

**GUJARAT NATIONAL LAW UNIVERSITY
SILVASSA CAMPUS**

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

End Semester Examination: Oct-Nov 2023 (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 reason, if any.

Answer any 5 of the following

Marks

- Q.1 Justice H. R. Khanna, in his 'Making of Constitution', said: "The framing of a Constitution calls for the highest statecraft. Those entrusted with it have to realise the practical needs of the government and have, at the same time, to keep in view the ideals, which have inspired the nation. They have to be men of vision, yet they cannot forget the grassroots"
- Do you think restricting the interpretation of the Constitution to an "originalist interpretation" would do injustice to both the drafters of the Constitution as well as to the Constitution itself? Discuss with the help of the latest case laws. (10)
- Q.2 The pattern of intergovernmental relations in a federal country is not static; it is dynamic, and a new balance is constantly being found in response to the centripetal and centrifugal forces operating in the country. Substantiate. (10)
- Q.3 Upendra Baxi has stated that, (10)
- "Constitution makers everywhere remain concerned with the best constitutional design, however, that 'best' consists in 'shopping' around available models and adapting to their needs and aspirations. The eventual mix is constrained by history interlaced with future-looking aspirations for social transformation."*
- Do you think, for the purpose of the study of comparative public law, it may be useful to limit oneself, at least at first, to positive law, i.e., the law as it is or has been and not as it might, should, or will be? What will be the consequence if the scope of the investigation is expanded by introducing philosophical speculations about the essence or purpose of the law in general? Discuss.
- Q.4 Elaborate on the formal and informal methods adopted by the USA and India for amending their constitutions to address new circumstances over time. (10)

Q.5 Justice Y V Chandrachud, in the Bachan Singh (1980), has said that, (10)

"The highest judicial duty is to recognise the limits on judicial power and to permit the democratic processes to deal with matters falling outside of those limits.' As Judges, we have to resist the temptation to substitute our own value choices for the will of the people....When Judges, acting individually or collectively, in their benign anxiety to do what they think is morally good for the people, take upon themselves the responsibility of setting down social norms of conduct, there is every danger, despite their effort to make a rational guess of the notions of right and wrong prevailing in the community at large and despite their intention to abide by the dictates of mere reason, that they might write their own peculiar view or personal predilection into the law, sincerely mistaking ... what they perceive to be the Community ethic."

Justice Holmes, in his dissent in Southern Pacific v. Jensen, 244 U.S. 205 (1917), has remarked:

"I recognize without hesitation that judges do and must legislate, but they can do so only interstitially; they are confined from molar to molecular motions."

Have the judges of the Supreme Court of India and the USA upheld the principle of separation of powers while embracing judicial activism? Do you think the judges have disregarded the Constitution by engaging in judicial legislation? Elaborately explain with the help of case laws.

Q.6 "Constitutionalism is the antithesis of arbitrary powers". Explain. (10)
