GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR

Course: **Environmental Law**

Semester- VII (Batch: 2019-24)

End Semester Examination: November 2022

Date: 06th Nov, 2022

Duration: 3 hours **Max. Marks: 50**

Instructions:

- Read the questions properly and write the answers in the given answer book.
- Do not write anything on the question paper.
- 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.
- Cite relevant case laws wherever applicable

Part A **Marks**

(Answer Any Two)

Q.1 The relationship between economic growth and the environment is complex. Several different drivers come into play, including the scale and composition of the economy – particularly the share of services in GDP as opposed to primary industries and manufacturing – and changes in technology that have the potential to reduce the environmental impacts of production and consumption decisions whilst also driving economic growth. With many key natural resources and ecosystems services scarce or under pressure, achieving sustained economic growth will require absolute decoupling of the production of goods and services from their environmental impacts. (10)

In view of this, discuss the exemplary activism demonstrated by Indian Judiciary in implementing the mandate of Sustainable Development with the help of relevant case laws.

Q.2 Sustainable development is much more than economics, development and environment. It is a crusade based on the moral imperative of saving our planet and making it safe, secure and prosperous for all. In view of this, discuss the principles, which cover the key dimensions of green sustainable development. (10)

Q.3 'No water No life, No Blues No Green' the quote by Dr. Sylvia Earle indicating towards the significance of oceans and marine life. Describe 6 threats adversely affecting the marine biodiversity. Analyze three legal instruments related to the marine biodiversity and marine pollution. (10)

Part B

Q.4 "The Indian economy is growing at a tremendous rate but at significant cost in environmental health and public safety as large and small companies throughout the subcontinent to pollute. Far more remains to be done for public health in the context of industrialization to show that the lesson of the countless thousands of dead in Bhopal have truly been heeded. More than half a million people still suffer the side effects of the (10)

exposure to the gas; the soil and groundwater have been contaminated and toxicity has crossed over to the second and third generations."

The Union Carbide Corporation, an American enterprise established a pesticide plant in India because of its central location. The plant was supposed to produce **Sevin,** a pesticide. Union Carbide and the Indian Government had a deal, and under this idea, the Union Carbide had a 50.9% share and the Indian Investors had a 40.1% share. The plant was named as The Union Carbide India Limited (UCIL). UCIL started its production of pesticide in 1979. While this pesticide was produced, a toxic liquid was also produced i.e., Methyl Isocyanate (MIC). Since MIC is a very toxic chemical it required great maintenance. Around 1:00 a.m. on 4th December 1984, when the MIC gas started swallowing up the whole of Bhopal people who were sleeping peacefully started feeling the change in the air. They ran for their lives but couldn't escape their death. Some who were able to save their lives weren't able to save themselves from the coming disabilities. All this happened because of leakage of the MIC gas from the tank E106.

People, in large numbers, were rushed to the hospital but at that time no doctor knew about the actual cause of death. No one knew about the leakage of the MIC. They just had a hunch about some leakage but exactly didn't know about the leakage of MIC gas. Since doctors couldn't operate properly without knowing the exact cause of the accident, so many people lost their lives. It was reported that nearly 5000 people lost their lives and more than 6 lacs were severely injured. The survivors survived with permanent respiratory problems, and other complications. Children who weren't even born at that time were born with some health issues.

After the accident, many cases were filed on behalf of the victims since there was a problem in claiming compensation, and many people, especially the ones having low financial status, couldn't afford to fight the case for a long time. These cases were filed against UCC in Bhopal as well as in the USA. An effort was also made to settle the matter outside of the court but it wasn't successful.

Later in 1985, the Indian Parliament passed The Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985. And according to Section 3 of the Act, the government of India had the power to file cases on behalf of every citizen who was entitled to claim the compensation. The government by Section 9 of the Act introduced "The Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985".

In view of the above stated facts, answer the following: (5x2=10)

a) Discuss the observations of **Keenan J** while dismissing the lawsuit filed by Union of India in the United States District Court of New York against UCC.
In Re: Union Carbide Corporation Gas Plant Disaster at Bhopal, India in December 1984, MDL No.626, Misc.21-38 (JFK). All Cases, Opinion and Order of Judge JOHN F. KEENAN, New York, dated 12 May 1986.
b) Critically analyze the relevant issues discussed in Union Carbide Corporation v Union of India (Bhopal Review) AIR 1992 SC 248.

