NOTE: The following sample question paper is from 2017. The question paper for 2018 year will differ in pattern and structure

Ambedkar University Delhi
School of Law, Governance and Citizenship
Entrance Exam
M.A in Law, Society and Politics

2 1/2 Hours

A. Choose any 2 from the following and write a short analytical essay on the same
(Maximum 800 words)

2 x 20 Marks = 40 Marks

1. The exponential rise of social media has transformed the media landscape in India completely. On the one hand it has democratised the ability of people to participate in public debates and citizens are now able to participate not just as consumers of news, but also as producers who can significantly shape political opinion. At the same time there are many legal concerns about the growth of social media including cyber bullying, trolling, the viral circulation of fake news and the impact of social media on the right to a fair trial. Using the example of social media, critically evaluate how one would balance between these competing claims.

2. The Constitution of India was drafted through an elaborate deliberative process with the Constituent Assembly sitting from 1946 to 1950. The Constituent Assembly Debates (CAD) have often been cited by the Supreme Court in landmark judgments, and more recently become the subject of legal scholarship. How would you evaluate the contemporary relevance of the CAD?

3. The terrain of "Law and Society" scholarship has enriched our understanding of legal debates and in recent years we have seen astute academic interventions in the law coming from disciplines such as literature, anthropology and history to name a few. Identify any scholar/s from the social sciences or humanities whose work you believe has significantly influenced legal discourse and write an essay evaluating their contribution to legal studies.

4. The distinction between human, animals and things have been at the heart of jurisprudential debates for centuries. Indian courts have in recent years had an opportunity to revisit some of these questions especially in the context of environmental cases and those related to animal rights. How would you assess the philosophical consequences of extending the idea of a 'juristic person' to animals and nature?

5. Rajeev Bhargava, a prominent political theorist suggests that " it is important to see the Constitution as a moral document, as embodying an ethical vision". Constitutions, like morality are contested domains with competing visions staking their claim on public imagination. Write a short note using examples from the post-independence history of India of instances in which constitutional visions have clashed, and how did this affect the domain of politics in India?

6. In the course of arguments before the Supreme court challenging the government's decision to make Aadhaar mandatory for filing income tax returns, one of the lawyers for the petitioners claimed that such a move violates the right to autonomy over one's body and it was suggested that "there is no concept of eminent domain of the state qua a person and his body". Evaluate the legal and moral implications of this claim.

7. Writing about law and literature, the renowned literary critic Shoshana Felman claims "Literature is a dimension of the concrete embodiment and a language of infinitude that, in contrast to the language of law, encapsulates not closure but precisely what is in a given case refuses to be closed and cannot be closed. It is to this refusal of the trauma to be closed that literature does justice; The literary writers stand at the margins of legal closure, on the brink of the abyss that underlies the law, and on whose profundity they fix their vision and through whose bottomlessness they reopen legal cases". Examine this claim using examples from non legal texts.

B. Short Notes (choose 4 from 10)

5 x 4 Marks = 20 Marks

1. Brexit
2. Preventive Detention
3. Smart Cities
4. Rule of Law
5. Right to be Forgotten
6. Non Aligned Movement
7. Goods and Services Tax
8. Marital Rape
9. Paris Accord on Climate Change
10. International Court of Justice

C. Read the passages below and answer the questions following the passages.

20 X 2 Marks = 40 Marks

1: Extract from Pratap Bhanu Mehta, Constitutional Morality

THE phrase 'constitutional morality' has, of late, begun to be widely used. Yet the phrase rarely crops up in discussions around the Constituent Assembly. Of the three or four scattered uses of the phrase, only one reference has any intellectual significance. This is, of course, Ambedkar's famous invocation of the phrase in his speech 'The Draft Constitution', delivered

on 4 November 1948. In the context of defending the decision to include the structure of the administration in the Constitution, he quotes at great length the classicist, George Grote. The quotation is worth reproducing in full:

