

**UGC**

**CURRICULUM DEVELOPMENT  
COMMITTEE**

**LAW**

**REPORT**

**2001**

## FOREWORD

Renewing and updating of the Curriculum is the essential ingredient of any vibrant university academic system. There ought to be a dynamic Curriculum with necessary additions and changes introduced in it from time to time by the respective university with a prime objective to maintain updated Curriculum and also providing therein inputs to take care of fast paced development in the knowledge of the subject concerned. Revising the Curriculum should be a continuous process to provide an updated education to the students at large.

Leaving a few, there have been many universities where this exercise has not been done for years together and it is not uncommon to find universities maintaining, practicing and teaching still on the Curriculum as old as few years or even more than a decade. Not going through the reasons for this inertia, the University Grants Commission, realising the need in this context and in relevance to its mandate of coordinating and maintaining standard of higher education, decided to adopt a pro-active role to facilitate this change and to ensure that the university Curriculum are soon updated to provide a standard education all over the country.

Curriculum Development Committee for each subject was constituted with the respective Convenor as its nodal person. The Committee besides having five subject experts drawn from the university system, was given a wider representation of various sub subject experts attending meetings of the Committee as the esteemed co-opted members which kept on changing from time to time as the need arose. The Committees, therefore, had representations from a large number of experts and had many meetings before final updated model Curricula were presented to UGC.

The University Grants Commission and I as its Chairman are grateful to the nodal persons, a large number of permanent and co-opted members in different subjects and their sub disciplines for having worked seriously with committed devotion to have produced a UGC model Curriculum in 32 subjects within a record period of 18 months.

The exercise would not have been possible without the support of our entire academic community. We can only hope that the results will fulfil their expectations and also those of university community and Indian society.

The UGC model Curriculum has been produced to take care of the lacuna, defects/short-comings in the existing Curricula in certain universities, to develop a new model Curriculum aiming to produce the one which is compatible in tune with recent development in the subject, to introduce innovative concepts, to provide a multi disciplinary profile and to allow a flexible cafeteria like approach including initiating new papers to cater for frontier development in the concerned subject.

The recommendations have been compiled by panels of experts drawn from across the country. They have attempted to combine the practical requirements of teaching in the Indian academic context with the need to observe high standards to provide knowledge in the frontier areas of their disciplines. It has also been aimed to combine the goals and parameters of global knowledge with pride in the Indian heritage and Indian contribution in this context.

Today all knowledge is interdisciplinary. This has been duly considered. Flexible and interactive models have been presented for the universities to extend them further as they would like. Each institution may have to work out certain uniform structures for courses at the same level, so that effective interaction between subjects and faculties is possible. The tendency across the country is now to move from the annual to the semester system, and from award of marks to award of credits. There is perceptible growing interest in modular framing as well.

The recommendations while taking all these features into account, have also made provisions for institutions who may not be in a position to undertake radical structural reform immediately. In any country, especially one as large and varied as India, academic institutions must be allowed enough autonomy and freedom of action to frame courses according to specific needs. The recommendations of the Curriculum Development Committees are meant to reinforce this. The purpose of our exercise has been to provide a broad common framework for exchange, mobility and free dialogue across the entire Indian academic community. These recommendations are made in a spirit of openness and continuous improvement.

To meet the need and requirement of the society and in order to enhance the quality and standards of education, updating and restructuring of the curriculum must continue as a perpetual process. Accordingly, the University Grants Commission constituted the Curriculum Development Committees. If you need to seek any clarification, you may contact Dr. (Mrs.) Renu Batra, UGC Deputy Secretary and Coordinator of CDC who shall accordingly respond to you after due consultation with the respective nodal person of concerned subject.

The University Grants Commission feels immense pleasure in forwarding this model Curriculum to the Hon'ble Registrars of all Universities with a request to get its copies made to be forwarded also to the concerned Deans and Heads of Departments requesting them to initiate an early action to get their Curriculum updated. The University Grants Commission model Curricula is being presented to the Registrar of the university with **options** either to adopt it in toto or adopt it after making necessary amendments or to adopt it after necessary deletion/addition or to adopt it after making any change whatsoever which the university may consider right. This UGC model Curriculum has been provided to the universities only to serve as a base and to facilitate the whole exercise of updating the Curriculum soon.

