

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: **Fundamental Rights and Social Justice**  
Semester- I (Batch: 2022-23)

**End Semester Examination: November 2022 (LL M)**

**Date:** 28<sup>th</sup> Nov, 2022

**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: 12.5 Marks:1000 - 1200 words, 8.5/8 Marks: 600-700 words.

**Part: A**

**Marks**

(Answer **any two** of the following questions:)

- Q.1 Discuss critically whether judicial and quasi-judicial bodies fall within the definition of 'State'. To what extent are the 'judicial' and 'quasi-judicial' orders amenable to the writ jurisdiction under Article 32 of the Indian Constitution? (12.5)
- Q.2 "While overruling *Golak Nath*, the Apex Court in fact went several steps ahead in asserting its power of judicial review. *Golak Nath* had confined itself to the taking away of Fundamental Rights, but *Kesavananda* gave the court the power to scrutinize any amendment to see if it violated the basic structure...." Explain the above statement and discuss the limitations on the amending power of the Parliament. (12.5)
- Q.3 At one point, the determination of socially and educationally backward classes and reservations in promotions were contentious issues and resulted in several litigations. But at present, both of them have not remained contentious issues. Do you agree with this statement? (12.5)

**Part: B**

(Answer the following questions:)

- Q.4 "Restriction" means that freedom given is restrained on grounds stated. Restriction can in no case mean absolute prohibition. Neither fundamental freedoms are absolute nor restrictions. Freedom under Art. 19(1)(a) to (g) are subject to restrictions on grounds stated in clause (2) to (6) of Indian Constitution. The restrictions are subject to their being 'reasonable.' What is reasonable is nowhere defined in the Constitution. On a number of occasions, it was interpreted to mean a desirable balance in 'freedom' (individual interests) and restrictions (social interests). The enjoyment of freedom cannot be arbitrary, excessive, hence unreasonable restrictions cannot abridge or take away fundamental freedoms (so as to be unreasonable). Whether the reasonable restrictions mentioned in Art 19 of Indian Constitution can be applicable in the same spirit in today's (8.5)

changed scenario too? Discuss the same in the light of the recent incidents of internet shutdowns in India.

- Q.5 Men lived in a 'state of nature' in the beginning, where no law or any system of governance organised or controlled them. Some opined that it was a time of subjugation and affliction, while others glorified it as that of ecstasy. In order to protect lives and property, men entered into an agreement and thus a civil society was established. They consented to respect each other and live peacefully. They also agreed to obey the authority and concede whole, or a part of their rights and freedom to the authority in exchange of which, they would get the guarantee of protection of property, life and to some extent, liberty to each person. Thus, the government, the sovereign or the ruler came into being. The whole process has witnessed the contribution of different jurists to have a society which no longer strives for mere survival but looks beyond it. It is evident that through their contributions these jurists/thinkers stressed on the idea of justice. Discuss any two jurists whose contributions you believe are relevant in the contemporary era. Justify your answer by stating the reasons. (8)
- Q.6 Interpretation of Art 21 by the Indian Judiciary from conservative to activists to creative has come a long way. The journey from strict interpretation of 'procedure established by law' in the first two and a half decades to the adoption of 'due process standards' as expounded in the US Constitution; and further to the use of 'constitutional morality' in enhancing the meaning and content of 'right to life', is a reflection of transformative constitutionalism in tune with the global constitutional values, ethos and culture. Decisions on the issues such as Sec. 377, privacy and many other contemporary issues clearly indicate the continued efforts of the Indian Judiciary to accommodate the changes happening to societal norms, values, culture as well as the development in the field of technology. Discuss the rationale adopted by the judiciary in expanding the scope of the right to life and the protection to personal liberty especially with special reference to the new and emerging issues. Discuss in brief how the changes in the field of technology calls for a revisit to interpreting Art. 21 of Indian Constitution. (8.5)

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