

## NATIONAL LAW UNIVERSITY, JODHPUR

Re - Mid Term Examination - 2023

Semester: UG IV

Subject: Jurisprudence - II

26 APR 2023

Time: 90 minutes

Maximum Marks: 50

## Instruction:

1. Both questions are compulsory.
2. Write concise answers.

Q1: Disagreeing with Bentham's rejection of qualitative distinction among pleasures, Mill writes: "The quantity of pleasure being equal, push-pin is as good as poetry". (Push-pin was a children's game). It seems that Mill's response to the objection to utilitarianism – that it reduces all values to a single scale – turns out to lean on moral ideals independent of utility.

Do you agree? Give sufficient reasons for your answer.

(Marks 25)

Q2: Nozick rejects the idea that a just distribution consists of a certain pattern – such as equal income, or equal utility, or equal provision of basic needs. What matters is how the distribution came about.

Explain with the help of appropriate examples.

(Marks 25)

## NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination: May 2023

Semester : UG IV Semester

Subject : Jurisprudence – II

Time : Three Hours

Marks : 100

Instructions:

- (1) Answer any five of the following questions.
- (2) Clearly identify the question you are answering.
- (3) Write concise answers.

- Q 1. "I want to argue that we should focus on the reduction of dominance – not, or not primarily, on the break-up or the constraint of monopoly."  
- Michael Walzer, *Spheres of Justice – A Defense of Pluralism and Equality*, Basic Books (1983), at p. 17.

Explain in detail what Michael Walzer means to say in this sentence?

(Marks 20)

- Q 2. "In most cases when we say that someone has a 'right' to do something, we imply that it would be wrong to interfere with his doing it, or at least that some special grounds are needed for justifying any interference. I use this *strong sense of right* when I say that you have the right to spend your money gambling, if you wish, though you ought to spend it in a more worthwhile way. I mean that it would be wrong for anyone to interfere with you even though you propose to spend your money in a way that I think is wrong." (Italics supplied).  
- Ronald Dworkin, *Taking Rights Seriously*, UBT (1996), at p. 188.

What is this 'strong sense of right'? Explain with suitable examples.

(Marks 20)

- Q3. "How is it possible to affirm certain liberties and rights as fundamental without embracing some vision of the good life, without endorsing some ends over others? It would seem we are back to the relativist predicament – to affirm liberal principles without embracing any particular ends."  
- Michael J Sandel, *Public Philosophy – Essays on Morality in Politics*, Harvard University Press (2005), at p. 150.

In the light of the above said statement discuss the objections and counter-objections of liberals and communitarians/republicans on their versions of transcendental institutionalism and its refutation respectively.

(Marks 20)

- Q4. What 'fundamental ideas' Rawls proposes before introducing the principles of justice? How those ideas are relevant in his theory of justice?

(Marks 20)

Q5. "When a man attempts to combat the principle of utility, it is with reasons drawn, without his being aware of it, from that principle itself."  
- Jeremy Bentham, *Introduction to the Principles of Morals and Legislation*.

With the help of suitable examples, explain what Bentham means to say? Do you agree with him?

(Marks 20)

Q6. Write a note on any one of the following:

- a. Inalienable Rights.
- b. Relevance of consent in justice.

(Marks 20)

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Semester: UG IV  
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Time: 90 minutes

Maximum Marks: 50

Instruction:

1. Both questions are compulsory.
2. Write concise answers.

Q1: "What kind of work people do, and how hard they do it, is up to them to decide in light of the various incentives society offers. What the difference principle requires, then, is that however great the general level of wealth – whether high or low – the existing inequalities are to fulfil the condition of benefitting others as well as ourselves." – John Rawls.

In the light of the above statement explain what is the difference principle? And, why it is placed after principle 1 and 2(i) in Rawlsian principles of justice.

(Marks 25)

Q2: Considering the high accolades and the amount of money that an Olympic medallist can earn how far the IOC FRAMEWORK ON FAIRNESS, INCLUSION AND NON-DISCRIMINATION ON THE BASIS OF GENDER IDENTITY AND SEX VARIATIONS (Annexure 1) appear to be appropriate to you? Justify your stance with reasons.

(Marks 25)

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# IOC FRAMEWORK ON FAIRNESS, INCLUSION AND NON-DISCRIMINATION ON THE BASIS OF GENDER IDENTITY AND SEX VARIATIONS

## INTRODUCTION

Every person has the right to practise sport without discrimination and in a way that respects their health, safety, and dignity. At the same time, the credibility of competitive sport – and particularly high-level organised sporting competitions – relies on a level playing field, where no athlete has an unfair and disproportionate advantage over the rest.