May I request Hon'ble Vice Chancellor and the Hon'ble Registrar including the esteemed Deans, Heads of Departments, Members of the Faculty, Board of Studies and Academic Council of the Universities to kindly update their Curriculum in each of the 32 subjects in consultation with model Curriculum provided here. This has to be done and must be done soon. May I request the Academic administration of the universities to kindly process it immediately so that an updated Curriculum is adopted by the university latest by July, 2002.

The University Grants Commission requests the Hon'ble Registrars to confirm that this time bound exercise has been done and send a copy of the university's updated Curriculum in each subject to UGC by July 31, 2002. It is a must. It has to be done timely, failing which, the UGC may be forced to take an appropriate unpleasant action against the concerned university.

The UGC looks forward for your active participation in this joint venture to improve the standards to achieve excellence in higher education.

Dated : December, 2001

**HARI GAUTAM**  
MS (SURGERY) FRCS (EDIN) FRCS (ENG)  
FAMS FACS FICS FIACS DSc (HON CAUSA)  
**CHAIRMAN**

## ACKNOWLEDGEMENTS

During their three year tenure from 1997-2000, the UGC panel on law had initiated the work of revision and updating of the LL.M. and LL.B. (Hons.) syllabi prepared by CDC more than a decade ago. The Bar Council of India had prescribed already titles of the courses for LL.B. but did not formulated detailed rubrics. The responsibility fell on the Curriculum Development Committee, constituted by the UGC in the year 2000, to take up the venture with a view to shedding more light on the frontier areas of law. The committee also completed the updating work already started by the panel.

The committee for revising and updating LL.M.and LL.B(Hons.) courses consists of eight members - Professor C.M.Jariwala, Professor N.S. Chandrasekharan, Professor V.K. Bhansal, Professor K.L.Bhatia, Professor Mool Chand Sharma, Professor Haragopal Reddy, Professor T. Bhattacharya and Professor P. Leelakrishnan as convenor.

The committee to formulate LL.B. syllabi has eight members - Professor C. M. Jariwala, Professor N.S.Chandrasekharan, Professor K.L.Bhatia, Professor Mool Chand Sharma, Professor Haragopal Reddy, Professor Ranbir Singh, Professor M. Pinheiro and Professor P. Leelakrishnan as convenor.

The LL.M. committee met on 23-24 October 2000 and on 28 November to 1 December 2001. The other committee met on 18-19 January 2001 and on 20-21 February 2001.

The work was an uphill task. But there were memorable experiences. The co-operation and dedication among members made the deliberations objective and meaningful. The homework they did before coming to the meetings went a long way in accomplishing the task almost according to schedule.

Dr Hari Gautam, the Chairman of the University Grants Commission, has rendered constant encouragement and guidance in the course of our deliberations. We express our thanks for giving an opportunity to take up this challenging task.

We are happy to note that Professor Arun Negavekar, Vice Chairman, occasionally popped in and showed keen interest.

II

*UGC Model Curriculum*

Mr. A.K. Dogra, the ever-present secretary of the law panel was on call for all help from the administrative side. His commitment to the job shall not go unacknowledged. Close on his heels was his personal assistant Nand Kishore who responded actively to our work schedule.

My former colleagues in the Cochin University School of Law - professors, research scholars, students and members of the administrative and library staff - were ready to extend a helping hand and to provide me with uptodate background materials. Their enthusiasm in the venture is appreciated and acknowledged.

Cochin  
09-03-2001  
(Law)

P. Leelakrishnan  
Nodel Person, CDC

## CHAPTER-I

### INTRODUCTION

Everything that is printed becomes out of date. The saying is true to a great extent in the case of both enacted and judge made laws in India. No wonder many programmes of legal education become outmoded by the time they are introduced after long gestation period. This makes constant revision and updating essential.

