

NATIONAL LAW UNIVERSITY, DELHI

B.A, LLB. (Hons.): III-YEAR, VI-SEMESTER End-Semester Examinations, June-2015

Paper 6.1: Jurisprudence-II

Time: 3 Hours

Total Marks: 50

Instructions:

1. Read the questions carefully and answer. All questions are compulsory.
 2. No clarification shall be sought on the question paper.
 3. Do not write anything on the question paper except your Roll No.
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(Part A)

- Q.1 Altopia is a third world country with a poor human rights record. Its Constitution guarantees civil, political as well as economic, social and cultural rights to its citizens. However, Altopia has no social security policies or schemes owing to the lack of resources to implement the same. Anarchists Anonymous (AA) is a radical rebel movement that has called for scrapping of the fundamental rights chapter in the Constitution. AA is critical of 'rights' and 'rights talk'. Help AA frame arguments to seek removal of fundamental rights from the Altopian Constitution. **(5 marks)**
- Q.2 Geox is a new State that is formulating its Constitution. It seeks your expert assistance in deciding on the model of distributive justice it should follow. Critically examine whether it should adopt the Rawlsian difference principle. **(10 marks)**
- Q.3 Geox is an economically prosperous country neighbouring Altopia. It does not have significant cultural ties to the people of Altopia. Given that Altopia is economically poor, and that Geox has the capacity to provide economic assistance, does Geox have any obligations to assist the State or people of Altopia? Can Altopia claim that Geox has a duty to assist using the concept of global justice? **(5 marks)**
- Q.4 Critically evaluate the Kantian conception of rights. **(5 marks)**

(Part B)

- Q.1 'X' entered into a covenant not to compete with the plaintiffs. Later, having left the plaintiffs, he formed a company of his own family and this company then sought the custom of the plaintiffs customers. 'X' argued that his company could not be bound by the covenant, since it had not entered into one; nor could he be personally answerable, since it was not he but the company which committed the breach. Decide the above case with the help of Fiction, Realist and Bracket theories of personality. Also elaborate upon the advantages and disadvantages of the above theories in dealing with the case at hand. **(10 marks)**
- Q.2(a) A tenant left the premises to visit her daughter and was taken from there to a mental home. The daughter maintained the premises so that the tenant could eventually return. What is the status of possession of the premises qua tenant? Explain by deploying concept of possession. **(3 marks)**
- (b) If A momentarily hands his watch to B, from whom it is stolen by C, who then loses it on D's property, where it is then found by E, the question who has the right to possess-which is often considered the same as the question who has legal possession-will depend on who brings action against whom. Elaborate upon the above statement by explaining legal position. **(7 marks)**
- Q.3 How is it possible for those holding religious doctrines, some based on religious authority, for example, the Church or the Bible, to hold at the same time a reasonable political conception that supports a reasonable constitutional democratic regime? Discuss in the light of John Rawls' view on the above. **(5 marks)**

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Paper 6.2: Constitutional Law-II

Time: 3 Hours

Total Marks: 50

Instructions:

