

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: **Constitutional Law II**
Semester- IV (Batch: 2021-26)

End Semester Examination: May 2023

Date: 02nd May, 2023

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- Do not write anything on the question paper.
- 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.
- Cite relevant case laws where ever required
- No Bare Act is permitted during examination

Answer **any five** of the following.

- | | | Marks |
|-----|---|----------------------|
| Q.1 | Some members of the Nagaland Legislative Assembly were disqualified by the Speaker of the Assembly under the Tenth Schedule to the Constitution of India, as inserted by the Constitution (Fifty-Second Amendment) Act, 1985, on the ground of defection. They challenged the order of the Speaker before the High Court of the State. Several other similar orders of the Speakers of the Legislative Assemblies of Manipur, Meghalaya, Madhya Pradesh, Gujarat and Goa were also under challenge before the various High Courts. The Supreme Court of India transferred all those matters to it and decided them in the present case. | (3+3+
2+2=
10) |

The petitioners had challenged the constitutional validity of the Tenth Schedule to the Constitution on several grounds. In particular, para 7 of the Tenth Schedule was challenged on the ground that that para had taken away the jurisdiction of all Courts, including the Supreme Court, to review the order of the Speaker under that Schedule. In this case, multiple petitions were heard together. So, the tenth schedule was inserted by the Constitution (Fifty-Second Amendment) Act, 1985. The combined petition aimed to challenge the Constitutional validity of the Tenth Schedule introduced by the Constitution (Fifty-Second Amendment) Act, 1985. These cases were brought amongst a batch of Writ Petitions, Transfer Petitions, Civil Appeals, Special Leave Petitions and other similar and connected matters raising common questions that were heard together. Four Articles of the Constitution were altered by the Constitution (Fifty-second Amendment) Act. These Articles are 101(3) (a), 102(2), 190(3)(a) and 191(2). Also, the Tenth Schedule was added. This Amendment is usually mentioned because of the Anti-Defection Law.

In view of the above stated facts, answer the followings:

- a) Discuss whether the Tenth Schedule to the Constitution seeking to penalize and disqualify elected representatives is violative of the fundamental principles of Parliamentary democracy?
- b) Discuss whether the Paragraph 7 of the Tenth Schedule barring judicial review affects the Articles 136, 226 and 227 of the Constitution, and thus, is required to be ratified as envisaged by the proviso to Article 368(2)?

- c) Elucidate in detail whether Paragraph 6(1) in imparting a constitutional 'finality' to the decisions of Chairmen/Speakers, and paragraph 6(2) in the event of attracting immunity under Article 122.
- d) Discuss the efficacy of Anti Defection Law in the light of mass defection incidences in India.

Q.2 The Petitioner was the Chief Minister of Karnataka between 13th August 1988 - 21st April 1989. The largest governing party in Karnataka's State Legislature, Janta Dal, was led by the petitioner in this case. With the addition of thirteen members, the party was doing well, however when K.R. Molakey and other legislators felt paralyzed in the party, prompting them to write a letter to the Governor requesting that they withdraw their support. This letter was then handed to the President by Governor Peketanti Venkatasubbaiah, stating the conflict between the parties and the large quarrel among the legislators. The Governor then proposed the President's rule under Article 356, citing the lack of decorum of the Government not to be ruled by a Minister, including the Council of Ministers. Two days later, seven of the nineteen legislators wrote a letter to the Governor confirming their support for the chief minister, despite receiving those letters, the Governor refused to enable the petitioner to prove his party's majority in the assembly, further denying a floor test to the government. In April of 1989, the President declared the merits specified by the Governor, which were confirmed by the Parliament under Article 356(3). Petitioner had originally challenged the constitutionality of the proclamation in the High Court; the court then dismissed his writ petition, which further prompted him to seek relief from the Supreme Court.

(3+3+
2+2=
10)

In view of the above stated facts, answer the followings:

- a) Whether Judicial Review and Article 13 of the Indian Constitution lie in the scope of the Presidential proclamation stated under Article 356 of the Indian Constitution.
- b) The extent of Presidential powers stated under Article 356(1) and the scope of judicial review in respect of the case.
- c) What does the phrase "*A situation has arisen in which the government of the state cannot be carried on as per the provisions of this Constitution*" mean, as stated under Article 356(1)?
- d) Whether the provision of Article 74(2) of the Constitution permits withholding of the reasons and material forming the basis for the ministerial advice tendered to the President?

