BLOGS

Practice Questions on Constitutional Law based on the Latest CLAT PG Pattern

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Practice Questions on Constitutional Law

Passage I

The Indian Constitution provides immunity to an accused against self-incrimination under Article 20(3): 'No person accused of an offence shall be compelled to be a witness against himself'. The Supreme Court widened the scope of this immunity by interpreting the word 'witness' to include oral as well as documentary evidence so that no person can be compelled to be a witness to support a prosecution against himself.

The Supreme Court has made it clear that to claim this prevents the community from being compelled to make a self-incriminating statement, a formal accusation must be made against the person at the time of interrogation. To back up what the Supreme Court said in the famous Selvi v. State of Karnataka case, it was decided that a witness is someone who tells the court or someone investigating facts that they know something pertaining to the case and can do so either orally or in writing.

In the case of Bombay v. Kathi Kalu Oghad, the court held that it must be shown that the person was compelled to make a statement that was likely to incriminate him. An eleven-judge bench of the Supreme Court, in the case of State of Bombay v. Kathi Kalu Oghad, held that while the investigative university is not allowed to take compelled testimony from an accused, it is allowed to take physical evidence from the accused, which does not come from the volition of the accused, only for identification and corroboration of evidence. The physical evidence included fingerprints, handwriting samples, and hair strands, among others, only for investigation and corroboration of the evidence that was already in its possession.

1) Sakshi was accused of murdering her husband, whose body was recovered from their farmhouse. While Sakshi refuses to have killed her husband, she is the only person who

has access to the farmhouse apart from her husband. While investigating the crime, the investigating authority got a warrant for a search of Sakshi's house. Sakshi resisted the search and applied to a magistrate, stating that such searches violated her right against self-incrimination, compelling her to produce evidence against herself.

Decide:

a) A search does not amount to a violation of the right against self-incrimination, as the same would apply only when any incriminatory evidence is found by police in the house.

b) The search amounts to a violation of the right against self-incrimination, as Sakshi shall be given prior notice to avoid self-incrimination before searching her house.

c) A search does not amount to a violation of the right against self-incrimination, as Sakshi is not being asked to produce any incriminating evidence herself.

d) Search amounts to a violation of the right against self-incrimination, as searching Sakshi for evidence is synonymous with asking her to produce incriminating evidence herself.

2) Selvi has been arrested and charged under POCSO for sexual assault of a child and causing her grievous hurt. When the police could not gather enough evidence against Selvi, they applied to the local magistrate to allow a narcotics analysis of the accused. In this test, the accused is sedated and then interrogated, which they often answer as their imagination is neutralised, and they lose control of their senses as they kind of enter a hypnotic stage. Selvi contests the application, arguing a violation of the right against self-incrimination. Decide:

a) The application shall not be allowed as the accused might give false answers, which could then be used to incriminate them in court.

b) The application shall be allowed as the accused shall be themselves, giving all the answers without being compelled to do so.

c) The application shall not be allowed to answer questions unwillingly in a sedated state would amount to self-incrimination.

d) The application shall be allowed as such answers would be given before the investigating authority, which is not admissible before a court of law.

3) With the rest of the facts remaining the same as the above question, can the court allow such a test with the consent of the accused, who too is desperate to prove his innocence? The court is sceptical, as allowing the application would set the wrong precedent by promoting measures where the accused does not exercise control over how much information they are willing to diverge. Decide:

a) The application can be allowed by the court as there would be no violation of 20(3), without any compulsion to divulge self-incriminating information.

b) The application cannot be allowed by the court, as it would defeat the purpose of protection, and then the accused would be compelled to consent to tests such as narcotics analysis.

c) The application can be allowed by the court as it would help give direction to a derailed investigation, considering that such statements are not admissible in court.

d) The application cannot be allowed by the court as the accused's whims cannot be allowed to dictate the course of a criminal investigation.

4) Harry has been arrested for the offence of conspiracy to defame on a complaint by her school principal, Dolores Umbridge. The complaint says that Harry has recorded her videos of conversations with school staff and students, which he intends to use to defame her. Harry's phone was confiscated by the police, but they could not access it because of the fingerprint lock on the phone. The police had no evidence against Harry. Harry is being compelled to share his fingerprint. As a result, Harry has filed a writ petition under Article 226 of the Indian Constitution before the High Court for protection of his right against self-incrimination. Decide:

a) Harry's right has not been violated as the investigative authority is allowed to take physical evidence from the accused, and it does not qualify as self-incrimination.

b) Harry's rights have been violated, as he cannot be compelled to share fingerprints to access incriminating evidence against himself.

c) Harry's right has not been violated, as there is no mention of the use of force by the investigating authority, which is required to establish a violation.

d) Harry's rights have been violated, as even confiscating his phone amounts to a violation of his rights under Article 20(3).

