Azim Premji University

Applicant's Name:			
Roll Number:		**Application Number:**	A P U 1 7
Date:		**Test Centre:**	

<u>PART – III</u> <u>ESSAY</u>

- This Part is to be answered **only** by candidates who have applied for the **LL.M. in Law and Development**
- You are required **to answer any ONE** out of the four questions asked below.
- In answering the questions, please refer briefly to any relevant material you have read.
- You have **60 minutes** to complete this section.
- This booklet will be collected at 2:45 p.m.

QUESTIONS:

Q1. In Kedar Nath Yadav v. State of West Bengal the Supreme Court held that the acquisition of private land for setting up the Tata Nano Car plant could not be construed as a 'public purpose' under the Land Acquisition Act, 1894.

Section 3(f) of the Land Acquisition Act, 1894 provides: *the expression 'public purpose' includes— …………*

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State; …………

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government,…;

(vii) the provision of land for any other scheme of development sponsored by Government or, with the prior approval of the appropriate Government, by a local authority; ……… but does not include acquisition of lands for Companies"

Justice Gopala Gowda held, *"In the instant case… The acquisition of land for and at the instance of the company was sought to be disguised as acquisition of land for 'public purpose' in order to circumvent compliance with the mandatory provisions of Part VII of the L.A. Act. This action of the State Government is grossly perverse and illegal and void ab initio in law and such an exercise of power by the state government for acquisition of lands cannot be allowed under any circumstance. If such acquisitions of lands are permitted, it would render entire Part VII of the L.A. Act as nugatory and redundant, as then virtually every acquisition of land in favour of a company could be justified as one for a 'public purpose' on the ground that the setting up of industry would generate employment and promote socio economic*

development in the State. Surely, that could not have been the intention of the legislature in providing the provisions of Part VII read with 3 (f) of the L.A. Act."

Justice Arun Mishra held "*Acquisition of land for establishing such an industry would ultimately benefit the people and the very purpose of industrialization, generating job opportunities hence it would be open to the State Government to invoke the provisions of Part II of the Act. When Government wants to attract the investment, create job opportunities and aims at the development of the State and secondary development, job opportunities, such acquisition is permissible for 'public purpose'."*

Is the Justice Gopala Gowda's view in the case persuasive? How should courts interpret the phrase 'public purpose' in such cases?

Q2. Government of India vide their Notification dated 8 November 2016 have withdrawn the Legal Tender status of INR 500 and INR 1,000 denominations of the Reserve Bank on 8th November 2016.

Article 300 A of the Constitution of India states that *"No person shall be deprived of his property save by authority of law"*

Section 26(2) of the Reserve Bank of India Act, 1934 states that *"On recommendation of the Central Board the Central Government may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender save at such office or agency of the Bank and to such extent as may be specified in the notification."*

Arjun Jayadev[1] argues that *"Notes and reserves are the liability of the Reserve Bank of India. The Central bank is a fully owned entity of the Indian state. On the consolidated government balance sheet, which combines the Reserve Bank and the Central government, therefore, there are two key liabilities: government bonds (some of which are held as assets by the Reserve Bank but the majority of which is held by the public at large) and money (reserves and notes that are held by the public). Money is best seen as zero yield perpetuity just as government bonds are positive yield liabilities with finite length. When a note is issued, a permanent liability is created without a date or time of redemption. While the government can declare its notes are no longer legal tender, it does not claim that it is not a liability of the Reserve Bank without further legal recourse….But from the point of view of the Central bank's balance sheet, the permanent liability does not stop being a liability of the Reserve Bank even if it is no longer useable or used as a means of settlement between private agents. When the government declared that Rs 500 and Rs 1,000 notes were no longer legal tender, it did not declare that these notes were no longer the liability of the Central bank. The distinction is crucial.*

If one is to take that written guarantee of the Reserve Bank governor – "I promise to pay the bearer the sum of x rupees" – seriously (and one must take it seriously in order for notes to be used as legal tender and function as money), the only way to extinguish this liability is to directly repudiate it. Note that the Reserve Bank itself has not contravened this promise in the case of pre-2005 notes that it seeks, nevertheless, to withdraw from circulation. In several cases of demonetisation worldwide, demonetised notes can be returned indefinitely to the Central bank in question since all that is being changed is the form of the liability itself, and not the actual quantity of the liability.

Anyone who states a hope that these claims will not be forthcoming and that they will be extinguished is stating a hope that the Reserve Bank is going to be able to dishonour one of its key liabilities. On the consolidated balance sheet of the government, this is equivalent to hoping that claims on outstanding bonds are not forthcoming so that the government can write them off. In an accounting sense, this is the same as hoping to promote a legal default."

[1] Arjun Jayadev, "With its talk of extinguishing unreturned cash, is the government defaulting on its obligations?" scroll.in, December 10, 2016.

