

UNIVERSITY OF COLOMBO, SRI LANKA
FACULTY OF LAW
MASTER OF LAWS EXAMINATION, 2016/17

HUMAN RIGHTS LAW

(Three hours)

Total number of questions: 04

Answer **Question No. 1** and any **Two** other Questions.

(Candidates will be penalized for illegible handwriting)

1. Raja, is a senior legal consultant attached to a non-governmental organization '*Justice Path*', which actively engages in advocating rule of law and good governance in the State of Serandiana. He is also consulted by other voluntary organizations functioning in the rural areas. Serandiana, after the change of government at recent general elections, is about to adopt a new constitution for ensuring rule of law and good governance. In this endeavor, the Government invites representations from various civil and political organizations in the country as to the manner and scope in which the fundamental rights of the people should be guaranteed in the new constitution.

The political parties representing the minority communities in the country insist that group rights and equal opportunity guarantees should be recognized and included in the fundamental rights chapter of the constitution. Civil society groups argue that fundamental rights violations by all three organs of the government should be made reviewable by the appellate courts. Further, they argue that all the international human rights instruments guaranteeing civil and political rights ratified by Serandiana should become the law of the land. However, these two views are vehemently opposed by the both major political parties in the country and they contend that since parliament is supreme it should be held outside the reach of the judiciary. Also, they opine that the idea of secularism is nugatory to the national ethos.

A group of social workers representing the remotest village of the country requests Raja to make representation on their behalf demanding that economic and social rights guaranteed by international human rights instruments should be made justiciable within Serandiana.

The Director of '*Justice Path*' requests Raja to prepare a Memorandum to be submitted to the Government. Raja is instructed, *inter alia*, to focus on the following key issues in his Memorandum:

- i) Constitutional guarantee of group rights;
- ii) The scope of equal opportunity guarantees;
- iii) Place of religion in the constitution;
- iv) Justiciability of economic and social rights;
- v) Judicial review of legislation
- vi) Proclamation of emergency
- vii) Derogation of fundamental rights in times of public emergency.

Assuming that the present Constitution of Serandiana is similar to that of the Constitution of Sri Lanka, draft the Memorandum for '*Justice Path*'.

(42 Marks)

2. "There is a mistaken belief that the doctrine of State sovereignty and international human rights are incompatible with each other. The evolutionary development of human rights law has clearly established that undertaking of human rights obligations by State parties itself is an exercise of their sovereign authority."

Critically comment on the above statement in light of the scope and application of international human rights law. Support your answer with relevant provisions of international instruments and case law authority.

(29 Marks)

3. (a) 'Although freedom from torture is considered as an absolute freedom, the continuous and systematic practice of it by many State agencies reflects the failure of the international human rights protection system.'

Do you agree? Discuss with examples. Support your answer with relevant authorities.

- (b) 'As far as developing countries are concerned, they feel it comfortable in calling certain rights as luxuries unaffordable by their governments. The list includes the rights of women, children, and the rights of other such vulnerable groups'.

Do you agree? Discuss in light of the nature of the yardstick used to measure the luxurious character of these rights.

(29 Marks)

4. (a) 'What a religious practice, and certainly not a religious belief, is subject to the law. However, it remains a daunting task to adopt a universal standard of restrictions imposed on those practices irrespective of the different beliefs behind them.'

Evaluate the correctness of the above statement in the context of religious freedom recognized in international human rights law and the constitutional protection of the same in Sri Lanka.

- (b) 'The dividing line between what is public and what is not is in a flux state. The jurisprudence to be found in some other jurisdictions is a clear indication of such dilemma. In this sense, the Sri Lankan judiciary still remains as a conservative partner of a very few.'

Discuss in light of the right to equality in international human rights law and how it is approached by the Supreme Court of Sri Lanka in fundamental rights cases brought before it.

(29 Marks).