5) The ex-CM of MP, Nandini, was called in for some questioning by the Vigilance Department regarding a formal complaint against her for corruption during her tenure in the office. She refused to answer some questions, claiming her rights under Article 20(3) of the Constitution. The officers denied her such a right and kept compelling her to give such information. Nandini filed a petition before the court, and the authorities contended that the right applies only when the trial has commenced and that testimony given before the investigating authority is anyway inadmissible. Therefore, the right need not be provided at the investigating stage itself. Decide whether Nandini's rights have been violated or not.

a) Nandini's rights have been violated as she is being compelled to be a witness against herself.

b) Nandini's right has not been violated, as she has no right against self-incrimination at this stage of criminal machinery.

c) Nandini's right against self-incrimination has been violated as an accused of an offence cannot be called in for interrogation.

d) Nandini's right against self-incrimination has not been violated; even if she is compelled to divulge any incriminatory information, it would not be admissible in court.

Passage II

Arbitrariness as a Test of Article 14 Violation It is both logical and intuitive to start with the text of Article 14. The state shall not deny any person equality before the law or equal protection of the laws within the territory of India. The earliest decisions of the Court had a fairly consistent view of Article 14. The first part of the article, which speaks of equality, is commonly accepted to be a guarantee that no person is above the law. This guarantee is made effective by its corollary in the second part, which offers people equal protection under the laws. How are these interconnected guarantees made effective? To quote from the minority opinion of Shastri J.

State of West Bengal v. Anwar Ali Sarkar:

"The second part, which is a corollary of the first and is based on the last clause of the first section, of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without

discrimination or favouritism, or as an American judge put it, 'it is a pledge of the protection of equal laws' (Yick Wov. Hopkins [118 US 356, 369]), that is, laws that operate alike on all persons under like circumstances and as the prohibition under the article is directed against the state, which is defined in Article 12 as including not only the legislatures but also the governments in the country, Article 14 secures all persons within the territories of India against arbitrary laws as well as arbitrary application of laws.

This is further made clear by defining "law" in Article 13 (which renders void any law which takes away or abridges the rights conferred by Part III) as including, among other things, any "order" or "notification," so that even executive orders or notifications must not infringe Article 14. This trilogy of articles thus ensures non-discrimination in state action both in the legislative and administrative spheres in the "democratic republic of India."

Contrary to the belief that arbitrariness was discovered in the seventies, it is clear from the above paragraph from 1952 that Article 14 has, from the very outset, been interpreted as a guarantee against arbitrary action.

6) Based on the passage above, when can a law justifiably be excluded from following the principle of equality in Article 14?

a) When it treats people differently in like circumstances

b) When it treats similarly like people in unlike circumstances

c) When it treats similarly unlike people in like circumstances

d) When it treats differently unlike people in unlike circumstances

7) The test of arbitrariness applies on:-

a) Legislative action

b) Executive action

c) Both (a) and (b)

d) Neither (a) nor (b)

8) If the Parliament were to enact a law fixing the age of consent for sex to be 15 years, such a law would be:-

a) Equal and arbitrary

b) Unequal and non-arbitrary

c) Equal and non-arbitrary

d) unequal and arbitrary.

9) Rishav is employed by a government company. The company, through an office order, announced that every employee who has more than two children will not be eligible for certain allowances. However, employees who already had two or more children were exempt from this rule. Rishav challenged this order in court, claiming it was arbitrary and unreasonable and thus violates Article 14. Can Rishav claim an Article 14 violation against his employer?

a) Yes, because Article 13 protects all fundamental rights.

b) No, because relief for fundamental rights violations is available only for the government's legislative and executive functions.

c) Yes, because a government company is considered a state as per Article 12.

d) No, because Article 13 only protects fundamental rights from violation by the government.

10) Will Rishav succeed in his claim?

a) Yes, because the order is arbitrary and unreasonable.

b) No, because the order is arbitrary and reasonable.

c) Yes, because the order is non-arbitrary and unreasonable.

d) No, because the order is non-arbitrary and reasonable.

ANSWERS

1) Option C

To be a witness means imparting knowledge concerning relevant facts using oral statements or statements in writing by a person who has personal knowledge of the facts to be communicated to a court or a person holding an inquiry or investigation. This also includes documentary evidence, but only when a person is compelled to present it themselves, as given in Article 20(3). In the present case, the investigating authority is merely searching the property of the accused legally

with a warrant.

