

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Fundamental Rights and Social Justice  
Semester-I (Batch: 2017-18)

LL.M. End Semester Examination: November-2017

Date: 8<sup>th</sup> November, 2017

Duration: 3 hours

Max. Marks: 70

**Instructions:**

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- **Constitution of India Bare Act is not allowed.**

**Part-A****Marks**

**Q.1 is compulsory. Attempt any two questions from Q.2 to Q.4.**

- Q.1 (a) In 2016, the Government of Gujarat noticed that women in the State were not getting their due share of public employment. It decided to take certain remedial measures. In pursuance of its policy decision, Rule 12-A was introduced in the Gujarat State and Subordinate Service Rules under the proviso to Article 309 of the Constitution of India. The new Rule 12-A reads as follows:
- 'Rule 12-A: Notwithstanding anything contained in these Rules or Special or Ad-hoc Rules-
- (1) In the matter of direct recruitment to posts for which women are better suited than men, preference shall be given to women; Provided that such absolute preference to women shall not result in total exclusion of men in any category of posts.
- (2) In the matter of direct recruitment to posts for which women and men are equally suited, other things being equal, preference shall be given to women and they shall be selected to an extent of at least 30% of the posts in each category of O.C., B.C., S.C., and S.T. quota.
- (3) In the matter of direct recruitment to posts which are reserved exclusively for being filled by women they shall be filled by women only.'
- A petition is filed before the Supreme Court of India challenging the constitutional validity of Rule 12-A. Decide the constitutional validity of Rule 12-A.
- (b) Discuss the extent of State control on minorities educational institutions established under Article 30 (1) of the Indian Constitution.
- Q.2 The Constitution (Twenty-fourth Amendment) Act, 1971 confers unlimited power on Parliament to amend the Constitution. Do you agree with this proposition? Discuss the limitations, if any, on the amending power of Parliament to amend the Constitution. (14)
- Q.3 "It must ...therefore, now be taken to be well-settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is involved by the court is merely a judicial (14)

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formula for determining whether the legislature or executive action in question is arbitrary and, therefore, constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislation or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached." In view of the above statement, find out the difference between both the doctrines and discuss their nature and scope.

- Q.4 It is laid down in Article 46, as a directive principle of State policy, that the State shall promote with special care the educational and economic interests of the weaker sections of the people and protect them from social injustice. To promote the educational advancement of the socially and educationally backward classes of citizens or of the Scheduled Castes and Scheduled Tribes, Parliament inserted clause (5) in Article 15 by the Constitution (Ninety-third Amendment) Act, 2005. Discuss the scope of clause (5) of Article 15 and critically examine the decisions of the Supreme Court of India upholding the constitutional validity of clause (5) of Article 15. (14)

### Part-B

Answer the following question:

- Q.5 The constitutional validity of the National Security Act, 1980 was considered by the Supreme Court in *A K Roy v Union of India* (AIR 1982 SC 710). Critically examine the Supreme Court's decision of upholding the validity of the said Act. (08)

### OR

The appellant assails the order of preventive detention of her husband, passed by the respondent (State of Telangana) under the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act). The appellant submits that an order of preventive detention is a serious matter affecting liberty of citizen. It cannot be resorted to when sufficient remedies are available under general laws of land for any omission or commission under such laws. Detenu was already being prosecuted under the Indian Penal Code and Seeds Act. Order of preventive detention has been made under Section 3 (1) and (2) read with Section 2 (a) and (b) of the Act. Section 3 of Act empowers the Government (if satisfied with respect to a "Goonda") to detain such person with view to preventing him from acting in any manner prejudicial to maintenance of public order. Section 13 of Act provides for a maximum period of detention for twelve months. If order of preventive detention is sustainable, the detenu will continue in custody, without opportunity to move for bail, for a period of one year. An order of preventive detention, though based on subjective satisfaction of detaining authority, is nonetheless a serious matter, affecting life and liberty of citizen under Articles 14, 19, 21 and 22 of Constitution of India. The power being statutory in nature, its exercise has to be within limitations of statute, and must be exercised for the purpose the power is conferred. If the power is misused, or abused for collateral purposes, and is based on grounds beyond the statute, takes into consideration extraneous or irrelevant materials it will stand vitiated as being in colourable exercise of power.

The detenu was owner of Laxmi Bhargavi Seeds, District distributor of Jeeva Aggri Genetic Seeds. Three FIRs were lodged against detenu and others under Sections 420, 120-B, 34, IPC and Sections 19, 21 of the Seeds Act, 1966. It was alleged that the chilli seeds sold were spurious, as they did not yield sufficient crops, thus causing wrongful loss to farmers, and illegal gains to accused. Whether seeds were genuine or not, the extent of the yield, are matters to be investigated in the FIRs. Section 19 of the Seeds Act, provides for penalty by conviction and sentence also. Likewise, Section 20 of Seeds



Act, provides for forfeiture. Sufficient remedies for the offence alleged were, therefore, available and had been invoked also under ordinary laws of the land for the offence alleged. Order of preventive detention passed against detenu states that his illegal activities were causing danger to poor and small farmers and their safety and financial well-being. Recourse to normal legal procedure would be time consuming, and would not be an effective deterrent to prevent the detenu from indulging in further prejudicial activities in business of spurious seeds, affecting maintenance of public order, and that there was no other option except to invoke the provisions of the preventive detention Act as an extreme measure to insulate the society from his evil deeds. Decide the fate of appeal in the case.

### Part-C

Answer **any two** questions:

- Q.6 State and explain the principles of double jeopardy with the help of the well established maxims of the English Common Law. What is the scope of Article 20(2) of the Constitution of India? Why is the rule of *autrefois acquits* not incorporated in Article 20(2) in India? (3.5)
- Q.7 State and explain the propositions laid down by the Supreme Court in the case of *Maneka Gandhi* seeking to make Article 21 much more meaningful than hitherto. Whether a law laying down unreasonable procedure be declared to be unconstitutional under Article 21, or only the action of the administration depriving personal liberty be declared to be unconstitutional? (3.5)
- Q.8 An *ex post facto* law which only mollifies the rigours of a criminal law is not within the prohibition of Article 20(1). Therefore, an accused should have the benefit of a retrospective or retroactive criminal legislation reducing punishment for an offence. Illustrate this proposition with the help of relevant case laws. (3.5)

### Part-D

Answer the following questions:

- Q.9 Discuss how far street vendors have right to do trade and business on pavements. (7.5)
- Q.10 Explain the concept of modern slavery. Critically appreciate the efforts of the Supreme Court of India in eradicating this evil. (7.5)

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