OR

Lafarge Surma Cement Ltd ("LSCL") is a Bangladeshi company that has a cross border cement manufacturing project in Chhatak, Bangladesh. LSCL has a 100-hectare captive limestone mine located in Khasi, Meghalaya. The mine is leased out to its wholly owned subsidiary in India namely Lafarge Umiam Mining Private Limited and the limestone quarried in the mine is transported via a 7km long conveyor belt to the cement factory in Bangladesh. The limestone quarried from the mine in Meghalaya is the only source of limestone for the cement factory.

In 1997, before commencing the project, LSCL through its subsidiary in India, namely Lum Mawshun Minerals Private Limited ("LMMPL"), began the process of obtaining the necessary environmental clearances from the MoEF. As a part of the application, LMMPL made representations that the limestone mines did not involve the diversion of "forest land." The LMMPL's representations were supported by two sources—firstly, the letters from the Khasi Hills Autonomous District Council ("KHADC"), the local authority with jurisdiction over the mines, and secondly, a certificate from the Divisional Forest Officer ("DFO") of the Khasi Hills Division stating that the mining site was not in a forest area. After several rounds of queries from the MoEF and consequent responses from LMMPL, the MoEF finally gave environmental clearance for the mines in 2001, and subsequently LMMPL commenced its mining operations.

2007, six years after the MoEF had already granted the appropriate clearances, MoEF asked Lafarge to stop all mining activity in the area. This step was taken after the Chief Conservator of Forests ("CCF") for Meghalaya informed the MoEF that Lafarge had misrepresented that the mining area was not a "forest land" and had diverted forest land for its mining activity without first obtaining the necessary forest clearance under section 2 of the Forest Conservation Act, 1980. The company vehemently denied such allegations and stated that it had proceeded with the developmental work on the basis of the certificate given by DFO, pursuant to which the DFO had certified that the project area was not "forest land" and did not fall in any of the notified, reserved, or protected forests. Therefore, according to the company, the requirement of obtaining a forest clearance did not arise.

Further, Shella Action Committee ("SAC"), which was spearheading the movement on behalf of tribals of the region, alleged that Lafarge was flagrantly violating Schedule VI of the Indian Constitution, which provides for protection of tribal land in the North Eastern region of India against acquisition by non-tribals. SAC argued that since Lafarge had misrepresented the nature of the project land, no forest clearance should be granted to the company.

In view of the above stated facts, answer the followings: (3+3.5+3.5=10)

a) Clarify the extent of judicial review in a situation where environmental clearances had already been granted and where questions are subsequently raised with respect to the validity of the process.

b) Discuss the comprehensive guidelines of the Hon'ble Supreme Court for future projects that involve both forest and environmental clearances.
c) Explain the concept of a *national environmental regulator with reference to sec 3 of Environment Protection Act 1986.*
d) Elucidate the provision of de-reservation of reserved forest and use of forest land for no-forest purposes under Forest Conservation Act, 1988

Q.5 The issues raised and apprehensions expressed by the petitioners i.e., Dr. Shivarao Shantaram Wagle & Ors. arise from the fact that Chernobyl 1 reactor accident, which occurred in USSR in April, 1986, deposited radioactivity in measurable and varying quantities in several European countries. Consequently, the possibility exists that milk and dairy products produced soon after the accident in such countries contain radioactive contamination. The specific issue raised was about Irish butter imported into India after the accident. The apprehension was that if such contaminated food products were consumed by the Indian population, harmful effects may be caused. (10)

Consequent to the Chernobyl 1 reactor accident, radioactive fallout deposited over several European countries. Ireland was also affected by this radioactive fallout, though to a smaller extent as compared to several other European countries, e.g. Sweden, Norway, Poland, Finland, Switzerland, etc. The most important radionuclides so dispersed were I-131, Cs-137 and Sr-90. I-131 being a short-live radionuclide (half-life 8 days) was of concern to the countries receiving the fallout, and not to India. In most of the imported milk powder samples Sr-90 was below detection limits. Therefore, Cs-137 is the most important long-lived radionuclide from the Chernobyl accident; life time of Cs-137 is 30 years. Since it can also be measured in a short-time by a sensitive gamma spectrometer, it is the ideal radionuclide for screening of imported food items. It is for these reasons that not only India, but most of the other countries also adopted Cs-137 measurements for screening of the imported food items.

