

UNIVERSITY OF COLOMBO, SRI LANKA
FACULTY OF LAW
DEGREE OF MASTER OF LAWS BY COURSEWORK - 2023/24
2nd SEMESTER END EXAMINATION

Public Law in South Asia – TLLM 12316
(Three Hours)

Total number of questions: 04

Answer any **Three** questions
(Candidates will be penalized for illegible handwriting)

1. Answer either **A or B.**

(A). The Rule of Law in South Asia faces significant challenges mainly due to prevalent corruption, weak governance structures, and threats to the independence of the judiciary. South Asia's cultural, social, and economic diversity further complicates addressing these challenges, necessitating nuanced approaches tailored to each nation's unique context. Even though it is evident that regional organizations play an increasingly important role in strengthening and promoting the Rule of Law, the South Asian region is far behind in achieving this reality.

Do you agree? Evaluate the above statement in light of the application of the Rule of Law in the South Asian context, referring to any three South Asian jurisdictions. Support your answer by drawing examples from any other regional organization, case law authorities, and constitutional provisions of respective jurisdictions.

(20 Marks)

(B) By imposing a fiduciary obligation on the state to uphold the public interest, the Public Trust Doctrine serves as a tool for controlling arbitrary or capricious exercises of governmental authority, thereby upholding the rule of law. Within the realm of South Asian constitutional governance, the judicial interpretations of South Asian courts delineate a similarity in the nature, scope and application of the public trust doctrine. Despite slight differences, South Asian courts contribute in expanding the doctrine into various fields, within respective constitutional frameworks.

Critically assess the contribution of South Asian courts in expanding the Public Trust Doctrine. Support your answer by drawing examples from three jurisdictions including Sri Lanka.

(20 Marks)

2. Power-sharing mechanisms adopted by countries vary, reflecting each of its unique cultural, linguistic, ethnic, and religious diversity. In the South Asian context, these variations are crucial and decisive in addressing identity-based demands and improving the democratic functioning of the state to foster stability and development of South Asian nations. Many South Asian countries approach power-sharing differently, to address their specific historical, social, and political contexts. These diverse attempts at power-sharing underscore the region's complex mosaic of identities and the necessity of customized solutions to maintain harmony in governance.

Assume that you have been invited to deliver an inaugural speech at an international legal conference under the theme of "Balancing Diversity and Unity: Power-Sharing in South Asian Democracies". Write a script exploring power-sharing mechanisms adopted by any two South Asian jurisdictions of your choice.

(20 Marks)

3. Certain South Asian countries have enumerated a limited number of fundamental rights, which are broader in scope to facilitate their respective judiciaries to include other human rights through creative interpretation of the existing fundamental rights. Meanwhile, in some other South Asian jurisdictions, similar judicial activism is constrained by the narrower scope of fundamental rights and the theocratic nature of the Constitution. Despite this, South Asia also stands as a model to the rest of the world in providing constitutional recognition of the first to third-generation rights, essential to a modern welfare state.

Do you agree? Evaluate the above statement in light of the scope and nature of fundamental rights in South Asian jurisdictions discussed above. Substantiate your answer with relevant constitutional provisions and case law examples.

(20 Marks)

4. The introduction and evolution of administrative law remedies in South Asia have been profoundly influenced by the colonial legacy, which established the foundational legal frameworks during British rule, and the subsequent constitutional developments that enshrined fundamental rights and freedoms, necessitating robust mechanisms for their protection and enforcement. On the other hand, judicial activism has also played a critical role in expanding the scope of administrative law remedies in South Asia. In recent times, economic liberalization and globalization, have driven the need for effective administrative law remedies to address the complexities of modern governance and public service delivery where South Asian jurisdictions are not an exception.

In light of the above statement, critically discuss the recent developments of administrative law remedies in South Asia. You may refer to any three South Asian jurisdictions including Sri Lanka. Support your answer with relevant constitutional provisions and case law authorities.

(20 Marks)
