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NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination – April – May, 2025

Semester: UG X Semester

Subject: Constitutional Law (Hons.) – Affirmative Action and Distributive Justice

Time: Three Hours

Marks: 100

Instructions:

1. All questions carry equal marks.
2. Kindly answer any five out of six questions.

Q 1) In *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (2023), the U.S. Supreme Court struck down the use of race-conscious admissions policies at Harvard and the University of North Carolina. The Court elucidated that college admissions are zero-sum. A benefit provided to some applicants but not to others necessarily advantages the former at the expense of the latter. It observed that, “eliminating racial discrimination means eliminating all of it.”

Further, the Court has held that any “racial classification must meet the strictest scrutiny” to survive a constitutional challenge. Such classifications are permissible only if they are narrowly tailored to achieve a compelling governmental interest. And while race can be a factor in holistic admissions, it cannot be used in a manner that operates as a stereotype or negative for others.

Critically evaluate the opinion of the U.S. Supreme Court in reference to the concept of equality and the Equal Protection Clause of the U.S. Constitution.

(Marks 20)

Q 2) EquiRights Collective is a public-spirited NGO in the fictional country of Nayasa, working on issues of constitutional rights and social justice. Recently, the Parliament of Nayasa enacted the 119th Constitutional Amendment Act, inserting Articles 16A and 17A into the Constitution. These provisions empower the State to make special provisions, including 15% reservation in public education and government employment, for Economically Disadvantaged Groups (EDGs).

The amendment explicitly excludes individuals belonging to the Scheduled Castes (SC), Scheduled Tribes (ST), Socially and Educationally Backward Classes (SEBC), and Other Backward Classes (OBC) from the scope of EDG reservations, even if they meet the economic criteria. The rationale provided is that these groups already benefit from existing reservations based on social and educational backwardness.

EquiRights Collective is considering filing a constitutional challenge to the amendment and has approached you for legal advice. They raise the following concerns:

1. The amendment violates the basic structure of the Constitution, particularly the principles of equality and social justice, by permitting reservation solely on the basis of economic criteria.
2. The exclusion of SC, ST, SEBC, and OBC individuals from the EDG quota, despite being economically disadvantaged, amounts to arbitrary and hostile discrimination, violating the principles of equal protection under Articles 14 and 16.
3. The 15% EDG reservation, when added to the existing 50% reservations, exceeds the reservation ceiling laid down in *Kumar v. State of Nayasa* (a precedent closely resembling *Indra Sawhney v. Union of India*), which held that total reservations must not ordinarily exceed 50%.
4. The amendment risks diluting the purpose of affirmative action, which has historically addressed structural and caste-based oppression, by shifting the focus solely to economic disadvantage.

Submit your reasoned legal opinion, with the help of relevant constitutional provisions and case law, assessing the constitutional validity of the 119th Constitutional Amendment. The Constitution of Nayasa is *pari materia* to the Constitution of India.

(Marks 20)

Q 3) Nyaya Foundation is a public interest legal advocacy group in the Republic of Vedanta, committed to promoting constitutional equality. The Constitution of Vedanta, like that of India, empowers the State to make special provisions for the advancement of Other Backward Classes (OBCs), including providing for reservation in promotions in public employment.

Recently, the Government of Vedanta issued a notification granting reservation in promotions in the civil services to select OBC communities, namely the Narmukhi, Jatari, and Telwan groups. The notification was issued following widespread agitations and political mobilisations by members of these communities demanding better representation in public employment. Mr. Rihan Ghosvi, also a member of the OBC category, was denied the benefit of reservation in promotion, as his community, the Ghosvi, was excluded from the notification. The government has offered no data or transparent reasoning to justify either the inclusion of certain OBC groups or the exclusion of others, relying instead on vague references to social unrest and political expediency. Hence, he has approached you for legal advice on the constitutional validity of the government's decision.

