

GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
 Course: **Constitutional Law II (Constitutional Bodies)**
Semester- IV (Batch: 2018-23)

End Semester Online Examination: February 2021

Date: 01st February, 2021

Duration: 8 hours

Max. Marks: 50

Instructions:

- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.
- Approx. Word Limit: 10 Marks-700 words, 7 Marks-500 words, 5 Marks-350 words, 3 Marks-200 words, 2 Marks- 100 words.

- | | | Marks |
|-----|--|---------------------------------|
| Q.1 | <p>31st August 2015 was a bad day for the people of the State, when its Chief Minister Shri Yogeshwar Dayal was assassinated in the porch of the Civil Secretariat, known to be the most secure place. As per prosecution, Shri Yogeshwar Dayal was assassinated pursuant to a deep rooted criminal conspiracy masterminded by ABC International Group, an International Terrorist Organisation as it is perceived that Shri Yogeshwar Dayal has usurped the power after the election in the Country and is responsible for the indiscriminate atrocities against the particular class of people. It was under these circumstances Joginder Singh was put on trial for this assassination being part and parcel of the well laid and deep rooted conspiracy for commission of the offences under section 302, 307 read with section 120-B of IPC and under section 3,4, and 5 of the Explosive Substance Act.</p> <p>On 22 Jan 2019, Joginder was convicted and sentenced to death by the Additional Sessions Judge. His appeal was dismissed by the High Court and his subsequent appeal by special leave to the Supreme Court was dismissed on 3rd August 2019. A review petition filed thereafter was also dismissed on 7 September 2019 and later a writ petition was also dismissed by the Supreme Court. On 14 October 2019, Joginder Singh presented a mercy petition to the President of India for the grant of pardon. In the mercy petition, he claimed that he was innocent, and the verdict of the Courts that he is guilty was erroneous. The petition also included a prayer that Joginder Singh representatives may be allowed to see the President in person in order to explain the case concerning him. Both his prayers were rejected by the President's office. On 24 November 2020, he was informed about the rejection of his mercy petition by the President. On 2nd January 2021, he filed a petition before the Supreme Court for grant of stay on the execution of his death sentence. During the preliminary hearing, the Supreme Court taking into consideration the seriousness of the controversy as well as the prayer for laying down the guidelines, decided to entertain the writ petition and stayed the execution of Joginder Singh.</p> <p>On the basis of the arguments of petitioner and respondent, the Supreme Court has framed the following issues:</p> | <p>(2+3+
3+5+7
=20)</p> |

- a) Whether the petitioner is entitled for an oral hearing from the President on his petition invoking the powers under Art. 72? (2 Marks)
- b) Can the President scrutinize the evidence on record of the criminal case and come to a different conclusion? (3 Marks)
- c) Can the guidelines be laid down by the Court to reduce the harassment of death row convicts? (3 Marks)
- d) Whether the power of the President to grant pardon is subject to judicial review? (5 Marks)
- e) What is the scope of the President's discretion while deciding the mercy petition? Does he act as a 'rubber stamp' while deciding the mercy petition? (7 Marks)

Assuming yourself as an amicus curiae, advice the Supreme Court on the above issues citing appropriate authorities/ case laws.

- Q.2 Anti-defection law was inserted in the Constitution to curb the practice of defection or horse trading. The said law "has ceased to be the antidote to the malaise for which it was designed." However the supreme court of India from time to time, has attempted to cure the defects of anti-defection Law. Evaluate the role of the judiciary in strengthening and making the anti-defection law more effective. (10)
- Q.3 Explain the procedure laid down in the Indian Constitution for the impeachment of the President? Compare the same with the US Constitution. (10)
- Q.4 The collegium system has its genesis in a series of judgments called "Judges Cases". The collegium came into being through interpretations of pertinent constitutional provisions by the Supreme Court. In October 2014, the Supreme Court of India in SCAORA-II case held that judges' appointments shall continue to be made by the collegium system in which the CJI will have "the last word". "There is no question of accepting an alternative procedure, which does not ensure primacy of the judiciary in the matter of selection and appointment of judges to the higher judiciary," said the majority opinion. Justice J Chelameswar wrote a dissenting verdict, criticising the collegium system by holding that "proceedings of the collegium were absolutely opaque and inaccessible both to public and history, barring occasional leaks". (10)

In light of the above statement, explain the pros and cons of the collegium system.