So, the Petitioners were seeking ban on release of the Irish butter for public distribution and human consumption on the ground that the butter was contaminated by nuclear fall-out after Chernobyl disaster. The 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 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 No. 2, National Dairy Development Board, 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 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. (3+3.5+3.5=10 marks)

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

a) Discuss the basis of legislative control of use of radiation in India through the Atomic Energy Act, 1962 and Atomic Energy (Safe Disposal of Radioactive Wastes) Rules, 1987.
b) Discuss briefly, the role and responsibilities of the Atomic Energy Regulatory Board (AERB) in implementing Radiation Protection Programme.
c) Discuss the Classification of Waste under the Hazardous and other Wastes (Management and Transboundary Movement) Rules, 2016.
d) Discuss the treatment, storage and disposal facility for hazardous and other waste under the Hazardous and other Wastes (Management and Transboundary Movement) Rules, 2016.

OR

In 2010, the Mascot of Commonwealth Game was SHERA, a tiger which is rare to found in today's times as a result of organized crimes of human like poaching that have pushed wildlife to the stage of extinction and such issue is highlighted in the following case.

The appellant, Ramesh had a long history regarding his wildlife crime. He had started the wildlife crime from the age of 16 in 1974. He was arrested for having 680 skins of different wild animals. He also arrested for involving in the activities of poaching, illegal trade of tiger, leopard and skins of other animals and further the appellant along with his gang started a smuggling network in which they send the tiger and leopard's part and skins outside the Indian Border, especially China. He along with his gang had been booked for 57 wildlife case from year 1964-2005.

In this case, a Bunty was arrested by police in train for having a carton containing leopard's skin on January 5, 2003. Bunty made disclosure statement to SHO, Bhilwara that the two leopard skins were for the appellant Ramesh. The appellant was arrested and during trial, he was convicted by the Additional Chief Judicial Magistrate (Railways), Ajmer, Rajasthan on April 29, 2004.

The appellant then filed an appeal against the decree to the Special Judge, SC/ST (Prevention of Atrocities) Cases, who upheld the conviction of the appellant and dismiss the appeal on 19.8.2006. Thereafter, the petitioner filed the Revision Petition in the Rajasthan High Court who also dismissed the petition. Thus, all the above courts found the appellant guilty of the offences charged. Thus, the present appeal was filed before the Supreme Court.

In view of above stated facts, answer the following: (3+3+4=10 marks)

a) Whether the conviction of the appellant under the wildlife (Protection) Act,1972 is justified or not?
b) Whether the conviction is solely based on the extra judicial confession or not?
c) Discuss the punitive measures prescribed under Wildlife (Protection) Act,1972

Q.6 The present appeals arise out of orders that have been passed Signature Not Verified by the National Green Tribunal ["NGT"] The brief facts necessary to appreciate the controversy raised in the present case are as follows. (10)

The respondent, Sterlite Industries (India) Ltd. / Vedanta Ltd., was operating a copper smelter plant at the State Industries Promotion Corporation of Tamil Nadu Ltd. (SIPCOT) Industrial Complex at Thoothukudi, Tamil Nadu. On 01.08.1994, the respondent received a No-Objection Certificate from the Tamil Nadu Pollution Control Board for the production of blister copper and sulphuric acid. The environmental clearance to the project by the Ministry of Environment, Forest, and Climate Change followed on 16.01.1995. On 17.05.1995, the MoEF also granted environmental clearance to the respondent.

The TNPCB granted its consent under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 on 22.05.1995. After obtaining the requisite permissions, the consent to operate the plant was issued on 14.10.1996 by the TNPCB. Production commenced on 01.01.1997. However, the environmental clearances that were granted were challenged before the Madras High Court in Writ Petition Nos.15501-15503/1996, 5769/1997, and 16961/1998.

