

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: **Comparative Public Law/System of Governance**  
Semester-I (Batch: 2017-18)

**LL.M. End Semester Examination: November-2017**

**Date: 1<sup>st</sup> November, 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 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.

**Part A**  
**(Answer any five questions)**

**Marks**

- Q.1 'In an uncivilized society where there are no inhibitions, only physical restraints may detract from personal liberty, but as civilization advances the psychological restraints are more effective than physical ones. The scientific methods used to condition a man's mind are in a real sense physical restraints, for they engender physical fear channelling one's actions through anticipated and expected grooves. So also the creation of conditions which necessarily engender inhibitions and fear complexes can be described as physical restraints. Further, the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life.'  
In the light of the afore-stated observation, discuss the doctrinal foundations of the nature and content of the right to privacy. Whether or not the right to privacy is a constitutionally protected fundamental right under the Indian Constitution? Answer taking into consideration the recent Supreme Court judgment in *K S Puttaswamy v Union of India* (2017). (12)
- Q.2 'It must be appreciated that the debate cannot be reduced to the acceptance of an unconstitutional but popular decision versus a constitutional but unpopular decision. All of us are bound by the Constitution and judges have to abide by the oath of office to uphold the Constitution and the laws, even if the decision is unpopular or unacceptable to Parliament. This is the essence of judicial review otherwise no law passed by Parliament (obviously having a popular mandate) could be struck down as unconstitutional.'  
In view of the above-stated observation, compare the nature and scope of judicial review (of legislative and executive actions) under the constitutional law of India, the US and the UK. (12)
- Q.3 Explicate, in detail, the constitutional principle of the rule of law — a public law principle that has been routinely invoked by judges in their judgment. (12)
- Q.4 'The twenty first century federalism has come to be understood as a dynamic process of



co-operation and shared action between the two levels of Government, with increasing interdependence and centrist trends. The antiquated concept of dual federalism is nowhere a functional reality in the modern world even in the so called classical federal model of the USA.' Analyse this statement in the context of Constitutions of India, Germany, Canada and the USA and explain the features of federalism contained in Amending Power and Procedure, Structure of Judiciary and Judicial Authority.

- Q.5 Shanker Singh Srivastava was appointed as a stenographer in the office of the Commissioner of Urban Affairs of the State of Krishna, a State in the Union of India, in the year 2005. He was deputed to work with the Lok Ayukta in the year 2015 and has been working as a stenographer. He was later on given a higher scale of pay by way of promotion with effect from 21.07.2016 and re-designated as Private Secretary. Owing to certain acts of misconduct, the Lok Ayukta censured and warned Shanker Singh Srivastava and was asked him to hand over the key of his almirah, but he refused to do so and also used indecent language against the Lok Ayukta. Subsequently the said almirah was sealed and Shanker Singh Srivastava was served with an order of suspension. The said seal on the almirah was broken at a later date and it was opened with a duplicate key. A notice was served upon Shanker Singh Srivastava and a departmental proceeding was initiated against him based on the charges as under:

"Charge No. 1- On 13.1.2017, Deputy Secretary accompanied by the Lok Ayukta went on round to your room at 10.30 A.M. and he wanted to see if there was any undisposed matters pending and documents were lying with you. The Lok Ayukta found that in violation of his orders, you had locked your almirah. On making request, you did not open the almirah yourself and when you were asked to give its key, you got enraged and using a very indecent and vulgar language, you refused to hand over the key and in a fit of anger crying at the pitch of your voice you said that you might be suspended but you would not give the key and you did not give the key. Therefore, you are guilty of committing indiscipline and misconduct."

"Charge No. 2- When you did not give the key of your almirah then your almirah was opened on 15.1.2017 by making alternative arrangements."