Submit your reasoned legal opinion, with the help of relevant constitutional provisions and case law, on the validity of the Government of Vedanta's policy of granting reservation in promotions to select OBC groups without supporting data and excluding others from its benefit. The Constitution of Vedanta is *pari materia* to the Constitution of India.

(Marks 20)



Q 4) Write short notes on the following topics –

- a. Sub Classification of SC/ST
- b. Amartya Sen's Capability Approach and Affirmative Action

(Marks 10 x 2 = 20)

Q 5) "There is substantial evidence that the members of the Constituent Assembly recognised that (i) Indian society suffered from deep structural inequalities; and (ii) the Constitution would serve as a transformative document to overcome them. One method of overcoming these inequalities is reservations for the SCs and STs in the legislatures and state services." Comment in reference to relevant constitutional provisions and case laws.

(Marks 20)

Q 6) EduJustice Forum is an educational rights advocacy group in the federal republic of Samriddhi, concerned with the implications of reservation policies on access to quality education and professional standards. The Constitution of Samriddhi, like that of India, permits the State to make special provisions for the advancement of Other Backward Classes (OBCs), Scheduled Castes (SCs), and Scheduled Tribes (STs) in matters of education.

Recently, the State of Dakshin Pradesh issued a notification implementing reservation in admission to postgraduate medical courses offered by its government medical universities. Under the policy, a certain percentage of seats in MD/MS programs were reserved for candidates belonging to SC, ST, and OBC categories, and the minimum qualifying marks for these candidates were reduced significantly. For instance, while the eligibility threshold for general category candidates was 55%, candidates from reserved categories were allowed admission with as low as 40%.

Dr. Ananya Sinha, a general category candidate who narrowly missed admission to the MD (General Medicine) program, has challenged the policy. She argues that:

1. Although the Constitution allows reservation in education, lowering the minimum qualifying marks in advanced technical and professional courses such as medicine compromises the academic and professional standards, with potential implications for public health and safety.
2. The policy interferes with uniform standards prescribed by the National Medical Council of Samriddhi, the regulatory authority that had mandated a common minimum eligibility criterion for all candidates.
3. The policy violates the constitutional principle of merit and excellence in higher education, and the relaxation of eligibility standards is not a proportionate means of achieving social justice.

The State of Dakshin Pradesh justifies its policy as a necessary step to ensure greater representation of historically disadvantaged communities in higher education and elite professions, where they continue to be underrepresented. Dr. Sinha has now approached you for legal advice.

Submit your reasoned legal opinion, with the help of relevant constitutional provisions and case law, on the validity of the State of Dakshin Pradesh's policy of granting reservation in postgraduate medical education along with relaxed qualifying standards. The Constitution of Samriddhi is *pari materia* to the Constitution of India.

(Marks 20)

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Q 1) “The Constitution does not define what the framers meant by the phrase efficiency of administration. Article 335 cannot be construed on the basis of a stereotypical assumption that roster point promotees drawn from the SCs and STs are not efficient or that efficiency is reduced by appointing them. This is stereotypical because it masks deep rooted social prejudice. The benchmark for the efficiency of administration is not some disembodied, abstract ideal measured by the performance of a qualified open category candidate. Efficiency of administration in the affairs of the Union or of a State must be defined in an inclusive sense, where diverse segments of society find representation as a true aspiration of governance by and for the people. If, as we hold, the Constitution mandates realisation of substantive equality in the engagement of the fundamental rights with the directive principles, inclusion together with the recognition of the plurality and diversity of the nation constitutes a valid constitutional basis for defining efficiency. Our benchmarks will define our outcomes. If this benchmark of efficiency is grounded in exclusion, it will produce a pattern of governance which is skewed against the marginalised. If this benchmark of efficiency is grounded in equal access, our outcomes will reflect the commitment of the Constitution to produce a just social order. Otherwise, our past will haunt the inability of our society to move away from being deeply unequal to one which is founded on liberty and fraternity. Hence, while interpreting Article 335, it is necessary to liberate the concept of efficiency from a one sided approach which ignores the need for and the positive effects of the inclusion of diverse segments of society on the efficiency of administration of the Union or of a State.”

