



SCOPE OF ARTICLE 227 OF THE INDIAN CONSTITUTION: A COMPARATIVE ANALYSIS WITH ARTICLE 226

AUTHOR – KEERTHI KASTURI, STUDENT AT SCHOOL OF LAW, CHRIST (DEEMED TO BE UNIVERSITY), BANGALORE

BEST CITATION – KEERTHI KASTURI, SCOPE OF ARTICLE 227 OF THE INDIAN CONSTITUTION: A COMPARATIVE ANALYSIS WITH ARTICLE 226, *ILE LEX TIMES (ILE LT)*, 1 (1) of 2023, Pg. 4-9, APIS – 3920 – 0040 | ISBN – 978-81-964391-3-2.

ABSTRACT

This research paper examines the significance, evolution, and jurisdiction of Article 226 and Article 227 of the Indian Constitution, which grant substantial powers to the High Courts. Article 226, known as the "writ jurisdiction," empowers the High Courts to issue writs, orders, or directions for the enforcement of fundamental rights and other purposes. Article 227 provides the High Courts with supervisory jurisdiction over subordinate courts and tribunals. The inclusion of Article 226 and Article 227 in the Indian Constitution reflects the framers' commitment to establishing a robust judicial system. The constituent assembly debates highlighted the need for effective remedies to protect fundamental rights and maintain judicial supremacy. Under Article 226, the High Courts have jurisdiction to exercise judicial review over administrative actions, protect fundamental rights, and issue various types of writs. Article 227 grants the High Courts the authority to correct errors, irregularities, or injustices committed by subordinate courts and tribunals. It ensures the proper administration of justice, maintenance of judicial standards, and prevention of the abuse of process. The High Court's exercise judicial control and superintendence over lower judicial bodies, intervening when necessary to rectify jurisdictional errors or violations of natural justice. While Article 226 and Article 227 grant wide discretionary powers to the High Courts, it is essential to understand their scope and limitations. Furthermore, the review of administrative actions is limited to their conformity with the law and principles of natural justice. Article 226 and Article 227 have significantly contributed to the protection of fundamental rights, the exercise of judicial review, the maintenance of judicial independence, and the upholding of the rule of law in India. Understanding the scope and limitations of these provisions is crucial for their appropriate application within the Indian legal framework.

Keywords– Article 226, Article 227, Constituent Assembly Debates, Fundamental Rights, Supervisory

INTRODUCTION

Article 226 and Article 227 of the Indian Constitution grant significant powers to the High Courts, playing a pivotal role in upholding the rule of law and protecting the rights of individuals.

Article 226, also known as the "writ jurisdiction," empowers the High Courts to issue writs, orders, or directions for the enforcement of

fundamental rights and for any other purpose. This provision grants wide discretionary powers to the High Courts to exercise their jurisdiction in matters related to the violation of legal rights, acts of maladministration, and any action that adversely affects the interests of justice. It enables individuals to directly approach the High Courts for the protection and enforcement

of their fundamental rights, ensuring prompt redressal of grievances.¹

On the other hand, Article 227 grants the High Courts supervisory jurisdiction over subordinate courts and tribunals. It provides them with the authority to exercise judicial control and superintendence over these lower judicial bodies to ensure proper administration of justice. Article 227 aims to maintain the independence and integrity of the judiciary by allowing the High Courts to intervene and correct errors, irregularities, or injustices committed by the subordinate courts². This provision serves as a mechanism to ensure that justice is dispensed effectively and uniformly across the judicial system.

The significance of Article 226 and Article 227 lies in their contributions to the protection of fundamental rights, the exercise of judicial review, the maintenance of judicial independence, and the upholding of the rule of law. Article 226 acts as a crucial safeguard for fundamental rights by enabling individuals to seek legal remedies for violations. It also allows the High Courts to review administrative actions for their legality and fairness. Article 227 reinforces the protection of fundamental rights by granting the High Courts the authority to rectify errors or injustices committed by subordinate courts that may infringe upon these rights.

