

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Centre State Relations and Local Self Government  
Semester-II (Batch: 2017-18)

LLM End Term Test Examination: May 2018

Date: 4<sup>th</sup> May 2018

Duration: 3 hours

Max. Marks: 70

**Instructions:**

- Read the questions properly and write the answer in the give 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 reasons, if any.

**Part-A****(Answer any three)****Marks**

- Q.1 River Devayini is a river originating from central-eastern part of India; it spreads over three States of central-eastern India, Madhyabharat, Divyasthan and Rajnagari. Madhyabharat is the higher riparian State and others are the lower riparian States. In 1966, an agreement was entered into among these States for sharing of Devayani River water for a time period of 50 years. In 2016, on expiration of this agreement, States of Divyasthan and Rajnagari approached the Central Government and complained that the earlier water sharing formula cannot be continued. They sought an intervention of the Central Government in awarding greater share of water. The Central Government allocated water as per the new formula of sharing water. According to the new formula, out of the available 1560 TMC water, 560 TMC water was reserved for Madhyabharat, 500 TMC was reserved each to Divyasthan and Rajnagari. Whereas in 1966, water sharing formula provided for 700 TMC for Madhyabharat, 430 TMC was reserved each to Divyasthan and Rajnagari. Madhyabharat approached the Supreme Court of India and challenged water sharing and sought a declaration that water sharing as per 1966 agreement needs to be restored along with a direction from the Supreme Court of India to constitute Water Dispute Tribunal or adjudicate dispute by the Supreme Court. Decide the dispute. (10)
- Q.2 The State of Gujarat made a law restricting the use of sound amplifiers, The Gujarat Protection of Civic Rights Act, 2015 (Act). Gandhinagar Cultural Forum (GCF) conducted its cultural programme at Sector-12, opposite to Civil Hospital, Gandhinagar. The programme was conducted by using huge amplifiers and the events were conducted till midnight. There were complaints against GCF for violation of the provisions of the impugned Act. It was complained that by conducting programmes at Hospital area and by using amplifiers, GCF caused health problems for patients admitted in the hospital. The prosecution initiated against the officials of GCF was challenged before the Gujarat High Court. GCF challenged the validity of the Act. Decide the dispute. (10)
- Relevant Entries of Seventh Schedule:  
List- I, Entry-31: "Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication"  
List- II, Entry-6: "Public health and sanitation; hospitals and dispensaries"



- Q.3 Explaining the case of *GVK Industries Ltd and Anr v The Income Tax Officer and Anr* (2011) 4 SCC 36, discuss the application of the principles established by the Supreme Court in this case to subsequent cases. (10)
- Q.4 In the State of Gujarat, under the Gujarat Schools Teachers Conditions of Service Act, 1965 (GSTCSA), there was no scheme constituting provident fund (PF) for teachers in private schools. The preamble of the Act states that it is an Act to make provision for regulating payment of salaries to teachers of private Schools. Under Section 5 of GSTCSA, an institutional fund (IF) was constituted for payment of salary to the teachers. Under Section 5(2), the management was required to place in advance the amount in IF such sums as may be required for the payment of salary to teachers along with PF contribution amount. GSTCSA did not prescribe any scheme for PF as such. In 2010, the Gujarat legislature passed Gujarat Teachers Provident Fund Act, (GTPFA), and specific provisions were made for opening of PF accounts for deposit of teacher's contribution to the PF along with PF contribution of management, which were deposited in IF. Section 10 (6) of GTPFA provides that notwithstanding anything contained in the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 the GTPFA shall apply to the all private Schools, which employed more than 30 teachers. It also prescribed that, PF account and other records relating thereto shall be maintained in accordance with the provisions of the said Act. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act) initially did not apply to educational institutions. Hence the teachers of the private schools were not entitled for PF. However an amendment was made to the EPF Act by Parliament in 2002, wherein it was specified that institutions in which 20 or more persons were employed are covered for the entitlement of PF. The EPF Act thereby included any school private or aided by the Central or the State Government. The amendment Act was brought into force in the Gujarat on 6th of March, 2017 through the notification, issued in the Gazette of India, by Govt. of India, in exercise of powers conferred by Section 1(3) (b) of the EPF Act. Private School Teachers Association (PSTA) filed claims for PF under EPF Act with effect from 2002 before the High Court, which was objected by the State of Gujarat and Private School Managements, and the Court held that State Acts would be applicable to Private School Teachers and thereby rejected the claims of PSTA. Against this decision, an appeal was filed before Supreme Court. Decide the Appeal. (10)

Relevant Entries of 7th Schedule of Constitution of India:

List- II

Entry- 41: "State public services; State Public Service Commission."

List-III

Entry-24: "Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits."

