

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Environmental Law
Semester-VII (Batch: 2017-22)

End Semester Online Examination: December 2020

Date: 12th December, 2020

Duration: 8 hours

Max. Marks: 50

Instructions:

- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.

	Answer any five	Marks
Q.1	<p>The applicant in this present Criminal Application before the Hon'ble Bombay High Court, seeks to quash and set aside the impugned order passed by the Sessions Court and seeks a direction for the Worli Police Station to register the First Information Report and to investigate the case in accordance with Chapter XII of the Criminal Procedure Code, 1973 (Cr.P.C).</p> <p>Facts: The applicant is a socially conscious person and has been raising issues on environmental concerns especially the harm being caused to the environment due to illegal construction. He submitted that several people have started construction of a Commercial and I.T. building without complying with the provisions laid down in the Environment (Protection) Act, 1986. These people have not taken the clearance from the State Environment Impact Assessment Authority (SEIAA) under the Environment Impact Assessment Notification of 2006. Therefore, they are resentful to the government.</p> <p>He therefore filed a complaint under section 156(3) of the Cr.P.C. Through this complaint, the applicant sought investigation by police under sections 420, 120B and section 187 of the Indian Penal Code read with section 15 of the Environment (Protection) Act. This complaint was rejected by the Metropolitan Magistrate on the basis of the barrier contained in section 19 of the Environment (Protection) Act. Aggrieved by this, the applicant filed an appeal to the Sessions Judge, which was also dismissed.</p> <p>The counsel for the applicant submitted that as per the Environment Protection Act, 1986, the case is liable to fall in the ambit of cognizable offence. On the other hand, the counsel for the respondents stated that the applicant was an uninterested party in property in question having the only intention to harass the respondents.</p> <p>The Court dismissed the application. The Court held that the contention of the applicant that he has the right to file FIR with the police in order to reveal any cognizable offence by the accused under the section 15 of the Environment (Protection) Act is without any merit.</p>	(3+3+4=10)

In view of the above stated facts and rulings, answer the following:

- Whether the provisions of the Environment (Protection) Act, 1986 & subordinate rules or orders override any other law? (3 Marks)
- Whether a private person has the right to file a complaint under Section 19 of the EPA Act? (3 Marks)
- In the light of recent Draft EIA Notification, 2020, justify whether Environmental Impact Assessment (EIA) used as a tool to identify the environmental, social and economic impacts of a project prior to decision-making in India. (4 Marks)

Q.2 *"Sustainable development is an exceptional opportunity –Economically to build market, create jobs. Socially to bring people in from the margins and politically to give every man and woman a voice and a choice in deciding their own future"- UN Secretary General Kofi Annan* (4+4+2=10)

Gross Domestic Product (GDP) looks at only one part of economic performance—income—but says nothing about wealth and assets that underlie this income. For example, when a country exploits its minerals, it is depleting wealth. The same holds true for over-exploiting fisheries or degrading water resources. These declining assets are invisible in GDP and so, are not measured.

Long-term development is a process of accumulation and sound management of a portfolio of assets—manufactured capital, natural capital, and human and social capital. As Nobel Laureate Joseph Stiglitz has noted, "a private company is judged by both its income and balance sheet, but most countries only compile an income statement (GDP) and know very little about the stock side of the equation in the national balance sheet. While nature can act as a buffer between humans and pathogens, it can also help in economic and social recovery efforts. In the aftermath of the coronavirus crisis, it is expected that the Government and the development community will need to rapidly deploy stimulus packages at scale to spur economic recovery".

In view of this, answer the following:

- Discuss the National and International Organisations alliance for strategic sustainable development. (4 Marks)
- Discuss briefly the Principles that cover key dimensions of Sustainable Development and a framework for sustainability. (4 Marks)
- Discuss the design and strategic initiatives, post pandemic, which can integrate longer-term sustainability considerations that can boost the economy and deliver positive environmental outcomes simultaneously. (2 Marks)

Q.3 *"Natural resources of the country are not meant to be consumed only by the present generation of men or women of the region where natural resources are deposited. These treasures of nature are for all generations to come and for intelligent use of the entire country." K Joseph, A Bhushan JJ* (3+5+2=10)

The Hon'ble Supreme Court was hearing the appeals challenging the various orders of National Green Tribunal wherein several directions were issued, measures to be taken to check and combat the unregulated coal mining in Tribal areas of State of Meghalaya which coal mining resulted not only loss of lives but damaged the environment of the area. Noticing that in the course of rat-hole coal mining by flooding water, several employees and workers have died, the NGT held that the illegal and unscientific mining neither can be held to be in the interest of people of the area, the people working in the mines nor in the interest of the environment.

