

January 2021

Constitutional Rights Adjudication

Duration: 10.00am - 1.45 pm

Maximum Marks: 50

Answer All questions. Each question carry Ten marks (5*10 =50 Marks)

1. (a) Discuss the Hohfeld theory of rights. What is the difference between positive fundamental rights and negative fundamental rights? Draw a comparison between the Indian and the South African Constitution.

OR

(b) *The Directive Principles of State Policy of Indian Constitution have incorporated points from the Constitution of Ireland which is itself an end result of copying Spanish Constitution. The soul of the Constitution is that Fundamental Rights are above Directive Principles and in case of any conflict between the two former should be accorded priority or the later.* Critically examine the statement.

2. (a) The social contract includes certain duties which members assume upon entry and certain other duties on the state to protect its citizens. Examine this aspect of social contract theory in the light of obligations on the state and limitation of state action.

OR

(b) write short notes on

- (i) Transformative constitutionalism – a comparative study
- (ii) the third and fourth generation of human rights

3. (a) Examine the standard of reasonableness as adopted by the courts in India, South Africa and the US with respect to the fundamental right of equality and equal protection of laws.

OR

(b) Examine the concept of burden of proof with respect to Affirmative Action cases in the US and protective discrimination cases in India. Is affirmative action and protective discrimination one and the same and can the terms be used interchangeably?

4. (a) *There is no way to really do it right. The final decision has always come down to the members of our (Supreme Court) as to whether someone should live or someone should die ...* Examine the scope of judicial discretion in imposition of death penalty in US and India.

OR

(b) The trimester test laid down in Roe v Wade is more appropriate in comparison to the undue burden test brought out in later cases. Comment . Examine the right of a woman to privacy in matters of reproductive choices as opposed to compelling state interest in protection of life of the fetus by drawing a comparison between India, USA and ECtHR.

5. (a) The Hicklin test is inappropriate as it restricts free speech rather than protect free speech. Examine the statement in the light of recent trends in the standards of obscenity as seen in USA, India and Canada

OR

(b) Hate speech that has now become a fashion and a short cut to get publicity, poses vexing and complex problems for contemporary constitutional rights to freedom of expression.” Examine the statement in the light of cases in USA and South Africa.