

LL.M. End Semester Examination: November-2016

Fundamental Rights and Social Justice

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**
Course: Fundamental Rights and Social Justice
Semester-I (Batch: 2016-17)

LL.M. End Semester Examination: November-2016

Date: 15th November, 2016**Duration: 3 hours****Max. Marks: 70****Instructions:**

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- **Constitution of India Bare Act is not allowed.**

Part-A**Marks****Q.1 is compulsory. Attempt any two questions from Q.2 to Q.4.**

Q.1 The Animal Preservation Act was brought into force with effect from 15th April, 1978. (16)

In the year 1995, the Karnavati State Legislature passed the Karnavati Animal Preservation (Amendment) Bill; 1995. The Presidential assent was received to the said Bill on 4th March, 2015. Accordingly, the Amendment Act was published in Karnavati Government Gazette dated 4th March, 2015. The Amendment Act was brought into force on 4th March, 2015. The preamble of the amendment act read thus:

“An Act to provide for the prohibition of slaughter of cows and for the preservation of certain other animals suitable for milch, breeding, draught or agricultural purposes and preservation of cows, bulls and bullocks useful for milch, breeding, draught or agricultural purposes and for restriction on slaughter for the preservation of certain other animals suitable for the said purposes

WHEREAS it is expedient to provide for the prohibition of slaughter of cows and for the preservation of certain other animals suitable for milch, breeding, draught or agricultural purposes and preservation of cows, bulls and bullocks useful for milch, breeding, draught or agricultural purposes.”

The following amendments were made in the act:

Amendment in Section 5: The amended Section 5 reads thus:

Section 5. Notwithstanding anything contained in any other law for the time being in force or any usage or custom to the contrary no person shall slaughter or cause to be slaughtered or offer for slaughter any cow, bull or bullock, in any place in the State of Karnavati.

Sections 5A to 5D incorporated by the Amendment Act read thus:

Section 5A. (1) No person shall transport or offer for transport or cause to be transported cow, bull or bullock from any place within the State to any place outside the

Sections 5A to 5D incorporated by the Amendment Act read thus:

Section 5A. (1) No person shall transport or offer for transport or cause to be transported cow, bull or bullock from any place within the State to any place outside the State for the purpose of its slaughter in contravention of the provisions of this Act or with the knowledge that it will be or is likely to be, so slaughtered.

Page 1 of 4

LL.M. End Semester Examination: November-2016

Fundamental Rights and Social Justice

(2) No person shall export or cause to be exported outside the State of Karnavati cow, bull or bullock for the purpose of slaughter either directly or through his agent or servant or any other person acting on his behalf, in contravention of the provisions of this Act or with the knowledge that it will be or is likely to be slaughtered.

Section 5B. No person shall purchase, sell or otherwise dispose of or offer to purchase, sell or otherwise dispose of any cow, bull or bullock for slaughter or knowing or having reason to believe that such cow, bull or bullock shall be slaughtered.

Section 5C. Notwithstanding anything contained in any other law for the time being in force, no person shall have in his possession flesh of any cow, bull or bullock slaughtered in contravention of the provisions of this Act.

Section 5D. No person shall have in his possession flesh of any cow, bull or bullock slaughtered outside the State of Karnavati."

Being aggrieved by the said amendment the petitioner has filed a writ petition before the Supreme Court of India challenging the constitutional validity of the above provisions of the 1995 Act. Frame the issues and decide the constitutional validity of the above provisions.

- Q.2 Discuss the scope of Article 15 and 16 in the light of the constitutional amendments made to these articles. (12)
- Q.3 Discuss the following: (12)
- (a) Doctrine of Reasonable Classification
 - (b) Doctrine of eclipse
- Q.4 "Pradeep Kumar Biswas judgement formally overruled Sabhajit Tewari, but more importantly, further narrowed the 'agency or instrumentality' test." Do you agree with this statement? In the light of the above statement, evaluate the role of Judiciary in interpreting the term "other authorities". (12)

Part-B

Answer the question

- Q.5 In a writ petition, preferred under Article 32 of the Constitution of India, the petitioner, Youth Bar Association of India, has prayed for issue of a writ in the nature of mandamus, directing the Union of India and the States to upload each and every First Information Report registered in all the police stations within the territory of India in the official website of the police of all States, as early as possible, preferably within 24 hours from the time of registration. After the writ petition was entertained by the Supreme (1x12 =12)

Information Report registered in all the police stations within the territory of India in the official website of the police of all States, as early as possible, preferably within 24 hours from the time of registration. After the writ petition was entertained by the Supreme Court, notices were issued to the Union of India and the States.

