since it has been misused by government by citing Public Interest and the current law under hand Acquisition Act, 1894 provides FINALITY to DM's decision the rights of individuals have been suppressed. LAAR

Under A.38(1) state shall strive for promoting a welfare state by promoting social order permeated by social, economic & political justice, however misuse of ED has lead to a conflict



Q.5(D). Executive clemency is a matter of discretion and yet subject to certain standards. Enumerate the ground on which pardoning power of governor can be challenged. Refer judicial pronouncement. [10 Marks, 150 Words]

Under Article 161 the Governor has power to grant Pardon, Commutation, Remission, Reprieve and Respite to any individual who has been convicted for a law over which EXECUTIVE power of State exists. ~~national~~

The SC in Epuru Sudhakar and Shadrugany Sinha case stand that Pardoning power under A 161 is a CONSTITUTIONAL Duty and not a matter of discretion. Hence, there are certain standards which are to be followed while deciding case.

GROUND ON WHICH P.P. CAN BE CHALLENGED

If the judgment is based upon Extra-
mous facts and is arbitrary in nature



the judiciary can interfere. In Swaran Singh case the Governor remitted the sentence of a prisoner who referring to relevant documents. The SC upheld and the Governor's decision was reversed.

make grounds in final

The SC held that INORDINATE delays who justification are reasonable grounds for the court to interfere, as such delays have an impact upon the mental conditions of convicted and violators. Right to life and liberty [Spuri Sudhakar]

The clemency power of Governor is a constitutional duty which shall be exercised keeping standards like Ani-Arkeharinnen. The decision can be challenged if it is unreasonable-whimsical [Kher Singh case]



Q.5(E). "There is fine distinction between notion of constitutionality to a pre and post constitutional law". Examine the statement in light of Article 13 of Indian Constitution. [10 Marks, 150 Words]

Under A.13(1) Pre-constitutional laws in violation of Part III become dormant to the extent of violation [Doctrine of Eclipse]

Under A.13(2) post-constitutional laws which abridge or take away FRs are void ab initio to the extent of violation [Doctrine of Severability].

Article 13(1)

Article 13(2)

• Violation of FR is dormant.

• The dormant part can be amended to make law functional

• Violation FR is void ab initio

• The Doctrine of Severability impacts only the violative part



Recently, in the case of Rajendra N
Shah the SC held Part IX B (Cooperatives)
Violation of Federal Structure and Doctrine
of Separability was applied wherein A-19(1)(i)
wrt to Right to form cooperatives was
held valid.

The SC in AK Gopalan distinguished b/w
pre-constitutional and post-constitutional
laws where it was held that the
pre-constitutional have a special
position. The laws under 15(1) are
saved by mere amendment, however
such privilege does not extend to 13(1)

25% of 13(1) not saved



Q.8(A). Article 142 has enabled the Supreme Court in Recent times to take recourse to extra judicial remedy and transform itself in diverse forms, untrammelled by any limitations. Comment in Light of recent judicial decisions..[300 words, 20 Marks]

Under A.142 SC has the power to issue orders and decrees as to ensure complete justice. The aim of A.142 is to ensure Justice is delivered to all without any delays or ~~unjustness~~.

A.142 USED BY SC IN DIVERSE FORMS

The SC in various cases has used A.142 to ensure that Individual life and liberty along with dignity is not exploited [Band-
hwa Mukh Morcha]

① The Guidelines introduced by SC to ensure legislative loopholes and lacunae are filled go Vishakha Guidelines



To ensure that Mismanagement of Justice
and Process of Justice is not breached.

The court in Ashok Kumar v Rupa
Kumar introduced curative Petition which
ensured that complete justice is provided.

The court has used A-142 to take
decisions in public crises and emergency
situations. When legislature has failed
to provide justice. The SC in 2020 took
cognisance of Migrant-Crisis, and in
2021 with Vaccine Inequality.

Though SC has focused upon delivering
complete justice this power of court
has breached Separation of Powers
and it has been criticised.



