

NATIONAL LAW UNIVERSITY AND JUDICIAL ACADEMY, ASSAM
L.M. (TWO YEAR PROGRAMME)
ACADEMIC SESSION: 2013-2014 (SECOND SEMESTER)
END-SEMESTER EXAMINATION (23-05-2014)
2.1 INDIAN CONSTITUTIONAL LAW: NEW CHALLENGES



MARKS: ONE HUNDRED (100)

TIME: THREE (3) HOURS

SECTION ONE

PLEASE ANSWER THE FOLLOWING QUESTIONS IN APPROXIMATELY 100 WORDS. ALL QUESTIONS ARE COMPULSORY.

- 1.1 Discuss the Preamble as suggested by B.N. Rau in his Memorandum dated May 30, 1947. Whether the Preamble as suggested by B.N. Rau in his Memorandum dated May 30, 1947 was adopted in *toto* under the present Constitution of India?
- 1.2 Justify the necessity of reservation in promotion in public employment in present-day situation in India.
- 1.3 Discuss in brief the composition and the election of the members of the Council of States or the Rajya Sabha
- 1.4 On what grounds proclamation of emergency could be challenged?

4x4=16 MARKS

SECTION TWO

PLEASE ANSWER EIGHT FROM THE FOLLOWING QUESTIONS ANALYTICALLY IN APPROXIMATELY 250 WORDS. IT IS COMPULSORY TO ANSWER TWO QUESTIONS FROM EACH MODULE.

MODULE - I

- 2.1 Discuss in brief the text of the Resolution adopted by the Constituent Assembly in its first meeting. What changes were brought in the text of the Resolution adopted by the Constituent Assembly under the present Constitution of India?
- 2.2 "Constitutionalism promotes the concept of a limited government". Discuss in brief the seven principles of constitutionalism which promotes the concept of a limited government in a nation.
- 2.3 Discuss the Constituent Assembly Debates on the fundamental right to equality of opportunity in the matters of equal opportunity now

numbered as Article 16 of the Constitution of India. Specify the recommendations made by the Constituent Assembly with regards to Article 16 which were adopted under the present Constitution of India, 1950.

MODULE- TWO

- 2.4 How far the Principle of Natural Justice has been reflected in various provisions of the Indian Constitution? Discuss with the help of relevant case laws.
- 2.5 What are the reasons for incorporating the Uniform Civil Code in the Indian Constitution as a Directive Principles of the State Policy? How could you assess the instrument of the Uniform Civil Code as an agenda for social justice?
- 2.6 Critically examine the power of the Supreme Court of India for imposing criminal liability upon the state within the ambit of the Constitution of India. Do you suggest for the amendment of the Constitution? Advance your opinion with logical arguments considering the contemporary Indian socio-legal conditions.

MODULE-III

- 2.7 What is a Money Bill? Who decides as to whether a Bill is a Money Bill or not?
- 2.8 Discuss the pardoning power of the President of India and the Governor of each States under the Constitution of India. Whether such pardoning power of the President and the Governor under the Constitution of India can be subject to judicial review?
- 2.9 Discuss the issue of conflict between fundamental rights and parliamentary privileges under the Constitution of India. Whether the parliamentary privileges under the Constitution of India need to be codified?

MODULE- IV

- 2.10 "The principle of throwing the cloak of constitutional protection upon otherwise infirm acts of State Legislatures and making them part of the constitution in an unprecedented constitutional practice. No constitution of any democracy in the world has done this so far. The Nine Schedule is a standing confession of Legislative failure to

conform to the Constitutional mandates and is an afferent to the Constitution".

In the light of the above observations critically examine the objectives and scope of the Articles 31A, 31B, and Ninth Schedule of the Constitution.

2.11 "... new standards and restrictions have been laid down for the application of Article 356... new constitutional standard ordained by the Supreme Court and actual political conduct, there seems to be some kind of credibility gap".

Give a critical assessment on the practical needs and misuse of Article 356 of the Constitution of India. Do you think Article 356 should be abolished?

2.12 What do you mean by Hung Parliament? Discuss the necessity and working of the Hung Parliament in India since 1989 to 1998.

8x7=56 MARKS

SECTION THREE

PLEASE ANSWER ANY TWO OF THE FOLLOWING QUESTIONS ANALYTICALLY IN APPROXIMATELY 1000-1200 WORDS.

