

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Comparative Public Law/Systems of Governance  
Semester-I (Batch: 2019-20)

LL.M End Term Examination: November 2019

Date: 6<sup>th</sup> November, 2019

Duration: 3 hours

Max. Marks: 50

**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 anything 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.

**Answer any FIVE Questions**

**Marks**

- Q.1 "The recent trend in the Supreme Court is to rely more on the sociological school of jurisprudence and less on the positivist school. In other words, the court is resorting more to judicial activism rather than judicial restraint ..." Do you think that this trend is problematic? Support your answer with the help of relevant case laws. What suggestions, if any, would you like to propose in this regard? (10)
- Q.2 Do you agree with the proposition that where the fundamental rights of a citizen/person are violated by the State, it should not be open to the State to plead the defence of sovereign functions or to plead the protection of protective clauses? Is the Indian position, in this context, in consonance with the modern social-welfare thinking of progressive societies? Answer with the help of leading judicial pronouncements. Also, discuss the changes brought about by the Federal Tort Claims Act, 1946 (in the USA) and the Crown Proceedings Act, 1947 (in the UK). (10)
- Q.3 "The court should guard zealously Fundamental Rights guaranteed to the citizens of the society, but at the same time strike a balance between the Fundamental Rights and the larger interests of the society. But when such right clashes with the larger interest of the country it must yield to the latter. Therefore, wherever any enactment is made for advancement of Directive Principles and it runs counter to the Fundamental Rights an attempt should be made to harmonise the same if it promotes larger public interest." (10)
- In view of the afore-stated observation, explain how the judicial view has veered round from irreconcilability to integration between the fundamental rights and directive principles and, in some of the more recent cases, to giving primacy to the directive principles. Discuss with the help of leading judicial pronouncements.
- Q.4 Federalism embodies an effort to achieve national unity while preserving some degree of local autonomy. It strives at once to provide a structure for national government and to provide some protection for regional diversity. However, a continuing question is the extent to which the values of federalism are to be found in the constitutional allocation of powers in the actual working of the political process. Explain the constitutional immunity of territory of federation, role of states in federal law making and deciding the authority of the Constitution in the countries of the USA, Germany, South Africa and Switzerland in comparison with India. (10)

- Q.5 Section 6 of the Gujarat Transport Act, 2018 provides that the general superintendence, direction and management of the affairs and business of the corporation established under this Act shall vest in a Board of Directors which with the assistance of its committees and the Managing Director, may exercise all such powers and do all such acts and things as may be exercised or done by the corporation. The Board shall consist of a Chairman and such other Directors being not less than five and more than seventeen as the Government may think fit to appoint. Under the Provisions of this Act, the Gujarat Transport Corporation (GTC) has been established. The Corporation, GTC does the transport business throughout the State along with private bus operators. Several other bus operators applied for renewal of their carriage-permits before the Gujarat State Transport Authority (GSTA) an authority established under Section 44 of the Motor Vehicles Act, 1988. GTC also filed applications on each one of these routes for grant of permits. While the applications filed by private bus operators and GTC were pending before GSTA, some private bus operators approached Gujarat High Court seeking a prohibition against Chairman of GSTA on the ground that he being a member of the Board of Directors of the GTC is disqualified by law to function either as a member of GTC or as chairman of GSTA. GSTA opposed the said petition. (10)

Relevant Provisions for Consideration: Section 44(2) of Motor Vehicle Act:

*“A State Transport Authority shall consist of a Chairman who has had judicial experience as an appellate or revisional authority under any law relating to land revenue and in case of Transport authority, such other officials and non officials not being less than two, and, in case of a Regional Transport Authority, such other persons, not being less than two, as the state Government may think fit to appoint; but no person who has financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be appointed as a member a State or Regional Transport Authority, and if any person being a member of any such Authority acquires a financial interest in any transport undertaking, he shall, within four weeks of so doing, give notice in writing to the State Government of the acquisition of such interest and shall vacate office.*

*Provided also that nothing in this sub section shall be construed as debarring (other than an official connected directly with the management or operation of a transport under taking) from being appointed or continuing as a member of any such authority merely by reason of the fact that the Government employing the official has, or acquires, any financial interest in a transport undertaking”.*

Decide this dispute based on Indian case laws and compare them with the position of existing law of England.

- Q.6 “The principles of natural justice have a sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide a great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take an administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision-making that a decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong.” (10)
- Discuss the aforementioned statement along the relevant English case laws and explain their applications in the existing Indian legal system.

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