

11 NOV 2024

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination – Nov - 2024

Semester: UG IX Semester

Subject: Constitutional Law (Hons.) – Comparative Federalism

Marks: 100

Time: Three Hours

*Instructions:*

1. All questions carry equal marks.
2. Kindly answer any five out of six questions.

Q 1) The Parliament of the Republic of Atria had enacted the "National Health and Safety Act" (NHSA), aiming to create uniform health and safety standards across the nation. The NHSA set minimum safety standards for workplace conditions, regulated the use of hazardous materials, and imposed penalties for non-compliance. One of its provisions allowed the use of certain industrial chemicals, provided companies followed federal safety guidelines.

Meanwhile, the State of Verde, a heavily industrialized region within Atria, passed its own "Verde Environmental Protection Act" (VEPA). The VEPA imposed stricter regulations on industrial safety than those laid out in the NHSA, including a complete ban on the use of specific hazardous chemicals that were permitted under the NHSA. The state government of Verde argued that stricter laws were necessary to protect the health of its residents and the environment, considering the state's unique environmental vulnerabilities and industrial practices.

A major industrial chemical company, Verde Chem Ltd., challenged the VEPA in the Supreme Court of Atria, arguing that it conflicted with the NHSA. The company contended that, while it complied with the national safety guidelines, the VEPA's stricter rules, particularly its ban on a key industrial chemical, rendered their operations impossible.

The federal government has defended the NHSA, asserting that the national law provided a comprehensive regulatory framework for workplace safety. The State of Verde countered that states had the authority to adopt stricter safety standards when necessary to protect public health and the environment, particularly in areas not fully covered by the NHSA.

You are a judge of the Supreme Court of Atria. Kindly decide with the help of relevant provisions and case laws. The Constitution of Atria is *pari materia* to that of India. Further, labour welfare and environment are matters listed in the concurrent list of the Seventh Schedule to the Constitution of Atria.

(Marks 20)



Q 2) "Necessary and proper" ranks among the most abused clauses in the U.S. Constitution. It has been dubbed the "elastic clause" because of the perception that it allows the scope of federal power to expand.

Comment with the help of relevant examples. Are there similar provisions or principles in India?

(Marks 20)

Q 3) The State of Atlantia, within the Federation of Tervonia, enacted the "Atlantia Online Safety and Regulation Act" (AOSRA) in response to growing concerns over the mental health impacts of harmful online content on its citizens, particularly minors. In legislative debates leading up to the enactment of the AOSRA, lawmakers highlighted alarming statistics showing a rise in cyberbullying incidents and mental health issues among young people linked to exposure to violent and inappropriate online material.

During these discussions, the Chief Minister of Atlantia stated, "The safety and well-being of our children are paramount. We cannot allow harmful digital content to undermine the mental health of our youth. This Act is essential to protect our community's public morals and to ensure a safer online environment for all."

The AOSRA included several provisions listed hereunder –

1. **Age-Verification Requirement:** Social media platforms were required to implement age-verification systems to prevent minors from accessing harmful content. The Act stipulated that platforms must verify the age of users before allowing access to certain types of content categorized as "adult" or "harmful."
2. **Content Removal Obligations:** The Act mandated that platforms remove flagged harmful content within 48 hours. This included content that was violent, obscene, or sexually explicit, with the intent to reduce exposure to materials that could negatively impact users' mental well-being.
3. **Mental Health Resources:** The AOSRA required digital platforms to provide links to mental health resources and support for users who reported experiencing negative impacts due to online content. This provision aimed to ensure that users, especially minors, had access to support systems.
4. **Reporting and Transparency:** Platforms were obliged to submit biannual reports to the state government detailing their content moderation practices, user data regarding flagged content, and the measures taken to protect minors. This aimed to ensure accountability and transparency in protecting public morality.
5. **Fines and Penalties:** The Act imposed significant fines for non-compliance with these provisions and established potential service suspensions for repeated violations, emphasizing the seriousness with which the state regarded the regulation of harmful online content.

A prominent social media company, Digital Sphere Inc., has challenged the constitutionality of the AOSRA in the Supreme Court of Tervonia. The company argued that the law regulated aspects of telecommunications, which fell under the exclusive authority of the federal government according to the Federal List. Digital Sphere Inc. claimed that the AOSRA's provisions on content regulation, service restrictions, and reporting obligations encroached upon matters clearly beyond the

state's authority and reserved for federal jurisdiction. The State Government of Atlantia defended the AOSRA by asserting that the law's primary focus was on public morality, public health and the protection of minors from harmful content, which were subjects falling under the state's legislative powers. You are a judge of the Supreme Court of Tervonia. Decide with the help of relevant provisions and case laws.

(Marks 20)

Q 4) Write short notes on any two of the following topics –

- a. Mediation committee in Germany.
- b. Amendment process in the Canadian Constitution.
- c. Anti – Commandeering Doctrine.

