Uttarakhand Civil Judge (Mains) 2012

Language · compulsory paper

Time allowed : Three Hours · Maximum Marks : 100

Notes: (i) Candidates should attempt all the three questions. (ii) Marks carried by each question are indicated at its end. (iii) The parts of same question must be answered together.

Part 1 · English Language

1. Translate into the ordinary language spoken in the courts using Devanagri Script : [30 marks]

The fact that the Indian Constitution was drafted in the mid-twentieth century gave an advantage to its makers in so far as they could take cognizance of the various constitutional processes operating in different countries of the world and thus draw upon a rich fund of human experience, wisdom, heritage and traditions in the area of governmental process in order to fashion a system suited to the political, social and economic conditions in India. In the end result, the Indian Constitution has turned out to be a very interesting and unique document.

One could discern in it the impact of several constitutions. As for instance, the Indian Federalism is influenced by the American, Canadian and Australian Federalism. Fundamental Rights in India owe a great deal to the American Bill of Rights; the process of Constitutional amendment adopted in India is a modified version of the American system.

The influence of the British Constitutional Law, theories and practices on the Indian Constitution is quite pervasive. As for example, the parliamentary form of Government in India closely follows the British model in substance; the system of prerogative writs which plays a crucial role in protecting peoples' legal rights and ensuring judicial control over administrative action is Britain's contribution to India. Australia's experiences have been especially useful for ordering the Centre-State financial relationship, and for promoting the concept of freedom of trade and commerce in the country. Inspiration has come from the Irish Constitution in the shaping of the Directive Principles of State Policy.

The Government of India Act, 1935, which preceded the Indian Constitution, has furnished not only administrative details, but also the verbatim language of many provisions of the Constitution.

It will, however, be wrong to suppose that the Indian Constitution is just a carbon copy of other Constitutions and contains nothing new and original. While adopting some of the principles and institutions developed in other democratic and federal countries, it yet strikes new paths, new approaches and patterns, in several directions. It makes bold departures in many respects from the established Constitutional norms and introduces many innovations. For example, in the areas of Centre-State relationship, with a view to achieve the twin objectives of promoting the unity of India and reducing rigidity inherent in a federal system, the Indian Constitution makes several provisions which are original in conception as nothing parallel to these is to be found in any other Federal Constitution and, to this extent, it makes a distinct contribution to the development of theories and practices of federalism in general.

Part 2 · Hindi Passage

2. Translate the following Hindi passage into ordinary English language : [30 marks]

विधिशास्त्र का हमारे जीवन में पर्याप्त महत्त्व है, यह निर्विवाद है। इसका अपना एक व्यावहारिक पक्ष है। यह ठीक ही कहा गया है कि विधिशास्त्र विधि की आँख है। मानव शरीर में आँख का जो महत्त्व है वही विधि में विधिशास्त्र का है। विधिशास्त्र विधि के विद्यार्थी के लिए वही कार्य करता है जो भाषाशास्त्र के विद्यार्थी के लिये व्याकरण करता है। विधि की व्याख्या करने वाले का कार्य वास्तव में बहुत ही कठिन है। अपने व्यावहारिक कार्य में एक वकील या विधिवेत्ता को नित नई और कठिन समस्याओं से जूझना पड़ता है। यहाँ विधिशास्त्र ऐसी समस्याओं को सुलझाने में उसकी सहायता करता है। विधिशास्त्र के सम्यक ज्ञान के अभाव में समस्या उसके लिये असाध्य होगी। विधिशास्त्र हमें विधिक ढंग से विचार-विमर्श करने में उत्प्रेरित एवं अभ्यस्त करता है। उसका अपना एक शैक्षणिक महत्त्व भी है क्योंकि विधिक संकल्पनाओं का तार्किक विश्लेषण वकील की अपनी तर्क-पद्धति में वृद्धि करता है। यह कहा जाता है कि विधिशास्त्र किसी विधिवेत्ता के समक्ष एक बहुत ही स्पष्ट एवं संक्षिप्त शब्दकोश उपस्थित करता है। इस शब्दकोश की सहायता से विधि-विषयक सही जानकारी प्राप्त की जा सकती है। विधि की अपनी भ्रांतियाँ, मान्यतायें होती हैं, विधि की अपनी समानतायें एवं विभिन्नतायें भी होती हैं। विधि का कोई विद्यार्थी विधि के बारे में समुचित ज्ञान तभी प्राप्त कर सकता है जब वह इन भ्रांतियों, मान्यताओं एवं विभिन्नताओं के बारे में पूर्णरूपेण जानें।

