

GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
Course: **Research Methodology and Legal Writing**
Semester- I (Batch: 2022-23)

End Semester Examination: November 2022 (LL M)

Date: 24th 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.

Marks

- Q.1 Read the following article published in *The Indian Express [P] Ltd.*, on 10th of November 2022 written by KS Chauhan, senior advocate, Supreme Court of India and draft a *Research Proposal* to submit to the Research department of the Gujarat National Law University. (10)

“Owen M Fiss, professor at Yale University, has argued that “economic criteria” is artificial, and has no basis for discrimination in social life. On the same line, William E Forbath of the University of Texas, said that constitutional equality is equality of status or standing; different degrees of respect are attributed to status. Caste degradation denotes membership of a group that is seen as physically different and inferior. Class and interest groups do not need constitutional protection: Their economic commonalities do not demand invocation of constitutional values. Use of economic criteria to understand marginalisation can result in the subjugation of historically-disadvantaged groups. This is why scholars reject economic criteria as the sole basis for understanding discrimination. There is no instance of deprivation or discrimination or social exclusion against any person solely on the ground of her economic standing. The examples are far too many to list. There is enough evidence that points to the practice of untouchability and social discrimination continuing against the members of the erstwhile fourth varna, “Shudra”. The five-member Constitution Bench that heard the validity of the 103rd constitutional amendment did not reject this fact, yet the majority verdict held that the introduction of economic criteria in reservations is constitutionally valid. Even the dissenting judgment did not say that the “criteria of economic standing alone” is bad, as they emphasised the 50 per cent ceiling. This 50 per cent ceiling, a judicially-created criteria with no roots in the Constitution, could deprive members of SC, ST and OBC communities, as well as the deprived among the Muslims and Christians. It has been justified the economic criteria and held the view that the “exclusion of classes covered by Articles 15(4) and 16(4) from getting the benefit of reservation as economically weaker sections, being in the nature of balancing the requirement of non-discrimination and compensatory discrimination does not violate the equality code and does not in any manner cause

damage to the basic structure of the Constitution of India". This view is contrary to the scheme of the Constitution and the principles settled by a larger bench in *Indra Sawhney* (1992). It has been held that "we need to revisit the system of reservation in the larger interest of reservation of the society as a whole, as a step forward towards transformative constitutionalism". Further it has been held that the "reservation should not be allowed to become a vested interest... as larger percentages of backward class members attain acceptable standards of education and employment, they should be removed from the backward categories". In a case where the Supreme Court has upheld the reservation for a class, which does not deserve such a protective right, any suggestion to restrict or limit the rights of a class that has been historically deprived and socially excluded is against the spirit of the Constitution and is constitutionally impermissible. The Court do not seem to understand the social conditions of the society wherein a President of India or a Chief Minister can face discrimination on the basis of their caste. To deny the recognition of social factors and to recognise economic factors alone to mark discrimination is constitutionally perverse and is meant to further perpetuate deprivation and even untouchability, which is abolished by Article 17 of the Constitution. The rights are derived from the constitutional values, which were adopted by the Constituent Assembly after a marathon process of deliberations. *Kesavananda Bharati* (1973) held that the basic features of the Constitution are unalterable. Democracy is one of the basic features of the Constitution. Social democracy is the real facet of democracy. Adequate representation of different sections of society is the essence of democracy. By providing an economic basis for reservation, Parliament has tried to deprive social democracy and democratic rights to all sections of the society. The *savarnas* or upper castes, who constitute 10 to 15 per cent of the total population are already represented in 45 to 50 per cent of the total services, whereas the SCs, STs and OBCs constitute the majority of this country, and are only provided 49.5 per cent reservation. The latter, however, are yet to achieve that level of representation in services and in educational institutions while the upper castes are already overrepresented in these sectors. Moreover, reservation in promotions for SCs and STs is yet to be implemented 27 years after the 77th Amendment was passed. The Constitution Bench in *Jarnail Singh* (2018) said that *Indra Sawhney* is binding on *M Nagaraj* (2006). Yet, effective implementation of "reservation in promotion" is yet to see the light of the day. Parliament failed in its duty when it altered the constitutional philosophy to redress discrimination without deliberation: Neither did a parliamentary committee discuss the 103rd amendment nor a House committee effectively consider its provisions. The issue in this case is whether the category of "social and educational backwardness", devolved by the founders of the republic, could be altered to "economic backwardness" without any scientific basis or any material that demonstrates changes in the social conditions. The Supreme Court ought to have also discussed the constitutional question of "deliberative democracy", since Parliament had not adhered to it while passing the amendment. The *Janhit Abhiyan* judgment is a negation of the constitutional principles that the Constituent Assembly accepted while drafting the visionary document. A deep-rooted caste system pervades Indian society. It has deprived the members of the backward classes (SCs/STs/OBCs) of equal treatment in the society. It has also denied human dignity to 85 to 90 per cent of the population.