Critically examine the abovementioned excerpt from the opinion of Chandrachud J. in B.K. Pavitra v. Union of India (II) with the help of relevant provisions and case laws.

(Marks 20)

Q 2) The Republic of Vedanta is a constitutional democracy with a federal structure and a Constitution that is pari materia to that of India. In 2010, the Public Service Commission of the State of Devagiri, a constituent state of Vedanta, implemented a policy to provide reservation in promotions for members of the Scheduled Castes (SCs)

and Scheduled Tribes (STs) in the state civil services. The policy was introduced under enabling provisions of the Constitution of Vedanta, analogous to Articles 16(4A) and 16(4B) of the Indian Constitution.

The promotion policy was challenged by a group of general category civil servants on the grounds that:

- The State of Devagiri did not collect quantifiable data showing that SCs and STs were not adequately represented in promotional posts before implementing the policy;
- The policy adversely affected administrative efficiency, especially in technical and decision-making posts.

In response, the State of Devagiri argued that:

- The requirement to collect quantifiable data on backwardness should not apply to SCs and STs, who are presumed to be backward due to historical discrimination;
- The policy was introduced following a detailed study of representation in public employment, and thus complied with constitutional requirements.

The matter is now before the Supreme Court of Vedanta, and the question is whether the policy of providing reservation in promotion for SCs and STs, without collecting fresh quantifiable data on backwardness is constitutionally valid.

You are a Justice of the Supreme Court of Vedanta. Submit your reasoned judicial opinion, with reference to relevant constitutional provisions and judicial precedents, on the validity of the State of Devagiri's reservation in promotion policy.

(Marks 20)

Q 3) The Republic of Vidyanagari is a constitutional democracy whose Constitution is *pari materia* to that of the Constitution of India. In 2025, the Parliament of Vidyanagari enacted the Right to Quality Elementary Education Act, which guarantees free and compulsory education to all children between the ages of 6 and 14 as a fundamental right under the equivalent of Article 21A. The Act mandates that private unaided schools (both minority and non-minority) must reserve 25% of their seats for children from economically weaker sections and disadvantaged groups, to be filled through a government-administered lottery system. These schools are reimbursed at the rate of per-child expenditure in government schools.

A group of private unaided non-minority educational institutions, led by the Azadi Shiksha Trust, has challenged the constitutionality of the Act before the Supreme Court of Vidyanagari. They argue that:

- The Act violates their autonomy under the equivalent of Article 19(1)(g), by imposing unreasonable restrictions on their right to establish and administer educational institutions of their choice;
- The obligation to admit 25% students from disadvantaged backgrounds and follow the lottery-based admission procedure interferes with their institutional character and academic freedom;

- The exemption granted to minority unaided schools violates the principle of equality before the law, since similarly placed institutions are treated differently based solely on their minority status;
- The State cannot shift its constitutional obligation to provide free education onto private entities through legislative fiat.

The Union of Vidyanagari defends the law, arguing that:

- The law serves a compelling state interest in ensuring universal and inclusive access to quality education;
- The reimbursement mechanism ensures that private institutions are not financially burdened;
- The exemption for minority institutions is constitutionally justified under provisions analogous to Articles 29 and 30, to protect their rights against potential state interference;
- The Act strikes a reasonable balance between fundamental rights and directive principles.

You are a legal advisor to the Azadi Shiksha Trust. Prepare a reasoned legal opinion evaluating the constitutionality of the 25% quota imposed on private unaided non-minority schools under the Right to Quality Elementary Education Act, 2025. Support your opinion with reference to relevant constitutional provisions and case laws.

(Marks 20)

Q 4) Write short notes on the following topics –

- Affirmative Action provisions of the Indian Constitution – Exceptions to the Equality Code?
- Affirmative Action for EWS in the Indian Constitution

(Marks 10 x 2 = 20)

Q 5) Equal Futures Institute is a public interest organization in the federal republic of Libertas, which follows a constitutional framework *pari materia* to that of the United States, including guarantees of equal protection and due process.