It was submitted by the learned counsel appearing for the petitioner that after the registration of the First Information Report if it is uploaded in the official website of police, that will solve many unnecessary problems faced by the accused persons and their family members. Learned counsel contended that when the criminal law is set in motion and liberty of an individual is at stake, he should have the information so that he can take necessary steps to protect his liberty. In this context, he has drawn the attention of the court to a passage from the judgment rendered in *State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal and others* (2010) 3 SCC 571, wherein it has been observed:-

"Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and

Page 2 of 4

personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State."

Learned Additional Solicitor General has drawn the attention of this court to paragraph 4 of the affidavit filed in an interlocutory application in the present writ petition. The said paragraph reads as under:-

"4. It is respectfully submitted that Central Government is supporting all the states to set up a mechanism for online filing of complaints under the project 'Crime & Criminal Tracking Network & Systems (CCTNS)'."

The learned counsel appearing for the State of Uttarakhand has submitted that the First Information Report in respect of certain offences which are registered, like sexual offences and the offences registered under the Protection of Children from Sexual Offences Act, 2012 (POSCO Act), may be difficult to be put on the website.

Three of the learned counsels appearing for the States of Meghalaya, Mizoram and Sikkim respectively, have submitted that insurgency would be a sensitive matter and, that apart, it may not be possible on the part of the said States to upload the First Information Reports within 24 hours.

The learned counsel appearing for the State of Odisha has submitted that whether a matter is sensitive or not, no reasons should be given because the allegation in the F.I.R shall speak for itself.

Having heard learned counsel for the parties, the Court thought it appropriate to record the requisite conclusions and, thereafter, proceeded to issue the directions for uploading of FIR in the website of all the States to be given effect from 15th November, 2016 and a copy of the order be sent to all the Home Secretaries and the Director Generals of Police of the States concerned.

Answer the following questions:

copy of the order be sent to all the Home Secretaries and the Director Generals of Police of the States concerned.

Answer the following questions:

- (a) The right to liberty under Article 21 of the Constitution is a valuable right, and hence should not be lightly interfered with. The rights inherent in Articles 21 and 22 (1) of the Constitution required to be jealously and scrupulously protected. Any form of torture or cruel inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. Elucidate precisely citing relevant case laws. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest?
- (b) The Supreme Court having heard learned counsel for the parties, proceeded to issue the direction that, the copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under POSCO Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report. Explain what is the rationale of issuing such a direction by the Court? If an FIR is not uploaded, if the offence is sensitive in nature, whether it shall enure *per se* a ground to obtain the benefit under section 438 of Cr. PC for grant of anticipatory bail to a person apprehending arrest?

Page 3 of 4

LL.M. End Semester Examination: November-2016

Fundamental Rights and Social Justice

- (c) In case there is connectivity problem due to geographical location or there is some unavoidable difficulties, whether the time can be extended beyond twenty-four hours to upload the FIR on police website or on the official website of the State Government as the case may be? If the accused has committed a crime say today i.e. 15 November, 2016 which is not sensitive in nature, and an FIR has been registered against him, when will the FIR be uploaded on the police website or otherwise?

Part-C

Answer **any two** questions

(2x4=
08)

- Q.6 The right secured by Article 20(1) corresponds to the provisions against *ex post facto* laws of the US Constitution which declares that no *ex post facto* laws shall be passed. "There can be no doubt", said Jagannathadas J, "as to the paramount importance of the principle that such *ex post facto* laws which retrospectively create offences and punish them are bad as being highly inequitable and unjust". Discuss *ex post facto* laws in the first part and second part of Article 20(1), with the help of different instances and relevant case laws.
- Q.7 What are the safeguards ensured in Clauses (1) and (2) of Article 22 for a person who is arrested? Explain each of the rules embodied in Article 22(1) and (2). Article 22 advances in a way the purpose of Article 21 in so far as it specifies some guaranteed rights available to persons arrested or detained. Comment.

advances in a way the purpose of Article 21 in so far as it specifies some guaranteed rights available to persons arrested or detained. Comment.

- Q.8 The value of free speech and expression gets strengthened when judges capably use it to arrive at different opinions- informed, effective and judicious. In the judgment delivery system of India, judges either concur or supplement the majority opinions in most of the cases. It does not mean that the free expression of dissent is nonexistent. But it is very occasional and declining at an unusual speed. State the significance of dissenting opinion of Justice Fazal Ali in *A K Gopalan vs. State of Madras* and that of Justice Khanna in *A.D.M. Jabalpur vs. Shukla*. What could be the possible reasons for absence of dissents in CJI's benches?

Part-D
(Compulsory)

(2x5=
10)

- Q.9 What do you understand by Begar? Explain in light of Constitutional Provisions.
- Q.10 Discuss the various aspects of exploitation as protected under Articles 23 of the Constitution of India.
