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**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Centre State Relations and Local Self Government
Semester-II (Batch: 2013-14)

End Term LL.M. Examination: May-June 2014

Date: 30th May, 2014

Duration: 3 hours

Max. Marks: 70

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 any thing 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.
- **Bare Act is not allowed.**

Part – A**Answer any five Questions**
Marks
(5×10
=50)

- Q.1 The State of Durgapur, a State in the Union of India, by exercising its legislative competence under Entry 18 of the State List (Land, Land Tenures) passed Durgapur Land Reforms Act. The Act has been challenged before the Court on the contention that it is repugnant to the Hindu Adoptions and Maintenance Act, 1956 passed by the Union under Entry 5 of List III (Adoption, Succession, Joint Family and Partition). Whether a State Legislation can be challenged on the basis of this contention? Which are the doctrines in relation to the abovementioned issue that can be taken up for arguments? Which doctrine will prevail in the present instance? Decide.

Entry 5 of Concurrent List:- “Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law”.

Entry: 18 of State List:- “Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization”.

- Q.2 The State of Pachimghat, a State in the Union of India, passed Pachimghat Exhibition of Films on Television Screen through Video Compact Disk (Regulation) Act, 2013 (hereinafter as Act). A State Legislation based on Entry 33 of List II under its Section 12(4) requires that every person keeping a Video Library licensed under this Act, shall in respect of each film in his possession, produce when demanded by an Officer authorised by the Government in this behalf, a letter of consent acquired from the first owner of the copyright of such film under the Copyright Act or from its Assignee there under. The object sought to be achieved by the State Legislature by enacting the Act, as declared in its Preamble, is the regulation in State the exhibition of films on Television through Video Compact Disk. Section 14(1) of the Act reads: “No person licensed under this Act for keeping a Video Library shall sell, let to hire, distribute, exchange or put into circulation in any manner whatsoever any film other than a film which has been certified as suitable for publication by the authority constituted under Section 3 of the Cinematograph Act, and which, when exhibited, displays the prescribed mark of that authority, and has not been altered or tampered with in any way since such mark was affixed thereto”. Metro Entertainments challenged Section 12(4) and Section 14(1) of

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the Act before the High Court as they are *ultra vires* to the legislative competence on the part of the Legislature. The High Court held that the provisions enacted by the State Legislature is on Copyright, the subject in List I of Seventh Schedule and is beyond the legislative power of the State.

Entry 33, List II:- “Theaters and dramatic performances; cinemas subject to the provisions of Entry 60 of List I; sports, entertainments and amusements”

Entry 60, List I:- “Sanctioning of Cinematograph films for exhibition”

Entry 49, List I:- “Patents, inventions and designs; copy right; trade- marks and merchandise marks”

Government filed an Appeal before the Supreme Court of India. Decide the Appeal.

- Q.3 Federation of Hotel & Restaurant Association, who are engaged in, or associated, with, the Hotel Industry in India challenged the constitutional validity of the Expenditure-Tax Act. The Act envisages a tax at 10 percent on ‘chargeable-expenditure’ incurred in the class of Hotels wherein “room-charges” for any unit of residential accommodation are Rupees 400/ per day per individual. The ‘Chargeable-expenditure’ as defined in Section 5 of the Act includes expenditure incurred in or payments made in such class of hotels in connection with the provision of any accommodation, residential or otherwise, food or drink whether at or outside the hotel; or for any accommodation in such hotel on hire or lease; or any other services envisaged in the respective Section. However, any expenditure incurred in or paid for in “foreign exchange” or by persons who enjoy certain diplomatic privileges and immunities is exempted. A challenge to the *ultra vires* of the ‘Act’ is on grounds of lack of legislative-competence under Entry 62 of List II and of violation of the rights under Article 14 and 19(1)(g) of the Indian Constitution. The Union of India seeks to sustain the legislative competence on the ground of VII Schedule. Decide the Petition. (10)
- Entry 62 of State List:- “Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling”.
- Q.4 “It is by reference to the ambit or limits of territory by which the legislative powers vested in the Parliament and the State Legislatures are divided in Article 245. Generally speaking, a legislation having extraterritorial operation can be enacted only by the Parliament and not by any State Legislature; possibly the only exception being one where extra-territorial operation of a State Legislation is sustainable on the ground of territorial nexus. Such territorial nexus, when pleaded must be sufficient and real not illusory”- Explain this statement with case-laws. (10)
- Q.5 (a) Explain the role of institutional mechanisms envisaged by the Constitution to resolve disputes of Centre-State and Inter-State relations. (5+5=10)
- (b) Explain the Doctrine of Harmonious Construction.
- Q.6 Article 262 (1) provides that “the Parliament may by law provide for the adjudication of any dispute or compliant with respect to use, distribution or control of the waters of, or in, any inter-State or river valley”. Explain water disputes in India and the exercise of jurisdiction by the Supreme Court in the context of Article 262(2). (10)

