

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Constitutional Law-III
(Centre State Relations, Emergency and Amendments)
Semester-V (Batch: 2017-22)

End Semester Examination: October-2019

Date: 23rd October, 2019

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write anything on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

Answer any five questions

Marks

- Q.1 Andhra Pradesh and Maharashtra are the two riparian states of inter- state Godavari river. The suit has been filed by State of Andhra Pradesh complaining violations by State of Maharashtra of the agreements and awards. On 10.04.1969, the Union of India constituted the Tribunal and on the same day, disputes among the riparian states regarding the inter-state Godavari River and the river valley thereof were referred to the Tribunal for adjudication. The Tribunal investigated into the matters referred to it and made its award on 27.11.1979. The Tribunal gave further award under on 07.07.1980. The bilateral and other inter-state agreements entered into by the riparian states during the period 1975 to 1980 for the distribution of water of Godavari River form the main features of the award. The Godavari originates in the Sahayadri hill ranges in Nasik District of Maharashtra and flows for a total length of about 1465 Km. through Maharashtra and Andhra Pradesh before joining the Bay of Bengal. The river has its basin area spread into other States like Karnataka, Orissa, Chhattisgarh and Madhya Pradesh. Andhra Pradesh filed a suit before the Supreme Court of India and in the plaint they presented following facts about their construction of irrigation project to its full potential at Pochampad, which is located close to the inter-state border of Andhra Pradesh and Maharashtra. On 06.10.1975, in the course of pendency of disputes before the Tribunal, an agreement, which was endorsed by the Tribunal, was entered into between Andhra Pradesh and Maharashtra whereby Maharashtra agreed that Andhra Pradesh can go ahead with Pochampad dam project. Acting on the agreement, Andhra Pradesh constructed Pochampad dam on Godavari River and have reimbursed to Maharashtra for construction of five bridges across the Godavari River. The wrongs against which redress is sought are, first, Maharashtra's illegal and unauthorised act of construction of Babhali barrage within the reservoir bridge of Pochampad dam contrary to the award and without any right and entitlement; and, second, Maharashtra's intention to utilize the water of Pochampad by invasion of reservoir water spread area by construction of Babhali barrage which would deprive Andhra Pradesh in general and its inhabitants of having water for irrigation and drinking purposes. Andhra Pradesh complains that construction of Babhali barrage will interfere with natural and continuous flow of water to them. (10)
- The violations alleged by Andhra Pradesh against Maharashtra are in respect of

construction of Babhali barrage into their reservoir area of Pochampad project. The other four riparian states of the inter-state Godavari River – Karnataka, Madhya Pradesh, Chhattisgarh and Orissa have been impleaded as 3rd, 4th, 5th and 6th defendant respectively. Union of India is 2nd defendant in the suit. Decide the dispute by explaining appropriate case laws.

- Q.2 State of Navarashtra a State in Union of India, passed The Navarashtra Liquor Production, Distribution and Consumption Prohibition Act, 2018; the legislation was in exercise of the Legislative Power under List II Entry 8 of the Seventh Schedule, *"Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors"*. The Act prohibits a total production, distribution and consumption of Liquor in the State of Navarashtra. The Act has been challenged before the Delhi High Court by the Navarashtra Traders Association (NTA) and the Court held it as arbitrary and a discriminatory Legislation and also held that it violated the freedom of trade and commerce. The Act has been placed in the ninth schedule through Constitutional Amendment after the State Legislature made amendment in the legislation whereby it prohibited the use, possession and consumption of locally made liquor in the State. NTA approached High Court and challenged the amendments. High Court rejected the petition. Appeal has been filed before the Supreme Court challenging the order of the High Court. Decide the Appeal. (10)
- Q.3 State of Divyasthan is a State in the Union of India. Elections to the 140 member Legislative Assembly of State of Divyasthan was conducted on 24th February, 2019. Election Commission of India notified the list of elected members of the Legislative Assembly on 25th February, 2019. As per the notification Democratic Congress Party (DCP) won 56 seats, Democratic Socialist Party (DSP) won 47 seats, Rashtriya Congress Party (RCP) won 17 seats, Divyasthan Janatha Morcha (DJM) won 12 seats and Independents won 8 seats. The Governor of Divyasthan invited DCP's leader Mr. Navakishore to form the Government and the new Government was formed with the support of 17 MLAs of RCP. The Governor instructed the new Government led by Mr. Navakishore to prove majority within 7 days. On 2nd March, 2019, the session of the Legislative Assembly was convened and the Government has proved majority. 10 MLAs of DCP and 7 MLAs of RCP were made as Ministers on 7th March, 2019. An agitation, which was started by leaders of 'vishwa' community in the month of June, 2019 demanding 12% reservation for the community in public employment of Divyasthan. There were allegations that these agitations were supported by RCP as their majority of MLAs are representing said community. Complaints were made before the Governor and it was alleged that by using power RCP is trying to give reservation to this community which against Constitutional principles. Septemeber, 2019 marked with bad days for the State as the agitations of the said community led to violence in different parts of the states and resulting in the death of 15 people. These incidents led to a split in RCP and 8 of its MLAs left RCP and joined with DJM. On 24th Septemeber, 2019, President Rule was invoked in the State and on 30th Septemeber, 2019 legislative Assembly was dissolved by the President of India through another Presidential Order. On 10th October, 2019, Election Commission of India notified Election Schedule for Divyasthan and elections are proposed to be conducted on 8th November 2019. Mr. Navakishore filed a petition before the High Court and the Court dismissed petition stating lack of jurisdiction. Against this decision an Appeal was filed before the Supreme Court of India challenging the Presidential Rule, Dissolution of Legislative Assembly and Election notification. Decide Appeal with relevant Articles of the Constitution of India and with case laws. (10)