The NGT directed that the rat-hole mining operation, which has been going on in Jaintia Hills in the State of Meghalaya for last many years without being regulated by any law, be stopped forthwith throughout the State of Meghalaya and any illegal transport of coal shall not take place until further orders passed by the Tribunal. Further, while permitting the transportation of the already extracted coal lying in open near the mining sites, NGT constituted a committee for supervising such transportation.

Ruling of the Supreme Court

On the power of NGT to issue various directions, the Court held that Rule 24 of National Green Tribunal (Practice and Procedure) Rules, 2011 empowers the Tribunal to make such orders or give such 195 directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. There is no lack of jurisdiction in NGT in directing for appointment of a committee and to obtain a report from a Committee.

“NGT by directing for constitution of committee has not delegated essential judicial functions. The Tribunal had kept complete control on all steps which were required to be taken by the committees and has issued directions from time to time. The State is always at liberty to obtain appropriate directions if aggrieved by any act of the committee.”

It also noticed that NGT by issuing direction to constitute the committee for transportation of the extracting mineral, for preparing time bound action plan to deal with the restoration of environment and to ensure its implementation does not in any manner interfere with the powers of the District or Regional Councils.

The Hon'ble Supreme Court has directed the State of Meghalaya to transfer the amount of Rs.100 Crores to Central Pollution Control Board from the Meghalaya Environment Protection and Restoration Fund (MEPRF) which amount shall be used by Central Pollution Control Board only for restoration of Environment.

The Court noticed that the said amount is neither a penalty nor a fine imposed on the State of Meghalaya. Accepting the submission that State of Meghalaya has very limited source of finances and putting an extra burden on the State of Meghalaya to make payment of Rs. 100 Crores from its own financial resources may cause great hardship to the State of Meghalaya, the Court directed that the ends of justice be served in modifying the direction of NGT dated 04.01.2019 to the extent that State is permitted to transfer an amount of Rs. 100 Crores from the amount lying in the MEPRF to the Central Pollution Control Board.

The Hon'ble Supreme Court's further Direction

1. Extracted coal as assessed by State of Meghalaya lying in different districts of State of Meghalaya which as per order of NGT is in custody of State of Meghalaya shall be handed over to Coal India Ltd. for proper disposal.
2. The Katakey Committee after discussion with Coal India Ltd. and the State of Meghalaya shall formulate a mechanism for transport, weighment of all assessed coal.
3. The Coal India Ltd. shall auction the coal so received by it as per its best judgment and remit the proceeds to the State to the extent as directed above.
4. All coal seized by the State for which cases have already been registered shall be dealt by the State in accordance with Section 21 of Mines and Minerals (Development and Regulation) ACT, 1957.

In view of above stated facts and rulings, answer the following:

- a) Justify whether the Hon'ble Supreme Court and National Green Tribunal are able to figure out the contours of Environmental law. (3 Marks)
- b) Discuss the basic Principles of Intergenerational and Intra-generational Principles under the Environmental Jurisprudence. (5 Marks)
- c) Elucidate whether the modest beginning of International law and developments at the global level have influenced Indian law. (2 Marks)

Q.4 The years since 1992 i.e. United Nations Conference on Environment and Development (UNCED) commonly referred to as the Rio Conference or Earth Summit, have succeeded in raising public awareness of the need to integrate environment and development and witnessed major developments in international environmental law and policy. Wherein the international intergovernmental organizations, civil society, and industry associations, as well as other groups in partnership have played a pivotal role in shaping national developing plan and strategy outlined in the outcome documents **Agenda 21** which is a non-binding action plan of the United Nations with regard to sustainable development. The developmental and environmental objectives of Agenda 21 will require a substantial flow of new and additional financial resources to developing countries, in order to cover the incremental costs for the actions they have to undertake to deal with global environmental problems and to accelerate sustainable development. In the implementation of the relevant programme areas identified in Agenda 21, special attention should be given to the particular circumstances facing the economies in transition. (10)

In view of this, discuss the programme areas identified under Agenda 21 for protecting and promoting human health and the level of ignorance of the health sector in a country like India.