Part-B

- Q.7 The Karnataka Municipalities Act, 1964 provides for the reservation of seats and chairperson posts in favour of SCs, STs, Women and Backward Classes. The respective Sections of that Act reserved 15% of the seats in *Panchayats* in favour of SCs, 3% in favour of STs, 33% in favour of Women and 33% in favour of Backward Classes. The (15)

election to the Municipal Council, Ramanagar was held on 16.4.2013. In total there were 31 Wards out of which 15 Wards were reserved for the members belonging to SCs and 2 Wards were reserved for Backward Classes. Mr Ramaswamy was elected from Ward No. 2 which was a General Category and not reserved in favour of any one of those Categories mentioned as above. Mr Rangaswamy was also elected from Ward No. 18 which was reserved for Backward Classes. Thereafter election was held to the Office of the President, Municipal Council, Ramanagar on 29.8.2013 and all the 31 Municipal Councillors and 1 nominated by a local M.L.A participated in the election of the President. Mr Rangaswamy secured 19 votes whereas the Ramaswamy got 13 votes and Rangaswamy was declared accordingly to have been duly elected as the President of the Municipal Council.

Ramaswamy challenged the said President's election on the sole ground that as per the Notification issued by the Competent Authority, the Office of the President of Municipal council has been reserved for General Category candidate and the same shall be filled in from amongst the members belonging to the General Category and only the members elected from the General Category has a right and not as the member elected from Backward Class category. The contention was, once the Office of the President of a Municipality is reserved to be filled in by persons belonging to Scheduled Castes and Backward Class category, the candidate elected from the General Category has no right to be elected as the President. Similarly, General Category is also a separate category and therefore, only members among the General Category have a right to hold the post of the President, which is reserved specifically for the General Category. Therefore the member coming from the Backward Class category cannot become the President of the Municipality which is earmarked for a General Category. The petitioner in addition to the abovementioned contention challenged several provisions of the Karnataka Municipalities Act, 1964 and the court has framed the following issues:-

- (a) The reservations enabled by Art. 243-D(6) and Art. 243-T(6) of the Constitution of India do not contemplate the exclusion of the 'creamy layer' in the manner that has been prescribed for reservations in the context of Higher Education under Arts. 15(4) and 15(5) and Public Employment under Art. 16(4), (4A) and (4B) respectively, and thereby frustrates the objectives of the reservation policy and hence unconstitutional.
- (b) The Karnataka Municipalities Act, 1964 has provided for reservations that were in excess of the 50% upper ceiling and not sustainable on the ground of constitutional provisions.
- (c) Whether the General Category can be treated as a separate category for the purpose of election to the President of Municipal Council, and whether only members among the General Category have a right to hold the post of the President, which is reserved specifically for a General Category.
- (d) The Reservation to the President of Municipal Council is in the nature of reservation to single post and reserving it amounted to 100 percent reservation, thereby violates the equality-clause as enshrined under the Indian Constitution.

Advance your arguments on behalf of the state with the help of provisions of constitution and decided case laws

- Q.8 The Constitution (73rd Amendment) Act and the Constitution (74th Amendment) Act, 1992 are considered to be milestones in the field of local self-governance in the country. (05)
Though local self-government acts as "institutions of self-government" with the responsibility of promoting economic, gender and social justice and devolves with

powers, functions and finances in order to make it play a meaningful role in the governance of the country, however it has not achieved a considerable progress. In view of this suggest the reformative measures to strengthen local self governments in India.