Through this Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations, the International Olympic Committee (IOC) seeks to promote a safe and welcoming environment for everyone, consistent with the principles enshrined in the Olympic Charter. The Framework also acknowledges the central role that eligibility criteria play in ensuring fairness, particularly in high-level organised sport in the women's category.

This Framework is issued as part of the IOC's commitment to respecting human rights (as expressed in Olympic Agenda 2020+5) and as part of the action taken to foster gender equality and inclusion.

In issuing this Framework, the IOC recognises that it must be in the remit of each sport and its governing body to determine how an athlete may be at a disproportionate advantage against their peers, taking into consideration the nature of each sport. The IOC is therefore not in a position to issue regulations that define eligibility criteria for every sport, discipline or event across the very different national jurisdictions and sport systems.

Therefore, the aim of this Framework is to offer sporting bodies – particularly those in charge of organising elite-level competition – a principled approach to develop their criteria that are applicable to their sport. Sports bodies will also need to consider particular ethical, social, cultural and legal aspects that may be relevant in their context.

This Framework was developed following an extensive consultation with athletes and stakeholders concerned. This included members of the athlete community, International Federations and other sports organisations, as well as human rights, legal and medical experts. It replaces and updates previous IOC statements on this matter, including the 2015 Consensus Statement.

This Framework recognises both the need to ensure that everyone, irrespective of their gender identity or sex variations, can practise sport in a safe, harassment-free environment that recognises and respects their needs and identities, and the interest of everyone – particularly athletes at elite level – to participate in fair competitions where no participant has an unfair and disproportionate advantage over the rest.





Lastly, the IOC also recognises that most high-level organised sports competitions are staged with men's and women's categories competing separately. In this context, the principles contained herein aim to ensure that competition in each of these categories is fair and safe and that athletes are not excluded solely on the basis of their transgender identity or sex variations.

Where eligibility criteria must be set in order to regulate the participation in the women's and men's categories, the establishment and implementation of such criteria should be carried out as part of a comprehensive approach grounded on the respect for internationally recognised human rights, robust evidence and athlete consultation. In so doing, precaution should be used to avoid causing harm to the health and well-being of athletes.

## PRINCIPLES

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This Framework should be considered as a coherent whole and should be taken into consideration by International Federations and other sports organisations when exercising their responsibility in establishing and implementing eligibility rules for high-level organised competition in their respective sports, disciplines and events and, more generally, in ensuring safe and fair competition in the context of inclusion and non-discrimination on the basis of gender identity and sex variations.

While these principles have been drafted with the specific needs of high-level organised sports competitions in mind, the general principles of inclusion and non-discrimination reflected below should be promoted and defended at all levels of sport.

### 1. INCLUSION

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- 1.1. Everyone, regardless of their gender identity, expression and/or sex variations should be able to participate in sport safely and without prejudice.
- 1.2. Measures should be put in place with a view to making sporting environments and facilities welcoming to people of all gender identities.
- 1.3. Sports organisations should work together to advance inclusion and prevent discrimination based on gender identity and/or sex variations, through training, capacity-building and campaigns that are informed by affected stakeholders.
- 1.4. Mechanisms to prevent harassment and abuse in sport should be further developed by taking into account the particular needs and vulnerabilities of transgender people and people with sex variations.



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- 1.5. Where sports organisations choose to establish eligibility criteria in order to determine the participation conditions for men's and women's categories for specific contests in high-level organised sports competitions, these criteria should be established and applied in a manner that respects the principles included in this Framework. Individuals or parties responsible for issuing such criteria should be appropriately trained in order to ensure that these issues are handled in a manner consistent with these principles.
  - 1.6. The design, implementation and evaluation of these measures and mechanisms should be done in consultation with a cross-section of affected athletes.

## **2. PREVENTION OF HARM**

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- 2.1 The physical, psychological and mental well-being of athletes should be prioritised when establishing eligibility criteria.
- 2.2. Sports organisations should identify and prevent negative direct and indirect impacts on athletes' health and well-being that may come from the design, implementation and or interpretation of eligibility criteria.

## **3. NON-DISCRIMINATION**

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- 3.1 Eligibility criteria should be established and implemented fairly and in a manner that does not systematically exclude athletes from competition based upon their gender identity, physical appearance and/or sex variations.
- 3.2 Provided they meet eligibility criteria that are consistent with principle 4, athletes should be allowed to compete in the category that best aligns with their self-determined gender identity.
- 3.3 Criteria to determine disproportionate competitive advantage may, at times, require testing of an athlete's performance and physical capacity. However, no athlete should be subject to targeted testing because of, or aimed at determining, their sex, gender identity and/or sex variations.

