

NATIONAL LAW UNIVERSITY, DELHI

B.A.LLB.(Hons.): V-YEAR, IX-SEMESTER (2012 Batch) Special Repeat Examinations, July-2017

Paper 9.2: Judicial Process and Interpretation of Statutes

Time: 3.00 Hours

Total Marks: 70

Instructions:

1. Read the questions carefully and answer.
2. No clarification shall be sought on the question paper.
3. Do not write anything on the question paper except your Roll No.

Q.1 "Law must be stable and yet it cannot stand still." Roscoe Pound. Discuss.
"The Mystery of change and motion still vexes the minds of men." Justice Cardozo. Discuss.
What are the causes for uncertainties in law? **(5 Marks)**

Q.2 The National Legal Services Authority, constituted under the Legal Services Authority Act, 1997, to provide free legal services to the weaker and other marginalized sections of the society, files public interest litigation on behalf of members of Transgender Community (for short -TG community) seeking a legal declaration of their gender identity than the one assigned to them, male or female, at the time of birth. It has been prayed that non-recognition of their gender identity violates Articles 14 and 21 of the Constitution of India. Hijras/Eunuchs, who also fall in that group, claim legal status as a third gender with all legal and constitutional protection.

The petition states that transgenders (TGs) are deprived of social and cultural participation and hence restricted access to education, health care and public places which deprives them of the Constitutional guarantee of equality before law and equal protection of laws. Further, it is also pointed out that the community also faces discrimination to contest election, right to vote, employment, to get licences etc. and, in effect, treated as an outcast and untouchable in India. It has been submitted in the petition that transgender persons have to be declared as a socially and educationally backward classes of citizens and must be accorded all benefits available to that class of persons, which are being extended to male and female genders. Answer the following:

- i. Whether the petition is maintainable before the Supreme Court of India? **(2 Marks)**
- ii. Can the Supreme Court of India frame rules and regulations for protecting the interests of the transgenders community? **(3 Marks)**
- iii. For safeguarding the rights of the transgenders community, whether the Supreme Court of India has any right to issue appropriate directions to the government? **(5 Marks)**

Q.3 National Judicial Appointments Commission (NJAC) is a body which will be responsible for the appointment and transfer of judges to the higher judiciary in India. The Commission has been established by amending the Constitution of India through the ninety-ninth constitution amendment vide the Constitution (Ninety-Ninth Amendment) Act, 2014 passed by the Lok Sabha on 13 August 2014 and by the Rajya Sabha on 14 August 2014. The NJAC has replaced the current collegium system for the appointment of judges. The Commission consists of the following six persons:

- Chief Justice of India (Chairperson, ex officio)
- Two other senior judges of the Supreme Court next to the Chief Justice of India - ex officio
- The Union Minister of Law and Justice, ex-officio
- Two eminent persons

These (two) eminent persons are being nominated by a committee consisting of the Chief Justice of India, Prime Minister of India, and Leader of Opposition in the Lok Sabha (or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in Lok Sabha), provided that of the two eminent persons, one person would be from the Scheduled Castes or Scheduled Tribes or OBC or minority communities or a woman. The eminent persons shall be nominated for a period of three years and shall not be eligible for re-nomination.

P.T.O.

Answer the following:

- i. Can the Constitution (Ninety-Ninth Amendment) Act, 2014 be subjected to judicial review?
(5 Marks)
- ii. What is the constitutional validity of the current collegium system relating to appointment of judges in higher judiciary in India?
(5 Marks)

Q.4a) What are the Primary rules of interpretation. (3 Marks)

- b) Illustrate each of the above principles/rules with the relevant case laws (at least one for each). (7 Marks)

Q.5 Explain the role of presumptions in the interpretation of law. (5 Marks)

Q.6 Explain the different parts of a statute and the role played by each in understanding, interpretation of a statute. (5 Marks)

Q.7 Interpretation must depend on the text and the content. They are bases of interpretation. One may well say, if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted.

This was held in Reserve Bank of India V. Peerless General Finance and Investment Co. Ltd. & others (1987), 1SCC424. Chinnappa Reddy & Khalid J.J. Illustrate the above statement with suitable examples. (5 Marks)

Q.8a) Supreme Court in interpreting the entries in the Seventh Schedule of the Constitution, List I, II and III have laid down certain principles and doctrines. What are they? (5 Marks)

- b) Explain each of the above principles/doctrines with at least one case law. (5 Marks)

Q.9 Section 6 of The Hindu Minority and guardianship Act, 1956 read as:-

“The natural guardian of a Hindu minor, in respect of the minor’s person as well as in respect of the minor’s property (excluding his or her undivided interest in joint family property) are:-

- I. In the case of a boy or an unmarried girl- the father, and after him, the mother.”

The Constitutional validity of the above section was challenged as violating Art.14 and 15 of the Constitution. The Court declared it constitutionally valid. Which rule of the interpretation was applied and how this section was interpreted by the Court? (5 Marks)

Q.10 The work of a judge is in one sense enduring and in another sense ephemeral. What is good in it endures? What is erroneous is pretty sure to perish. The good remains the foundation on which new structures will be built. The bad will be rejected and cast off in the laboratory of the years-Justice Cardozo.

Explain few land mark decisions of the Supreme Court of India which you consider as the foundation (enduring) on which our Constitution now stands. Give some examples of cases which have become ephemeral. (perished) (5 Marks)