- 3.1 The Maneka Gandhi case has opened a new vista to enforce the non justifiable Directive Principles through the justifiable Article 21 of the Constitution. Give a critical appraisal how non-justifiable directive of Article 48A could be enforced through Article 21 of the Constitution?
- 3.2 Critically examine the Constitutional validity of the Armed Forces (Special) Powers Act, 1958 in the light of relevant case laws.
- 3.3 Write a note on the Doctrine of Basic Structure and its relevance in the Indian legal Order. Support your answer with relevant judgments of the Supreme Court of India.
- 3.4 Discuss the issues relating to the transfer and removal of judges of the higher judiciary under the Constitution of India? Support your answer with relevant case laws. Do you think that the appointment of a *Judicial Appointments Commission* will solve the issues relating to the transfer and removal of judges under the Constitution of India


2x14=28 MARKS

3.4 Make an appraisal of the judicial control over the exercise of the constituent power by the Parliament in India with the aid of case laws. Comment as to whether such judicial control is anti-thesis to the doctrine of 'Separation of Power'. If so, what should be the reasonable limit to be imposed on the judiciary to keep it within its own field? If you agree the contrary, justify as to why judiciary should be allowed to control over the exercise of constituent power by the Parliament.

2x14=28 MARKS

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NATIONAL LAW UNIVERSITY AND JUDICIAL ACADEMY, ASSAM
LL.M. (TWO YEAR PROGRAMME)
ACADEMIC SESSION: 2013-14
END-SEMESTER EXAMINATION (27-05-2014)
2.2 JUDICIAL PROCESS (SECOND SEMESTER)



MARKS: ONE HUNDRED (100) TIME: THREE (3) HOURS
SECTION ONE

PLEASE ANSWER THE FOLLOWING QUESTIONS IN APPROXIMATELY 100 WORDS. ALL QUESTIONS ARE COMPULSORY.

- 1.1 What are the basic differences between the 'Question of Fact' and the 'Question of Law'?
- 1.2 Cite the demerits of rigidly following a Precedent.
- 1.3 What is the interrelation between 'Judicial Process' and 'Legislative Process' in the administration of justice?
- 1.4 How is Professor Wambaugh's 'Reversal Test' applied in finding the ratio of a case law?

4x4=16 MARKS

SECTION TWO

PLEASE ANSWER EIGHT FROM THE FOLLOWING QUESTIONS ANALYTICALLY IN APPROXIMATELY 250 WORDS. IT IS COMPULSORY TO ANSWER TWO QUESTIONS FROM EACH MODULE.

MODULE - I

- 2.1 Discuss the extent of the applicability of John Rawls's theory in the Indian Legal Order. Do you think that social justice will be served by applying the theory? Give suitable reasons and case laws in support of your answer.
- 2.2 How can you define the concept of 'Judicial Tools and Techniques'? What are the techniques adopted by the judiciary in the interpretation of Statutes? Explain with the help of suitable case laws.
- 2.3 The 'administration of criminal justice' in India has been not upto the mark and sometimes innocent victims are at the receiving end

of the failure of the criminal justice system. Identify some of the major shortcomings in the said area and suggest probable solution to improve the system.

MODULE- II

- 2.4 Analyze the importance and the implications of the 'Doctrine of *Stare Decisis*'. Elucidate the situations which permit the judiciary to deviate from the traditional notion of *stare decisis*.
- 2.5 Make a critical appraisal of the 'Theory of Original Precedents' and the 'Theory of Declaratory Precedents' in the light of established precedents in India.
- 2.6 Define the term 'Prospective Overruling'. What is the justification of applying the Doctrine of Prospective Overruling? Trace the genesis of the Doctrine of Prospective Overruling in the United States. Discuss some of the instances in which Prospective Overruling was applied by the Supreme Court in India.

MODULE-III

- 2.7 There have been instances of the excessive misuse of the power to formulate delegated legislation by the administrative authorities in India. Attempt has been made by the judiciary to put a control over such misuse of power from time to time. Examine the constitutional validity of the exercise of judicial control power over delegated legislation. What are the manners of exercising control over delegated legislation by the judiciary? Support your answer with the help of relevant case laws.
- 2.8 Discuss the factors which can influence the scope of judicial process with the help of suitable illustrations.
- 2.9 Discuss the Constitutional mandate of Judicial Review power in India along with its exclusion. Give your reasons for agreeing or disagreeing with the express exclusion of judicial review power in Article 31B and 31C of the Constitution of India.