Further, Namita Wahi[2] argues that the demonetization ordinance is unconstitutional on three counts: *"First, it violates the constitutional right to property under Article 300A. In Jayantilal v RBI, in the context of the 1978 demonetisation, the Supreme Court held that demonetisation is not merely a regulation of property, as the government is presently arguing, but constitutes compulsory acquisition of a "public debt" owed to the bearer of the notes declared illegal.*

Under Article 300A, the state may deprive an individual of property only by "law", and not by executive notification as the government has done here. The government's failure to issue an ordinance (since Parliament was not in session at the time) to extinguish the RBI's debt to the people impermissibly violates the constitutional right to property. However, even if the demonetisation had been sanctioned by ordinance, there is a strong claim that the rationing of currency constitutes a form of creeping expropriation for which there has been no compensation, which nevertheless violates Article 300A.

Second, the extraordinary hardship caused by demonetisation has impacted fundamental rights to trade, business and livelihoods of vast sections of the population and the right to life of those who have died.

While the government may "reasonably" restrict fundamental rights in the interests of the "general public", it bears the burden of showing that these restrictions are reasonable.

The test of reasonableness is whether the measure was necessary to achieve the government's objectives, and whether less risky, less harmful alternatives were available. The reasonableness of a measure must be assessed in terms of its "immediate effects" on the affected population.

Unlike the 1978 demonetisation that impacted only 1% of currency held, the 2016 demonetisation insofar as it impacts an estimated 86% of total currency has had punitive effects on many sections of the population, including, daily wage earners, those without bank accounts and those dependent on the informal cash economy for their livelihood and business. The notification is unconstitutional for violating their fundamental rights under Articles 19 and 21.

Third, the notification also discriminates between holders and non-holders of bank accounts.

While the government has argued that such a classification is necessary to achieve their objectives of eliminating unaccounted money, insofar as the government failed to ensure that 100% of the population had bank accounts prior to the issuance of this surprise notification, the classification may be assailed as arbitrary and violative of the right to equality under Article 14."

Assume that you are a Justice on Bench of the Supreme Court hearing this matter. Decide and write an opinion in support of your conclusion.

Q3. On October 6, the Supreme Court in Hiral P. Harsora struck down the words "adult male" from Section 2(q) of the Protection of Women from Domestic Violence Act 2005 (DV Act) to allow women and minors to be accused of perpetrating domestic violence.

Section 2(q) of the DV Act reads as follows: *" 'respondent' means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner."*

Section 2(f) of the DV act reads as follows: *"Domestic Relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family"*

[2] Namita Wahi, "Why demonetization notification is illegal and violates the Constitution", The Economic Times, December 11, 2016.

The court relied on Article 14: *"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India"*, read with the gender neutral domestic relationship under section 2(f) to conclude that section 2(g) should be interpreted in a gender neutral manner. The court held that *"the classification of "adult male person" clearly subverts the doctrine of equality, by restricting the reach of a social beneficial statute meant to protect women against all forms of domestic violence."*

Jayna Kothari[3] argues that *"The PWDVA is a gender-specific law enacted to protect women against domestic violence at the hands of men…. it is absolutely incorrect to state that domestic violence is gender-neutral. It is not. The world over, a vast majority of domestic violence is experienced by women at the hands of men. It is not a random event of violence but is a consequence and a cause of women's inequality and is linked to the discrimination and devaluing of women."*

Should equality always be interpreted in a gender/caste neutral fashion? Are there any conditions under which equality could permit a gender asymmetric legal rule?

Q4. In his book 'Responsibility and Fault', Prof Tony Honore has the following comments on negligence liability in tort law (p. 24):

Often it [the objective standard of liability in negligence] merely makes it easy to prove negligence on the part of some-one who is in fact at fault. But sometimes it penalizes the bad luck of those who suffer from shortcomings. The principle involved in imposing ordinary strict liability, say for storing explosives, and in applying the objective standard of negligence is at bottom the same. Thus in Britain a motorist who has an accident because, though he scraped through the test, he is too clumsy or stupid to drive properly can suffer, directly or through his insurer, for his bad luck. So under a different legal theory can his opposite number in France or Germany who is held liable for a road accident even though no fault on his part can be proved. Holmes, in a classic passage of The Common Law, points to this combination of bad luck and blame. He says,

"If a man is born hasty and awkward, is always having accidents and hurting himself or his neighbours, no doubt his congenital defects will be allowed for in the courts of Heaven, but his slips are no less troublesome to his neighbours than if they sprang from guilty neglect."

Hence "the law considers . . . what would be blameworthy in the average man, the man of ordinary intelligence and prudence, and determines liability by that. If we fall below the level in those gifts, it is our misfortune."

Holmes gives no morally convincing reason for holding the accident-prone person liable for his bad luck. The member of the awkward squad is not to blame for his defect. In the courts of Heaven, accordingly, he goes scot-free, but on earth his neighbours insist that he be held liable. True, but by what right? It is certainly bad luck to fall below a decent level in the gifts needed for social intercourse, but why should this misfortune entail legal liability?

Do you believe that it is fair for the law of negligence to penalize the accident prone person?

[3] Jayna Kothari, "Violence that is not gender neutral", The Hindu, November 16, 2016.