

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Fundamental Rights and Social Justice
Semester-I (Batch: 2015-16)

LL.M. End Semester Examination: Oct-Nov. 2015

Date: 6th November, 2015

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.
- **Bare Act is not allowed.**

Part-A

Marks

Q.1 is compulsory. Attempt any two questions from Q.2 to Q.4.

- Q.1 With a view to conserve the cattle wealth of the State of Gujarat, the state government enacted the Gujarat Animal Preservation Act, 1988 and prohibited the slaughter of animals which are useful for milch, breeding or agricultural purposes. Section 5 of the said Act reads as under: (16)
- 5(1) Notwithstanding any law for the time being in force or any usage to the contrary, no person shall slaughter or cause to be slaughtered any animal unless, he has obtained in respect of such animal a certificate in writing from the competent authority appointed for the area that the animal is fit for slaughter.
- 5(2) No certificate shall be granted under sub-section (1), in respect of
- (a) A cow;
 - (b) She-buffalo
 - (c) the calf of a cow, whether male or female and if male, whether castrated or not;
 - (d) a bull;
 - (e) a bullock below the age of sixteen year."
- The constitutional validity of section 5(2) is challenged before the Supreme Court of India on the ground of violation of fundamental rights. Frame the arguments on behalf of the petitioner and respondent.
- Q.2 "The courts should be anxious to enlarge the scope and width of the Fundamental Rights by bringing within their sweep every authority which is an instrumentality or agency of the government or through the corporate personality of which the government is acting, so as to subject the government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligation of the Fundamental Rights". In the light of the above statement, evaluate the role of the Indian Judiciary in expanding the meaning of 'other authorities' as mentioned in Article 12 of the Indian Constitution. (12)
- Q.3 "The Kesavananda Bharati case was the culmination of a struggle for supremacy over the power to amend the Constitution between Parliament and government of the day on the (12)

one hand and the Supreme Court of India on the other. The battle began from the time the Supreme Court in *Golak Nath v. State of Punjab*, in 1967 held that Fundamental rights could not be amended by Parliament.' In the light of the said statement, trace the evolution of the doctrine of basic structure with the help of the judgements of Supreme Court. Discuss, if any, attempts has been made by Parliament to overcome the Kesvananda Majority.

- Q.4 The Parliament of India by the **Constitutional (Ninety-third Amendment) Act, 2005** (12) added clause (5) in Article 15 of the Indian Constitution. Clause (5) of Article 15 read as follows:

Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

The Private Unaided Educational Institutions Organization, an NGO filed a writ petition before the Supreme Court of India challenging the constitutional validity of the same.

Frame the arguments in favour and against the constitutional validity of clause (5) of Article 15 of Indian Constitution.

Part-B

- Q.5 The Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit, Mumbai, received (15) an information that one sea-faring vessel by name M.T. AL SHAHABA (a motor tanker) carrying approximately 700 metric tons (MT) of Diesel Oil of foreign origin is arriving into Indian Customs Waters on or around 20th or 21st December, 2004 and the said diesel oil would be smuggled into India. The officers of the DRI, Mumbai, therefore, kept surveillance in that area and on 21.12.2004, the officers spotted the said vessel. They noticed two self-propelled barges and two dumb barges each towed by a tow boat, were around the said vessel. They also noticed that pipes were attached from the said vessel to the barges and oil was being pumped into the barges from the vessel. The officers of the DRI boarded the said vessel and took control of the same. The vessel and barges were found to be of Mumbai coast within the Indian territorial waters. When the officers made enquiry with the Captain of the vessel – Fouad Ahmed Al Manie, he informed that the vessel was carrying High Speed Diesel (HSD) from Muscat. The Captain was not holding any legal documents for import of the said diesel oil into India. The Captain informed the officers that he has already discharged around 250 MTs of oil from the vessel into three barges before they boarded the vessel. The officers, therefore, brought the said vessel and barges to the P and V Anchorage of Port Trust, Mumbai.

Two independent panchas were brought and detailed inventory was prepared and after conducting search of the said vessel and barges, panchnamas were drawn. The officers of the DRI seized the said diesel oil weighing about 770 MTs, worth Rs. 2 crores, under the Customs Act, 1962.

During the course of investigation, the officers came to know the name of the appellant-detenu Bobby and one Chand as the persons behind the said smuggling. On 22.12.2004, the Statement of the Captain of the vessel was recorded wherein he stated that he was asked by his master to take the vessel to the Indian Coast and to deliver the consignment

to Bobby, the detenu in India. On the same day, the statement of Sayyed Hussain Madar @ Chand was also recorded wherein he, *inter alia*, stated that he was to purchase the said Diesel Oil brought by Bobby in India and sell the same.