The University of North Cascadia, a prestigious public university in Libertas, recently adopted a revised admissions policy for its super speciality medical programs (such as fellowships in oncology, neurosurgery, and cardiology). Under this policy:

- All applicants must take the Medical Advancement Assessment (MAA), a nationally standardized qualifying exam.
- The general eligibility score for consideration is set at 85/100. However, applicants from historically underrepresented racial and ethnic minority groups may be considered with a minimum score of 75/100.
- The admissions process is holistic, allowing consideration of multiple factors such as academic performance, research experience, leadership roles, community service, socioeconomic disadvantage, and race or ethnicity as a “plus factor.”



Dr. Noah Bennett, a white non-minority applicant, scored 83/100 on the MAA but was denied admission to the Fellowship in Pediatric Cardiology at the University of North Cascadia. He later learned that several admitted candidates from racial and ethnic minority backgrounds had lower scores but were admitted under the university's holistic evaluation framework.

Dr. Bennett challenged the admissions policy, arguing that:

- The consideration of race and ethnicity as a plus factor, even without fixed quotas, constitutes racial discrimination and violates the Equal Protection Clause.
- The policy's allowance of differential minimum scores is not narrowly tailored to achieve a compelling state interest.
- In highly specialized and life-critical fields like super speciality medicine, academic merit must be the paramount criterion to ensure competence and safeguard public health.

The University of North Cascadia defended its policy, asserting that:

- The policy does not impose quotas or automatic preferences but simply includes race and ethnicity as one factor among many in a holistic review.
- The university has a compelling interest in achieving diversity, especially to address longstanding disparities in healthcare delivery and representation in elite medical fields.
- Lowering the eligibility threshold for initial consideration does not compromise standards, as all admitted candidates still undergo rigorous assessment.

You are a Justice of the Supreme Court of Libertas, submit your reasoned judicial opinion, with the help of relevant constitutional principles and case law, on the constitutionality of the University of North Cascadia's admissions policy for super speciality medical education, particularly in light of the Equal Protection Clause.

(Marks 20)

Q 6) The Republic of Nyaya Pradesh follows a constitutional framework *pari materia* to that of the Constitution of India.

In 2018, the State Legislature of Dwaraka, a constituent state of Nyaya Pradesh, enacted the Scheduled Castes Equitable Access Act, which introduced sub-classification within the Scheduled Castes (SCs) for the purpose of distributing reservation benefits more equitably in public employment and higher education. The Act created sub-categories such as Dhartiya SCs, Nirmaniya SCs, and Anushisht SCs, based on historical data regarding representation and access to public goods.

A challenge to the Act was initially allowed by the High Court of Dwaraka, which held that the State Legislature lacked the competence to sub-classify SCs, as the power to identify and specify SCs lies exclusively with the Union Government under the equivalent of Article 341 of the Constitution.

On appeal, the Supreme Court of Nyaya Pradesh, relying on the precedent set by the Supreme Court of India in *State of Punjab v. Davinder Singh* reversed the High Court's ruling. The Supreme Court held that the State Government is empowered to make sub-

classification within the SC list for the purpose of equitable distribution of reservation, provided that such sub-classification is reasonable and based on objective criteria. The Court observed that doing so does not amount to “tinkering” with the Presidential list under Article 341, but merely relates to the implementation of the benefit.

Now, Mr. Pranav Malik, a member of the Anushisht SC group which was assigned the lowest percentage of reservation quota under the new classification, seeks to file a review petition before the Supreme Court. He believes that:

1. The State Legislature cannot sub-divide the Presidential list of Scheduled Castes under any pretext, including equitable implementation;
2. Sub-classification based on relative backwardness within SCs undermines the foundational principle of equality of status and recognition of all SCs as a homogenous group for the purposes of constitutional protection.

Mr. Malik has now approached you for legal advice. Prepare a reasoned legal opinion advising Mr. Malik with the help of relevant provisions and case laws.

(Marks 20)