## **4. FAIRNESS**

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- 4.1 Where sports organisations elect to issue eligibility criteria for men's and women's categories for a given competition, they should do so with a view to:
  - a) Providing confidence that no athlete within a category has an unfair and disproportionate competitive advantage (namely an advantage gained by altering one's

body or one that disproportionately exceeds other advantages that exist at elite-level competition);

- b) preventing a risk to the physical safety of other athletes; and
- c) preventing athletes from claiming a gender identity different from the one consistently and persistently used, with a view to entering a competition in a given category.

## **5. NO PRESUMPTION OF ADVANTAGE**

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- 5.1 No athlete should be precluded from competing or excluded from competition on the exclusive ground of an unverified, alleged or perceived unfair competitive advantage due to their sex variations, physical appearance and/or transgender status.
- 5.2 Until evidence (per principle 6) determines otherwise, athletes should not be deemed to have an unfair or disproportionate competitive advantage due to their sex variations, physical appearance and/or transgender status.

## **6. EVIDENCE-BASED APPROACH**

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- 6.1 Any restrictions arising from eligibility criteria should be based on robust and peer reviewed research that:
  - a) demonstrates a consistent, unfair, disproportionate competitive advantage in performance and/or an unpreventable risk to the physical safety of other athletes;
  - b) is largely based on data collected from a demographic group that is consistent in gender and athletic engagement with the group that the eligibility criteria aim to regulate; and
  - c) demonstrates that such disproportionate competitive advantage and/or unpreventable risk exists for the specific sport, discipline and event that the eligibility criteria aim to regulate.
- 6.2 Should eligibility criteria prevent an athlete from entering a given competition, such athlete should:
  - a) be allowed to participate in other disciplines and events for which they are eligible, in the same gender category; and

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- b) be able to contest the ultimate decision of International Federations or other sports organisations through an appropriate internal mediation mechanism, such as ombudsperson, and/or procedures before the Court of Arbitration for Sport, to seek remedy.

## **7. PRIMACY OF HEALTH AND BODILY AUTONOMY**

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- 7.1 Athletes should never be pressured by an International Federation, sports organization, or any other party (either by way of the eligibility criteria or otherwise) to undergo medically unnecessary procedures or treatment to meet eligibility criteria.
- 7.2 Criteria to determine eligibility for a gender category should not include gynaecological examinations or similar forms of invasive physical examinations, aimed at determining an athlete's sex, sex variations or gender.
- 7.3 Sports organisations should seek to educate coaches, managers and other members of the entourage to prevent interpretations of their eligibility criteria that can lead to harm.

## **8. STAKEHOLDER-CENTRED APPROACH**

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- 8.1 When drafting, reviewing, evaluating and updating eligibility criteria, sports organisations should meaningfully consult with a cross-section of athletes who may be negatively affected in order to prevent harm.
- 8.2 Any decisions affecting an athlete's ability to compete should follow the basic standards of procedural fairness, including neutrality and impartiality.
- 8.3 Sports organisations should put in place internal mechanisms that offer athletes and other affected stakeholders accessible, legitimate, safe and predictable avenues to raise concerns and grievances connected to gender-based eligibility.

## **9. RIGHT TO PRIVACY**

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- 9.1 Sports organisations should ensure transparency in their decision-making processes on eligibility while working to preserve the privacy of individuals who may be affected by such restrictions. This includes all personally identifiable information processed in the context of eligibility decisions which should be handled in compliance with applicable laws and international standards.
- 9.2 Medical information about an athlete, including testosterone levels, that is collected in the context of anti-doping or otherwise, must be handled in compliance with applicable privacy laws and should be used only for the purposes disclosed to the athlete at the time such information is collected.



- 9.3 Informed consent should be acquired from athletes prior to the collection of data that is obtained for the purpose of determining eligibility to compete in the men's or women's category.
- 9.4 Sports organisations should avoid public disclosure of athletes' confidential health and other personal information in the absence of the athlete's consent. In addition, sports organisations should consult with the athletes concerned on the best ways to publicly communicate about their eligibility.

## **10. PERIODIC REVIEWS**

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- 10.1 Eligibility criteria should be subject to predictable periodic review to reflect any relevant ethical, human rights, legal, scientific, and medical developments in this area and should include the affected stakeholder's feedback on their application.

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