The notice stated the said misconduct of Shanker Singh Srivastava for which he was found guilty along with neglecting and suppressing work. Shanker Singh Srivastava asked the Lok Ayukta to disclose the name of witness and the documents upon which they issued such notice. In the said departmental inquiry, Shanker Singh Srivastava intended to engage a lawyer, which was declined, inter alia, on the ground that the department did not engage any lawyer. The charges levelled against Shanker Singh Srivastava were found to be proved as the Lok Ayukta took over upon himself the burden of conducting the disciplinary proceedings as it is required by the Lok Ayukta Act.

Sir William Wade in his book stated, "In administrative cases the same exigency may arise. Where statute empowers particular minister or official to act, he will usually be the one and only person who can do so. There is then no way of escaping the responsibility, even if he is personally interested. Transfer of responsibility is, indeed, a recognized type of ultra vires. In one case it was unsuccessfully argued that only minister competent to confirm a compulsory purchase order for land for an airport had disqualified himself by showing bias and that the local authority could only apply for a local Act of Parliament". Analyse the issues involved in the stated problem and also explain the statement of Sir William Wade in the context of said problem.



- Q.6 State of Pachimrashtra is a State in the Union of India established under the State Re-organisation Act. There were agitations in State of Pachimrashtra for bifurcation of the State into two based the religious and linguistic considerations. A part of Pachimrashtra, which is there in the border of India and was considered as a disputed property of India with its neighbouring country Gathak. Despite the dispute over the territory, there were cordial relations between India and Gathak. In 2017, both the countries made an agreement and accordingly, a part of Pachimrashtra was agreed to be given to Gathak and a part of Gathak was agreed to be admitted to India. A public interest litigation has been filed for before the Supreme Court of India for the following reliefs:

This Honourable Court may be pleased to issue a writ, order or direction in the nature of Mandamus or otherwise declaring (1) that Article 3 of the Constitution of India is violating the basic structure and preamble of the Constitution of India apart from inconsistent with other provisions of the Constitution of India, particularly Part 3 of the Constitution of India and quash and set aside the same or alternatively declare the Constitutional (V Amendment) Act, 1955 insofar as it relates to not ascertaining the views from the State Legislature pertaining to provisions proposed in the draft bill sent to the State Assembly in pursuance of recommendation made by the President as well as prescribing time to express views pertaining to proposed bill as well as provision of bill is concerned as violating the basic structure and preamble of the Constitution of India and against the democratic and federal principles envisaged in the Constitution of India and quash and set aside the same; (2) restrain the Union of India from initiating any action in pursuance of Article 3 of the Constitution of India for bifurcation of State of Pachimrashtra and formation of new States without enacting any law or even issuing any executive instructions prescribing criterion, modalities and guidelines for exercising power under Article 3 of the Constitution of India or alternatively direct the Union of India to consider for making any legislation or issuing executive instructions prescribing guidelines, modalities for exercising power under Article 3 of the Constitution of India, particularly forming new States before initiating any action under Article 3 of the Constitution of India for bifurcation of State of Pachimrashtra; (3) issue direction to the effect that as long as Article 371-D (special status was given to State of Pachimrashtra) is in force, the Union of India is not having any authority or power to exercise power under Article 3 of the Constitution of India for bifurcation of existing State of Pachimrashtra; (4) also declare and restrain the President of India from exercising constitutional power available under Article 3 of the Constitution of India in pursuance of any recommendation made by the Union Cabinet regarding bifurcation of State of Pachimrashtra and forming new States and (5) restraining the Union of India to proceed under the agreement with Gathak to handover Indian territory.

Territory and its significance is been considered as an important criteria in determining federal character of the Constitutions. In this respect, write a comparative analysis of the issues involved in the Public Interest Litigation by explaining provisions in the Constitutions of India, the United States of America, South Africa and Switzerland.

### Part-B (Compulsory)

- Q.7 (a) Write a short note on 'constitutionalism'. (5+5=10)  
(b) "It is essential that administrative authorities and tribunals should accord fair and



proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial functions will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law”.

Explain this statement of Justice Bhagwati in the context Indian law comparing it with England and the USA.

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