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- Q.1 Decide the Constitutional validity of the following:
- a) A Minister, who is not a member of either House of legislature was reappointed a Minister, after the expiry of six months period.
 - b) Regulatory and compensatory taxes are regarded as trade barriers and are violative of freedom of trade and commerce envisaged in Indian Constitution.
 - c) Law declared by the Supreme Court of India is binding on all the courts within the territory of India, including the Supreme Court.
 - d) A forward class girl married a backward class boy would be entitled to the benefit of reservation for Backward Classes provided as per the provisions of the Constitution of India.
 - e) The nomination form filled by X as a candidate in the Parliamentary elections to be held in July 2015, was rejected by the Returning Officer. X filed immediately a writ under Art.226 for the enforcement of his constitutional right/fundamental right as envisaged in the Constitution of India. **(5X2=10 Marks)**
- Q.2 Ram Niwas was appointed as a Sub deputy Collector in U.P. Subordinate Civil Services on probation. Due to adverse reports received against him, he was served with a show cause notice- why he should not be discharged from service for gross neglect of duties and unsatisfactory work, and for notoriety for corrupt practices, and thereby earning bad reputation. Proceedings were initiated against him, as a result of which, he was discharged from service. The order of discharge also expressly stated the above mentioned charges as the grounds for the order.
Argue for him as well as for employer/state, whether the discharge from service is by way of punishment or not, as per the provisions of Art.311(2). **(8 Marks)**
- Q.3 According to Sec. 4 of Panchayati Raj Act, 1994, a person shall be disqualified for being chosen as a member of Panchayat-
- a. If he has attained the age of 21 years, but is less than 25 years of age.
 - b. If he is having more than 2 living children.
 - c. If he is not having any bachelor's degree from a recognised university.
- Discuss the validity of the above stated disqualifications in the light of Constitutional provisions and decided case law. **(6 Marks)**
- Q.4 Sarkaria Commission, while looking into the question of invocation of Art.356 said in its Report:
"Art. 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available alternatives fail to prevent or rectify a breakdown of Constitutional machinery in the state."
Comment on the above statement and highlight its significance and relevance according to the judicial pronouncements and Constitutional provisions. **(6 Marks)**
- Q.5 Explain the different methods for amending the provisions of the Indian Constitution given under Art. 368 and also discuss briefly, the relevance of Basic Structure Theory enunciated in Kesavananda Bharati Case in 1973, in the present times, whether it is still holds good, even after approximately four decades keeping in mind the organic nature of the constitution. **(8 Marks)**
- Q.6 Write short notes on any four of the following:
- 1) Doctrine of Colourable Legislation
 - 2) Difference between Tax and Fee
 - 3) Sovereign Immunity and Fundamental Rights (Public Law Doctrine-Arts. 300 and 21)
 - 4) All India Services
 - 5) Three language Formula and its Present day Relevance **(4X3=12 Marks)**

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End-Semester Examinations, June-2015

Paper 6.4: International Law

Time: 3 Hours

Total Marks: 50

Instructions:

1. Read the questions carefully and answer. All questions are compulsory.
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(Part-A)

- Q.1 Pascale is the President of the State of Quresha. He is accused of having committed genocide targeting a racial group Lyka that resulted in the death of thousands of Lykans.
- A. As a result of the genocide, several Lykans fled Quresha and settled in neighbouring States including Refe. Survivors and families of victims of genocide sought reparation from Quresha for the wrongs perpetrated against them. After failed attempts at inter-governmental negotiations, some victims and survivors of genocide have initiated domestic litigation in the district court of Refe for monetary compensation against Quresha. The district court is hearing arguments as to the admissibility of the claim. Draft arguments that may be advanced on behalf of Quresha and the Lykan Plaintiffs, and decide. **(8 marks)**
- B. Zivac is a country that has no territorial or nationality link with the Lykan genocide. The criminal laws of Zivac enable their domestic courts to exercise universal jurisdiction even where the accused is not present in the territory of Zivac. After elections in Quresha, Pascale was ousted from his presidency but continues to reside in Quresha. Post the regime change in Quresha, several States (including Zivac) are contemplating initiating prosecution against Pascale in order to send a strong message that the international community condemns genocidal practices. The Prosecutor of Zivac is unsure whether the exercise of universal jurisdiction to prosecute Pascale is permitted in international law. She is also concerned as to the policy implications of exercising universal jurisdiction in this manner. Advice on whether Zivac should prosecute Pascale. **(10 Marks)**
- C. Quresha is a signatory to the Genocide Convention of 1948. It has duly ratified the Convention subject to a reservation that reads as follows: "The Government of Quresha interprets the obligations of the Genocide Convention as not affecting the prescriptions of the provisions of the Constitution of Quresha. Quresha does not wish to be bound by the Genocide Convention if its conditional ratification is not accepted."
- i) Help Quresha draft its arguments. **(3 Marks)**
- ii) Is this reservation valid? Assuming that it is an impermissible reservation, what are the legal consequences of ratification subject to said reservation? **(4 Marks)**

(PART-B)

