

8 MAY 2024

NATIONAL LAW UNIVERSITY JODHPUR

End Term Examination April- May 2024
Semester: 10

CONSTITUTIONAL REMEDIES(Hons)

(MARKS: 100)

TIME : 3 hours

Instructions:

1. Answer any five questions.
2. Read the questions carefully and answer accordingly.

Q.1) "It is clear that whenever the doctrine of the basic structure has been expounded or applied it is only as a doctrine of interpretation of the Constitution as it actually exists and not of a Constitution which could exist only subjectively in the minds of different individuals as mere theories about what the Constitution is. The doctrine did not add to the contents of the Constitution. It did not, in theory, deduct anything from what was there. It only purported to bring out and explain the meaning of what was already there." - State of Karnataka v. Union of India. Critically Analyse .

(20 marks)

Q.2) "The primary purpose of the writ is to protect and establish rights, and to impose a corresponding imperative duty existing in law. It is designed to promote justice and its grant or refusal is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or establish a legal right but to enforce one that stood already established". Examine the writ jurisdiction as prescribed under Article 226 of the Indian Constitution.

(20 marks)

Q.3) "There are a range of constitutional institutions that can play an important role in protecting democratic norms and processes – including a range of independent "fourth branch" or "guarantor" institutions, such as electoral and human rights commissions, and transnational legal and political bodies. But at least under certain preconditions – of sufficient independence, political support and remedial power. Courts can too play an important role in buttressing democratic processes and commitments, often in ways that complement or intersect with these other forms of democratic protection. This is the essence of "responsive judicial review" Examine how the Constitutional Courts in India have fulfilled (or not) responsive judicial review.

(20 marks)



Q.4). Examine in detail the case of T.N Godavarman Thirumalpad v. Union of India (1997) 2 SCC 267 in connection with the use of continuing mandamus in India.

(20 marks)

Q.5) "The ills of the old classification doctrine have been long recognised. It was in response to these ills that the 'new' doctrine was developed. This second doctrinal test to determine the constitutionality of a measure under Article 14 is called the 'arbitrariness test'. In a much-quoted paragraph in Royappa (which incidentally concerned executive action and could have been treated as a matter of administrative law), Bhagwati J famously railed against the classification doctrine and 'emancipated' the principle of equality from its confinement by holding that mere 'arbitrariness' will suffice to constitute a violation of Article 14. The 'new' doctrine laid down in Royappa has been affirmed by several subsequent judgments. But controversies continue to dog the doctrine, especially with respect to its application to legislative review. It seems that Bhagwati J diagnosed the disease correctly, but prescribed the wrong medicine. Before we delve into it deeper, note that the new doctrine created a new ground of review under Article 14. It is in the context of a standard of review that the distinctions between reasonableness, proportionality, strict scrutiny, and similar concepts become moot". Examine the doctrine of arbitrariness and its use in Indian Constitutional Jurisprudence

(20 marks)

Q. 6) Tom Hickman had cautioned that proportionality must be accompanied by a well-thought-out, clear, consistent and principled approach to its content and structure. There is a real danger that proportionality will become no more than a label attached to outcome of a judge's consideration of the facts of case. Proportionality can either become a fig leaf or a powerful normative and predictive tool in public law. Critically Analyse the statement in connection with the use of doctrine of proportionality in India

(20 marks)