The diffusion of 'constitutional morality', not merely among the majority of any community, but throughout the whole is the indispensable condition of a government at once free and peaceable; since even any powerful and obstinate minority may render the working of a free institution impracticable, without being strong enough to conquer ascendance for themselves.[1]

What did Grote mean by 'constitutional morality'? Ambedkar quotes Grote again:

By constitutional morality, Grote meant… a paramount reverence for the *forms* of the constitution, enforcing obedience to authority and *acting under and within these forms*, yet combined with the habit of *open speech*, of action subject only to definite legal control, and *unrestrained censure* of those very authorities as to all their public acts combined, too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the *forms* of *constitution will not be less sacred* in the eyes of his opponents than his own.

In Grote's rendition, 'constitutional morality' had a meaning different from two meanings commonly attributed to the phrase. In contemporary usage, constitutional morality has come to refer to the substantive content of a constitution. To be governed by a constitutional morality is, on this view, to be governed by the substantive moral entailment any constitution carries. For instance, the principle of non-discrimination is often taken to be an element of our modern constitutional morality. In this sense, constitutional morality is the morality *of* a constitution.

There was a second usage that Ambedkar was more familiar with from its 19th century provenance. In this view, constitutional morality refers to the conventions and protocols that govern decision-making where the constitution vests discretionary power or is silent.

But Grote's use of the term was different from these two uses, and more important for Ambedkar's purposes. Ambedkar was making a series of historical claims about constitutionalism. Like Grote, he had little doubt that constitutional morality was rare. It was not a 'natural sentiment'. The purpose of Grote's *History of Greece* had been, in part, to rescue Athenian democracy from the condescension of its elitist critics like Plato and Thucydides, and argue that Athenian democracy had, even if briefly, achieved elements of a genuine constitutional morality.

For Grote, there were only two other plausible instances of a constitutional morality having been remotely realized: the aristocratic combination of liberty and self-restraint experienced in 1688 in England, and American constitutionalism. All other attempts at enshrining a constitutional morality had grievously foundered. For Ambedkar, this note of historical caution simply added to his worries about India. Democracy in India was only, as he put it, 'top dressing on Indian soil, which is essentially undemocratic.'[2] Our people have 'yet to learn' constitutional morality.

What are the elements of constitutional morality that Ambedkar is so concerned about? His invocation of Grote is meant not as a reference merely to historical rarity, but also as a pointer to the distinctiveness of constitutionalism as a mode of association. In both the 4 November 1948 speech and the final 'Reply to the Debate' on 25 November 1949, Ambedkar – amidst discussions of a whole range of substantive issues such as federalism, rights, decentralization, and parliamentary government – returns to elements of constitutional morality prefigured in his use of Grote. For him, the real anxiety was not 'Constitution' the noun, as much as the adverbial practice it entailed.

For Grote, the central elements of constitutional morality were freedom and self-restraint. Self-restraint was a precondition for maintaining freedom under properly constitutional government. The most political expression of a lack of self-restraint was revolution. Indeed constitutional morality was successful only in so far as it warded off revolution. Ambedkar also takes on the explicitly anti-revolutionary tones of constitutionalism. In a strikingly odd passage, he says that the maintenance of democracy requires that we must 'hold fast to constitutional methods of achieving our social and economic objectives. It must mean that we abandon the bloody methods of revolution. It means we must abandon the method of civil disobedience, non-cooperation and satyagraha.'[3]

In one stroke, both violent revolution and passive resistance are equated as exemplifying a kind of excess and lack of self-restraint incompatible with constitutional morality. The tacit equivalence he posits between satyagraha and violence has roots in Ambedkar's experience of satyagraha as a form of coercion. It is a feature of constitutional morality that while government is subject to the full force of criticism, this criticism must, in some sense, be 'pacific' criticism.

Ambedkar dismisses an entire repertoire of political action used during the nationalist movement as being incompatible with the demands of constitutional morality, as he understood it. These forms of political action continue to be seen by many as essential to democracy, though it is doubtful that Ambedkar would have admitted them within the ambit of constitutional morality. But there is perhaps a deeper element at play in his ruling out satyagraha as incompatible with the basics of constitutional morality. And this in part springs from his understanding of the distinctiveness of constitutional morality.