(Marks 10 x 2 = 20)

Q 5) The Federal Republic of Atovia, an ethnically diverse country with a population of over 50 million, is in the process of drafting a new federal constitution following the collapse of successive authoritarian regimes. For decades, power in Atovia had been highly centralized in the hands of military dictators and authoritarian rulers, leading to widespread disenfranchisement and oppression of its various ethnic, religious, and regional groups. The fall of the last authoritarian regime sparked a national movement demanding democratic governance, decentralization of power, and respect for regional autonomy.

Atovia has decided to adopt a parliamentary system of government, featuring a bicameral legislature at the federal level, consisting of a House of Representatives and a Senate. The House of Representatives will be based on population, while the Senate will provide equal representation to the country's constituent states. Atovia's 10 states are highly diverse, with different ethnic, linguistic, and cultural identities, and some regions are economically and politically stronger than others.

Many ethnic and regional groups in Atovia have experienced systemic discrimination and political marginalization under the previous authoritarian regimes. These groups now demand a federal structure that guarantees their political autonomy and protects their cultural identities. However, some fear that excessive regional autonomy could weaken the central government's ability to maintain national cohesion and foster economic development across the country.

Further, Atovia borders several conflict-ridden regions, and its new government will need to address concerns about national security, cross-border trade, and international diplomacy. Some argue that a strong central government is necessary to handle these matters effectively, while others believe that regional governments, particularly those located near the borders, should have the autonomy to manage local security and trade issues.

The northern and coastal regions of Atovia are more economically developed than the southern and interior states. Some argue that only a strong central government can redistribute resources and ensure equal development across the country. On the other hand, others argue that economically stronger regions should have more control over their own resources to continue their growth.

The Constitutional Drafting Committee now faces a crucial decision: Should Atovia adopt a model of dual federalism or integrated federalism in its constitution?

As a constitutional expert, the Constitutional Drafting Committee of Atovia has asked for your opinion on the design choices. Kindly submit your opinion with relevant examples.

(Marks 20)

Q 6) The Republic of Veridia, a federal country with a constitution *pari materia* to that of Canada, has recently faced a legal challenge concerning the division of powers between its federal and provincial governments. The Parliament of Veridia enacted the "Environmental Protection and Climate Responsibility Act" (EPCRA), which aims to regulate industrial activities, carbon emissions, and environmental protection across the country to combat climate change.

The EPCRA includes several key provisions:

1. National Carbon Emissions Cap: The Act imposes limits on carbon emissions for industries across Veridia, with specific reduction targets to meet the country's international obligations under agreements such as the Paris Climate Accord.
  2. Pollution Control Regulations: EPCRA sets uniform national standards for water and air quality, including limits on industrial waste disposal, across all provinces.
  3. Environmental Impact Assessments: Any major industrial or infrastructure project must undergo a federally mandated environmental impact assessment to ensure it meets the climate and environmental standards set out in the Act.
  4. Enforcement Mechanism: The federal government establishes a national regulatory body tasked with overseeing compliance and enforcing penalties, including fines and suspension of operations for companies found in violation of the Act.
- The federal government justified the EPCRA on the basis that environmental protection and climate change are issues of national concern that transcend provincial borders. In particular, Veridia is a signatory to multiple international environmental agreements, including the Paris Climate Accord and the United Nations Framework Convention on Climate Change (UNFCCC), which require coordinated national action to address climate change and environmental degradation.

However, the Province of Ismara challenged the constitutionality of the EPCRA in the Supreme Court of Veridia, arguing that the Act encroached on the province's exclusive jurisdiction over natural resources and property and civil rights.

The Premier of Ismara stated, "The regulation of industrial emissions and environmental standards is a provincial matter. The federal government has overstepped its authority by imposing a one-size-fits-all policy that ignores local conditions and the province's right to manage its own natural resources."

The Province of Ismara also pointed out that it had its own Provincial Environmental Protection Act (PEPA), which established its own limits on industrial emissions and required industries within the province to adhere to environmental standards tailored to local conditions. Ismara argued that the EPCRA overrides the province's ability to legislate on matters of local environmental protection, creating unnecessary duplication and conflict between provincial and federal regulations.

In response, the federal government argued that climate change and environmental protection are matters of national and international concern, falling under the federal government's power to legislate for the Peace, Order, and Good Government (POGG) of Veridia. The government contended that addressing climate change requires a unified national approach, given the interprovincial and global nature of environmental harm. It further emphasized Veridia's international obligations under the Paris Agreement, stating that failure to implement EPCRA would jeopardize the country's standing in the global community and its commitment to reducing greenhouse gas emissions. You are a judge of the Supreme Court of Veridia. Decide with the help of relevant provisions and case laws.

(Marks 20)