The Curriculum Development Centre (CDC) in law submitted their report in the eighties suggesting a thorough reform of the LL.B and LL.M courses. The CDC programmes were ambitious, substantial in content and rich with a vision for the future. They looked at the maladies of legal education then existing in the land and made a valiant attempt to renovate the system with notable recommendations for improvement.

Not only LL.M. and LL.B. courses but also courses on specialized areas where knowledge of law was essential captured their attention and concern. The proposal for introduction of LL.B. (Hons.) with innovative structure of more academic inputs, modern methods of teaching and learning and with distinct provision for better teacher and student involvement stands above all the other recommendations. This was done with a view to having a transitional strategy to move towards higher standards considering the realities of the state of legal education in the country.

#### ***LL.B Programme: the interaction between UGC and BCI***

In the mid nineties the Bar Council of India (BCI) moved in and made striking reforms in the LL.B. programme with more academic inputs and practical courses. They had identified the papers essential for making a professional lawyer and made them part of the curriculum in law schools and law colleges that impart professional education. Without undergoing these required courses no one can become an advocate. This was conveyed to all law schools in BCI letter LE (Cir.No.4/1997) dated 21st October 1997. However, they have laid down only the number and title of papers to be offered. The details were left to be evolved by Universities. The BCI said:

"The identification of the content and number of each paper in the prescribed courses is left to the discretion of the University Academic Bodies. The CDC Report (1988) commissioned by the UGC may be followed by Universities while preparing the syllabi for the various courses."

The Advocates Act 1961 empowers the BCI "to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils" [S.7(h)]. The University Grants Commission Act 1956 imposes a mandate on the UGC to take all such steps as they think fit "for the promotion and co-ordination of university education and for the determination and maintenance of standards of teaching, examination and research in universities"(S.12). In the field of legal education, there was, thus, a dilemma of dual responsibility of the BCI and UGC. The CDC in the eighties were aware of this difficulty and suggested certain ways and means to solve the problems arising from the dual responsibility and called for more interaction, in the form of information sharing and consultation, between UGC and BCI. It is significant that BCI had an open mind when they set out in 1995 for a reform. They consulted the universities and the UGC law panel while formulating the reforms for LL.B. courses. Although this cannot be described as closer interaction, the gaps in common endeavours between BCI and UGC for reforms in legal education were being filled. It is significant that besides asking to follow CDC report in the preparation of syllabi, BCI resolved to accept some of the courses recommended by the CDC. Environmental law, human rights law and consumer protection laws were made compulsory subjects. Law and poverty, comparative law, insurance law, law and medicine, women and the law and intellectual property were made optional papers. Administrative law and labour law were promoted to the status of compulsory courses.

### ***LL.M Programme***

On the initiative of the law panel, the UGC had convened workshops in different parts of the country in the late nineties with a view to updating the CDC syllabi. Deans of faculties of law and chairmen of boards of studies participated in these workshops. The Bangalore(1996) and Gorakhpur(1997) meets were on LL.M. syllabi while the Jammu(1997) seminar was on LL.M. and LL.B.(Hons.). The Cochin and Kurukshethra meetings(1998) discussed LL.B. (Hons.) programme as one to be introduced in select Universities.

Taking into account the various recommendations of the meetings, the panel suggested changes to a few papers to the CDC structure for LL.M. The workshops were clear in their view in making certain basic changes to the CDC foundational courses for LL.M. They suggested combining the two papers - Law and Social Transformation in Ancient India and Law and Social Transformation in Contemporary India - into one paper, namely, Law and Social Transformation in India. Comparative Analysis of Law and Economy need not be a core paper. It was suggested that Judicial Process be made foundation course. A significant recommendation in the workshops was introduction of a foundation course on Indian Constitutional Law: the New Challenges. The panel accepted these proposals with a modification that Legal Education and Research Methodology would be combined as a foundation course. According to the panel, optional courses on Human Rights, Environmental Law and Administrative Law can be offered for LL.M.