Furthermore, both provisions play a vital role in upholding judicial independence. Article 226 empowers the High Courts to issue writs and orders, ensuring the impartiality and autonomy of the judiciary by allowing them to correct executive and administrative excesses. Article 227 strengthens this principle by granting the High Courts the authority to ensure that subordinate courts and tribunals function in accordance with the law and judicial standards,

thus maintaining the integrity of the judicial system.

EVOLUTION AND INCLUSION OF ARTICLE 227 AND ARTICLE 226 IN THE INDIAN CONSTITUTION

The inclusion of Article 226 and Article 227 in the Indian Constitution reflects the framers' vision to establish a robust judicial system and ensure the protection of individual rights and the rule of law. The evolution of these provisions can be traced back to the debates and discussions during the constituent assembly.

During the constituent assembly debates³, there was a consensus on the need to grant the High Courts special powers to safeguard fundamental rights and maintain judicial supremacy. The framers recognized the significance of providing an effective remedy to individuals whose rights were violated and believed in the supremacy of the judiciary in upholding the constitutional principles.

Article 226, known as the "writ jurisdiction," was introduced to grant the High Courts the power to issue writs, orders, or directions for the enforcement of fundamental rights and for any other purpose. The framers aimed to ensure that individuals had direct access to the High Courts for the protection and enforcement of their fundamental rights. The wide discretionary powers bestowed upon the High Courts under Article 226 were intended to enable them to rectify injustices, prevent abuses of power, and maintain the rule of law.

Article 227, known as the provision for supervisory jurisdiction, was included to establish the High Courts' authority over subordinate courts and tribunals. The framers recognized the need to maintain the independence and integrity of the judiciary and to ensure that justice was administered uniformly across the country. Article 227 granted the High Courts the power of judicial superintendence and control over subordinate courts, enabling them to intervene and correct

¹ Mahendra P. Singh, V. N. Shukla's Constitution of India 355, (Eastern Book Company 13th edition 2017).

² Legal Service India E-Journal, <https://www.legalserviceindia.com/legal/article-944-supervisory-power-of-the-high-courts-under-article-227-of-the-constitution-of-india.html> (last visited July 1, 2023)

³ Volume XI, 14-11-1949 to 26-11-1949, Constituent Assembly Debates, https://eparlib.nic.in/bitstream/123456789/763285/1/cad_25-11-1949.pdf.

any errors, irregularities, or injustices committed by these lower judicial bodies.

The evolution of Articles 226 and 227 can also be observed through subsequent judicial interpretations. The court has consistently affirmed the importance of protecting fundamental rights, maintaining judicial independence, and upholding the rule of law through the exercise of powers under Articles 226 and 227.

The inclusion of Article 226 and Article 227 in the Indian Constitution demonstrates the framers' commitment to establishing a robust judicial system. The subsequent judicial interpretations have reinforced the significance of these provisions in upholding the principles of justice, fairness, and accountability in the Indian legal system.

DEBATES AND DISCUSSIONS DURING THE CONSTITUENT ASSEMBLY REGARDING THE INTENT AND SCOPE OF THESE ARTICLES

During the debates and discussions in the constituent assembly regarding the intent and scope of Article 226 and Article 227, several important considerations were taken into account. The framers recognized the need to establish a strong judiciary and ensure the protection of individual rights within the constitutional framework of India.

The constituent assembly debates⁴ highlighted the importance of providing an effective mechanism for the protection and enforcement of fundamental rights. The framers believed that Article 226 would serve as a powerful tool to safeguard individual liberties by granting the High Courts the power to issue writs, orders, or directions. This provision was seen as a means to enable individuals to directly approach the High Courts to seek redressal for violations of their fundamental rights.

The discussions in the constituent assembly emphasized the significance of maintaining judicial independence and supremacy. Article

227 was introduced to ensure that the High Courts had the authority to exercise superintendence and control over subordinate courts and tribunals. This provision was seen as essential to maintaining the integrity of the judiciary and to prevent any arbitrary actions or abuse of power by lower judicial bodies.

The framers recognized the need for a consistent and uniform administration of justice throughout the country. The debates highlighted that Article 227 would enable the High Courts to intervene and correct any errors, irregularities, or injustices committed by subordinate courts. This would ensure that justice was administered uniformly, regardless of the geographic location or jurisdiction of the subordinate court.

