

GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
 Course: **Comparative Public Law / Systems of Governance**
Semester- I (Batch: 2022-23)

End Semester Examination: November 2022 (LL M)

Date: 22th Nov, 2022

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.
- Bare Act is not allowed.
- Word Limit: 10 Marks: 700 words.

(Answer Any Five)

Marks

- Q.1 'If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.'
- (10)
- *Manoj Narula v Union of India* (2014) 9 SCC 1.
- Taking into consideration the afore-stated observation, explicate how 'constitutional morality' acts as an essential check upon the high functionaries and citizens alike, in order to realise the constitutional vision.
- Q.2 'The question of judicial reforms in judicial appointments has provoked a wide ranging debate both within and outside the judiciary. Representation, merit and selection process are all key aspects in the making of a robust judiciary. Yet, often, issues like retirement age and selection of Chief Justice are overlooked in the focus of the debate on collegium system.'
- (10)
- In view of the foregoing observation and taking into consideration the appointment process followed in the USA, the UK and Germany for their apex court, what holistic suggestions would you like to offer for the reforms required in the judicial appointments system in India?
- Q.3 Should fundamental rights be interpreted in the light of the directive principles of state policy and the latter, whenever and wherever possible, be read into the former? Do you also think 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 The Federal Legislature of Canada by exercising its powers under the Constitution of Canada passed a legislation known as, the Federal Bank Act. The Federal Legislative List in Section 91 (15) provides for 'Banking' as the subject matter legislation of Parliament. Whereas Section 92 (13) provides for 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 in relation to taxation and banking are presented before the Supreme Court of Canada. While the dispute is 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 which is mentioned above, explain the comparative constitutional features of federalism in the context of power of amendment, distribution of powers and judicial powers of highest courts of the Countries of India, Australia, Canada and Germany and provide an analysis of the dispute.

- Q.5 The State of Pachimrashtra is a State in the Union of Gangasthan and the said Union has a similar legal system like that of India and has its Constitution which is similar to that of the Union of India. (10)

State of Pachimrashtra was established under the State Re-organisation Act, 2002. There were agitations in the State of Pachimrashtra for bifurcation of the State into two based on linguistic and geographical considerations. A part of the State of Pachimrashtra constituted to be the border of Gangasthan and was considered as a disputed property with its neighboring country Gathak. Gangasthan and Gathak though disputed over the said territory, there were cordial relations between both the countries. In 2017, both the countries made an agreement and accordingly, a part of Pachimrashtra was handed over to Gathak and a part of Gathak was admitted to Gangasthan.

After the agreement the Parliament of Gangasthan by exercising its power under Article 3 created a new State known as Naysthan by dividing State of Pachimrashtra and also made the admitted territory from Gathak as the part of the new state, even though the legislature of Pachimrashtra under Article 3 while presenting its views denied bifurcation of the State.

A public interest litigation has filed for before the Supreme Court of Gangasthan for the following reliefs:

The Honourable Supreme Court of Gangasthan may be pleased to issue a writ, order or direction in the nature of Mandamus or otherwise declaring the following:

- (1) That Article 3 of the Constitution of Gangasthan is violating the basic structure and preamble of the Constitution of Gangasthan and also inconsistent with other provisions of the Constitution of Gangasthan, particularly Part III of the Constitution;

(2) To declare that the Constitution (Fifth Amendment) Act, 1955, insofar as it relates to not ascertain the views from the State Legislature pertaining to 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 is concerned as violating the basic structure and preamble of the Constitution of Ganagasthan and against the democratic and federal principles envisaged in the Constitution of Ganagasthan and quash and set aside the same;

(3) To issue an order restraining the Union of Gangasthan from initiating any action in pursuance of Article 3 of the Constitution for bifurcation of State of Pachimrashtra and formation of new States without enacting any law for issuing any executive instructions, prescribing criterion, modalities and guidelines for exercising power under Article 3 of the Constitution of Gangasthan or alternatively direct the Union of Gangasthan to consider for making any legislation for issuing executive instructions, prescribing guidelines, modalities for exercising power under Article 3 of the Constitution, particularly forming new States before initiating any action under Article 3 of the Constitution for bifurcation of State of Pachimrashtra;

(4) To issue direction to the effect that as long as Article 371-D and 371- E (special status was given to State of Pachimrashtra) is in force, the Union of Ganagasthan is not having any authority or power to exercise power under Article 3 of the Constitution for bifurcation of existing State of Pachimrashtra;

(5) To declare and restrain the President of Gangasthan from exercising constitutional power available under Article 3 of the Constitution in pursuance of any recommendation made by the Union Cabinet regarding bifurcation of State of Pachimrashtra and forming new State, and

(6) To issue an order invalidating the agreement between Ganagasthan and Gathak and to declare that the handover of its territory to Gathak was unconstitutional.

In the concept of federalism alteration of boundaries of states and cession of territory has been considered as an important criteria in determining federal character of a Constitution. In this respect write a comparative analysis of the issues involved in the Public Interest Litigation by explaining Constitutional provisions of India, United States of America, South Africa, Australia and Switzerland.

- Q.6 "The twenty-first century federalism has come to be understood as a dynamic process of co-operation and shared action between the two levels of Government, with increasing interdependence and centrist trends. The antiquated concept of dual federalism is nowhere a functional reality in the modern world even in the so-called classical federal model of the USA". - Analyse this statement in the context of the Constitutions of India, United States of America and Australia. (10)