The views of the workshops at the regional level were taken into account before the panel had a critical look at the syllabi prepared by the CDC. Several academic lawyers were involved in the process leading to a variety of opinions on CDC recommendations. Some hardly varied from CDC, some varied a little and some had entirely different approach to the views of CDC. In the light of these ideas the panel suggested some modifications. The LL.M. curricula are now updated. The updated syllabi are given in chapter III. The following are the courses.

### ***Foundation courses***

001. Law and Social Transformation in India
002. Indian Constitutional Law: the New Challenges
003. Judicial Process
004. Legal Education and Research Methodology
005. Dissertation



## **Optional Groups**

### ***Group A : International law and Organization***

A006 International Law and Organisation: Law, Practice and Future

A007 Disarmament and Peace Strategies

A008 International Humanitarian Law

A009 Law and Diplomacy

A010 Law of the Sea

A011 International Law and Contemporary Issues.

### ***Group B : Criminal Law***

B012 Comparative Criminal Procedure

B013 Penology :Treatment of Offenders

B014 Privileged Class Deviance

B015 Drug Addiction, Criminal Justice and Human Rights

B016 Juvenile Delinquency

B017 Collective Violence

### ***Group C : Business Law***

C018 Law of Industrial and Intellectual Property

C019 Legal Regulation of Economic Enterprises

C020 Law of Export - Import Regulation

C021 Banking Law

C022 Insurance Law

C023 Corporate Finance

**Group D : Labour, Capital and Law**

- D024 Collective Bargaining
- D025 Industrial Adjudication
- D026 Law Relating to Civil Servants.
- D027 Agricultural Labour
- D028 Wages
- D029 Social Security Law

**Group E : Environment and Legal Order**

- E030 Environment and Development : Law and Policy
- E031 Resource Management and the Law
- E032 Prevention and Control of Pollution
- E033 Environment and International Legal Order
- E034 Biological Diversity and Legal Order
- E035 Environmental Legislation

**Group F : Jurisprudence**

- F036 Comparative Judicial Process
- F037 Marxian Theory of Law
- F038 Socialist Jurisprudence
- F039 Concepts of Justice
- F040 Law and Society
- F041 Theories of Rights

**Group G : Constitution and Legal Order**

- G042 Mass Media law
- G043 Public Utilities law
- G044 Union-state Financial Relations
- G045 Constitutionalism: Pluralism and Federalism
- G046 Human Rights
- G047 National Security, Public Order and Rule of Law

**Group H: Feminist Critique of Legal Order**

- H048 Feminist Theorizing and Legal Order
- H049 Nationalist Struggle and Gender Equality
- H050 Patriarchal Elements in Indian Law
- H051 Gender Justice Standards at International Law
- H052 Labour, Gender and the Law
- H053 Population Planning and Gender Justice

**Group I: Science, Technology and Law**

- I054 Law, Science and Technology
- I055 Law, Science and Medicine
- I056 The Electronics Revolution and Legal Order
- I057 Nuclear Technology : Dilemmas of Legal Controls
- I058 Bio-technology and Legal Regulation
- I059 Epidemiological and Public Health Aspects of Science and Technology

**Group J : Human Rights Law**

- J060 Concept and Development of Human Rights
- J061 Human Rights and International Order
- J062 Protection and Enforcement of Human Rights in India
- J063 Human Rights of Disadvantaged Groups
- J064 International Humanitarian Law and Refugee Law
- J065 Science, Technology and Human Rights.

**Group K : Administrative Law**

- K066 Administrative Process : Nature and Scope
- K067 Administrative Process and Judicial Control
- K068 Public Authorities : Liability
- K069 Public Authorities and Power Holders: Controls on Maladministration
- K070 Local Self-government Law.
- K071 Comparative Administrative Law

**General norms for LL.M curriculum**

There is consensus that the rules laid down by CDC relating to LL.M are acceptable. The students shall have to do the dissertation, the practicals, all the four core courses and six papers from a single optional group. The suggestion that students may be given the discretion to opt inter-group papers is not acceptable. Whether it is teaching, practice of law, administration of justice or management of legal counseling in a firm, specialisation is a must. A thorough knowledge in a particular branch of law is the objective of LL.M. programme.