Q.3 The present disputes arose between Mrs. Indira Gandhi, the then Prime Minister, and Mr. Morarji Desai in 1969 and 1970. Mrs. Indira Gandhi advised the President to dissolve the Lok Sabha and requested to continue her (Mrs. Indira Gandhi) as the Prime Minister. After this petitioner U.N. Rao, an advocate of Madras by Writ of Quo Warranto prayed before Madras High Court for a declaration that the Prime Minister had no constitutional authority to hold office and to function as Prime Minister. Madras High Court dismissed his petition. Then he appeared before the Supreme Court challenging Mrs. Indira Gandhi's continuance as the Prime Minister after the dissolution of the Lok Sabha.

(3+3+
2+2=
10)

The Supreme Court rejected the argument of the petitioner and upheld the convention and concept of collective responsibility. It further clarified the position of 74(1) i.e., the

role of Council of Minister with the Prime Minister. The Supreme Court further said that in the context the word "shall" should not be read as "may". So is Article 74 (1).

In view of the above stated facts, answer the followings:

- a) What is the principle of Responsible Government?
- b) Can the Council of Ministers continue to function after the dissolution of the Legislature or the resignation of a Council of Ministers?
- c) Is it essential to have a Council of Ministers under Art. 74 (1) even at a time when the House of people has been dissolved or its term has expired?
- d) Can the President rule the Government with the help of an advisor during the dissolution of the Lok Sabha?

- Q.4 On 14th October, 1988 petitioner's son presented a petition to the President of India for the grant of pardon to the petitioner under Article 72 of the Constitution on the ground that the evidence on record of the criminal case established that the petitioner was innocent and the verdict of the courts that the petitioner was guilty, was erroneous. In the petition, he also urged that it was a fit case of clemency and prayed that the petitioner's representative may be allowed to see the President in person in order to explain the case concerning him. His request for hearing was not accepted on the ground that it was not in accordance with "the well-established practice in respect of consideration of mercy petitions". Thereafter, in response to a further letter written by counsel for petitioner to the President of India refuting the existence of any practice not to accord a hearing on a petition under Article 72, the Secretary to the President wrote to counsel that the President is of the opinion that he cannot go into the merits of a case finally decided by the highest Court of the land and that the petition for grant of pardon on behalf of petitioner will be dealt with in accordance with the provisions of the Constitution of India. The President of India thereafter rejected the said petition. Hence, these Writ petitions and the Special Leave Petition filed before the Hon'ble Supreme Court of India. (3+3+2+2=10)

In view of the above stated facts, answer the followings:

- a) Does the president exercise any personal discretion in the matter or does he act merely as a Constitutional head?
- b) Should he give a personal hearing to the convicted or his lawyer before disposing off the matter?
- c) Is the power to pardon subject to any norms e.g., Art.14?
- d) Is the exercise of this Power subject to any judicial review?

- Q.5 The present case was initiated through a petition filed before the Supreme Court of India by a retired judge of the Karnataka High Court in relation to the Aadhaar Project, which was spearheaded by the Unique Identification Authority of India (UIDAI). The Aadhaar number was a 12-digit identification number issued by the UIDAI to the residents of India. The Aadhaar project was linked with several welfare schemes, with a view to streamline the process of service delivery and remove false beneficiaries. The petition filed by the petitioner was a case which sought to challenge the constitutional validity of the Aadhaar card scheme. Over time, other petitions challenging different aspects of Aadhaar were also referred to the Supreme Court. Furthermore, the issue of whether the certificate of the Speaker certifying the Bill as a Money Bill (as per Sec.7 of Aadhaar Act) was challenged before the Hon'ble Supreme Court. (3+3+2+2=10)

The Supreme Court opined that the Art.110 was an exception to the Parliamentary Democracy that a Bill must be passed by both the Houses of Parliament. Section 7 of the Aadhaar is constitutional. The provision does not deserve to be struck down on account of denial in some cases of right to claim on account of failure of authentication. The State while enlivening the right to food, right to shelter etc. envisaged under Article 21 cannot encroach upon the right of privacy of beneficiaries nor former can be given precedence over the latter.

In view of the above stated facts, answer the followings:

- a) Discuss whether the Aadhaar Act, 2016 has been rightly passed as Money Bill.?
- b) Whether the decision of the Speaker certifying the Aadhaar Bill, 2016 as Money Bill is immune from Judicial Review?
- c) Discuss in detail the essential element and special procedure in respect of Money Bill
- d) *All Money Bills are Financial Bills, all Financial Bills are not Money Bills, Justify.*

Q.6 Write a short note on **any two** of the followings:

(5x2=
10)

- a) Attorney-General of India
- b) Consolidated Fund of India
- c) System of Proportional Representation and Single Transferable Vote