For the second element of constitutional morality is the recognition of plurality in its deepest form. What is surprising is that Ambedkar turns out to be as, if not more, committed to a form of non-violence as Gandhi. For him, respecting constitutional forms is the only way in which a genuinely non-violent mode of political action can come into being. For the central challenge in a political society is the management and adjudication of differences – though what Ambedkar had in mind were more differences of opinion than of identity.

The only way of non-violent resolution amidst this fact of difference is securing some degree of unanimity on a constitutional process, a form of adjudication that can mediate difference. Unilaterally declaring oneself to be in possession of the truth, setting oneself up as a judge in one's own cause, or acting on the dictates of one's conscience might be heroic acts of personal integrity. But they do not address the central problem that a constitutional form is trying to address, namely the existence of a plurality of agents, each with his/her own convictions, opinions and claims.

Questions:

1. According to Mehta, in Grote's view one of the components of constitutional morality was "… a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of constitution will not be less sacred in the eyes of his opponents than his own". Which of these statements would be least compatible with the statement above?

a) All political parties agree that free and fair elections will be held to select representatives to Parliament
b) The Constitution has a basic structure that cannot be amended easily
c) The political opinion of the ruling and opposition parties are different, but they agree that they will not use violent means to overthrow each other
d) All constitutional amendments will be allowed through a simple majority in Parliament

2. Which reason from those stated below, is NOT among the reasons that contributed to Ambedkar to viewing satyagraha as incompatible with the basics of constitutional morality

a) As per Ambedkar, a respect for constitutional norms is the only way that a political mode of action could be truly non-violent
b) As per Ambedkar, satyagraha as a mode of political action did not allow for a plurality of thought and opinion
c) According to Ambedkar, any powerful and obstinate minority could use satyagraha to render the working of a free institution impracticable
d) For Ambedkar satyagraha would not allow for a genuine process of sorting out opinion among a diverse polity

3. What does Ambedkar mean by the phrase "Democracy is a top dressing on Indian soil, which is essentially undemocratic"?

a) For Ambedkar India did not have the necessary ingredients of liberty and self-restraint to enable the emergence of constitutional morality
b) Ambedkar was worried that constitutional morality was essentially a Western concept that would not fit in India
c) Ambedkar was worried that while the formal language of the Constitution was in place, it would be difficult to translate this into societal values
d) Ambedkar was anxious that the Constitution would be overturned by a revolutionary movement

4. Constitutional morality may be distinguished from other forms of morality such as religious morality because

a) It is the constitution and the values enshrined which are the source of definitions of morality
b) It is based on secular rather than religious notions of morality
c) One of the constitutive elements of constitutional morality namely freedom is missing in the case of religious morality
d) Religious morality is binding on people whereas constitutional morality has no binding force

5. According to the author, Ambedkar was committed to an idea of constitutional morality as a recognition of plurality in its deepest form. Which of the following would correspond most closely to this conception of plurality?

a) The Constitution should accommodate communities regardless of their religious or linguistic differences
b) The Constitution should accommodate a diversity of thought and viewpoints
c) The Constitution should provide for affirmative action as a mode of redressing historic injustice and encouraging plurality
d) The best way to manage differences would be to create a common identity such as equal citizenship of all communities

II.

Dworkin- The Majoritarian Premise

Democracy means government by the people. But what does that mean? No explicit definition of democracy is settled among political theorists or in the dictionary. On the contrary, it is a matter of deep controversy what democrat really is. People disagree about which techniques of representation, which allocation of power among local, state, and national governments, which schedule and pattern of elections, and which other institutional arrangements provide the best available version of democracy. But beneath these familiar arguments over the structures of democracy there lies, I believe, a profound philosophical dispute about democracy's fundamental *value* or *point,* and one abstract issue is crucial to that dispute, though this is not always recognized. Should we accept or reject what I shall call the majoritarian premise?