Indian society has developed on the edifice of graded inequality. The *Brahminical* social order sanctifies social discrimination and gradation. The *Brahminical* forces are firm believers in social inequality and they work for its perpetuation. The Constitution intends to establish an egalitarian social order, allowing no scope for discrimination of any kind. Through the Constitution, it was successful in laying the foundation for an egalitarian society by eliminating discriminatory factors including religion, race, caste, sex, descent, place of birth or residence etc. The *Janhit Abhiyan* judgment, unfortunately, is a denial of the constitutional rights of a larger section of the population that ought to be protected under the scheme of the Constitution of India.

- Q.2 Read the following para on 'Why intellectual property and pandemics don't mix', authored by Brink Lindsey on Thursday, June 3, 2021 and draft a *Title* [Research Problem] with explanation in detail and an *Abstract* for the research paper to publish in a SCOPUS journal. (5+10=15)

"On May 5 the Biden administration announced that it would support waiving intellectual property protections for COVID-19 vaccines under the World Trade Organization's Agreement on Trade-Related Intellectual Property Rights (TRIPS). Predictably, the move drew fiery condemnation from drug companies. In addition, many disinterested observers criticized the support for a TRIPS waiver as empty symbolism, arguing that vaccine patents are not the major obstacle hindering the currently flagging drive to make vaccines available around the world.

Waiving patent protections is certainly no panacea. What is needed most urgently is a massive drive of technology transfer, capacity expansion, and supply line coordination to bring vaccine supply in line with global demand. Dispensing with patents in no way obviates the need for governments to fund and oversee this effort. Although focusing on these immediate constraints is vital, we cannot confine our attention to the short term. First of all, the COVID-19 pandemic is far from over. Although Americans can now see the light at the end of the tunnel thanks to the rapid rollout of vaccines, most of the world isn't so lucky. The virus is currently raging in India and throughout South America, overwhelming health care systems and inflicting suffering and loss on a horrific scale. And consider the fact that Australia, which has been successful in suppressing the virus, recently announced it was sticking to plans to keep its borders closed until mid-2022. Criticisms of the TRIPS waiver that focus only on the next few months are therefore short-sighted: this pandemic could well drag on long enough for elimination of patent restrictions to enable new vaccine producers to make a positive difference. Furthermore, and probably even more important, this is almost certainly not the last pandemic we will face. Urbanization, the spread of factory-farming methods, and globalization all combine to increase the odds that a new virus will make the jump from animals to humans and then spread rapidly around the world. Prior to the current pandemic, the 21st century already saw outbreaks of SARS, H1N1, MERS, and Ebola. Everything we do and learn in the current crisis should be viewed from the perspective of getting ready for next time."

- Q.3 What do you mean by research? What is the importance of objectivity in scientific research? (10)
- Q.4 What do you mean by research design? Explain any one of the types of research design. (10)
- Q.5 Write short notes on **any two**: (2.5x2 =5)
- a) Difference between participant and non participant observations
 - b) Difference between questionnaire and interview schedule
 - c) Difference between focus group discussion and content analysis
