

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Comparative Public Law / Systems of Governance
Semester- I (Batch: 2024-25)

End Semester Examination: October 2024 (LL M)

Date: 19th Oct, 2024

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 reasons, if any.
- Word Limit: Word limit for each question: 700 words.
- Bare Act is not allowed.
- Word Limit: 700 words for each question.

Answer any five questions.

Marks

Q.1 (10)

'The most common critique of the transformative interpretation model is that there is no common form of a transformative interpretation. Since transformative interpretation is based on a judge's understanding of the constitutional values, it is argued that how the judge understands the constitutional value may vary thereby creating an uncertainty, for example every judge may read that equality is a significant constitutional value, they may disagree on the facts and conceptions of equality. This critique is answered if we arrive at a consensus on the approach to identifying constitutional values. Therefore in my opinion the values espoused by the Constitution must be identified not upon the reading of a single provision, but upon reading the constitution as a whole and upon the understanding of the social and political context in which the document was adopted.'

— *Chief Justice of India Dr DY Chandrachud in his recent lecture at Cambridge University, speaking on his idea of 'transformative constitutionalism' and the role of Indian Courts in bolstering a democratic space for discussing diverse views* (June 2024).

Taking into consideration the afore-stated observation, explicate how the Supreme Court of India, through its recent judgments, has contributed to the progression of transformative constitutionalism, according to changing societal expectations.

Q.2 (10)

'... Article 299 only lays down the formality that is necessary to bind the government with contractual liability. It is important to note that Article 299 does not lay down the substantial law relating to the contractual liability of the Government, which is to be found in the general laws of the land. It is for this reason that, even though a contract may be formally valid under Article 299, it may nevertheless fail to bind the Government if it is void or unenforceable under the general provisions of law.'

— *M/s Glaxo Asia-Pacific Ltd v Union of India* (2023 SCC OnLine SC 664.)

In view of the foregoing observation, discuss whether a contract, entered into in the name of the President of India, immunises the Government from any contractual liability arising under such a contract. In this context, compare the legal position in India with the law in the United Kingdom.

Q.3 The judicial contribution to the synthesis and the integration of the fundamental rights and the directive principles of state policy in the process of 'constitutionalising' social and economic rights has been crucial to the realisation of the directive principles not only as a means to effectuate fundamental rights, but also as a source of laws for a welfare state. Do you agree that the increasing recognition of social and economic rights in the international arena and their incorporation in the national constitutions has even weakened the notion that the kind of rights that are incorporated in the directive principles are not fit for judicial enforcement? Substantiate your answer with relevant judicial pronouncements. (10)

Q.4 Tasmania is a province in the Federation of Australia. The legislature of Tasmania passed a law known as Tasmania Taxpayer Protection Act, 2019. The Act prohibited for introduction of a Bill to impose a new tax without first holding a referendum on the proposal and obtaining the approval of the voters. This legislation is similar to the legislation passed by the Parliament of Australia known as the Australia Taxpayer Protection Act, 2018. However, a new Government that was elected in the State of Tasmania passed new legislation, The Tasmania Health Tax Act, 2020, and the said legislation was made without a prior referendum. The State Legislature of Tasmania subsequently made a change to the Tasmania Taxpayer Protection Act, 2019, and made The Tasmania Health Tax Act 2020 an exception to the said Act. This conflict between the State Laws with the Parliamentary Law was challenged before the High Court of Australia. (10)

On the basis of the above mentioned disputes, explain the exercise of judicial powers and distribution of powers in the Constitutions of the United States of America, Canada, Germany, and Australia.

Q.5 The Federal Legislature of Canada by exercising its powers under the Constitution of Canada passed a legislation known as, the Federal Bank Act under the Federal Legislative List Section 91 (15) which provides for 'Banking' as the subject matter of legislation of Parliament. Whereas Section 92 (13) includes the power of provincial Legislatures to legislate on 'Insurance' and Section 92 (2) provides for the power of 'direct taxation'. Provinces of Canada, Alberta, British Columbia, Manitoba, New Brunswick, Northwest Territories, and Nova Scotia passed laws in their provincial Legislatures providing for imposing taxation of the Banks and Insurance companies as established by the Federal Government. The disputes about taxation and banking are presented before the Supreme Court of Canada. While the disputes are pending before the Supreme Court of Canada, the Canadian Parliament passed a Constitutional Amendment transferring the power of 'direct taxation' from provincial Legislative power to federal Legislative power. (10)

Based on the dispute mentioned above, explain the comparative Constitutional features of federalism in the context of the power of Amendment in the Constitutions of the United States of America, India, Australia, Canada, and Germany along with an analysis of the dispute.

Q.6 The Supreme Court of Canada prohibited Quebec from seceding unilaterally in the seminal *Re Quebec Secession* case (*Re Secession of Quebec*, [1998] 2 SCR 217). The case concerned a reference to the Constitutionality of the 1995 Quebec referendum in which the question as to whether the people of Quebec would prefer sovereignty with an optional partnership with Canada or not, was answered negatively by the people. In (10)

addition to the questions regarding the primacy in municipal law versus international law on territory and secession, the principal legal issue before the Court was whether under the Constitution, can the Canadian National Assembly or even the government or legislature of the State claim the right to secession unilaterally. The Court held that the same was impermissible except when a Constitutional Amendment could be passed to allow the same. The Court identified four basic principles that secession had to meet: the rule of law, democracy, federalism, and the protection of minorities. In pursuance of this decision, the federal government later came up with the Clarity Act of 2000 detailing the procedure for a referendum in the future.

Discuss this statement and analyse the following questions based on Constitutional Principles of the United States of America, Germany, Australia, South Africa, and India: Is the Federal Union Constitutionally immune against dissolution by secession? Are the Component Units immune to the elimination of their identity and authority in a Federation? Explain.