SC's Jurisdiction Unhampered by Any Limitation:

Judicial Adventurism, wherein SC has focused upon issues where it has no expertise. e.g. Recent guidelines for liquor ban on highways [500 ms]

SC by placing reliance upon A.142 has ventured into the domain of legislature and executive wrt to law and policy making. The legislature & executive have ~~enforced~~ mandate to do such actions, while SC has no such mandate.

Symbolic Justice where court comes up with guidelines, but there is no mechanism to enforce them in DK Basu SC provided guidelines wrt Jail,



however the guidelines have been openly flouted. Since SC has no institutional set up to enforce them.

The SC has taken up populist cases under A-142 wherein it lacks competence and expertise. In recent case SC Enforced Article 142-2, it was held that such actions go beyond SC's primary duty of delivering justice [4.5 crore cases pending]

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A-142 holds significance, and SC has used it generously to do complete justice, but it is important that SC doesn't breach A-50 [Separation of Power] as it does not possess electoral mandate



Q.8(B). The proviso to Article 74(1) which grants a special privilege to the President's reconsideration of advice to Council of Ministers) is not to be found in Article 163(1) whereas clause (2) of Article 163 is not to be found in Article 74. Comment and bring out the contrast.
[250 words, 15 Marks]

Under A. 74(1) the President is required to act in aid and advice of council of ministers. Such aid and advice is binding upon the President [Samsher Singh Case]. Though, Proviso of 74 empowers President to ask council of ministers such advice. Amendment 44 empowered the President, however if council of Ministers pass decision, then President becomes bound. The President has situational discretion but no constitutional discretion [Samsher Singh].

Under A. 163(1) the Governor is to be aided and advised by council of ministers, except upon matters where he has discretion by or under the constitution



A. RECONSIDERATION

Though A. 74(1) doesn't expressly confer power with President, there is no such power with Governor. However, it cannot be said that Governor doesn't possess such power. The term "shall act in aid & advice" is not provided under A. 163 which hence, in cases like Kehar Holan SC has held that Governor can ask State Government for reconsideration.

B. DISCRETION

The SC in Sambhar Singh case discussed the Situational Discretion which both President & Governor possess. The SC held that discretion arises.



- (1) Hung Assembly no clear majority (Madam Muneer v Chaudhary Charan).
- (2) To turnish report wvt adm. functioning under A. 78 & A. 167
- (3) To summon house under A. 85 & A. 174
by PM/CM trying to avoid confidence motion

Though, situational discretion b/w the two is same. Governor has constitutional discretion under Articles like 200 (Reservation of Bills), A. 356 (President's Rule), A. 244 (Administration of Scheduled Areas), etc.

Such power is not vested with President hence why we do not see provision like A. 163(2) in A. 74. However, Governor has to exercise such power narrowly as s/he cannot use it for termining government [Kihoto Holan].



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

The President of Indian Constitution is appointed under the Article 52 of Indian Constitution. The President is the De Jure head of India. *marks*

POWER OF PRESIDENT

① The executive power of government is vested in the President which s/he has to exercise in accordance with COI ~~by~~ directly or indirectly through subordinate officers. A-53

② Legislature Powers:

2.1 Summon Prorogue & Resolve House A-85

2.2 Assent to Laws Under A-111

2.3 Part of Parliament under A-79



2.4 Ordinance making power

③ Executive Power:

3.1 All executive action taken in his name

[A. 77]

3.2 Appoints PM and Council of Ministers
under [A. 75(1)]

3.3 Appoints judges [A. 123 & 217]

④ Judicial power of Pardonning under [A. 72]

POSITION

① Ram Jawaya Kapoor v UOI: The pleasure
of President means pleasure of council
of ministers headed by PM.

② Sambhar Singh v UOI: The actual power
lies with the council of ministers, and
they have the real power.

③ Indira Gandhi v UN Rao: Harmonious



reading of A-74(1), 74(2), 75(3) and 73 provides that President is required to act in aid and advice not only when com are in power, but also when they resign. The term "shall act in aid & advice binds President"

INFLUENCE

The SC in Madan Mohan

v/s Chaudhary Charan Singh stated the importance of President's office in cases of constitutional breakdown in case of hung Assembly.

The SC in Sambhu Singh stated that President holds an important position in constitutional set up as her decision has helped in solving many conflicts.

De Facto IAS

mentions

Constitutional Conventions

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