

**GUJARAT NATIONAL LAW UNIVERSITY  
SILVASSA CAMPUS**

**Course: Fundamental Rights and Social Justice  
LL M Semester- I (Batch: 2024-25)**

**End Semester Examination: Oct 2024**

**Date: 25<sup>th</sup> October, 2024**

**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: 700-800 words; 5 marks: 350-400 words.

**Part A**

**Attempt any three questions from Part A**

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| <p>Q.1 Mr Manish was a Lecturer at Hogwarts School of Law which is a 'Deemed University' in the State of Maharashtra. A series of memos and counter-replies were in motion as the University alleged that he had failed to take classes for two batches. Later on, the university constituted an Enquiry Committee that communicated that the action was based on several complaints made against him by his students. However, he was not referred to any of those documents or complaints. He was subsequently served with a notice informing him that the following month would be his one-month notice period and he would be terminated.</p> <p>A petition was filed before the High Court of Bombay for his reinstating, which was rejected, stating that the petition was not maintainable as the university does not fall under the definition of State under Article 12 of the Indian Constitution and thus could not be subject to writ jurisdiction. Afterwards, a Special Leave Petition against the decision of the High Court that viewed the University as not being a State for the purpose of Article 12 was filed before the Supreme Court of India. Decide the petition.</p> | (10)         |
| <p>Q.2 "If an existing act has become inconsistent with the Fundamental Rights on commencement of the Constitution, then can it become valid again if there comes any Amendment which removes such inconsistency?" Explain the above-mentioned statement using relevant case laws.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | (10)         |
| <p>Q.3 Discuss the evolution of the 'Test of Reasonable Classification' and the 'Test of Arbitrariness' in the context of Article 14 of the Indian Constitution. How are these two tests distinguished from each other? Additionally, provide examples of cases where the court has ruled that the 'Test of Reasonable Classification' is not applicable, but the legislation was still held to be arbitrary.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | (10)         |
| <p>Q.4 a) Ravi is an employee in the XYZ Government Department. He was suspended from his job after an internal inquiry found him guilty of financial misconduct. As a result, disciplinary action was taken against him, and he was penalized. Later, a criminal case was initiated against him in the court of law for the same offense of financial misconduct under the Bharatiya Nyaya Sanhita. With reference to Article 20(2) of the Indian Constitution and the principle of double jeopardy, explain whether Ravi can be</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | (5+5=10)     |

tried again in the court for the same offense for which he has already faced disciplinary action in his department. Can the principle of double jeopardy be applied in this case? Justify your answer.

- b) Comment on the evidentiary value of the Narco-Analysis, Brain Mapping and Polygraph tests using relevant legal provisions and case laws

### **Part B**

#### **Attempt all questions from Part B.**

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| Q.5 On 30 <sup>th</sup> November 1948, Dr. B.R. Ambedkar made the following speech with respect to Article 16 (The then Draft Article 10 during the Constitutional Assembly Debates): | <b>Marks</b><br>(10) |
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“The Hon’ble Dr. B.R. Ambedkar: If honourable Members understand this position that we have to safeguard two things namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, then, I am sure they will agree that unless you use some such qualifying phrase as “backward” the exception made in favour of reservation will ultimately eat up the rule altogether. Nothing of the rule will remain. That I think, if I may say so, is the justification why the Drafting Committee undertook on its own shoulders the responsibility of introducing the word ‘backward’ which, I admit, did not originally find a place in the fundamental right in the way in which it was passed by this assembly.....”

“The Hon’ble Dr. B.R. Ambedkar: Somebody asked me: “What is a backward community?” Well, I think anyone who reads the language of the draft itself will find that we have left it to be determined by each local Government. A backward community is a community which is backward in the opinion of the Government. My honourable Friend, Mr. T. T. Krishnamachari asked me whether this rule will be justiciable. It is rather difficult to give a dogmatic answer. Personally, I think it would be a justiciable matter. If the local Government included in this category of reservations such a large number of seats, I think one could very well go to the Federal Court and the Supreme Court and say that the reservation is of such a magnitude that the rule regarding equality of opportunity has been destroyed and the court will then come to the conclusion whether the local Government or the State Government has acted in a reasonable and prudent manner. ....”

In the year 1994, Nani A. Palkhiwala published his book, *We, The Nation, The Lost Decades*. In his book, he made the following observation with respect to Indra Sawhney v. Union of India, AIR 1993 SC 477:

“The Basic Structure of the Constitution envisages a cohesive, unified, casteless society. By breathing new life into casteism, the judgment fractures the nation and disregards the basic structure of the Constitution. The decision would revitalise casteism, cleave the nation into two – forward and backward - and open new vistas for internecine conflicts and fissiparous forces, and

make backwardness a vested interest. It will undo whatever has been achieved since independence towards creating a unified, integrated nation. The majority judgments will revive casteism which the Constitution emphatically intended to end; and the pre-independence tragedy would be re-enacted with the roles reversed – the erstwhile underprivileged would now become the privileged.”

Do you think that Indian judiciary has been able to fulfil its role to secure social justice in relation to equality of opportunity in matters of public employment? Justify your answer with the help of relevant legislative provisions and judicial pronouncements.

- Q.6 The Indian Constitution does not define the term ‘Minority’. Even the judgments that have dealt with minority rights have not provided an exhaustive definition of the term ‘Minority’. Mr. Jules Deschenes in his proposal to United Nation Commission of Human Rights has submitted as follows: (10)

“In the light of the Ohrid Seminar and the work done by Mr. Capotorti, the foregoing considerations led me initially to propose the following definition of minority:

*A group of citizens numbering less than half the population of a State and in a non-dominant position, whose members, have a community of interest, are motivated - albeit implicitly - by a collective will to survive, and possess ethnic, religious or linguistic characteristics which differ from those of the majority of the population, and whose aim is to achieve equality with that majority in fact and in law.*

However, after further reflection, I have come to the conclusion that this definition could be tightened and would benefit from a more logical ordering of its various elements. Consequently, I propose the following definition of minority:

*A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.”*

- a. How far do you think the definition by Mr. Jules Deschenes is relevant for the purposes of Minority Rights under the Indian Constitution? Do you agree that interpreting this definition into the Constitution would help in promoting social justice? Justify your answer with the help of relevant legal provisions and judicial pronouncements.
- b. What according to you should be the ‘indica’ or ‘criteria’ to determine whether an educational institution is a ‘Minority Educational Institution (MEI)’ in India? Explain your answer in the light of Aligarh Muslim University Case.

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