MODULE- IV

- 2.10 "The 'Theory of Vacuum Filling' seeks to demolish the 'Theory of Sloth Machine' and to justify the validity of judicial activism." Analyze the statement through suitable case laws.
- 2.11 Discuss the relationship between law and justice in the light of relevant theories. Substantiate your answer with the help of appropriate case laws. Critically comment on the shortcomings observed in the theories.
- 2.12 Appraise the problems and concerns of the misuse of Public Interest Litigations (PIL) in India. What suggestions would you like to put forth to put a check on such misuse of PIL.

8x7=56 MARKS

SECTION THREE

PLEASE ANSWER ANY TWO OF THE FOLLOWING QUESTIONS ANALYTICALLY IN APPROXIMATELY 1000-1200 WORDS.

- 3.1 "The notion of the 'Independence of Judiciary' should be understood as an independence from the legislative and the executive control and not as an independence from judicial accountability." Examine the statement and discuss the constitutional provisions which uphold the independence of judiciary and the problems challenging the accountability of the judiciary in the Indian context. How the judiciary should be made accountable according to you, to sustain the sanctity of the institution of the Judiciary?
- 3.2 Give analytical notes on the following:
- a) Application of the Reformatory Theory of Punishment in Cases of Sexual Violence Against Women: A Critique
- b) The Techniques of Legal Reasoning in the Judicial Process
- 3.3 Evaluate the shortcomings inherent in the Traditional Dispute Resolution Method and the need for its reformation. Discuss as to how such reformation can be made by adopting an Alternative Dispute Resolution System.

ensure the health and education of children have also been enshrined in the text of the Constitution.
Discuss the various Constitutional provisions and government policies, have adopted to protect and to secure the rights of children in India.

8x7=56 MARKS

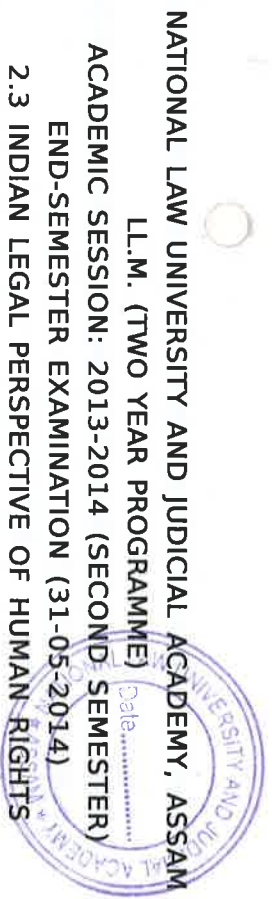
SECTION THREE

ANSWER ANY TWO OF THE FOLLOWING QUESTIONS ANALYTICALLY IN APPROXIMATELY 1000-1200 WORDS.

- 3.1 The economic development has sufficiently brought the deprivation of various human rights of people of a given society. Do you agree? Give your reasonable arguments in favour and against the above statement.
- 3.2 Write a critical legal essay on the protection and promotion of the rights of minorities under the Constitution of India.
- 3.3 "...equality is a multifaceted and multi-coloured concept and several definitions of the terms can be given. The concept of equality has many shades and connotations..." - Mathew, J. in *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299 (at p. 2384).
Elucidate the above statement and examine critically the present status of Article 17 of the Constitution.
- 3.4 "Any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the United Nations" - The U.N. General Assembly Resolution 1514 of 1960.
Justify the struggle for the right to self-determination with the help of above statement and with special reference to the statement of Nagaland and Jammu and Kashmir.

2x14=28 MARKS

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MARKS: ONE HUNDRED (100)

TIME: THREE (3) HOURS

SECTION ONE

ANSWER THE FOLLOWING QUESTIONS IN APPROXIMATELY 100 WORDS. ALL QUESTIONS ARE COMPULSORY.

- 1.1 Buddhist doctrine of non-violence is a humanitarian doctrine par excellence. - Explain.
- 1.2 Discuss the differences between the 'Derogation' and the 'Limitation'.
- 1.3 What does Democratic Socialism mean? Do you think Democratic Socialism could be able to satisfy the aspirations of the people of India?
- 1.4 What are the reasons for creation of Minority Institutions in India?

