GUJARAT NATIONAL LAW UNIVERSITY
SILVASSA CAMPUS
Course: **Fundamental Rights and Social Justice**
Semester- I (Batch: 2023-24)
End Semester Examination: Oct-Nov 2023 (LL M)

Date: 6th Nov, 2023
Duration: 3 hours **Max. Marks: 50**

Instructions:

- Read the questions properly and write the answers in the given answer book.
- Do not write anything on the question paper.
- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.
- Word Limit: 10 Marks: (4 Marks:350-500 words), (6 Marks:500-700 words), (10 Marks:800-1000 words)

Attempt any five from the following questions. **Marks**

Q.1 "The term social justice has many uses and interpretations, but in its most basic and universal sense, social justice is a philosophical construct—in essence, a political theory or system of thought used to determine what mutual obligations flow between the individual and society. As such, social justice is distinct from the concept of individual justice, the latter pertaining only to obligations that exist among individuals. Also inherent in the concept of social justice, as it is generally construed within democratic societies, is the idea that civil society is predicated on the basis of a social contract that spells out the benefits, rights, and obligations of societal membership. Unlike a theocracy comprising culturally homogeneous and like-minded individuals ascribing to a shared moral and political philosophy, a pluralist democracy must accommodate diverse points of view on what mutual obligations exist, what rules for the governance of mutual obligations should be codified, and how limited resources should be distributed. Thus, in a pluralist democracy, the problems of social justice are manifold." (10)

In light of the passage quoted above and the discussions that have transpired in the classroom, discuss in detail various theories of social justice, their conceptualization of society, individuals and their relations *inter se.* Also, briefly reflect on the ideals of social justice that the Constitution of India exemplifies.

Q.2 "The expansionary notion of what a State meant, and was meant to do, as posited by Mathew J in **Sukhdev Singh v Bhagat Ram**, ultimately resulted in a strong doctrinal push back with strong structuralist undertones. The growing inconsistency between the functionalist model, as articulated in welfare state terms by the Court, and the economic changes that swept the nation post the early 1990s, leading it to embrace what could arguably be branded a neo-liberal form of government, plausibly contributed to the (6+4= 10)

recoiling. But before concluding thus, it is important to realize that the Court, even at the peak of its functionalist phase, failed to provide the much-required doctrinal transition from a structuralist to a more expansive functionalist test. And this, above all, could have resulted in dislodging the functional flexibility in Article 12. The pathway to this realization lies in a close reading of RD Shetty's successor, the much-lauded **Ajay Hasia v Khalid Mujib Sehravardi**."

a) Discuss the approach taken by the Supreme Court of India in expanding, or restricting, the meaning of State under Article 12 of the Constitution of India. Elucidate your answer with relevant case laws.
b) Also discuss whether, in your views, the interpretation given to State under Article 12 addresses the socio-economic realities of the day and furthers the ends of social justice.

Q.3 "The right to equality under Article 14 is engaged only when the law makes a classification (or, arguably, when it fails to make a classification). The essence of the right to equality was assumed to be comparative. The next stage in the story involves the characterisation of this inquiry as 'old', 'doctrinaire', 'positivist', 'narrow', etc—an image of a pedantic, unreconstructed, slightly reactionary, and decidedly unfashionable old man is presented. The traditional narrative then projects the elevation of the administrative law standard of 'non-arbitrariness' to a distinct ground of constitutional review under Article 14 in the 1970s as a fresh, progressive, development that unfettered Article 14 from its older doctrinaire confinement. There have, of course, been discordant voices, which have challenged this dominant narrative forcefully. Even so, the story has come to acquire significant currency, not least because of its frequent parroting from the bench. And yet, the old doctrine refuses to go away. The reason for its stubborn persistence is down to the fact that the old doctrine is conceptually distinct from the new doctrine, and cannot be subsumed simply as an instance of the latter. The main analytical difference between the two doctrines lies in the fact that the classification doctrine is essentially comparative, whereas the arbitrariness doctrine is not essentially so. What this means is that there must be some comparatively differential treatment between two persons or two classes of persons before the classification doctrine is even engaged. The arbitrariness doctrine, on the other hand, can be invoked for any sufficiently serious failure to base an action on good reasons. To put it differently, the classification doctrine interrogates **unreasonable comparisons**, whereas the arbitrariness doctrine's unique contribution is to bring **noncomparative unreasonableness** within the ambit of Article 14." (10)

In light of the passage stated above critically examine the way in which the author assesses the old and the new doctrine for reviewing legislations under Article 14 of the Constitution of India. What are the other elements that the author suggests should be included in the classificatory doctrine that interrogates unreasonable comparisons?

Elucidate your answer with reference to relevant case laws.

Q.4 "The right to strike represents the collective human spirit. It is part of the **'politics of struggle'**. It can be abused and has to be used with care and caution. But, the attempt to capture and imprison this spirit as part of the **'politics of governance'** must be treated with suspicion. The strike is part of the struggle for human rights against exploitation and injustice. As globalization seeks to enforce discipline on workers in the name of progress, there is even more reason to preserve the spirit of collectivity to rise and assert itself. **Legal sophistry** may have persuaded the Indian Supreme Court to deny that the right to strike was protected as a constitutional right. But, those who are oppressed know that if they are to fight for justice in an unequal world, they must fall back on the solidarity of their collective being and the weaponry of argument, protest, demonstration and strike. That is where this argument must end and the struggle begin. Globalization is upon us. It will not yield its equities to those who most deserve these equities without a struggle within and across nations" (10)

In light of the passage quoted above, explain the **'legal sophistry'** that the author attributes to the Supreme Court of India in dealing with the right to strike as a fundamental right. Illustrate your answers with relevant case laws.

Q.5 "In many ways the constitutional challenges to anti-terror and security challenges have tested the normative foundations of the SC's seemingly progressive jurisprudence on the 'right to life and personal liberty'. The superstructure of Article 21 built in a host of cases discussed before seems to stand on unstable foundations as the Court struggles to even frame the constitutional debate in the context of anti-terror and security legislation. The Court's response to the constitutional challenges to these legislation also demonstrates the inherent weakness of the Article 21 jurisprudence that has been developed since **Maneka Gandhi v Union of India**." (10)

In light of the passage quoted above, highlight the limitations of the ***'just, fair and reasonable'*** doctrine as enumerated in ***Maneka Gandhi v Union of India*** with special reference to anti-terror and security legislations. Illustrate your answers with relevant case laws.

Q.6 "We have seen that BN Rau and Alladi Krishnaswami Ayyar were worried that the due process clause would be used by Indian courts to invalidate social welfare legislation, like price control laws. However, the Court has not used 'due process' to invalidate social welfare legislation. In fact, often, the Court has used due process doctrines to protect the interests of vulnerable sections of society such as pavement dwellers and prisoners. In short, a **'Lochner era'** has not been seen on the Supreme Court of India under the due process clause." (10)

In light of the passage quoted above, discuss the transition that **'procedure established by law'** under Article 21 of the Constitution has undergone as far as Supreme Court interpretations are concerned. Also, reflect on the reservations that the Constituent

Assembly had on the inclusion of **'due process'** clause along the lines of the American Constitution.

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