

GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
 Course: **Comparative Public Law/Systems of Governance**
Semester-I (Batch: 2015-16)

LL.M. End Semester Examination: Oct-Nov. 2015

Date: 30th October, 2015

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 or not allowed.**

- | | Part-A
(Answer any five questions) | Marks |
|-----|--|--------------|
| Q.1 | <p>‘Rule of law is the antithesis of arbitrariness ... Rule of law is now the accepted norm of all civilised societies. Even if there have been deviations from the rule of law, such deviations have been covert and disguised for no government in a civilized country is prepared to accept the ignominy of governing without the rule of law. ... [E]verywhere it is identified with the liberty of the individual. It seeks to maintain a balance between the opposing notions of individual liberty and public order. In every State the problem arises of reconciling human rights with the requirements of public interest. Such harmonising can only be attained by the existence of independent courts which can hold the balance between citizen and State and compel Governments to conform to the law.’</p> <p>Elucidating the concept of the rule of law as principle of constitutionalism, discuss the general principles of public law set in the broader perspective of legal philosophy.</p> | (12) |
| Q.2 | <p>‘For a democracy to function smoothly, the three pillars — legislature, executive and judiciary — need to be strong in their own inherent strength. Maintenance of a critical balance among the three helps strengthen democratic values. But given the natural instinct to encroach on others’ territory, there is bound to be periodic friction among the three. This always sharpens the vibrancy of a democracy.’</p> <p>In the light of the foregoing observation, critically analyse the recent Supreme Court judgment — <i>Supreme Court Advocates-on-Record Association v Union of India</i> — wherein the Supreme Court declared the Constitution (99th Amendment) Act 2014 and the National Judicial Appointments Commission Act (NJAC Act) unconstitutional on the ground that, they violated of the basic structure of the Constitution of India. Did the NJAC Act really strike on the independence of the judiciary? Or, is the SC ruling a setback to the Parliamentary Sovereignty?</p> | (12) |
| Q.3 | <p>Do you agree that the demarcating line between sovereign and non-sovereign powers, for which no rational basis survives, has largely disappeared, and therefore, barring the primary and inalienable functions of a constitutional government, the State cannot claim</p> | (12) |

any immunity? Discuss in view of the Federal Tort Claims Act 1946 (USA) and the Crown Proceedings Act 1947 (UK). Is the Indian position, in this context, in consonance with the modern social-welfare thinking of progressive societies? Answer with the help of leading judicial pronouncements.

Q.4 This Public Interest Litigation has been filed for the following reliefs: (12)

This Hon'ble 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 not to ascertain the views from the State Legislature pertaining to the 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 Andhra Pradesh and formation of new State of Telangana 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 Andhra Pradesh; (3) issue direction to the effect that as long as Article 371-D 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 A.P., and forming proposed new State of Telangana (4) also declare that restraining the present H.E. 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 Andhra Pradesh and forming new State of Telangana and (5) restraining all the non-official respondents from conducting any agitations, strikes, bundhs etc., either for bifurcation of State of Andhra Pradesh or opposing the same and pass such other order or orders as it deems fit and proper.

This petition was rejected by Andhra Pradesh High Court in P.V. Krishnaiah v. Union of India, rep. by its Cabinet Secretary and Ors, AIR 2014 AP 13. Territory and its significance has been considered as an important criteria in determining federal character of the Constitution. In this respect, write a comparative analysis of this judgment and also compare the status of States in Federal Law making with constitutions of US, Canada, Germany, South Africa and Switzerland.

Q.5 Mr. Dinesh Raj, Principal of Dr. Raja Ram (Co- education) Higher Secondary School, at Gujarat, was placed under suspension and a charge-sheet containing 12 charges issued against him. Charge No. 12 accused him of use of an unaccounted sum of Rs. 25,129/-, given to him by Mr. Vivek Nath, teacher-in-charge of amalgamated fund. The enquiry committee constituted, comprised of 3 members, of which Mr. Vivek Nath was a member. Enquiry Committee issued a brief notice asking Mr. Dinesh Raj to be present before the Committee on 10 September, 2015. Mr. Vivek Nath deposed as a witness for (12)

the administration in support of charge no. 12. Mr. Dinesh Raj's objection to the inclusion of Mr. Vivek Nath on the enquiry committee was overruled, and he was found guilty of some of the charges including charge no. 12 and Director, Public Education, proposed to dismiss him from service. Mr. Dinesh Raj's application for inspection of documents to enable him to make his representation before the Commissioner, Education Department, the confirming authority under S.3(2) of the Gujarat Aided Schools (Security of Service) Act, was rejected by the Director, and the Commissioner. Mr. Dinesh Raj is seeking a legal advice, advice him by using Indian, US and UK legal positions.

- Q.6 Structure of Judiciary and Judicial Authority are considered as important criteria in determining federal character of the Constitution. But traditional authors provided importance to rigidity of the constitution and distribution of powers as important principles of federalism. Explain these features of federation in the context of Constitutions of India, United States of America, Canada and Germany. (12)

Part-B
(Compulsory)

- Q.7 The fundamental rights are not an end in themselves, but are the means to an end specified in the Directive Principles of State Policy. Explicate the statement. (05)
- Q.8 (a) "We must have a clear conception of the doctrine (of absolute necessity). It is well established that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety...It is often invoked in cases of bias where there is no other authority to judge or decide the issue"- Explain this statement of Chief Justice Ahmadi. (3+2=05)
- (b) The Gujarat Public Service Commission (GPSC) conducted examination for the post of Administrative officer. GPSC found Ms. Noothan Thara guilty of writing her roll number in not only in front page of the answer books, in the space provided for it, but even at other places despite of the instructions issued by the Commission which was mentioned in the Answer book also. The GPSC debarred her from the examination. Ms. Noothan Thara challenged the order before the High Court. Decide the Petition.