On 20.05.1999, the TNPCB granted its consent for production of two more products, namely, phosphoric acid and hydrofluorosilicic acid. On 21.09.2004, a Supreme Court Monitoring Committee was constituted to verify the compliance status of hazardous waste management. It recommended to the MoEF that the environmental clearance for the proposed expansion should not be granted, and if granted, should be revoked. On 19.04.2005, the TNPCB issued consent to operate, subject to fulfillment of various conditions for the expanded capacity. Meanwhile, the Madras High Court, on 28.09.2010, allowed the various writ petitions that had been filed and quashed the environmental clearances granted to the respondent and directed the TNPCB to close down the plant.

Meanwhile, on 23.03.2013, the residents of nearby areas started complaining of irritation, throat infection, severe cough, breathing problem, nausea etc. due to emissions from Sterlite Industries. Reports were obtained after inspection of the premises by the TNPCB. Based on these reports, the TNPCB issued a show-cause notice dated 24.03.2013 and directed closure of the unit under Section 31A of the Air Act on 29.03.2013. This order was stayed by the NGT on 31.05.2013, allowing the respondent to commence production subject to certain conditions. Against this, the TNPCB filed Civil Appeal Nos.4763-4764 of 2013, which will be disposed of by the judgment delivered in this case.

Finally, on 08.08.2013, the NGT set aside the TNPCB order dated 29.03.2013, against which, Civil Appeal Nos.8773-8774 of 2013 were filed.

Hence, the appellants herein raised the issue of maintainability of the respondent's appeal before the NGT, stating that an appeal should have been filed first before the appellate authority under the Air Act / the NGT,2010 ["NGT Act"]. This ground of

maintainability was decided against the appellants by the impugned order dated 08.08.2013.

Owing to various interim orders passed by the NGT, the respondent continued to operate its plant. On 13.04.2016, the TNPCB granted consent to operate the plant for one year subject to certain conditions. Post inspection of the unit of the respondent in March 2017, the TNPCB issued a show-cause notice dated 14.03.2017 for violations under the Air Act and the Water Act which, apparently, was not pursued. On 06.09.2017, an inspection report by the TNPCB was made, and an order passed on 07.09.2017, granting renewal of consent to operate only till 31.03.2018 subject to various conditions.

Meanwhile, a protest had been organized in March 2018 by some persons against the proposed expansion sought by the respondent.

On 09.04.2018, the TNPCB refused renewal of consent to operate to the respondent's unit based on non-compliance with certain conditions that were laid down under the Air Act and the Water Act. On 12.04.2018, the respondent filed Appeal Nos.36-37 of 2018 before the appellate authority under Section 28 of the Water Act. In these appeals, various orders were passed.

On 12.04.2018, an order was passed by the TNPCB under Section 33A of the Water Act and Section 31A of the Air Act directing that the respondent's unit shall not resume production without obtaining prior approval/renewal or consent from the TNPCB. This was followed by two orders, both dated 23.05.2018, again issued under the same Sections, this time to close down the respondent's unit and disconnect power supply to it.

In view of above stated facts, answer the following: (3+3.5+3.5=10 marks)

a) Discuss the provision of "Consent" & "deemed consent" under Air (Prevention and Control of Pollution) Act,1981 & Water (Prevention and Control of Pollution) Act, 1974.
b) Discuss the provision of Appeal and the power of State Pollution Control Board to make an application for restraining the person from causing pollution under the Water Prevention and Control of Pollution) Act, 1974 & Air (Prevention and Control of Pollution) Act,1981.
c) Discuss the penalties for contravention of the provisions of the Air (Prevention and Control of Pollution) Act & Water (Prevention and Control of Pollution) Act,1974.

OR

Write Short note on **any two** of the followings: (5x2=10 Marks)

a) Difficulties in implementation of international instruments related to marine environment with details of any three significant instruments and their limitations.
b) What is salvage? Assess the role of Salvage operations in protecting marine biodiversity.
c) Provide a short note on Marine Protected Areas and their significance in protecting the marine biodiversity.

****