This is a thesis about the fair *outcomes* of a political process: it insists that political procedures should be designed so that, at least on important matters, the decision that is reached is the decision that a majority or plurality of citizens favours or would favour if it had adequate information and enough time for reflection. That goal sounds very reasonable, and many people, perhaps without much reflection, have taken it to provide the very essence of democracy. They believe that the complex political arrangements that constitute the democratic process should be aimed at and tested by this goal: that the laws that the complex democratic process enacts and the policies that it pursues should be those, in the end, that the majority of citizens would approve.

The majoritarian premise does not deny that individuals have important
moral rights the majority should respect. It is not necessarily tied to some collectivist or utilitarian theory according to which such rights are nonsense. In some political communities, however- in Great Britain, for example - the majoritarian premise has been thought to entail that the community should defer to the majority's view about what these individual rights arc, and how they arc best respected and enforced. It is sometimes said that Britain has no constitution, but that is a mistake. Britain has an unwritten as well as a written constitution, and part of the former consists in understandings about what laws Parliaments should not enact. It is part of the British constitution, for example, that freedom of speech is to be protected. Until very recently, it has seemed natural to British lawyers, however, that no group except a political majority, acting through Parliament, should decide what that requirement means, or whether it should be altered or repealed, so that when Parliament's intention to restrict speech is clear, British courts have no power to invalidate what it has done. That is because the majoritarian premise, and the majoritarian conception of democracy it produces, have been more or less unexamined fixtures of British political morality for over a century.

In the United States, however, most people who assume that the majoritarian premise states the ultimate definition of and justification for democracy nevertheless accept that on some occasions the will of the majority
should *not* govern. They agree that the majority should not always be the final judge of when its own power should be limited to protect individual rights, and they accept that at least some of the Supreme Court's decisions that overturned popular legislation, as the *Brown* decision did, were right. The majoritarian premise does not rule out exceptions of that kind, but it does insist that in such cases, even if some derogation from majoritarian government is overall justified, something morally regrettable has happened, a moral cost has been paid. The premise supposes, in other words, that it is *always* unfair when a political majority is not allowed to have its way, so that even when there are strong enough countervailing reasons to justify this, the unfairness remains.

If we reject the majoritarian premise, we need a different, better account of the value and point of democracy. Later I will defend an account - which I call the constitutional conception of democracy -that does reject the majoritarian premise. It denies that it is a defining goal of democracy that collective decisions always or normally be those that a majority or plurality of citizens would favour if fully informed and rational. It takes the defining aim of democracy to be a different one: that collective decision be made by political institutions whose structure, composition, and practices treat all members of the community, as individuals, with equal concern and respect. This alternate account of the aim of democracy, it is true, demands much the same structure of government as the majoritarian premise does. It requires that day-to-day political decisions be made by officials who have been chosen in popular elections. But the constitutional conception requires these majoritarian procedures out of a concern for the equal status of citizens, and not out of any commitment to the goals of majority rule. So, it offers no reason why some non-majoritarian procedure should not be employed on special occasions when this would better protect or enhance the equal status that it declares to be the essence of democracy, and it does not accept that these exceptions are a cause of moral regret.

The constitutional conception of democracy, in short, takes the following attitude to majoritarian government. Democracy means government subject to conditions-we might call these the "democratic" conditions- of equal status for all citizens. When majoritarian institutions provide and respect the democratic conditions, then the verdicts of these institutions should be accepted by everyone for that reason. But when they do not, or when their provision or respect is defective, there can be no objection in the name of democracy, to other procedures that protect and respect them better. The democratic conditions plainly include, for example, a requirement that public offices must in principle be open to members of all races and groups on equal terms. If some law provided that only members of one race were eligible for public office, then there would be no moral cost- no matter for moral regret at all- if a court that enjoyed the power to do so under a valid constitution struck down that law as unconstitutional. That would presumably he an occasion on which the majoritarian premise was flouted, but though this is a matter of regret according to the majoritarian conception of democracy, it is not according to the constitutional conception. Of course, it may be controversial what the democratic conditions, in derail, really are, and whether a particular law does offend them. But, according to the constitutional conception, it would beg the question to object to a practice assigning those controversial questions for final decision to a court, on the ground that that practice is undemocratic, because that objection assumes that the laws in question respect the democratic conditions, and that is the very issue in controversy.

