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23 (Sem-2) CLJB 2-1

2010

CIVIL LIBERTY AND JUDICIAL PROCESS

Paper : 2-1

Full Marks : 80

Pass Marks : 32

Time : Three hours

The figures in the margin indicate full marks for the questions.

Answer all questions.

1. In the article "Needed, transparency and accountability" Justice V. R. Krishna Iyer while advocating for an independent, transparent and accountable judiciary squarely accused the judiciary for its work culture resulting mounting arrears in the courts. Again in the article "Judicial accountability - re-visioning the role of judiciary" the writer has exhibited a gloomy picture of corruption in the judiciary in the country pleading for more accountability etc. The Govt has introduced "The Judicial Standards and Accountability Bill".

Contd.

In the light of the above answer the following questions :

- (a) Discuss the views expressed by Justice Iyer pleading for a vibrant, transparent and accountable judiciary, and the reasons for mountaneous pendency of the cases.
- (b) Discuss some instances of judicial corruption in the country including impending impeachment of Justice Soumitra Sen of the Calcutta High Court ; and
- (c) Discuss the provisions / arrangements of foreign countries in insuring judicial accountability. Would you suggest some measures / steps for containing corruption in the judiciary at par with the provisions applicable to the Executive so as to guard the guardians ? $6+5+5=16$

2. (a) Evaluate the importance of Article 14 of the Constitution of India and state its inter-relationship with Articles 19 and 21 forming golden triangle. 6

- (b) Discuss the following aspects by citing case laws. $2\frac{1}{2}\times 4=10$

- (a) Viva-voce
- (b) Legislation applicable to a single person
- (c) Taxing statutes and
- (d) Administrative discretion.

Or

- (a) Briefly discuss Article 16(4) of the Constitution of India providing reservation in services against any backward class of citizens by referring to decided cases.
- (b) Discuss the decisions of the Supreme Court in Indra Sawhney-V-Union of India I & II cases and discuss law in the matter after substitution of sub-clauses (4A) and 4(B) in Article 16.
- (c) Would you suggest some more amendment in this sub-clause so as to appease all sections removing alleged discrimination and to prevent brain drain of meritorious students / employees ? $5+8+3=16$

3. (a) 'Article 19 of the Constitution of India guaranteed some of the basic, valued and natural rights inherent in a person.

Amplify the above statement and discuss the basic, valued and natural rights and discuss whether such rights can be curtailed by the state and if so how the rights can be restricted?

- (b) Discuss the principles and guidelines while considering the constitutionality of any law imposing restriction as decided in the case of *Papnasam Labour Union-V- Madura Coats Limited AIR-1995 SC 2200*.
- (c) Discuss whether picketing, demonstration, right to travel abroad and telecasting come under the purview of Art. 19(1)(a) by citing case laws. $5+5+6=16$

Or

- (a) Discuss how Article 21 has assumed a highly activist magnitude and proven procedural Magna Carta protective of life and liberty with the help of decided cases.

- (b) What do you mean by 'Due Process of Law' and how it differs from procedure established by law?

- (c) Discuss the expression life, personal liberty, procedure and onus of proof by citing case laws. $4+4+8=16$

4. Discuss the importance of Judicial Review under a written and federal constitution for promoting constitutionalism, rule of law and democratic behaviour in the country by citing important Indian and American cases.

Write the facts and decision of *Marbury-V- Madison* case and why it is considered to be a landmark decision?

Whether the Judges in exercising the power of Judicial review can exercise judicial activism?

Refer to some instances of admission of some S.C. Judges of exercising too much of judicial activism upsetting the delicate constitutional balance among the three instrumentalities of the state. $8+2+6=16$

Or

- (a) Critically discuss the constitutional provisions relating to Right to Freedom of Religion and Conscience.
- (b) Whether religious freedom is subject to others?
- (c) What do you mean by Jehovah's Witness?
- (d) Whether religious places can be acquired?
Answer by referring to case laws.

5. Discuss the rationale underlying the amendment of a Constitution. Discuss the various modes of the amendment of the Constitution of India.

What do you mean by 'Basic Feature of the Constitution'? Attempt an analysis of this doctrine as propounded by the Supreme Court of India from the case of Kesavananda Bharati, AIR 1973 SC 1461 to I. R. Coelho, AIR 2007 SC 861.

Discuss briefly also the 2 tests as applied in the Coelho's case. 6+10=16

Or

Discuss the power, jurisdiction and limitations of the higher judiciary in exercising writ jurisdiction. Discuss the inter-relationship of Arts 32 and 226 of the Constitution.

Discuss the following showing their relevancy while exercising writ jurisdiction by the S.C. and the High Courts in their respective domains:

- (a) Alternative remedy
- (b) Laches
- (c) Question of fact
- (d) Power to issue directions. 8+8=16