During the course of follow-up action of the said seizure of the vessel, the officers of the DRI, Mumbai seized about 5.127 MTs of previously smuggled diesel oil stored in two barges at Reti Bunder, Belapur and arrested Chand Captain Fouad Ahmed Al Manie, Shaikh Ahmedali, Murugan Murugeshan and Sadiq Anwar under Section 104 of the Customs Act, 1962 on 23.12.2004 and were produced before the Addl. CMM, Esplanade, Mumbai on 24.12.2004 and were later released on bail on 09.02.2005. However, subsequently, all of them retracted their statements. On 04.03.2005, residential premises of the appellant-Bobby were searched and finally he was traced on 14.03.2005. On the same day, he moved an anticipatory bail application to the Sessions Court, Mumbai which was rejected on 24.03.2005. On 24.03.2005, the statement of Bobby was recorded under section 108 of the Customs Act, 1962. On the basis of his statement, the officers arrested the appellant on 25.03.2005. On 12.04.2005, he was granted bail by the Addl. CMM, Mumbai but he did not avail of the same. On 03.05.2005, the Joint Secretary to the Government of India, after considering the appellant's high propensity and potentiality to indulge in prejudicial activities and with a view to prevent him from abetting the smuggling of goods in future, passed the detention order against him under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "the COFEPOSA ACT").

Being aggrieved by the said order, on 02.06.2005, the appellant filed Criminal Writ Petition No. 1500 of 2005 before the Bombay High Court. The High Court, finding no substance in the writ petition, by impugned judgment dated 16.03.2006, dismissed the same.

Aggrieved by the said judgment, the appellant has filed this appeal by way of special leave before the Supreme Court. On 09.05.2008, leave was granted.

The relevant provision of law is :

Section 3(1) of the COFEPOSA ACT, 1974:

Power to make orders detaining certain persons.-

(1) The Central Government or the State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner), that, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from-

(i) smuggling goods, or (ii) abetting the smuggling of goods, or (iii) engaging in transporting or concealing or keeping smuggled goods, or (iv) dealing in, smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or (v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods,

It is necessary so to do, make an order directing that such person be detained.

Based on the brief facts of the case answer the following:

- (a) The learned counsel for the appellant-detenu Bobby briefed the Supreme Court through detention order dated 03.05.2005 and the grounds of detention as well as the impugned order of the Bombay High Court dismissing the writ petition.

Suppose you are the learned counsel for the appellant raise the contentions based on the detention order, the grounds of detention and the impugned order of the High Court before this court. You may press into service various decisions of the Supreme Court in support of your contentions.

- (b) The learned counsel for the respondents-the Detaining Authority submitted their arguments before the Supreme Court taking the court through various grounds, details and materials adverted to in the impugned order.

Suppose you are the learned counsel for the respondents advance your arguments for the Detaining Authority based on the grounds, details and materials as to how they have rightly invoked the provisions of the COFEPOSA ACT, 1974 while passing the detention order.

- (c) The Supreme Court is conscious of the fact that the right to liberty is guaranteed by Article 21 of the Constitution of India. At the same time Article 22 clause (3) sub-clause (b) of the Constitution permits preventive detention.

Suppose you are the Judge of the Division Bench of the Supreme Court, keeping in mind the above presumption, decide whether the impugned detention order is sustainable in law? Whether any of the contentions raised by the appellant can be accepted?

- Q.6 “No person shall be deprived of his life or personal liberty except according to procedure established by law.” This article of the Constitution of India has been strongly relied upon by the petitioner in the case of *A.K. Gopalan*, supporting his contention that the impugned Preventive Detention Act, 1950 is ultra vires, as it abridges the right given by this article to every person. (05)

Discuss and bring out the four marked points of distinction between the clause ‘*due process of law*’ in the American Constitution and ‘*procedure established by law*’ in Article 21 of the Constitution of India.

OR

Every provision of the Constitution can be amended provided that in the result the basic foundation and structure of the Constitution remains the same. This basic foundation and structure cannot by any form of amendment be destroyed.

What is Secularism and why it is accepted as the basic feature of the Constitution? What are the other features of the basic structure of the Constitution?

Part-C

- Q.7 “The Supreme Court by its judicial activism has left enormous impact on certain Directive Principles of State Policy. Judicial activism has changed the status of certain Directive Principles of State Policy and elevated them to the status of certain fundamental rights.” discuss the above statement with specific reference to equal pay for equal work. (10)

OR

“Education is a tool to generate a sense of solidarity in a diverse society by addressing concerns relating to inequality, exclusion and segregation. The right to education is crucial for creation of equitable society and ensuring democratic governance. The right to education remains rhetoric for majority of the people who exist on the margins”. Discuss the statement in the light of Indian socio-economic and political position.
