

THE OPEN UNIVERSITY OF SRI LANKA
 FACULTY OF HUMANITIES AND SOCIAL SCIENCES
 DEPARTMENT OF LEGAL STUDIES
 LL.B DEGREE PROGRAMME – LEVEL 4
 FINAL EXAMINATION – 2017/2018
 LWU2314/ LLU4708- CONSTITUTIONAL LAW II
 DURATION – THREE (03) HOURS



DATE: 05 March 2020

TIME: 9.30 a.m. – 12.30 p.m.

Illegible handwriting will be penalized.
 Total number of questions 08.

Answer **Five (05)** questions only, selecting at least Two Questions (02) from each Part I and Part II.

Part I

- 1) “...the modern State has an array of corporate entities which are formed by the State or on the directions of the State, to engage in a variety of activities including the provision of services, administration, manufacturing and commerce. Though these corporate bodies are legal persons in their own right and their legal identity is distinct from the State, they often operate in terms of State policy or are closely associated with the State or perform functions on behalf of the State or are largely controlled by the State or are financed by the State. In many cases, they conform to many or all of these characteristics. Frequently, the power and authority of the State lies behind these corporate bodies when they deal with the people. They are, in truth and fact, agencies or instrumentalities of the State which, therefore, must be held to be bound by Article 4 (d) of the Constitution, which requires all organs of the Government to respect, secure and advance the fundamental rights which are declared and recognized by the Constitution.”

Prasanna Jayawardena, PC, J in Captain Channa D.L. Abeygunewardena Vs Sri Lanka Port Authority (S.C. F.R. 57/2016, pp. 7 – 8)

Discuss the scope and applicability of the term ‘executive and administrative action’ in Article 126 of the 1978 Constitution of Sri Lanka in the light of the above dictum.

(20 Marks)

- 2) Saman, a 39-year-old carpenter, lived in Kurunegala with his wife Kusuma and their two children. When Saman was away for work the previous Saturday, a police officer came to Saman's house and informed Kusuma that Saman should be present at the police station at 6.30 p.m. for an inquiry. After Saman returned home, he went to the police station with Kusuma. He was told at the police station that a complaint had been filed against him for allegedly stealing a bunch of bananas. As the complainants were not present at that time, the Police Officer told Saman and Kusuma to leave the Police Station.

Three days after the above incident, two Police Officers from the Kurunegala Police Station entered Saman's house and humiliated him and his family. Police officers dragged Saman out of the house and slapped him in front of Kusuma and the two children. Saman's wife came forward to save her husband and she was pushed by police officers and injured. Saman was then pushed into the jeep and assaulted in the jeep.

In the evening of the same day, Saman's father with Saman's brother Siripala, went to the Kurunagala Police Station. Saman's father and brother noticed that Saman was badly beaten and that he could not even drink the cup of tea, which was offered to him by them, as his hand was swollen. Several police officers came to Saman's father and asked him to leave the police station and come to the Magistrate's Court next morning.

However, the following morning, Saman's father along with Siripala visited the police station before going to court. They noticed that other suspects were lined up to be taken to Court but did not notice Saman. They went to the police station to find Saman and one police officer said that Saman was sick and admitted to the Kurunagala government hospital. Although they visited the hospital, they could not find Saman. Meanwhile, Saman's father found Saman's body lying on a trolley in the hospital and his head was covered with polythene.

Kusuma seeks your legal advice to file a fundamental rights case under the 1978 Constitution of Sri Lanka. Advise Kusuma. Support your answer with relevant Constitutional provisions and case law.

(20 Marks)

- 3) “.....the constitutional provision does not get atrophied or fossilised but remains flexible enough to meet the newly emerging problems and challenges, applies with greater force in relation to a fundamental right enacted by the Constitution.”

Justice Bhagwati in Francis Coralie Mullin v. Administrator Union Territory of Delhi
(A.I.R. 1981 S.C. 746.)