अंग्रेज वकील, जिनकी जड़ें कामन लॉ में हैं, जो पूर्व-निर्णय की पूजा करते हैं और जिनकी स्वाभाविक प्रवृत्ति है कि वे इतिहास की तरफ़ मुड़ते हैं, आगे देखने की बजाय पीछे देखते हैं। हर प्रश्न को ऐतिहासिक दृष्टिकोण से जाँचते हैं। यहाँ विधिशास्त्र उन्हें अगर आगे देखने में तो नहीं किन्तु अगल-बगल देखने या चारों तरफ़ देखने में सहायता कर सकता है। विधिशास्त्र उन्हें इस बात का भी एहसास दिला सकता है कि नई विधिक समस्याओं का समाधान वर्तमान सामाजिक आवश्यकताओं के परिप्रेक्ष्य में ही ढूँढा जा सकता है न कि अतीत की बौद्धिक मान्यताओं के संदर्भ में।

संक्षेप में हम कह सकते हैं कि विधिशास्त्र कई रूपों में बहुत ही उपयोगी एवं सहायक सिद्ध होता है। जैसे, जब हम किसी विशिष्ट विधि व्यवस्था का अध्ययन करना चाहते हैं तो विधिशास्त्र के अध्ययन से हमें यह पता चलता है कि वे कौन से मूलभूत सिद्धान्त हैं जो सभी विधि व्यवस्थाओं में समान रूप से पाये जाते हैं। किसी भी विधायक या विधिवेत्ता के लिए उन मूलभूत सिद्धान्तों का जानना अति आवश्यक है जिन्हें समाज मानवीय संबंधों को अनुकूल बनाने में स्वीकार करता है और इस बात का ज्ञान हमें विधिशास्त्र के माध्यम से होता है। विधिशास्त्र का अध्ययन घनिष्ठ रूप से जुड़े किन्तु सहायक विधायन विज्ञान जिसका संबंध इस बात से है कि विधि कैसी होनी चाहिये के लिये भी अति उपयोगी है।

विधिशास्त्र का अध्ययन इसलिये भी अनिवार्य है कि हम समकालीन विधिवेत्ताओं के विधिशास्त्रीय दर्शन के सम्यक विचार और ज्ञान को जान सकें।

Part 3

3. Write a précis in English of the following passage : [40 marks]

The real implication of equal distribution is that each man shall have the wherewithal to supply all his natural needs and no more. For example, if one man has a weak digestion and requires only a quarter of a pound of flour for his bread and another needs a pound, both should be in a position to satisfy their wants. To bring this ideal into being the entire social order has got to be reconstructed. A society based on non-violence cannot nurture any other ideal. We may not perhaps be able to realize the goal, but we must bear it in mind and work increasingly to near it. To the same extent as we progress towards our goal we shall find contentment and happiness, and to that extent too, shall we have contributed towards the bringing into being of a non-violent society.

It is perfectly possible for an individual to adopt this way of life without having to wait for others to do so. And if an individual can observe a certain rule of conduct, it follows that a group of individuals can do likewise. It is necessary for me to emphasize the fact that no one need wait for anyone else in order to adopt a right course. Men generally hesitate to make a beginning if they feel that the objective cannot be had in its entirety. Such an attitude of mind is in reality a bar to progress.

Now let us consider how equal distribution can be brought about through non-violence. The first step towards it is for him who has made this ideal part of his being to bring about the necessary changes in

his personal life. He would reduce his wants to a minimum, bearing in mind the poverty of India. His earnings would be free of dishonesty. The desire for speculation would be renounced. His habitation would be in keeping with the new mode of life. There would be self-restraint exercised in every sphere of life. When he has done all that is possible in his own life, then only will he be in a position to preach this ideal among his associates and neighbours.

Indeed at the root of this doctrine of equal distribution must lie that of the trusteeship of the wealthy for the superfluous wealth possessed by them. For according to the doctrine they may not possess a rupee more than their neighbours. How is this to be brought about ? Non-violently ? Or should the wealthy be dispossessed of their possessions ? To do this we would naturally have to resort to violence. This violent action cannot benefit society. Society will be the poorer, for it will lose the gifts of a man who knows how to accumulate wealth. Therefore the non-violent way is evidently superior. The rich man will use what he reasonably requires for his personal needs and will act as a trustee for the remainder to be used for the society. In this argument honesty on the part of the trustee is assumed.

De Facto IAS