Discussions in the constituent assembly also revolved around striking the right balance between the powers of the High Courts and the subordinate courts. While granting wide discretionary powers to the High Courts under Article 226, there were concerns about encroaching upon the authority of the subordinate courts. It was emphasized that the powers conferred should be exercised judiciously and in cases where there was a clear violation of rights or an abuse of power.

JURISDICTION OF HIGH COURTS UNDER ARTICLE 226

Under Article 226 of the Indian Constitution, the High Courts are vested with significant jurisdiction, empowering them to exercise judicial review, protect fundamental rights, and ensure the rule of law.

Article 226 confers upon the High Courts the power to issue various types of writs, including writs of habeas corpus, mandamus, prohibition, certiorari, and quo warranto. These writs enable the High Courts to command or prevent the performance of certain actions by the government or public authorities. By issuing writs, the High Courts exercise their discretionary powers to enforce legal rights,

⁴ *Id.*

correct administrative wrongs, and ensure the fair and just administration of justice.⁵

The jurisdiction under Article 226 grants the High Courts the authority to exercise judicial review over administrative actions. This includes reviewing the legality, fairness, and reasonableness of administrative decisions, orders, or actions taken by government authorities. The High Courts can examine whether the administrative actions are in accordance with the law, follow due process, and adhere to the principles of natural justice. Judicial review ensures that the actions of the executive branch are within the boundaries of the law and that they do not violate the rights and freedoms of individuals.

One of the significant roles of the High Courts under Article 226 is the protection and enforcement of fundamental rights guaranteed under Part III of the Indian Constitution. Individuals can approach the High Courts directly through writ petitions seeking remedies for the violation of their fundamental rights. The High Courts have the power to strike down laws, regulations, or actions that infringe upon the fundamental rights of individuals. They act as the custodians of the Constitution, ensuring that the rights to equality, freedom of speech, religion, and other fundamental rights are upheld and protected.

They act as a bulwark against arbitrary state action and provide an effective remedy for aggrieved individuals. Through their power to issue writs and orders, the High Courts can restrain or compel authorities to act in conformity with the law and protect the rights of individuals from any abuse of power.

Furthermore, the High Courts also have the authority to grant interim relief, such as stay orders or injunctions, to prevent immediate harm or irreparable injury to the rights of individuals. This allows them to ensure that the fundamental rights of individuals are not

violated or compromised pending the final disposal of the case.

JURISDICTION OF HIGH COURTS UNDER ARTICLE 227

Article 227 of the Indian Constitution confers supervisory jurisdiction upon the High Courts in India. This provision grants the High Courts the authority to exercise judicial control and superintendence over subordinate courts and tribunals⁶.

One of the primary functions of the High Courts under Article 227 is to correct errors, irregularities, or injustices committed by subordinate courts and tribunals. The High Courts have the power to intervene and rectify any legal or procedural errors that may have occurred during the course of a trial or adjudication. This ensures that justice is not compromised due to mistakes or omissions made by the lower courts.

Article 227 empowers the High Courts to ensure the proper administration of justice within their jurisdiction. They have the authority to oversee the functioning of subordinate courts and tribunals, ensuring that they adhere to the principles of fairness, impartiality, and adherence to legal procedures. The High Courts can review the conduct of lower courts and take appropriate actions to rectify any lapses or shortcomings that may affect the administration of justice.

Under Article 227, the High Courts have the responsibility to uphold and maintain judicial standards within the subordinate courts and tribunals. They can set precedents, issue guidelines, and provide directions to ensure that the lower courts and tribunals interpret and apply the law correctly. This helps in maintaining consistency, uniformity, and reliability in the judicial system and promotes the rule of law.

⁵ H. K. Saharay, *The Constitution of India An Analytical Approach*, 274-281 (Eastern Law House 4th Edition 2012).

⁶ Legodesk, <https://legodesk.com/legopedia/article-227-of-the-indian-constitution/> (last visited July 1, 2023).

