

**GUJARAT NATIONAL LAW UNIVERSITY
SILVASSA CAMPUS**

**Course: Comparative Public Law/ Systems of
Governance Semester- I (Batch: 2023-24)**

End Semester Examination: October 2023 (LLM)

Date: 27 October, 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 questions 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.
- Bare Act is not allowed.
- Word Limit: 10 Marks: 700 words

(Answer Any Five)

Q1) *"While everybody recognises the necessity of the diffusion of constitutional morality for the peaceful working of a democratic constitution, there are two things interconnected with it which are not, unfortunately, generally recognised. One is that the form of administration has a close connection with the form of the Constitution. The form of the administration must be appropriate to and in the same sense as the form of the Constitution. The other is that it is perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the Constitution. It follows that it is only where people are saturated with constitutional morality, such as the one described by Grote the historian, that one can take the risk of omitting from the constitution details of administration and leaving it for the legislature to prescribe them. The question is, can we presume such a diffusion of constitutional morality? Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it."*

-Speech by B. R. Ambedkar, Constituent Assembly of India, 4 November 1948, in *Constituent Assembly Debates* (Volume 7)

Discuss the above-mentioned statement with the help of the latest case laws highlighting the history, significance and irregularities in implementing constitutional morality.

Marks 10

Q2) *"Methods of amendment not declared or formally accepted by the legal system may be more effective than those that are formally announced. The nature of constitutional amendment and constitutional change, the methods by which change takes place, and the circumstances in which amendment or change is appropriate will all differ depending on the legitimacy, effectiveness, justice, history, and other contingencies of the existing Constitution and institutions of the legal system in question"*.

Do you agree with this statement? Discuss about the gap between formally recognised and informally effective methods of constitutional amendment.

Marks 10

Q3) The development of Canadian Federalism has been in striking contrast with that of the American Federalism. The United States of America, which was once regarded as the home of classical federalism, has developed strong centripetal tendencies in the course of time, and today, the functional reality does not accord with the classical federal theory. On the other hand, in Canada, the center designed to be strong has turned out to be restricted in mainly dealing with the socio-economic problems of the fast-developing economy.

Do you think these issues primarily happened due to difficulties in formally amending the Constitution? Explain the role of Judiciary in Canada and in USA in developing extensive jurisprudence in federative disputes.

Marks 10

Q4) "Non enactment of law defining the scope of tortious liability of the state has proved to be a blessing in disguise in the long run. Had such a law been enacted, the law in the area would have been circumscribed within the narrow confines of the statutory provisions of the enacted law. Absence of legislation in the area of tort law in India gave an opportunity for the full play of judicial creativity and the supreme court has thus been able to transform an archaic law concerning state tortious liability into a very liberal law favoring the citizen vis-à-vis state."

Analyse this statement with the help of judicial decisions and compare it with the development of tortious liability of the state in the United Kingdom after the enactment of the Crown Proceeding Act of 1947.

Marks 10

Q5)This Court held that the "Governor cannot decide whether the Council of Ministers has lost the confidence of the House and this has to be determined on the floor of the House. This Court approvingly referred to the Report of the five-member Committee of Governors which recommended that when a Governor is satisfied 'by whatever process or means' that the Government no longer enjoys the support of the majority, they should ask the Chief Minister to prove their majority on the floor of the Assembly." B P Jeevan Reddy, J held that loss of confidence by a government is an objective fact which has to be ascertained only on the floor of the House:

"[...] The Constitution does not create an obligation that the political party forming the ministry should necessarily have a majority in the Legislature. Minority Governments are not unknown. What is necessary is that that Government should enjoy the confidence of the House. This aspect does not appear to have been kept in mind by the Governor. Secondly and more importantly, whether the Council of Ministers has lost the confidence of the House is not a matter to be determined by the Governor or for that matter anywhere else except the floor of the House. The principle of democracy underlying our Constitution necessarily means that any such question should be decided on the floor of the House. The House is the place where the democracy is in action. It is not for the Governor to determine the said question on his own or on his own verification. This is not a matter within his subjective satisfaction. It is an objective fact capable of being established on the floor of the House. [...]"

- Subhash Desai v. Principal Secretary, Governor of Maharashtra & Ors (2022)

Explain with the help of the above-mentioned case and other relevant cases, the principle of Collective Ministerial Responsibility and the power of Governor to call for a floor test to prove the majority in the house.

Marks 10

Q6) "...If the judiciary does not exercise restraint and over-stretches its limits there is bound to be a reaction from politicians and others. The politicians will then step in and curtail the powers, or even the independence, of the judiciary..... In the name of judicial activism, judges cannot cross their limits and try to take over functions that belong to other state organs.."

- Aravali Golf Club and another v Chander Hass and another (2008)

In the above-mentioned case, are the judges arguing for a "submissive judiciary" under the garb of judicial restraint? Do you think a bold and active judiciary is a sine qua non for a healthy democracy? Explain.

Marks 10