- Q.2 Using Professor Martti Koskenniemi's criticisms of euro-centrism situate Immanuel Kant's 'Towards Perpetual Peace' and see if Professor Akeel Bilgrami offers any solution, any counter to the 'tyranny of the north'. Can there be any solution to this Euro-centrism by an alternative modernity from the south? Based on the two videos of Martti Koskenniemi and Akeel Bilgrami and the text of 'Towards Perpetual Peace' by Immanuel Kant and all the class discussions on these try and identify the problems of Euro-centrism and offer possible solutions. **(13 Marks)**
- Q.3 Two states shared the waters of a river 'X' which flowed from state 'A' to state 'B'. River 'X' which is crucial for the lives and livelihoods of people from both states flows from state 'A' to state 'B'. There is also a huge commerce as the river is navigable and has been so since the dawn of civilization but lately due to silting navigation was not possible which raised economic concerns. Also the demand for energy arose which made the two countries explore opportunities for hydroelectricity. Both countries wanted to initiate making of a dam on the river, but also create a wide and deep canal alongside for navigation and use the water extensively for irrigation purposes. In order to accomplish the ambitions, countries 'A' and 'B' entered into a detailed treaty by 1989 and started operations from 1990 onwards.
- Both countries started the project in 1990, but soon state 'B' lost interest and stopped operations and funding (around 1993) because there was widespread agitation by its citizens against it. The project was also considered to be environmentally damaging and expected to destroy the fragile ecosystem of 'B' apart from submerging a place of religious worship which was intrinsically connected to its cultural heritage. This religious structure was also a national heritage site for country 'B'. It became an electoral issue in country 'B' and the ruling party which had entered into the treaty and proposed and initiated the construction of the dam lost elections. The new party stopped operations in 1993. By 2000, country 'B' had completely suspended operations. From 1995, country 'A' had a separate option plan ready and as soon as state 'B' officially suspended operations in 2000, state 'A' activated this separate plan. State 'B' terminated the treaty in 2001 by accusing how country 'A' is implementing a separate plan of operation by excluding country 'B', as against the treaty, which is why 'B' could terminate the treaty altogether.
- Both states decided to resolve their dispute at the ICJ. Prepare arguments on behalf of both the states and provide a possible decision which could be given by ICJ. **(12 Marks)**

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Paper 6.5: Labour Laws

Time: 3 Hours

Total Marks: 50

Instructions:

1. Read the questions carefully and answer. All questions are compulsory.
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1. The Amco Pharmaceutical Company, Belur, had more than 600 workmen working in the establishment. On 1st January 2002, the Company came up with a notification whereby changing the working hours for Production Unit No.1. The new shift for a day was decided as 10 hours of work 2 hours of overtime and half an hour rest. Workmen raised a dispute in relation to the new hours of work and change in conditions of service without informing them. There was an illegal strike called for by the Kamgar Sanghatana for the period starting from 6-4-2002 to 30-5-2002. Immediately after the strike was called off, the management declared temporary closure of the Company without prior approval of the appropriate government from 12-6-2002 to 3-5-2004 on the ground of financial setback. The workmen raised dispute pertaining to this closure during the aforesaid period and claimed appropriate lay-off compensation. The matter was settled on 25-8-2005, between the Kamgar Sanghatana, which was a recognised union and the management. Clause 8 of the settlement stated that compensation would be paid for the days during which the mill did not function and marked as no work. The rival union, the Raymond Employees Union challenged the validity of the settlement. The Employees Union also filed an application under Sec. 33 6C (2) for lay-off compensation. In this factual background, discuss the legal positions in respect of the following issues?
 - (a) Whether the new shift arrangement was bad according to law relating to working hours? Does the introduction of new shift of hours of work require any compliance with procedure under industrial law? **(4 Marks)**
 - (b) Whether the contention of the Company that it was not lay-off but lock-out would succeed before the Court? If lay-off, discuss whether it is legal and justified according to law? **(3 Marks)**
 - (c) Discuss the nature of the settlement and its binding value on workmen referring to the conflict in legal jurisprudence? **(4 Marks)**
 2. Workmen of the Nissam Textile Mill, Shadra went on tools down strike in connection with non-payment of revised wage scales and dearness allowance on 8th May, 2010. Since the attempts to reach at a mutual agreement failed, it was referred by the appropriate government for adjudication 12th December, 2010. Thereafter, Mr. Ram Kumar was served with a notice of dismissal to show cause why he should not be dealt with under the Standing Order. The ground of dismissal was that he disobeyed the instructions of the Technical Director and the shift-in-charge. Clause 22(a) of the Standing Orders provided that wilful insubordination or disobedience of any lawful orders of superior was misconduct. He submitted his explanation. He was suspended from service and a charge-sheet was served on him. Thereafter an inquiry was held into the alleged misconduct. After the inquiry was over the Management referred the matter for the decision of the Labour Commissioner without giving any prior decision of its own as provided in clause 30 of the Standing Orders. The Labour Commission, however, refused to give a decision and informed the appellant that it could take such action as it was entitled to under the Standing Orders. Management again approached the Labour Commissioner for giving an order as envisaged by clause 30 of the Standing Orders, but the Labour Commissioner finally refused to pass any order and directed the appellant to take such action as it thought fit and as was within its power. Thereupon the appellant dismissed Ram Kumar. However, since one dispute was pending between the Management and its workmen before the Industrial Tribunal No. 3. at Allahabad, Management sent applications by post on the same day to the authorities for approval of the action taken, namely, the dismissal of the employee.
 - a. Suppose the application is (i) withdrawn by the management or (ii) the approval is refused by the authority, what would be the status of the workman and whether he would be entitled to file an application under Sec. 33-C (2) of the Act? Also discuss the remedy available to Mr. Ram Kumar in case approval is granted by the Authority? (Explain the complexity with reference to case laws). **(6 Marks)**

