

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: **Constitutional Bodies**
Semester-II (Batch: 2015-16)

LL.M. End Semester Examination: May-2016

Date: 11th May, 2016

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

Q.1 is compulsory. Attempt any three questions from Q.2 to Q.6.

- Q.1 “Ordinances were intended only for emergency circumstances, and relaxing that constraint may encourage Governments to resort to them when faced with ‘inconvenient legislation’. Apart from being inherently undemocratic....the house carries a sense of being ignored and the central secretariat perhaps gets into the habit of slackness, neither of which was conducive to the development of the best parliamentary traditions....if ordinances were not limited by convention only to extreme and very urgent cases, the result may be that, in future, the government may go on issuing ordinances giving the Lok Sabha no option, but to rubber stamp.” (14)

In the light of the said statement, do you agree that after more than sixty years, ordinances are neither exceptional nor limited; they are somewhat ‘parallel’ method in India’s parliamentary system.

Evaluate the role of the judiciary in making the ordinance parallel to legislative power and place your arguments justifying the need of widening the scope of judicial review with respect to Ordinance making power of the President.

- Q.2 Discuss the evaluation of the inter-relationship between the doctrine of separation of powers and the theory of checks and balances. Elaborate the relevance of above said concepts, in present day context with the help of constitutional provisions and Supreme Court judgements. (12)

- Q.3 In order to ensure free, fair and impartial elections, the Constitution establishes the election commission, a body autonomous in character and insulated from political pressures or executive influence. Care has been taken to ensure that the commission functions as an independent agency free from external pressures from the party in power, or the executive of the day. (12)

Do you agree that the election commission of India is an independent and autonomous body, insulated from political pressures and executive influence? Suggest at least five measures to make Election Commission of India more efficient and independent autonomous body?

- Q.4 “Exercise of Executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty. It is vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty. This discretion, therefore, has to be exercised on public consideration alone. The President and the Governor are the sole judges of the sufficiency of facts and of the appropriating of granting the pardons and reprieves. However, this power is an enumerated power in the Constitution and its limitations, if any, must be found in the Constitution itself. Analyse this statement in the context of judicial powers of the President of India. (12)
- Q.5 “Impeachment proceedings could not be taken up in the Lok Sabha against Justice Soumitra Sen after the Rajya Sabha passed a resolution for his removal. Similarly the former Chief Justice of the Karnataka and Sikkim High Courts, P. D. Dinakaran, resigned when a Committee of Inquiry constituted by the Chairman of the Rajya Sabha under the Judges Inquiry Act was in the midst of examining the charges of corruption against him. Justice V. Ramaswamy impeachment motion failed due to lack of requisite majority in the Lok Sabha. All the three judges thus escaped scrutiny of their conduct by Parliament and their likely removal by the President.” In the light of the said statement, critically examine the procedure to remove the Judges of the Supreme Court. Do you think that the present procedure is adequate enough to remove the errant judges? Suggest the changes, if any, to make the procedure more effective and adequate. (12)
- Q.6 Briefly discuss the following cases: (12)
- Election Commission v. Saka Venkata Rao, AIR 1953 SC 210
 - Krishana KumarSingh v. State of Bihar, (1998) 5 SCC 643

Part-B

(1x12
=12)

- Q.7 Ms. J. Jayalalitha was elected to the Legislative Assembly of Tamil Nadu on AIADMK ticket in the General Elections held in June 1991 and being elected as the leader of the party, she was sworn-in as the Chief Minister of the State. On 2.10.1992, Dr. Subramanian Swamy preferred a petition to the State Governor under Article 192 of the Constitution of India alleging that the Chief Minister had incurred a disqualification of being a member of the Legislative Assembly of the State, in that she being a partner in the partnership firm run in the name and style of Messrs. Jaya Publications and had entered into a contract with the State Government and which contract was subsisting on the date of the petition, in view of sub-clause (e) of clause (1) of Article 191 of the Constitution read with Section 9A of the Representation of the People Act, 1951.

Since the Governor did not forward the petition to the Election Commission, but kept the representation pending for nearly four months without taking any action thereon. Dr. Swamy moved a writ petition against the Governor for a direction that he forthwith forward the same to the Election Commission as required by Article 192 (2) of the Constitution for its opinion. While the said writ petition was pending in the High Court, the Governor forwarded the petition to the Election Commission on 27.3.1993 for its opinion. Had the Governor waited for some time more, the Court would have had occasion to decide the question about the Governor's actual role in the matter.

The Supreme Court ruled in the instant case, that the Election Commission acts in a *quasi-judicial* capacity while adjudicating upon the disqualification of a sitting member of a House of State Legislature or Parliament. This means that the Election Commission has to follow the principles of natural justice. One of these principles is the rule against bias. Therefore, if one of the members is disqualified because of the rule against bias, he

should not participate in the decision of the Commission.

The Chief Election Commissioner, Seshan, was held to be disqualified to participate in the decision because Swamy's wife, a lawyer, was engaged as counsel in a case filed by Seshan. The Supreme Court therefore ruled that the Chief Election Commissioner should call a meeting of the Commission and then recuse himself from participating in the decision, leaving the two other members, to decide the case. If the two Commissioners reach a unanimous verdict, that will be the decision of the Commission to be communicated to the State Governor. However, if the two members fail to reach such a decision, then the Chief Election Commissioner will have to give his opinion on the basis of the ground of necessity. The majority decision would then be conveyed to the Governor.

Answer the following:

- (a) As regards Art. 192 [as well as Art. 103] provides that when the Governor [or the President, as the case may be] receives a representation against a member of the State Legislature [or Parliament] that he has become subject to a disqualification, is the Governor [or the President] obliged to refer the same to the Election Commission for its opinion, or the Governor [or the President, as the case may be] can exercise some discretion and scrutinize by himself, whether there is a *prima facie* case against the member or not?
- (b) What will be the effect, if the decision making power is left with the Governor [or the President, as the case may be]? Is it obligatory on the part of the Governor [or the President, as the case may be] to seek advice from the Election Commissioner, whenever a question is raised and brought to his notice about the disqualification of a sitting member of the Legislature/Parliament?
- (c) What is the effect of the Governor [or the President, as the case may be] if held, on the advice of Election Commission that a member has become subject to a disqualification? What is the effect if the Governor [or the President, as the case may be] holds that the member had not incurred disqualification?

Part-C

Answer **any two** questions

(2x4=
08)

- Q.8 What does an 'office of profit' ordinarily mean? What are the tests or principles summarized by the Supreme Court to determine whether or not a person hold an office of profit under the Government? What is the function of the Joint Committee on offices of profit?
- Q.9 Whether the clause that the President "shall act" on the advice of the Council of Ministers bind the President to dissolve the House as and when the Prime Minister requests for it? On the basis of the practice followed so far, whether dissolution will be granted automatically on the advice of the Prime Minister who has lost confidence of the House?
- Q.4 The Council of Ministers being an integral part of Parliament participate intimately in the legislative process and discharges several important functions in relation to the Parliament. This concept is underlined by making President a component part of the Parliament. In this context discuss the participation of the Executive in the legislative process.
