

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Constitutional Bodies
Semester-II (Batch: 2016-17)

LL.M. End Semester Examination: May-2017

Date: 3rd May, 2017

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.

	Marks
Part-A	
Q.1 is Compulsory. Attempt any three questions from Q.2 to Q.6.	
Q.1 Discuss the following: (a) Circumstances under which an Ordinance comes to an end. (b) The effect of lapse of Ordinance.	(7+7= 14)
Q.2 An unprecedented pre-dawn 90-minute hearing of Yakub Memon, convicted in the 1993 blast case, sealed the fate of Yakub Memon, after his final plea to escape the gallows was dismissed. The petition was heard by a three-judge bench in court number 4 at 3.20 am and ended at 4.50 am. The Supreme Court has never before been opened in the wee hours for a hearing. Discuss the circumstances due to which the Supreme Court of India conducted the hearing of Yakub Memon at wee hours.	(12)
Q.3 "The present procedure laid down in the Constitution for the removal of a Supreme Court or High Court judge on the ground of proven misbehaviour or incapacity is cumbersome, unworkable, unrealistic and therefore impossible. The present procedure of removal is totally inadequate and for various reasons is impractical." Do you agree with this statement? Give your opinion in light of various impeachment processes initiated against the judges of the higher judiciary.	(12)
Q.4 Case Analysis: <i>Supreme Court Advocate on Record Association vs. Union of India, decided on October 16, 2015 & December 16, 2015</i>	(12)
Q.5 A women had moved the Supreme Court of India alleging that Mr. Maharatri Prajit, who was a transport minister in Akhil Jadav's cabinet, along with six others, had raped her at Prajit's official residence in Lucknow in 2014. She had alleged that Prajit had used photographs of the gangrape to blackmail her for months. She also alleged that a similar assault was made on her minor daughter in July 2016. On the directions of the Supreme Court, an FIR was lodged against Prajit and others, a non-bailable warrant was issued against Prajit and his passport was impounded. Later he was arrested. A day after a non-bailable warrant was issued against Prajit, Governor Laxman Naik wrote to Chief Minister Akhil Jadav, asking him as to on what basis Prajit is continuing as a minister in	(12)

his cabinet. Governor wrote, "Continuation of Prajit as cabinet minister and lack of action against him even after the Supreme Court took cognizance of the rape allegation against him raised "serious questions" on the democratic sacredness, constitutional decorum and constitutional conduct."

Identify the Constitutional issues involved in this episode and discuss the same with the help of Constitutional Provisions and Supreme Court judgements.

- Q.6 *The election for the Goa Legislative Assembly elections was held on 4th February 2017. No political party was able to secure the absolute majority. Congress emerged as the single largest party winning 17 seats out of 40. The BJP finished second with 13 seats. Among the rest, Goa Forward Party and the Mahavashtravadi Gomantak Party have won three each. Three independent and a legislator from congress also won.* (12)

A day after the election results, the BJP approached the governor claiming that it has the support of 21 MLAs. Governor Mridula Sinha invited Mr. Parrikar to form the government and asked to prove majority in the assembly within 15 days of assuming charge. The Congress objected the decision of the Governor to form the government and filed a petition before the Supreme Court challenging Governor Mridula Sinha's decision to invite the 13-MLA BJP, led by Mr. Parrikar, to form government, claiming that it violated the "established constitutional practice" of inviting the single-largest party in a hung Assembly. The Congress further alleged that "a party that comes second has no right to form the government.....BJP is stealing election in Goa....democracy is being undermined....Governor Mridula Sinha 'acted in haste.'" The Supreme Court, while hearing the petition reduced the fifteen day time to forty eight hours to Mr. Parrikar to prove his majority on floor of the House. In the floor test Mr. Parrikar emerged victorious winning 22 votes. The Congress received a mere 16 votes, one vote less than what they originally won in the assembly polls. Mr. Parrikar won 22 votes including those of BJP MLAs, legislators of the Goa Forward party, 3 independent MLAs and 3 MLAs from the MGP. Finally, Mr. Parrikar sworn-in as Chief Minister of Goa.

Examine, in the light of Constitutional Provisions and Supreme Court judgements, the decision of Governor Mridula Sinha to invite BJP's Mr. Parrikar to form a government.

Part-B
Answer the question

(1x10=
10)

- Q.7 The case of Kihoto Hollohan is commonly referred as the case where the Constitution Bench of the Supreme Court analyzed in detail the various provisions of the 52nd Amendment of the Constitution which inserted a new Schedule i.e. Tenth Schedule elaborating various provisions to protect the parties from defection. The Amendment happened in the year 1985, and followed by much uproar which ultimately led to filing a PIL resulting into the decision in the year 1992, that declared the Amendment completely legal with certain interpretation on judicial review.

The Constitution Fifty Second Amendment Act changed four Articles of the Constitution, viz. 101(3) (a), 102(2), 190(3)(a) and 191(2), and added the Tenth Schedule. This Amendment is often referred to as the Anti-Defection law. This legislation contains eight paragraphs – the first one deals with definitions, the second states the provisions which disqualifies members from the membership of Parliament or State Legislatures, the fourth states that disqualification is not going to apply in cases of merger, the fifth sets out certain exemptions, the sixth and seventh states the person who would be deciding the disputes regarding defections and barring jurisdiction of the courts in respect of questions on disqualification and the last paragraph contains provisions for the Speaker and the Chairman to make rules in order to give effect to the provisions

contained in the Schedule.

The judgment answers several questions and concerns regarding this law. While upholding the Constitutional validity of this Amendment, the court observed that the anti-defection law seeks to recognize the practical need to place the proprieties of political and personal conduct above certain theoretical assumptions. The court finally held that the law does not violate any rights of free speech or basic structure of the parliamentary democracy. Another important aspect of this judgment is the final decision making authority on declaring the defection. The court made it clear that the presiding officer is the one to make the decision and it is final subject to judicial review after the decision is pronounced and effected.

Answer the following:

- (a) Does the law while preventing defection due to the part whip, also suppresses a Member of Parliament's right to the freedom of expressing his own opinion in Parliament? Does it restrict an opinion which is against party position?
- (b) Is the decision of the Speaker regarding disqualification of a Member of Parliament final and immune from judicial review? Whether judicial review by courts extends to the rules framed under Tenth Schedule?
- (c) Whether ratification was required for the Constitution Fifty Second Amendment Act, 1985, under Article 368(2)? Does the doctrine of severability apply to the Amendment?

Part-C
Answer the question

(2x5=
10)

Q.8 Write comments on any two of the following:

- (a) No tax without authority of law
- (b) Comptroller and Auditor-General
- (c) Dissolution of Parliament