P.T.O.

3. The procedures relating to Lay-off, Closure and Retrenchment under Chapter 6V B of the Industrial Disputes Act has survived constitutionality challenges both on the substantive vices and procedural vices. Discuss and analyse the inter-related case law jurisprudence on the same? **(8 Marks)**

4. X was appointed as motor mate with effect from 3.6.2000 in the enterprise called 'Steep' engaged in production of steel pipes. After 10 months i.e. on 2.4. 2001 he was appointed as work munshi in the regular pay scale of 400-600 for a period of 8 months as the employer was looking for a more qualified person for the job. X's term ended on 1.12.2001 but he continued in service upto 30.10.2002 as the employer had not been able to find an appropriate person for the post till that time. In January 2003 Steep enterprises appointed a new work munshi and terminated the services of X with effect from 2.1.2003.
 - (a) Is the termination of X legal? If yes, how? If no, what relief is he entitled to? How do you assess your decision in the light of the erstwhile and contemporary labour jurisprudence. **(6 Marks)**

5. Meena had been a very efficient worker in an undertaking engaged in manufacture of toys for a long time (10 years). She had established herself as one of the most productive persons of the undertaking. However she had always been very sharp tongued. She had also been reprimanded by the management many times and asked to exercise restraint. This made her improve her conduct a little. She proceeded on unauthorised leave for 60 days on account of some domestic issue. When she returned she was subjected to disciplinary enquiry. Proceeding on unauthorised leave was a misconduct punishable with dismissal under the Industrial Employment Standing Orders pertaining to that undertaking. In the enquiry she stated that she tried to call the employer on his telephone but could not reach to him. She also stated that she sent a message about her inability to come through a relative who mentioned the same to the employer. The enquiry officer however, recorded the finding of misconduct on the part of Meena. After conducting a proper enquiry wherein the misconduct was established the enquiry officer recommended dismissal of Meena. The dismissal was challenged in the industrial tribunal and the tribunal confirmed the finding of misconduct but set aside the order of dismissal and ordered reinstatement. The order of the industrial tribunal is challenged in a special leave petition before the Supreme Court.
 - a) Assuming yourself to be Arijit Pasayat, J. who recently authored *V. Ramana vs. A.P.S.R.T.C.* (2005) 7SCC338 decision and *L and T Komatsu Ltd. vs. N. Udayakumar* (2008) ISCC 2C4, decide the case before you. **(5 Marks)**
 - b) Evaluate your decision in the light of the jurisprudence developed with respect to section 11A of the Industrial Disputes Act, 1947. **(4 Marks)**

Short Notes

6. Critique of Minimum Wage jurisprudence developed in *Workmen vs. Management of Reptakos Brett and Co. Ltd.* **(5 Marks)**

7. Critique of Judgment in *Bank of India vs. T.S. Kelawala and S.U. Motor* (1990) (4) SCC 744. **(5 Marks)**