Q.5 There are pressures of stringent environmental laws, rising resource prices, reduction in availability of natural resources and growing awareness among various concerned stakeholders about environmental issues which have compelled companies to redefine their products, processes and markets to make them more environment friendly and less resource consuming. More and more businesses are becoming conscious of their carbon footprint and how their actions impact the environment. Hence the green business is the only survival and growth mantra for business these days. (5x2=10)

In view of this, answer the following:

- a) Discuss the principles behind Environmental Management System and Green Audit process of environmental audit in India
- b) Discuss the 2019 Report of the Comptroller and Auditor General of India on Audit of "Preparedness for the Implementation of Sustainable Development Goals" of the 2030 Agenda in India. (specific reference to Goal 3 of SDGs)

Q.6 Special leave petition was directed against the judgment and order of the Bombay High Court, declining to issue a writ in the nature of Mandamus and other appropriate writ, directions or orders, directing the respondents (Union of India & National Dairy Development Board) to forbear from releasing 7500 cartons (200 MT) of Irish butter imported into India for operation Flood Programme, supplied to the Greater Bombay Milk Scheme by respondent National Dairy Development Board (NDDB), on the ground that the butter was contaminated by nuclear fall-out. Soon after the Chernobyl disaster, when it was realised that the imported milk and food products particularly from the EEC countries had the possibility of radio-active contamination. The Bhabha (2+4+4=10)

Atomic Research Centre took up the matter with the respective agencies and advised them to get the representative samples for radio-active analysis before releasing them for public distribution in India.

The NDDB, however, insisted that the imported butter was absolutely safe. Samples from the consignment had been analysed twice for radioactivity by the Bhabha Atomic Research Centre. In all the tests, the levels of the radionuclide cesium-137 were found to be well below the prescribed limits. These tests showed either no radioactivity or radioactivity much lower than the permissible level of 370 becquerel (Bq) per kg set by the European Economic Community (EEC) and the much more stringent 40 Bq/kg recommended by the Indian Atomic Energy Regulatory Board (IAERB).

Dismissing the special leave petition, the Hon'ble Supreme Court, held that there was no substance in any of the objections formulated by the petitioners. Further, the court referred to the limits of radioactivity prescribed by the International Commission on Radiological Protection and different permissible limits in different countries as France, UK, E.E.C., and Australia at 3700, 2000, 370 and 100. As against these, the prescribed limit for India admittedly is 40 (Bq/I). [120C-E] The analysis of the imported butter by the Bhabha Atomic Research Centre, which according to the Committee of Experts must be treated to be accurate, showed the presence in the samples of imported butter of CS-137 at limits ranging from 0.6 Bq/kg to 2.9 Bq/kg. The petitioners relied upon letters sent by some internationally known scientists including Nobel laureates tending to show that it was desirable to avoid foodstuffs containing low level radioactivity which, according to them, might in the long run prove to be hazardous.

In view of above stated facts and ruling, answer the following:

- a) Discuss the powers of the Atomic Energy Regulatory Board (AERB) in accordance with international guidelines, and coherent comprehensive and consistent set of principles and standards are being practiced all over the world for waste management system. (2 Marks)
 - b) Discuss the classification of radioactive wastes on the level and nature of radioactivity and the effective management through Deep geological repository. (4 Marks)
 - c) Elucidate the closed fuel cycle method for management of High-Level Radioactive Waste and the Bhabha Atomic Research Center's contribution towards it. (4 Marks)
- Q.7 Over 30 years have passed since the horrible evening of December third 1984 when a gas spill killed thousands of people and permanently disabled the survivors. The Bhopal Gas spill fiasco is still new in the psyches of each one of the individuals who endure and acquired the experiencing their paradigms. The quick impacts of the gas murdered 3787 individuals and a few thousand throughout the following decade. The public authority, speaking to the people in question, made sure about 470 million USD as compensation from the Union Carbide Corporation. The sum is considered excessively pitiful when contrasted with the size of harm caused. Following the occurrence, the state ordered a few enactments including, the Environment Protection Act, 1986, Public Liability Insurance Act, 1991 and so on Legal Activism covered the escape clauses and advanced the 'absolute liability' principle. More stringent guidelines were outlined yet implementation is as yet an issue, despite the fact that the circumstance has improved when contrasted with the pre-debacle time frame. While financial development is being

noticed, the unregulated ventures keep on compromising public security and ecological equilibrium. Reasonable turn of events and fixing corporate obligation is the path ahead.

In view of this, answer the following:

- a) Discuss the evolution of Mass Tort jurisprudence in India. (4 Marks)
- b) Justify the liability of the organisations with the "deep pockets" which are better able to accommodate the risk of the damages that those kinds of individuals who are not endowed with "deep pockets". (3 Marks)
- c) Discuss the constitutional validity of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 under the doctrine of *Parens patriae*. (3 Marks)