This is not the same as compelling a person to be a witness against themselves. (a) is incorrect as the search itself is not self-incriminatory, and it is irrelevant if any incriminatory evidence is later discovered, as the accused themselves are not compelled to produce such evidence but have been discovered in the course of the investigation. (b) is incorrect, as the passage does not mention any need for prior notice, and the same is thus apparently incorrect. (d) is incorrect for the reasons stated for the correct answers: searching for evidence is not the same as asking the accused to produce incriminating evidence themselves.

2) Option C

No person can be compelled to be a witness against themselves, which means imparting knowledge concerning relevant facts by a person who has personal knowledge of the facts to be communicated to a court or a person holding an inquiry or investigation. When a person is sedated, they are being compelled to impart such personal knowledge, which is self-incriminating, without their consent or willingness to do so. Therefore, the narcoanalysis test would violate Selvi's right against self-incrimination.

(a) is incorrect, regardless of whether answers are true or false; compelling incriminating information itself is violative of Article 20(3). (b) is incorrect, as even if the answers are being given, they are not out of willingness or consent to do so, and thus not justified as per Article 20(3). (d) is incorrect as the admissibility of the evidence is not a material consideration for the application of Article 20(3), considering the passage is silent on the same.

3) Option A

As per the passage, compelling a person to divulge self-incriminating information is violative of Article 20(3). However, here, the accused himself consents to the procedure. which means even if they end up giving some incriminating evidence against themselves, it wouldn't be a violation of Article 20(3). Therefore, (a) is correct. (b) is incorrect as, in light of the given information, such an application can be allowed if the accused is not being compelled. (c) is incorrect, as it is an irrelevant and immaterial point that doesn't discuss the legal basis, which is also the case with (d), which too is incorrect for the same reasons.

4) Option B

As per law, no person can be compelled to be a witness against themselves; however, Investigative authority is allowed to take physical evidence from the accused, which does not come from the volition of the accused but only for identification and corroboration of evidence. In the present case, even though the authorities are merely taking physical evidence in the form of a fingerprint, the same is true for unlocking the phone, which has incriminating evidence against Harry, and not for identification or corroboration of any existing evidence. Therefore, taking a fingerprint to access the phone in the present case amounts to self-incrimination and thus violates Harry's right under Article 20(3).

(a) is incorrect for the same reasons as stated above. (c) is incorrect as the passage uses the word compel, which has been given in the facts of the question as well, and therefore the mere absence of explicit information about the use of force does not mean that the right has not been violated. (d) is incorrect, as confiscating a device does not mean compelling testimony from a person.

5) Option A

The Supreme Court has made it clear that to claim this immunity from being compelled to make a self-incriminating statement, a formal accusation must be made against the person at the time of interrogation. In the present case, a formal complaint has been made against Nandini, which means that the protection of Article 20(3) extends to her as well. Therefore, forcing her to give incriminating answers is a violation of her right against self-incrimination. (b) is incorrect, as once formal accusations are made, the right covers the accused, so it is not important if the trial has commenced or not. (c) is incorrect, as calling in for interrogation is not the same as compelling one to be a witness against oneself, and therefore, merely calling in someone for interrogation is not a violation of their rights. (d) is incorrect, as the passage talks about mere compulsion. Only as soon as a person is compelled to share incriminating information is their right violated; the admissibility of such answers or statements is irrelevant.

6) Option D

Laws per Article 14 operate alike on all people in like circumstances. Therefore, a law treating differently-abled people in unlike circumstances would not violate Article 14.

7) Option C

The prohibition under the article is directed against the State, which is defined in Article12 includes not only the legislatures but also the Governments in the country,

Article 14 secures all persons within the territories of India against arbitrary laws as well as the arbitrary application of laws. This is further made clear by defining “law” in Article 13 (which renders void any law which takes away or abridges the rights conferred by Part III) as including, among other things, any “order” or “notification”, so that even executive Orders or notifications must not infringe on Article 14. This trilogy of articles thus ensures non-discrimination in State action, both in the legislative and administrative spheres, the democratic republic of India.

8) Option A

Such a law is arbitrary because it fixes any age of consent for sex without considering The emotional and sexual maturity of every individual teenager would be arbitrary. However, it applies universally to all people below and over the age of 15 and is therefore equal.

9) Option C

A government company is considered a state under Article 12, and Article 13 protects fundamental rights from violation by legislative and executive state action.

10) Option A

The order arbitrarily fixes at two the number of children one can have and applies differently between employees who have children and those who do not. Therefore, it is both arbitrary and unreasonable.

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