

2016 - L. 4

**NLUA**

NATIONAL LAW UNIVERSITY, ASSAM

One Year LL.M. Degree Programme, Academic Year: 2016-2017

End Semester Examination (October, 2016)

**1.2 : COMPARATIVE PUBLIC LAW/SYSTEM OF GOVERNANCE**

Time: 3 Hrs.

Total Marks: 100

**INSTRUCTIONS:**

1. Read the questions carefully and answer.
2. No clarification shall be sought on the question paper.
3. Do not write anything on the question paper. It will be treated as malpractice.

**Answer Q. No. 1, 2 and 3 are compulsory and answer any one question from Q. No. 4 and 5 both. All questions carry equal marks.**

1. Justice Marshall in *Marbury v Madison* said, "All those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature repugnant to the constitution is void. This theory is essentially attached to a written constitution.."

The originalist approach as can be seen in the above mentioned quote has been criticized by Jeremy Waldron to be stagnating the constitutional deliberation to the ideological dogmas of the framers at the time of enactment of the constitution. If the constitution shouldn't really have a sacrosanct status in a political community, what other role do you think a written constitution can play? Discuss in the light of Waldron's critical stand against originalist approach to constitutional interpretation.

Critically examine the empowerment model of constitutionalism by distinguishing it from the "limited government" and "restrained government" model of Constitutionalism.

**10+10=20 Marks**

2. By tracing the developments in the Natural Law School examine the development of the idea of Constitutionalism in practice through evolution of political institutions. Do the terms constitution and constitutionalism signify the same meaning? Justify by citing relevant illustrations.

**10+10=20 Marks**

3. Make a critical analysis of the different reasons Brian Tamanaha puts up to justify why the definition of rule of law should not necessarily include principles of Democracy and Human Rights? Explain in detail how at the crossroads of the three interconnected themes of "government limited by law", "formal Legality" and "rule of law, not man" lies the idea of rule of law?

**8+12=20 Marks**

4. (a) By examining the relevant theories as they have historically evolved explain the different ways of Horizontal structuring power in a political community. By citing the relevant Presidential, Parliamentary and Hybrid constitutional systems examine the various relative advantages and disadvantages of each form of constitutional systems.

**5+15=20 Marks**

**OR**

- (b) Critically analyze the two different senses in which the term state has been used to refer to in a Unitary state and explain the difference between the terms "Nation" and "State". By citing relevant examples examine the different ways the in which the territories in a Unitary State can be organized.

**5+15=20 Marks**

5. (a) With the help of relevant examples explain the differences between federalism, federation and a confederation. What do you understand by the principle of subsidiarity? Explain with the help of relevant examples. How does federalism help in policy and polity stability in a diverse political community?

**5+5+10=20 Marks**

**OR**

- (b) Discuss the various models of evolution of federalism by referring to the relevant examples as has been discussed in the class. Examine the various benefits associated with the local power and central in a federation. What role can a political party play in sustaining federalism?

**5+10+5=20 Marks**

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**NATIONAL LAW UNIVERSITY, ASSAM**

One Year LL.M. Degree Programme, Academic Year: 2016-2017

**End Semester Examination (October, 2016)**

**1.3 : LAW AND JUSTICE IN A GLOBALISING WORLD**

Time: **3 Hrs.**

Total Marks: **100**

**INSTRUCTIONS:**

1. Read the questions carefully and answer.
2. No clarification shall be sought on the question paper.
3. Do not write anything on the question paper. It will be treated as malpractice.

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**Answer Q. No. 1, 2 and 3 are compulsory and answer any one question from Q. No. 4 and 5 both. All questions carry equal marks.**

1. **Principle:** AV Dicey's conception of the rule of Law required governments to be held to account in the 'ordinary law'. Although Dicey recognized that there were some laws which applied to government that did not apply to everyone else, his starting point was very modern: wherever possible the political imperative is to put government on a level playing field with the rest of us. Accordingly the state legislatures should overturn the Crown's immunity from actions. The principle further undermine, the idea that 'serve the law, the root of nation and wealth.' In the present world of modernization and globalization governments play an important role in distribution of the scarce resources and policy making. While doing the same it might not able to foresee the consequences or future requirements. The present policies might be troublesome for coming generations. In the light of the aforementioned arguments analyse the following problem:

**Issue:** In a state having rich traditional base and sound cultural outlook, government comes up with a policy, according to which persons wearing casuals and short dresses are prohibited to enter into government offices. It is the opinion of the state that said policy will protect the tradition and culture, as all government employees have to wear the traditional dresses. Further as per the one report it is found that, said policy is formulated by observing the fact of increasing sexual offences in the country. In one year of the implementation of the said policy, it is found that there is a great fall in such cases, and further state's tradition start getting appreciation in the world community. But the said order is also getting criticized by people in and out of the country. The majority of people criticizing the cause are belonging to developed, independent spectrum of the society.

Can government be held accountable for its policy, if found improper? Further as a student of Law and Justice in Globalizing World, how do you analyse the situation? Elaborate your answer with the help of the examples and justify it with application of above mentioned principle and different theories discussed in class.

2. The idea of 'morality' is very significant in regulating the human behavior. As every aspect of human life, from birth to death is governed by certain moral principles. Hence it can be stated that the term itself is very vast and subjective in its meaning. In such a situation do you think that it is possible to trace the sources of morality? Further as we

understand that the principle of morality depends upon our interpretation of the surrounding and its prevalent condition, so is it legitimate to believe the genuineness of such sources and govern our-self accordingly? Elaborate your answer with the help of relevant discussions and reading materials.

3. Legal profession is known to be a royal profession. Everyone who wants to become law graduate, tries to do it from a good, reputed law school. National Law Schools are probably one good example for that. These law schools are dominated by economically sound stratum of society, and the fact is evident from the fee structure of these schools. In these conditions it is very difficult for economically weak students to pay the huge fees, especially where they don't have any supportive measure. Further geographic location also serves as the disadvantage, as majority of students of good, reputed law schools are from metro and advanced cities of the country. Anyone belonging to these disadvantaged positions usually faces many problems (including language etc.) after their entry into the law schools. In such a situation, don't you think that it is unfair to set a common platform for competition? This unfairness is there from entry to exit level in those schools. What is your rationale to the problem? Relate and analyse your arguments with the help of Rawlsian concept of justice.
4. (a) Write a critical essay on 'Right to Freedom and Progressive Democracy'. Do you think that the practice of the majority rule is the true characteristic of a democracy? Justify your arguments with the help of the relevant theories and examples.

**OR**

(b) What is your understanding about 'Law and Justice in a Globalizing World'? How the idea of Law and Justice is relating to globalization? Write a critical essay on the theme and try to articulate the significance of the subject in the modern society.

5. (A) **Write short note on the following:**

- (i) Categorical Imperative and consequentialism, which is important according to you and why? Justify your arguments with the help of the theories.
- (ii) What is the relation between Justice and Morality? Is it always proper to follow the principle of morality while defining justice?

**OR**

(B) What is your understanding about 'individual justice'? Is it possible to define justice individually, and if so, can there be any possibility to frame a universal definition of justice? How Immanuel Kant will respond to the question? Construct your argument with the help of chapter five of the book "*Justice: What is the Right Thing to Do?*" by Michel Sandal.

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