

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**  
Course: **Comparative Public Law/ Systems of Governance**  
**Semester-I (Batch: 2013-14)**

**End Term LL.M. Examination: November-2013**

**Date: 11<sup>th</sup> November, 2013**

**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 'Our entire legal system is in the process of undergoing re-examination in the supposed interest of reform, not always scientific and frequently undertaken by those who have no thorough or comprehensive knowledge of it. It is important in the public interest that the leadership in this investigation should be entrusted to those whose conclusions will inspire confidence because of their disinterestedness and because they are the product of scientific scholarship rather than to the politician and the agitator. To be scientific such an investigation of our law must be based on an adequate understanding of economic conditions and must be carried on in comparison with other legal systems and this is the great task of legal scholarship in this and the coming generation, namely, the study of our law both historical and analytical, in comparison with other systems for scientific purposes...'
- (12)
- In view of the foregoing statement, explicate the significance of the study of Comparative Public Law.
- Q.2 It is said that by enacting Fundamental Rights and Directive Principles of State Policy, which are negative and positive obligations of the State respectively, the Constituent Assembly made it the responsibility of the Government to adopt a middle path between individual liberty and public good. In view of this observation, answer the following questions by citing relevant judicial pronouncements:
- (12)
- (a) Should Fundamental Rights and Directive Principles be balanced?  
(b) Can the balance be tilted in favour of the public good?  
(c) Can the balance be overturned by completely overriding individual liberty?  
(d) Is this balance an essential feature of the Constitution?
- Q.3 Is the power of judicial review that feature of a federal Constitution which, more than any other, is the most basic and fundamental to the maintenance of democracy and the rule of law? Analyse and compare the power of judicial review provided under the Constitutions of India and the United States of America. What is the scope of judicial review under the British Constitution? Support your answer with the help of relevant case laws.
- (12)

- Q.4 Ivo D. Duchacek in his book 'Comparative Federalism' suggested ten yardsticks to identify the federal character of a Constitution. Identify the yardsticks related to Amendment, Judiciary, Judicial Authority, Distribution of Powers and Representation of States in Parliament. Analyse those yardsticks with the Constitutions of India, America, Canada and Germany. (12)
- Q.5 Explain the facts, arguments of Plaintiff and Defendant, and the Reasoning for the Decision in State of West Bengal v. Union of India, AIR 1963 SC 1241. Analyse the Supreme Court decisions subsequent to this judgement and elucidate the present position. Whether H.M. Seervai was Correct in criticising this judgement? (12)
- Q.6 (a) State of Aryasthan is a State in the Union of India, Aryasthan Legislature passed Aryasthan Transport Act. Section 6 of the Act provides that the general superintendence, direction and management of the affairs and business of the Corporation established under this Act shall vest in the Board of Directors, which, with the assistance of its committees and 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 not more than seventeen as the Government may think fit to appoint. Under the provisions of this Act, Aryasthan Transport Corporation (ATC) has been established. The Corporation – ATC, is doing the transport business throughout the State along with private bus operators. Several bus operators applied for renewal of their stage carriage permits to the Aryasthan State Transport Authority (ASTA) an authority established under Section 44 of the Motor Vehicles Act. ATC also filed applications on each one of these routes for grant of permits. While the applications filed by private bus operators and ATC were pending before ASTA, some private bus operators approached High Court seeking a prohibition against Chairman of ASTA on the ground that he being a member of the Board of Directors of the ATC, was disqualified in law to function either as a member of ATC or as chairman of ASTA. ASTA opposed the petition.  
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 the dispute in this Petition.
- (b) A Public Corporation advertised for the post of Managing Director. One of the applicants was the son-in-law of 'Mr. X', a member of selection committee. (03)

However, even though he sat on the committee to decide the merits of other applicants, when his son-in-law's application came for consideration, 'Mr. X' withdrew from the committee; the committee selected 'Mr. X's son-in-law for the post. Examine the validity of selection.

- (c) The Municipality issued a notice to the house owner stating that it was going to tax the house for a rate Rupees 2500 per year, and also stated that if the owner consented to it, he need not attend before 'Assessment Committee'. The house owner did not attend before the committee. Later Municipality enhanced the tax to Rupees 4500 without giving notice. House owner seek a legal remedy. Provide Legal Advice. (04)

**Part-B**  
**(Compulsory)**

- Q.7 (a) Short Note on: 'Judicial overreach'. (05)
- (b) "Parliament's power to alter the boundaries of States without their consent is a breach of the federal principle, but in fact it is not Parliament which has, on its own, altered the boundaries of States. By extra constitutional agitation, the States have forced Parliament to alter the boundaries of States. In practice, therefore, the federal principle has not been violated."- Discuss this statement and analyse following questions based on constitutional Practices of US and India: Is the Federal Union constitutionally immune against dissolution by secession? Are the Component Units immune to elimination of their identity and authority in a Federation? (05)

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