4x4=16 MARKS

SECTION TWO

ANSWER EIGHT OF THE FOLLOWING QUESTIONS ANALYTICALLY IN APPROXIMATELY 250 WORDS. IT IS COMPULSORY TO ANSWER TWO QUESTIONS FROM EACH MODULE.

MODULE - ONE

- 2.1 "It seems to me that, in view of Article 51 of the directive principles, this Court must interpret language of the Constitution, if not intractable, which is after all an intractable law, in the light of the United Nations Charter and the solemn declaration subscribed to by India." - Sikri, C.J., in *Kesavanand Bharati vs. State of Kerala*, (1973) Spp. SCR 1. Give critical appraisal on the Supreme Court's powers and functions in implementing international human rights norms in Indian Legal System.
- 2.2 Justify the Indian's position for reservation with respect to the certain rights which have incorporated in the international human rights

instruments to which India is a party. Discuss the effect of reservation and its current status.

2.3 Critically examine how does Fundamental Rights operate as limitation against the Executive?

MODULE- II

2.4 “ ‘Life’ couldn’t be restricted to mere animal existence, or physical survival. The right to life means the right to live with dignity and all that goes with it - the basic necessities ...” - *Francis Coralie Mullin v. The Union Territory of Delhi*, A.I.R. 1981 SC 746.

In the light of the given statement explain how “right to life” encompasses various rights which are necessary for human beings to live with human dignity.

2.5 “ ... full realization of the economic, social and cultural rights is dependent upon the availability of resources and the parties ... to take steps to achieving progressively the full realization of the rights recognized in the Covenant” .

Elucidate the above statement with the help of the Constitutional Scheme that imposes obligation upon the state to meet the cherish aspirations of the people of India.

2.6 Give a critical appraisal on the need and the role of the ‘right to education’ in the development of human personality with reference to the Constitutional provisions, judicial creativity, and the contribution of the Parliament in India.

MODULE-III

2.8 “In time of emergency ... strictly required by the exigencies of the situations ... not inconsistent with their other obligations under International Law and do not involve discrimination”
Critically examine the national and international obligations of the Government of India for protection of the basic human rights during the time of national emergency. Advance your own arguments with the help of the given statement.

2.9 “ ... monetary or pecuniary compensation is an appropriate and indeed an effective and sometime perhaps the only suitable remedy for redressal of the established infringement of the fundamental

right to life of a citizen by the public servants and the State is victoriously liable for their acts.” Kuldip Singh and A.S. Anand, JJ. in *D.K. Basu v. State of West Bengal*, 1997 SCC (1) 416.

In spite of absence of the constitutional provisions and India’s reservation with regard to the “right to get compensation” under the international human rights instruments, how could you justify the above statement? Evaluate the Supreme Court powers to exercise the compensatory jurisdiction within the ambit of the Constitution of India.

2.10 “ ... violation of any of the human rights has been the subject of so many Conventions and Declarations as ‘torture’ - all aiming at total banning of it in all forms but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. “Custodial torture” is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual dignity and whenever human - dignity is wounded, civilization takes a step backward - flag of humanity must on each such occasion fly half-mast” .

Give a critical appraisal on the rampant human rights violations made by the state machineries in India with the help of the given statement.

MODULE-IV

2.12 In the backdrop of the increasing rate of crime against women, make an assessment on the sufficiency of the penal provisions provided in the Indian Penal Code, 1860. Advanced your arguments if according to you more safeguards are necessary to control crimes against women.

2.13 The framers of the Indian Constitution have made sufficient provisions to protect the rights of women in India. Do you think the existing Constitutional provisions are enough to protect and promote the dignity and rights of women? State your arguments with reasons.

2.14 The constitutional framework for the protection of the child is, however, not limited in form to negative guarantees enforceable against the State alone. Several broad policy goals for the State to

- 3.3 "Depending on the region, the country and its legal system, the mandates and powers of National Human Rights Institutions vary widely. Some institutions, such as public protection offices and ombudsmen, have human rights mandates, although many do not." In the light of this statement discuss the challenges of the Regional International Organisations for the creation of National Human Rights Institutions in their respective regions.
- 3.4 Critically evaluate the functions and effectiveness of the regional human rights institution in Africa and Europe and its powers to deal with the enforcement of human rights.