I hope it is now clear that the majoritarian premise has had a potent- if often unnoticed-grip on the imagination of American constitutional scholars and lawyers. Only that diagnosis explains the near unanimous view I described: that judicial review compromises democracy, so that the central question of constitutional theory must be whether and when that compromise is justified. That opinion is the child of a majoritarian conception of democracy, and therefore the grandchild of the majoritarian premise.

It provokes the pointless search I described, for an interpretative strategy "intermediate" between the moral reading and originalism, and it tempts distinguished theorists into constructing Ptolemaic epicycles trying to reconcile constitutional practice with majoritarian principles.

So, a complex issue of political morality -the validity of the majoritarian premise-is in fact at the heart of the long constitutional argument. The argument will remain confused until that issue is identified and addressed. We might pause to notice how influential the majoritarian premise has been in other important political debates, including the pressing national discussion about electoral campaign reform. This discussion has so far been dominated by the assumption that democracy is in improved when it better serves the majoritarian premise-when it is designed more securely to produce collective decisions that match majority preferences. The unfortunate Supreme Court decision in Buckley v. Valio, for example, which struck down laws limited what rich individuals can spend on political campaigning, was based on a theory of free speech that has its origins in that view of democracy. In fact, the degeneration of democracy that has been so vivid in recent elections cannot be halted until we develop a more sophisticated view of what democracy means.

Questions

1. According to Dworkin how do the American and British view of the majoritarian premise compare?

a) For the British, the majoritarian premise cannot be absolute, while the Americans have a more absolute view of the majoritarian premise
b) The British version of the majoritarian premise is broader giving wide ranging powers to Parliament, while the Americans have a narrower conception of the majoritarian premise as seen in the Supreme Court's mandate to strike down laws
c) Both the British and Americans have a similar understanding of the majoritarian premise
d) Neither the British nor the Americans subscribe to an understanding of a majoritarian premise

2. As per Dworkin, which of the following would a constitutional conception of democracy be least compatible with?

a) Women's reservations in parliament and legislative assemblies
b) Quotas for minorities in government jobs
c) Courts being given the power to strike down legislation
d) All important policy decisions to be taken through a referendum that requires a simple majority of votes

3. How would the majoritarian premise contrast with a constitutional conception of democracy in its view of court decision that overturn laws or policies that do not respect democratic principles

a) Both the majoritarian premise and constitutional conception of democracy do not encourage courts to overturn laws or policies
b) The majoritarian premise views courts as antidemocratic, while from a constitutional conception of democracy courts may in exceptional cases overturn legislation, although this is not desirable
c) The majoritarian premise allows for such an exception, but at the cost of overruling the views of the majority, while from the constitutional conception of democracy such an action is necessary to keep legislators from overstepping constitutional boundaries
d) The majoritarian premise does not allow for courts to overturn law, while from a constitutional conception of democracy this is desirable

4. The role of a judiciary in Dworkin's view could be best characterised as

a) A counter majoritarian institution committed to protecting constitutional values
b) An institution that validates the majoritarian premise while protecting rights of minorities
c) Should be to ensure that the majoritarian premise should be interpreted in such a way as to improve democracy
d) To protect the majoritarian premise since to not do so would be a violation of principles of fairness

5. The idea of "Political Morality" in Dworkin and "Constitutional morality" in Pratap Bhanu Mehta's piece are

a) identical as they both determine the morality of the constitution
b) different as one is premised on the popular will manifested in the majoritarian premise while the other is defined in terms of constitutional principles
c) similar in that they both define the contours of acceptable and unacceptable forms of political behaviour
d) different because the former deals with the majoritarian premise while the latter concerns itself with the interests of minorities