

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Fundamental Rights and Social Justice  
Semester-I (Batch: 2018-19)

LL.M. End Semester Examination: Oct-Nov. 2018

Date: 3<sup>rd</sup> November, 2018

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.
- Bare Act is not allowed.

**Part-A**

Answer the following:

**Marks**  
(3x10=  
30)

- Q.1 “The courts should be anxious to enlarge the scope and width of the Fundamental Rights by bringing within their sweep every authority which is an instrumentality or agency of the government or through the corporate personality of which the government is acting, so as to subject the government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligation of the Fundamental Rights.” In the light of the above statement, evaluate the role of Judiciary in expanding the scope of ‘other authorities’ in Article 12 of the Indian Constitution.
- Q.2 “Article 13(1) cannot be read as obliterating the entire operation of the inconsistent laws, or to wipe them out altogether from the statute book, for to do so will be to give them retrospective effect...” Elucidate this statement with the help of relevant judicial pronouncements.
- Q.3 “The horizons of equality as embodied in Article 14 have been expanding as a result of the judicial pronouncements and Article 14 has now come to have a ‘highly activist magnitude.’ In the light of the said statement, trace out the evolution of the doctrine of reasonable classification and the doctrine of protection against arbitrariness with the help of Supreme Court judgements.

**Part-B**

**Question No.4 is Compulsory. Answer any two from Q.5 to Q.7.**

- Q.4 ‘In *Nandini Satpathy*, Iyer, J., advocated an expansive interpretation of the phrase ‘compelled testimony’. According to him, it is evidence procured “not merely by physical threats or violence” but also “by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, over-bearing and intimidatory methods and the like”. Any mode of pressure, “subtle or crude, mental or physical, direct or indirect, but sufficiently substantial”, applied by the police to obtain information from an accused strongly suggestive of guilt becomes compulsion. (12)



However, legal perils following upon refusal to answer, or answer truthfully, do not amount to compulsion within Article 20(3). But “frequent threats of prosecution if there is failure to answer may take on the complexion of undue pressure” violating Article 20 (3).’

What is ‘compulsion’ within the meaning of Article 20(3)? Explain with the help of different statutory provisions, rules, illustrations, and relevant case laws.

- Q.5 Clauses (1) and (2) of Article 22 ensure certain safeguards for a person who is arrested in the form of rules. Explain each of these four rules with the relevant provisions and case laws specifying as to some guaranteed rights available to persons arrested or detained. (04)
- Q.6 Parliament enacted the Preventive Detention Act, 1950 which was deemed to be a temporary measure with severe provisions but it remained in operation till 1969, when it was allowed to expire. Then was enacted the Maintenance of Internal Security Act, 1971 which lasted until 1977. Thereafter, was enacted the National Security Act, 1980 which is the prevailing law on preventive detention. Explain the salient features of the National Security Act and discuss how this law, with the passage of time, has been somewhat liberalized, with a view to give better safeguards to the detenu? (04)
- Q.7 A very fascinating development in the Indian Constitutional jurisprudence is the extended dimension given to Article 21 by the Supreme Court in the post-*Maneka* era. The Supreme Court has asserted that in order to treat a right as a Fundamental Right, it is not necessary that it should be expressly stated in the Constitution as a Fundamental Right. As such right to privacy is not enumerated as a Fundamental Right in the Constitution. However, such a right has been culled out by the Supreme Court from Article 21 and several other provisions of the Constitution read with the Directive Principles of State Policy. (04)

Explain the foregoing observation.

### Part-C

Answer **any two** of the following:

(2x10=  
20)

- Q.8 Discuss whether the term “untouchability” under Article 17 is restricted only to caste based untouchability. Why the framers of the Indian Constitution left it undefined?
- Q.9 The Muslim personal law allows polygamy but not polyandry. Does it amount to discrimination against women only on the ground of sex, hence violating articles 14 and 15 of the Constitution? Discuss with the help of case laws.
- Q.10 ‘Authority by Law’, ‘Reasonability’ and ‘Purpose sought to be achieved’ are the three essential conditions for determination of vires of a restriction imposed upon the fundamental freedoms guaranteed under article 19(1) (a) to (g). Discuss the nature and scope of these essential conditions with the help of case laws.

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