

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: **Comparative Public Law/Systems of Governance**
LL.M. Semester-I (Batch: 2014-15)



LL.M. End Term Examination: November-2014

Date: 11th November, 2014

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 any thing 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.**

PART-A

Marks

Answer ***any five*** of the following

- Q.1 'The principles which we believe should continue to underpin the judicial appointments process are judicial independence, appointment on merit, accountability and the promotion of diversity. The achievement of the correct balance between these principles is vital in maintaining public confidence in the judiciary and the legal system as a whole.' (12)
- In the light of the foregoing observation, discuss as to why the principle of judicial independence and accountability is recognised as an essential feature of constitutional democracies around the world. Also, referring to the judicial appointments commission of the United Kingdom, critically examine the provisions of the National Judicial Appointments Commission Bill 2014 recently passed by Parliament of India.
- Q.2 What relationship between 'Fundamental Rights and Directive Principles of State Policy' was envisaged by the framers of the Indian Constitution? Also delineate how the higher Judiciary over the years has demolished the wall between these two immediate neighbours and has built a bridge between them so that the concepts in the Preamble can now ply to and fro without any conservative hindrance. (12)
- Q.3 'When the idea of the rule of law is interpreted as a principle of constitutionalism, it assumes a division of governmental powers or functions that inhibits the exercise of arbitrary state power. It envisages a fundamental separation of powers between legislator or lawmaker, on the one hand, and those who 'execute' or administer the laws, on the other. The rule of law also assumes the generality of law: the individual's protection from arbitrary power consists in the fact that his personal dealings with the state are regulated by general rules, binding on private citizen and public official alike.' (12)

Against the backdrop of experiences in Britain, the United States, Australia and India, explain the concept of the rule of law as an ideal of constitutionalism, and discuss the general principles of public law set in the broader perspective of legal philosophy.

- Q.4 'Though the normal rule is that a person who is affected by administrative action is entitled to claim natural justice, the requirement may be excluded under certain exceptional circumstances. Each of the rules of natural justice yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal strait-jacket. They are not immutable but flexible. There are exceptional situations which demand exclusion of the principles of natural justice'.

Discuss the foregoing statement with case laws.

- Q.5 Mr. Rajeev was appointed as a youth coordinator in the Institute of Youth Development (IYD), an autonomous body operating under the Department of Youth Affairs and Sports, Ministry of Human Resource Development, Government of India. It is a State within the meaning of Article 12 of the Constitution of India. His appointment was with the terms that of one year probation which may be extended if considered necessary and IYD will be at liberty to terminate the services without any notice and without assigning any reasons whatsoever, during the probation period. He allegedly withdrew some amount from the Government fund and deposited in his personal account. In this regard, an enquiry was conducted without his knowledge and on the basis of that his service was terminated by the Registrar of IYD, who happened to be the complainant against Mr. Rajeev. Against this decision Mr. Rajeev filed an appeal before the Director of IYD for reconsideration of his case. Director rejected appeal without stating any reason. Mr. Rajeev filed petition before the Court and the same was disposed by the court directing to consider his representation. But the said representation was again considered by the authorities and rejected it by citing the fact that charges against Mr. Rajeev were proved prima facie and the same charges were also admitted by him. Against this decision appeal has been filed before the Court. Decide the Appeal.
- Q.6 'The point which is important to be noted is that principles of federalism, secularism, reasonableness and socialism etc. which are beyond the words of a particular provision. They are systematic and structural principles underlying and connecting various provisions of the Constitution. They give coherence to the Constitution. They make the Constitution an organic whole. They are part of constitutional law even if they are not expressly stated in the form of rules.'

Based on this statement explain federalism by identifying the yardsticks proposed by Ivo D. Duchacek on Judiciary, Judicial Authority, distribution of Powers and Amendment and Compare these features with the Constitutions of India, United States of America, Canada, and South Africa.

PART-B

Answer all the questions

(2x5
=10)

- Q.7 Discuss the aspects of procedural and substantive judicial review under the public law of India, the United States of America and the United Kingdom. Support your answer with the help of relevant case laws.
- Q.8 Analyse following questions on the basis of Constitutions of India and USA:

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?