Critically evaluate the validity of the above statement in the light of the modern approaches being used by judges in relation to the procedural requirements to invoke the fundamental rights jurisdiction of the Supreme Court under the 1978 Constitution of Sri Lanka.

(20 Marks)

- 4) The executive president of the State of Green Land, Mr. Surya imposed a ban on full face covering by an Emergency Regulation, after the series of suicide bomb attacks that killed more than 300 civilians and wounded 500 at several religious places in the country. The President has made this decision to strengthen national security and with the view of creating a peaceful and harmonious society. Both Fatima and Frieza, who are women of Islamic faith complained that their personal freedom has been affected by the regulations banning the wearing of the Burqa the traditional garment of Muslim women which covers both the body and the face.

Meanwhile, the Management committee headed by the Principal of the Hindu College which is a national school in the Northern Province of Green Land, issued a letter to students and staff prohibiting them from wearing the Abaya (Abaya covers the whole body except the face, feet, and hands). Nusla who is a Muslim teacher at the Hindu College normally wears the abaya as her attire. After the letter was issued the next day, Nusla came to the school wearing the Abaya and she was prevented from entering the school by a security guard. Also, she was surrounded by parents gathering around the gate. They used obscene words to harass her and tried to grab her handbag and umbrella.

Discuss whether the fundamental rights of Fathima, Friza and Nussla have been violated, assuming that the legal system of the Green Land is identical to that of Sri Lanka.

(20 Marks)

Part II

- 5) 'The core objective of Constitutionalism is that of safeguarding each member of the political community as a political person possessing a sphere of genuine autonomy.'

Carl Friedrich

Do you think that the above statement has any validity under the 1978 Constitution of Sri Lanka?

Explain your answer in the light of salient features of the concept of constitutionalism and its importance in a constitutional democracy.

(20 Marks)

- 6) X provincial council in Sri Lanka is planning to pass a separate environmental statute to establish a Provincial Environmental Authority for the Province in order to make provisions for the protection, management, and enhancement of the environment and for the regulation, maintenance and control of the quality of the environment. Under the 13th Amendment to the Constitution, the provisions relating to the environment are as follows:

Item 37 of Provincial Council List

Protection of the environment within the Province to the extent permitted by or under any law made by Parliament

Item 33 of the Concurrent List

Protection of the environment

The central government has already established the Central Environmental Authority under the National Environment Act No 47 of 1980 (as amended) to make provision for the protection and management of the environment.

X Provincial Council seeks your legal advice as to whether a separate provincial environmental statute can be enacted by them. What advice would you give? Discuss.

(20 Marks)

- 7) “The Constitution ensures that the Governor is deferential towards the electoral wishes of the people of a province and acts on the Chief Minister’s advice. He can dispense with such advice only where the Chief Minister has ceased to enjoy the confidence of the Council. This is a very satisfactory arrangement which seeks to enhance the quality and effectiveness of the devolution of power in Sri Lanka.”

Felix, S. (2013). ‘The Dissolution of Provincial Councils- A Comparative Analysis’, in Marasinghe, J. & Wickramaratne, L.(ed) 13th Amendment: Essays on Practice, p.205

Critically evaluate the validity of the above statement in the light of the executive powers of Provincial Councils under the 1978 Constitution of Sri Lanka. Support your answer with relevant legal authorities and examples.

(20 Marks)

- 8) ‘The Ministry of Public Administration, Home Affairs, Provincial Councils and Local Government has decided to assess the weaknesses and strengths of the Provincial Council systems of Sri Lanka as it has been subjected to public criticism for a long time. Hence, the Ministry has requested you to present your opinion on the ‘Effectiveness of the Provincial Councils in Sri Lanka’.

Write a report to the Ministry focusing on the following.

- a) Legislative Power of Provincial Council
- b) Executive power Provincial Council
- c) Judicial Power Provincial Council

Support your answer with relevant Statutory Provisions and Case Law.

(20 Marks)

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