Entry- 25: " Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

**Part-B**

**Answer all questions**

- Q.5 The Kerala Municipalities Act, 1994 which provided for the reservation of seats in Municipal Council in favour of SC, ST, backward class category, women and also in favour (10)



of Chairperson. The election to the Municipal Council, Palakkad was held on 15.2.2018. There were 31 wards in total and out of which 15 wards were reserved for the members belonging to Scheduled Castes and 2 wards were reserved for backward class category. Ram Iyer was elected from ward No. 2, which was general category and Rangaswamy was also elected from ward No. 18 which was reserved for backward class category. Thereafter, election was held to the office of the President, Municipal Council, Palakkad on 02.3.2018 and all the 32 Municipal Councilors participated in the election. Rangaswamy secured 19 votes, whereas Rama Iyer got 13 votes and therefore, Rangaswamy was declared as duly elected President of the Municipal Council, Palakkad.

Ram Iyer challenged the election of the President of the Municipal Council mainly on the ground that as per the notification issued by the Competent Authority, the office of the President has been reserved for general category and the same shall be filled in from amongst the members belonging to general category only and backward class category candidates do not have the right to contest for the same. He further, contented that once the office of the President reserved for the scheduled castes, then other category candidates do not have the right to contest for the same. Similarly, general category is also a separate category, therefore, only members among the general category have a right to contest and hold the post of President. In addition to the above contention, the petitioner also challenged the constitutionality of certain recently introduced provisions under the Kerala Municipalities Act, 1994, which are as follows:-

Section 29A : State Government shall have the power to dissolve of the Municipalities in public interest and hold elections at 'any time' before the expiry of five years.

Section 40 B : No Confidence Motion can be initiated by not less than half of the elected members of the Municipality against the President/Chairperson after the completion of one year from the date of formation the Municipality and also subsequently after every one year block period.

Section 61A : No person shall be a member of Municipality who has more than two living children

The petitioner challenged that the State Government's power to dissolve Municipality under Section 29A amounts to ultravires of the Constitution of India. Section 40B pertaining to the no confidence motion by the elected members against Chairperson/President is set back or impediment to the continuity or stability of the panchayati raj institution in the Country. Disqualification for contesting election to Municipality as enshrined under section 61 (1) violates the fundamental right to contest for the elections.

Critically examine the issues in the above case with the help of provisions of the Constitution of India and decided cases.

- Q.6 Whether the Constitution (73rd Amendment) Act and the Constitution (74th Amendment) Act, 1992 have achieved the considerable results in terms of responsibility of promoting social justice, economic justice, gender justice in true sense ? Discuss the different initiatives taken by the different State Governments across the country in strengthening these institutions and suggest some reformative measures. (10)



**Part-C**  
**Answer all questions**

Q.7 Kindly read the following statement and answer the following question: (10)

"I think it is agreed that our Constitution, notwithstanding the many provisions which are contained in it whereby the Centre has been given powers to override the Provinces, nonetheless is a Federal Constitution and when we say that the Constitution is a Federal Constitution, it means this, that the Provinces are as sovereign in their field which is left to them by the Constitution, as the Centre is in the field which is assigned to it. In other words, barring the provisions which permit the Centre to override any legislation that may be passed by the Provinces, the Provinces have a plenary authority to make any law for the peace, order and good government of that Province. Now, when once the Constitution makes the provinces sovereign and gives them plenary powers to make any law for the peace, order and good government of the Province, really speaking the intervention of the Centre or any other authority must be deemed to be barred, because that would be an invasion of the sovereign authority of the province. That is a fundamental proposition which, I think, we must accept by reason of the fact that we have a Federal Constitution. That being so, if the Centre is to interfere in the administration of the provincial affairs, as we propose to authorize the Centre by virtue of Article 278 [...], it must be by and under some obligation which the Constitution imposes upon the Centre. The invasion must not be an invasion which is wanton, arbitrary and unauthorized by law".

Source: Constituent Assembly Debates, Vol. IX, p. 133

Note: Read Article 278 in the context of Article 356 of the Indian Constitution at present.

- (a) Why do we require Emergency Provisions under Part XVIII of the Constitution of India especially in respect of Article 356? When the whole of India attained independence, does Article 356 not contrary to the core federal spirit of the Constitution as explained and cautioned by Dr Ambedkar in his address to the debates of Constitutional Assembly?
- (b) Discuss the merits and demerits of emergency provisions as to the failure of constitutional machinery in the State under Article 356 with the help of reasoning found in the landmark judgment of *S. R. Bommai vs. Union of India*, 1994 2 SCR 644.

Q.8 Local self-governance has many important roles to play. One important role is in strengthening sustainable development. No matter whether Panchayat has legislative power of licensing or not, they have power to bring social transformation in the country. Principles like public trust, natural resources, polluter pay, precautionary method, inter-generational and intra-generational equities and protection of bio-diversity etc., have become relevant now as a result of an *ex parte* order of the Supreme Court of India in the case of *Coco Cola* bottling plant in *Plachimada* and *Perumatty Panchayat* in Kerala, South India, where respondent *Coco Cola* company failed to appear before the court for several years. (10)

How do you think Panchayati Raj can bring balance between development and environment? Explain the role of panchayati raj and their duties under self-governance and Indian Constitution.