

# NATIONAL LAW UNIVERSITY DELHI

LL.M., Semester-I (Batch of 2023)

End-Semester Examinations, November - 2023

Paper: Advanced Constitutional Law

Time: 3 Hours

Total Marks: 50

**Instructions:**

1. Each sub-question carries 5 marks.
  2. The students are free to bring in their study material, including books and notes. This is an open-book examination.
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Q.1 With respect to India's equality jurisprudence, affirmative action policies and the article 'The Long Half Life of Reservations' by Marc Galanter, answer the following:

- i. Juxtapose the argument of "truer merit" or "moderated merit" discussed by Marc Galanter with the law laid down in *Ashoka Kumar Thakur*. In this context, discuss whether the creamy layer can be used as a principle of equality. How was the court's view different from *Nagraj*, and do you think such a departure was justified?
- ii. The "clustering" that Galanter talks about as a goal of the reservation policy, do you think is something which the apex court has acknowledged in its various decisions? What "paradox" is the author talking about in the context of the line between formal equality and protective treatment? Has such paradox been acknowledged by our courts?
- iii. Professor Alexandrowicz has termed the reservation policy as 'protective discrimination', and Marc Galanter has termed it 'compensatory discrimination'. Which term do you think is more appropriate? Answer while grounding the logic in the law laid down by the Supreme Court in various cases.
- iv. Compare the standard of review of such policies on similar constitutional provisions by the Indian and American Courts. Why do you think such divergent judicial views on this issue have emerged in India and the US?

Q.2 With respect to the personal liberty jurisprudence in India and the article "Freedom Of Expression" by Thomas Scanlon, answer the following:

- i. Considering the consequentialist defence of freedom of speech, do you think that the same has been adopted by the court in cases like *Anuradha Bhasin*? If yes, then on what basis can this be argued?
- ii. Do you think that the freedom of thought and expression relies on general moral grounds and is not independent of the features of any particular laws or institutions? In this context, discuss the meaning of natural and artificial elements that have been argued by Galanter as developed under Indian law.

iii. Do you think that Scanlon proposes something precisely like the doctrine of proportionality when he discusses harms and restrictions? Answer with the help of the robbery example which the author has used.

iv. Regarding the example Justice Holmes gave about a man shouting "fire" in a theatre in *Schenk v United States*, do you think that the Millian principle addresses such a situation effectively? Instead, do you think that the Indian law on the issue can more effectively address it?

Q.3 With respect to the ideas of Robert Nozick, as discussed by Michael Sandel, answer the following:

- i. Do you think that our jurisprudence has acted upon the "initial holdings" and helped bring about justice in the sense of outcome?
- ii. Do you agree with the relationship which Nozick makes between taxation and forced labour in the sense of how one owns oneself? Can we draw any parallel with the privacy jurisprudence which has been evolved by the apex court post *Puttaswamy*?