Article 227 allows the High Courts to correct jurisdictional errors committed by subordinate courts. If a lower court exceeds its jurisdiction or acts beyond the scope of its authority, the High Court can intervene and correct such errors. This ensures that cases are heard by the appropriate court and prevents injustice resulting from a court overstepping its powers.

The supervisory jurisdiction of the High Courts under Article 227 also empowers them to prevent the abuse of process by subordinate courts and tribunals. If a lower court or tribunal acts in a manner that is oppressive, biased, or contrary to the principles of natural justice, the High Court can intervene to safeguard the rights of the parties involved and maintain the integrity of the judicial process.⁷

Although Article 227 primarily deals with the supervision of subordinate courts, the High Courts can also exercise limited judicial review over administrative actions of these lower courts and tribunals. This allows the High Courts to examine whether the administrative actions of the lower courts are in accordance with the law, adhere to legal principles, and do not violate the rights of the parties involved.

LIMITATIONS OF ARTICLE 227

The High Courts have wide discretionary powers under Article 227. However, this discretion must be exercised judiciously and in cases where there is a clear violation of rights or an abuse of power. The High Courts cannot interfere in routine or trivial matters or mere errors of judgment by the subordinate courts.

Article 227 does not empower the High Courts to interfere with the exercise of judicial discretion by subordinate courts, except in cases where such discretion is exercised illegally or arbitrarily.⁸

While Article 227 primarily deals with the supervision of subordinate courts, the High

Courts have limited powers to review administrative actions of these lower courts and tribunals. The scope of review is restricted to examining whether the administrative actions are in accordance with the law and principles of natural justice.

Article 227 does not provide the High Courts with the power to review or set aside judicial orders passed by subordinate courts, except in cases where the orders are illegal or without jurisdiction.

It does not override or nullify the availability of statutory remedies. If a statute provides a specific remedy against an order or decision of a subordinate court, the High Court may not exercise its supervisory jurisdiction unless there is a clear violation of fundamental rights or an error of jurisdiction.

In *Radhey Shyam v. Chhabi Nath*⁹, which is a landmark case repeatedly used in high courts to substantiate the scope of Article 227, the court held that:

"25. It is true that this Court has laid down that technicalities associated with the prerogative writs in England have no role to play under our constitutional scheme. There is no parallel system of King's Court in India and of all the other courts having limited jurisdiction subject to the supervision of the King's Court. Courts are set up under the Constitution or the laws. All the courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all the High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of tribunals or authorities or courts other than judicial courts. There are no precedents in India for the High Courts to issue writs to the subordinate courts. Control of working of the subordinate courts in dealing with their judicial

⁷ Jagadish Swarup book: Human rights and fundamental freedoms, p. 149 : *Butcher's Union v. Crecent City*, 28 L. ed 585 (590).

⁸ Mahendra P. Singh, V. N. Shukla's Constitution of India 355, (Eastern Book Company 13th edition 2017).

⁹ *Radhey Shyam v. Chhabi Nath*, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67 : 2015 SCC OnLine SC 170 at page 447.

orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of the civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by the statutes, power of superintendence under Article 227 is constitutional. The expression “inferior court” is not referable to the judicial courts.”

CONCLUSION

In conclusion, Article 226 and Article 227 of the Indian Constitution play a crucial role in upholding the rule of law, protecting fundamental rights, and maintaining judicial independence. However, it is important to recognize the scope and limitations of Article 227. While the High Courts have wide discretionary powers, they must exercise them judiciously and only intervene in cases where there is a clear violation of rights or an abuse of power. Routine or trivial matters and mere errors of judgment by subordinate courts do not fall within the purview of Article 227. Furthermore, the High Courts' review of administrative actions is limited to examining their conformity with the law and principles of natural justice. Article 227 does not override statutory remedies and does not grant the power to review or set aside judicial orders unless they are illegal or without jurisdiction.

Overall, Article 226 and Article 227 have been instrumental in empowering the High Courts, ensuring the protection of individual rights, and maintaining the integrity of the judicial system. These provisions continue to play a significant role in upholding the principles of justice, fairness, and accountability within the Indian legal framework.