2x14=28 MARKS

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NATIONAL LAW UNIVERSITY AND JUDICIAL ACADEMY, ASSAM
L.M. (TWO YEAR PROGRAMME)
ACADEMIC SESSION: 2013-14
END-SEMESTER EXAMINATION (29-05-2014)
2.6.3 NATIONAL INSTITUTIONS AND HUMAN RIGHTS

MARKS: ONE HUNDRED (100) TIME: THREE (3) HOURS

SECTION ONE

ANSWER THE FOLLOWING QUESTIONS IN APPROXIMATELY 100 WORDS. ALL QUESTIONS ARE COMPULSORY

- 1.1 Write clearly four important objectives for the establishment of regional human rights institutions.
- 1.2 Write a brief note on the United Nations Standards on National Human Rights Institutions.
- 1.3 Write four important functions of the National Human Rights Commission of India
- 1.4 Discuss the jurisdiction of the State Human Rights Commissions for the protection of human rights in respective states in India.

4x4=16 MARKS

SECTION TWO

ANSWER EIGHT QUESTIONS FROM THE FOLLOWING ANALYTICALLY IN APPROXIMATELY 250 WORDS. IT IS COMPULSORY TO ANSWER TWO QUESTIONS FROM EACH MODULE

MODULE - 1

- 2.1 Give critical analysis of the institutionalisation of human rights mechanism in the Indian Constitution. Do you consider the Constitution of India provides guarantees for protection of human rights through institutionalised mechanism?
- 2.2 Discuss the role of national human rights institutions for the protection of human rights in the world. Give critical analysis that



how far these institutions have been succeeded in protecting the basic human rights of individuals.

- 2.3 Non-governmental organisations have been playing a very important place in the protection of human rights of the people. Some of the NGOs have been given observer status in international organisations such as UN and Human Rights Councils. In this scenario how do you assess the role of NGOs in protection of human rights and critically analyse their role and contribution for the protection human rights in the world.

MODULE – II

- 2.4 Discuss the important treaty mechanisms that are available in International human rights law and their obligations which provides the establishment of National Human Rights Institution and their role in protecting human rights.
- 2.5 Critically analyse the role and functions of the National Human Rights Commission of India and its effectiveness in dealing with human rights complaints filed by the individuals.
- 2.6 Critically assess the contribution made by the *Indian Human Rights Act*, 1993 for the effective promotion, implementation and enforcement of human rights in India.

MODULE –III

- 2.7 Discuss the Role of United Nations in the implementation the *Paris Principles* of 1992 for the effective implementation of human rights standards.
- 2.8 "Since inception the National Human Rights Institutions are facing substantial challenges in implementing the human rights standards in respective regions". Discuss those challenges and suggest measures to address the challenges.
- 2.9 "In resolution 63/172, the UN General Assembly welcomed the strengthening in all regions of regional cooperation among NHRIs and between them and the regional human rights networks". In this

back drop, enumerate the regional human rights networks which are working for the protection of human rights in the world and analyse their role in integrating human rights mandate in their day to day work.

MODULE – IV

- 2.10 Discuss the Standards laid down in the *Vienna Declaration and Programme of Action*, 1993 for setting up of National Human Rights Institutions.
- 2.11 Discuss the salient features of the *Human Rights Protection*, 1993, and provide clear analysis on the functions and role of the Chairman and Members of the National Human Rights Commission of India.
- 2.12 Critically analyse the role and functions of the State human rights commissions and their obligations to protect the human rights of people under their jurisdiction.

8x7=56 MARKS

SECTION THREE

ANSWER ANY TWO OF THE FOLLOWING QUESTIONS ANALYTICALLY IN APPROXIMATELY 1000-1200 WORDS

- 3.1 "National human rights institutions have an important role to play in the fight against torture in the Asia-Pacific region. The Asia-Pacific is the only region without its own mechanism to protect against torture and other human rights violations. In the absence of such a mechanism, the role of NHRIs assumes even more significance." In the light of this position, critically analyse the role of National Human Rights Commission of India to fight against torture in India. Does NHRC of India stands as a role model to rest of the south Asia and Asia pacific?
- 3.2 Discuss the role of the National Human Rights Commission in protection of refugees in India in the light of principles laid down by the Supreme Court in the case of *NHRC v. State of Arunachal Pradesh*, 1996