

Roll No.....

**NATIONAL LAW UNIVERSITY, DELHI**

**LL.M. Degree Programme, II-Semester (Batch of 2018)**

**End-Semester Examinations, April - 2019**

**Paper: Critical Criminal Law**

Time: 3:00 Hours

Total Marks: 50

Instructions:

1. Read the questions carefully and answer.
  2. Attempt ANY 5 questions.
  3. Only Bare Act, Printed cases and hand written/typed class notes are allowed.
  4. Students are strictly advised to use hand written/typed/photocopied class notes of their own.
  5. No clarification shall be sought on the question paper.
  6. Do not write anything on the question paper except your roll no.
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- Q1.** Critical criminal law typically entails “limits of criminal” and “last resort” propositions in its core construction. This is also reflected in what Allan Norrie said: “In a society where there is unequal distribution of wealth and power, the principal role of the criminal law is to be the buttressing of the economic and social dispensation by legitimating State coercion against economically less advantaged persons.”

Based on these ideas please state the core prepositions in explaining the notion of critical criminal law with proper illustrations including appropriate judicial decisions.

**(10 Marks)**

- Q2.** The instances of criminalization and decriminalization, in the recent past, in India were marked by vehement criticism of not following the idea of “principled criminalization or decriminalization”. For criminal law to be just, criminalization must be just. Criminalization charts human freedom, determining what people are not allowed to do. It affects justice, equality, legitimacy and monetary resources.

In the light of this proposition, critically state the significant principles of criminalization having a bearing on the issue mentioned above.

**(10 Marks)**

- Q3.** “The law of arrest is about balancing of peace and order in the society and protection of individual rights and liberty. It is about these conflicting claims which require reconciliation. The procedure must be such which prevents unnecessary arrest on one hand and provide for safeguards to the arrestee on the other. The journey of evolution of arrest law in its present form is a fine example of maintaining such balance between these two conflicting interests.”

Critically examine the contours of arrest law. Do you agree that the procedure of arrest is rationalised to such extent so that the chances of misuse of power by police are reduced significantly?

**(10 Marks)**

- Q4.** R and M were arrested on 1st April, 2019 for offences punishable under Section 323 and 324 IPC. While investigation of that crime was going on, both R and M were released on bail by police under section 436 on executing personal bond. During investigation it was revealed that the offence committed by them was an aggravated one under section 326 IPC, a non-bailable offence. Thereby, the investigating officer also incorporated the offence punishable under Section 326 IPC. Apprehending arrest by police, both R and M approached the Sessions Court and sought relief of pre arrest bail under section 438 of the Code. The Sessions Judge passed the following order

“Considering the materials available on record, this Court is not inclined to grant anticipatory bail to the petitioners. This court directs that if petitioners surrender before the Id J.M.F.C., Bhiwandi and moves an application for bail in the aforesaid case, in such event the Id J.M.F.C. shall release them on bail on such terms and conditions as he may deem fit and proper.”

Aggrieved by the Order of the Sessions Court both the petitioners approached the High Court. The sole argument of the Counsel for petitioners was that when bail is granted to a person for a bailable offence by the Police or Magistrate then such person cannot be rearrested without cancellation of the bail granted earlier.

At the same time, the Public Prosecutor has challenged the order passed by the Sessions Judge before the High Court stating it to be erroneous in law.

Both the matters are listed in your court. Decide.

**(10 Marks)**

- Q5.** “The right to consult and be defended by a legal practitioner is not to be construed as sanctioning or permitting the presence of a lawyer during police interrogation. According to our system of law, the role of a lawyer is mainly focused on court proceedings...It is thus to be seen that the right to access to a lawyer in this country is not based on the Miranda principles, as protection against self-incrimination, for which there are more than adequate safeguards in Indian laws. The right to access to a lawyer is for very Indian reasons; it flows from the provisions of the Constitution and the statutes, and is only intended to ensure that those provisions are faithfully adhered to in practice...The failure to provide a lawyer to the accused at the pre-trial stage may not have the same consequence of vitiating the trial.”

Give your answer in light of the Supreme Court’s stand on presence of lawyer during interrogation stage. What anomaly surrounds the issue of ‘presence of lawyer during interrogation’ under special laws and what in your opinion is the right approach to address such anomaly?

**(10 Marks)**

- Q6.** ‘A’ was arrested by Pune Police on 12<sup>th</sup> October, 2016 from his residence in Delhi in connection with FIR No.1527/2012 for offence of rioting and giving hate speech. Said FIR has also mentioned certain provisions of Unlawful Activities (Prevention) Act. On 13<sup>th</sup> October ‘A’ was produced before the Chief Judicial Magistrate, Dwarka Court for transit remand. The transit application was laid before the Id. CMM. The arrest memo and seizure memo were also placed before him. All these documents were prepared in Marathi and the arrest memo was signed by two witnesses who were brought by the Pune Police from Pune. The Officer of Pune Police made oral submission before the CMM

that A's remand is necessary since other individuals who were arrested in the same case in 2013 had made disclosure statements in regard to incitement of the riots and giving hate speech by 'A'. After hearing the Pune Police and perusing the materials the Ld. CMM has given 'A' to Pune Police under transit remand till 15<sup>th</sup> October.

On his production before the Ld. Magistrate in Pune, the investigating officer requested for his custody which the Magistrate allowed for 7 days. His custody period was extended from time to time.

Pending investigation, 'A' filed bail application under relevant provision of CrPC before the Sessions Court which was not allowed and therefore, he continued to be in judicial custody. On 10<sup>th</sup> January, 2017 'A' has moved an application before the Magistrate showing his intention to be released on bail. The Magistrate issued a notice to the public prosecutor and kept the application pending till 14<sup>th</sup> January, 2017. On 14<sup>th</sup> January, the Public Prosecutor opposed the bail application by stating that the investigation is still going on and as the accused is in custody for offences under UAPA it will hamper the smooth investigation if he is released on bail. The Magistrate then dismissed the bail application.

'A' then challenged the Order of the Magistrate before the High Court. The matter was listed on 27<sup>th</sup> February, 2017 in the High Court. On that date the Bench adjourned the matter for argument to 4<sup>th</sup> March, 2017 before a vacation Bench but in the meanwhile on 1<sup>st</sup> March, 2017 a charge sheet was filed before the Magistrate.

In the light of the given fact situation decide the legality of

1. Arrest of 'A'
2. Transit remand
3. Deferring the hearing of bail application by the Magistrate on 10<sup>th</sup> January, 2017 and by the High Court on 27<sup>th</sup> February, 2017 respectively.
4. Impact of filing of charge sheet on 1<sup>st</sup> March, 2017

**(2.5\*4=10 Marks)**