

LL.M. End Semester Examination: November-2016

Comparative Public Law/Systems of Governance

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**
Course: Comparative Public Law/Systems of Governance
Semester-I (Batch: 2016-17)

LL.M. End Semester Examination: November-2016

Date: 7th November, 2016

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
Q.1	<p><i>'Our [British] Constitution is dominated by the sovereignty of Parliament. But parliamentary sovereignty is no longer, if it ever was, absolute. It is not uncontrolled in the sense referred to by Lord Birkenhead LC in <i>McCawley v The King</i> [1920] AC 691, 720. It is no longer right to say that its freedom to legislate admits of no qualification whatever. Step by step, gradually but surely, the English principle of the absolute legislative sovereignty of Parliament which Dicey derived from Coke and Blackstone is being qualified.'</i></p> <p>In view of the afore-stated statement regarding the British Constitution, how far do you agree to the proposition that while the supremacy or sovereignty of Parliament is still the general principle of the British Constitution, the principle is not absolute and, because the principle was created by judges, judges could decide not to follow it in certain circumstances, such as an attempt to abolish judicial review? Answer it by comparing it to the constitutional arrangements in India and USA.</p>	(12)
Q.2	<p>'The very concept of "fundamental right" involves "state action". A right which is founded upon or created by the private law may assume a double character where it is guaranteed by a written Constitution as against acts of interference or infringement by the State.' Substantiate this observation with the help of relevant case laws.</p>	(12)
Q.3	<p>As a principle of Constitutional law, what is the meaning of the doctrine of 'separation of powers' in its modern form, and what purpose(s) does this doctrine serve? How far this doctrine finds place in the Indian, the US and the British Constitutions? Answer with the help of relevant provisions and case laws.</p>	(12)
Q.4	<p>Harsh Vardhan, an engineering student studying in fourth year Computer engineering, was rusticated with immediate effect by the Principal in his order dated February, 21, 2016 from Kutch College of Engineering and Technology for a period of two years and also was removed from the post of General Secretary of College Union. According to the order of Principal, it has found that Harsh Vardhan was involved in the incident of</p>	(12)

was rusticated with immediate effect by the Principal in his order dated February, 21, 2016 from Kutch College of Engineering and Technology for a period of two years and also was removed from the post of General Secretary of College Union. According to the order of Principal, it has found that Harsh Vardhan was involved in the incident of causing hurt, instigating the students to cause hurt to the lady Municipal Councilor of Kutch, creating tension in the college and behaving rudely with some faculty members

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and not pacifying the students and controlling the situation as leader of the student's community. A notice was issued to Harsh Vardhan on February, 15, 2016, to remain present on February 16, 2016, before the Inquiry Committee consisting of three faculty members. The committee members were alleged to be those faculty members who were subjected to the rude behavior of Harsh Vardhan. As notice could not be issued personally to him, it was affixed in his hostel room and at college notice board. Harsh Vardhan remained absent before the committee and some faculty members and students were made depositions before the committee and evidences were taken against him. A second notice dated February, 17th, 2016 to remain present on February, 18th, 2016, before the Disciplinary Committee of the University was issued and was fixed on the college notice board, hostel notice board and a copy was sent to the Chief Warden for information and necessary action. The head clerk of the University attempted to serve these notices to Harsh Vardhan, but he was not available at his room. The second notice was not in the form of show cause notice and it did not contain that the committee constituted for inquiry had submitted report and findings were made against Harsh Vardhan. The notice was a simple notice to be present before the said Disciplinary Committee in connection with the incident that took place on February, 9, 2016. Harsh Vardhan appeared before the Disciplinary Committee and informed them that he was not aware of any inquiry conducted against him and alleged biasness and arbitrariness in such inquiry proceeding. Based on the report of the Disciplinary Committee, Principal ordered for rustication. Harsh Vardhan challenged the order before the Gujarat High Court and contended that Inquiry Committee report has not been furnished, there is biasness and arbitrariness in the decision of College. College authorities contended that Harsh Vardhan remained absent before the Inquiry Committee and thereby admitted charges. Based on the said facts and contentions the matter is posted for final hearing. Frame relevant issues and argue for the petitioner and respondent and decide the petition and also explain relevant laws of USA and UK.

- Q.5 Ivo D. Duchacek in his book 'Comparative Federalism' suggested ten yardsticks to determine the federal character of a Constitution in comparison with the United States of America. Identify the yardsticks related to amendment to Constitution, structure of Judiciary, Judicial Authority, Distribution of Powers between Union and States and Representation of States in Parliament. Analyse these yardsticks with the Constitutions of India, United States of America and Canada. (12)
- Q.6 Explain the following: (3x4= 12)
- State of West Bengal v. Union of India* AIR 1963 SC 1241.
 - Indian National Congress v. Institute of Social Welfare* AIR 2002 SC 2158.
 - "We must have a clear conception of the doctrine (of absolute necessity). It is well established that the law permits certain things to be done as a matter of necessity

- (b) *Indian National Congress v. Institute of Social Welfare* AIR 2002 SC2158.
- (c) "We must have a clear conception of the doctrine (of absolute necessity). It is well established that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety...It is often invoked in cases of bias where there is no other authority to judge or decide the issue".

Part-B

- Q.7 (a) With reference to the enactment of a Uniform Civil Code, it is rightly said that it is not for the Court to direct Parliament to frame a specific law and that lawmakers only can take a call on a common code. Do you, believe that with the enactment of such a uniform civil code, secularism will be strengthened, leading to the emergence of a much more cohesive and integrated India? (2x5=10)

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- (b) "Parliament has the power to alter the boundaries of States without the consent of the States concerned. As a matter of law this is a serious departure from the federal principle. But in fact it is not the Union which has re-drawn the map of India; on the contrary, the hands of a reluctant Union have been forced by extra-constitutional agitation in the States, the States have forced Parliament to alter the boundaries of States and in practice, therefore, the federal principle has not been violated."- Discuss this statement of H.M. Seervai in his book Constitutional Law of India and explain State's character in federal Constitutions of India, USA, and Germany also analyse it with the yardstick applied in the context USA.

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