- Q.4 State of Vindhyachal is a State of Union of India. The Legislative Assembly of Vindhyachal on 24th February, 2018 passed the Vindhyachal Police (Amendment) Act 2018. The Act prohibits some types of dance performance under Sections 24 and 25 of the Act. (10)

Section 24 reads as follows: Notwithstanding anything contained in this Act or the rules made by the Commissioner of Police or the District Magistrate for the area under their respective charges, on and from the date of commencement of the Vindhyachal Police (Amendment) Act; (1) Holding of a performance of dance, of any kind or type, in any eating house, permit room or beer bar is prohibited; (2) All performance licences, issued under the aforesaid rules by the Commissioner of Police or the District Magistrate or any other officer, as the case may be, being the Licensing Authority, to hold a dance performance, of any kind or type, in an eating house, performance, of any kind or type, in an eating house, permit room or beer bar shall stand cancelled; (3) Any person who holds or causes or permits to be held a dance performance of any kind or type, in an eating house, permit room or beer bar in contravention of Sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to three years and with fine which may extend to rupees two lakhs; (4) The offence punishable under this section shall be cognizable and non-bailable.

Section 25: Subject to the other provisions of this Act, or any other law for the time being in force, nothing in Section 24 shall apply to the holding of a dance performance in a drama theatre, cinema theatre and auditorium; or sports club or gymkhana, where entry is restricted to its members only, or a three starred or above hotel or in any other establishment or class of establishments, which, having regard to (a) the tourism policy of the Central or State Government for promoting the tourism activities in the State; or (b) cultural activities, the State Government may, by special or general order, specify in this behalf.

Dance Performers Federation (DPF) challenged the Act before the High Court but their contentions were rejected by the Court. DPF challenged sections 24 and 25 of the Act before the Supreme Court and contended that the State of Vindhyachal does not have the legislative competence to enact the impugned law, as 'morality' does not fall within the ambit of List II of Schedule 7 and that the impugned enactment falls in the Concurrent List, List-III, Entry 1- "*Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power*". The State of Vindhyachal defended the challenge to enactment and contended that State Law is covered by the List II Entries 1-Public Order, 2-Police, 6-Public Order, 8-Intoxicants, 33-Entertainment or Amusement, 64-Offences against laws. Decide the dispute.

- Q.5 Explain the following with case laws: (5+5=10)
- (a) Doctrine of Harmonious Construction
 - (b) Residuary Power
- Q.6 Explain the following case laws with relevant doctrines and constitutional provisions: (4+3+3=10)
- (a) Special Reference Case 1 of 2001, 2004(4) SCC 489
 - (b) Prof. Yashpal & Anr. v. State of Chhattisgarh & Ors. (2005) 5 SCC 420
 - (c) State of Kerala v. Mar Appraem Kuri Company Ltd. (2012) 7 SCC 106