As CDC has said, the justification for semesterisation at master's level cannot be overemphasized. The papers recommended are for the semester courses. The course design shall be :

Semester	Compulsory/core Course	Optional course	Total	Marks
First	2	2	4	400
Second	2+1 (Practical)	2	5	500
Third		2	2	200
Fourth	Dissertation	(equivalent to 2 courses)	2	200
				1300

Every paper shall carry 100 marks out of which 60 marks are for written examination and 40 marks for internal assessment. In the light of views expressed in workshops, the criteria for internal assessment laid down by the panel are as follows:

(i) Class and seminar participation	10 marks
(ii) Home assignment	10 marks
(iii) Tests	15 marks
(iv) Attendance	05 marks
Total	40 marks

Every paper shall be evaluated internally and externally for 60 marks in addition to the continuous internal assessment of 40 marks described above. Dissertation carrying 200 marks shall be evaluated internally and externally with 150 marks for the written work and with 50 marks for presentation and viva-voce.

### ***Practical examination***

The practical examination shall be held at the end of the second semester on Research Methodology, Law Teaching and Clinical work. There shall be 25 marks each for doctrinal research and for non-doctrinal research and 25 marks each for law teaching and clinical work. How the components of practical shall be evaluated is left to individual faculties of law. They can formulate their own

models of assessment. However, for making the practical examination objective and meaningful, the following guidelines shall be adhered to.

### **1. Research Methodology**

(i) Doctrinal research (25 marks)

Each student is assigned in advance a separate topic and asked to collect materials. A period of 5-7 days can be set apart for carrying out this assignment in the library. The materials indicated or collected during the assignment shall be evaluated by a group of faculty members.

(ii) Non-doctrinal research (25 marks)

Here the students are asked to go out of the class room and library and make an empirical study of a problem which has social, economic, moral or political dimension. Field data can be collected through any model of data collection. The results are to be assessed by a team of faculty members.

### **2. Clinical work (25 marks)**

The modalities can be evolved by the law school. One method is that the legal aid clinic of the law school can involve itself with other legal aid programmes in the area. Students are encouraged not only to work with the clinic but also to acquaint themselves with court proceedings, working of a business organisation, tackling of labour disputes, drafting of business or other deeds and with public interest litigation. The initiative and potential of the student and the actual work turned out by him shall be assessed by the faculty.

### **Law Teaching (25 marks)**

A topic is assigned to the student in advance. He is required to handle a class for 25 to 30 minutes. Where LL.B. programme co-exists with LL.M programme, the students may be asked to teach the LL.B students. They can select any of the methods of teaching. In legal education practical, the LL.M students are evaluated internally and externally.

***LL.M. to be full-time course***

The panel agreed with the CDC and the Bangalore and Jammu workshops that LL.M shall be taught only as full-time as it is an intensive course. For selection of law teachers, LL.M with fifty five percent marks and NET qualification is laid down as the minimum qualification. This makes it necessary for the panel to lay stress on the requirement that part-time LL.M shall not be recognized as qualification for selection of law teachers. Nor shall the LL.M obtained through correspondence course be recognized for the purpose.

The CDC syllabi as modified by the workshops and formulated by the panel and now finalised by the Curriculum Development Committee of the UGC are the

Basic guidelines. The faculties of law, boards of studies in law and law schools may make improvement wherever it is found necessary without altering the frame work of the syllabus or watering down its academic contents.

The U.G.C. may consider rendering financial assistance to Faculties and Law Schools introducing the new syllabi. The financial assistance shall, inter alia, extend to purchase of books, switch over to pedagogic models other than lecture method, introduction of audio-visual aids, possession of modern equipments and information technology, extension work, clinical legal education, legal aid programme, seminars, regular publication of research journals and recruitment of specialist faculty.

***LL.B. HONOURS PROGRAMME***

The panel had taken into consideration the recommendations of the Cochin and Kurushethra seminars, revised and finalized the LL.B.(Hons.) courses and submitted it to the UGC to be considered as a special programme for raising the standards of professional education. This course to be taught as one supported by UGC is to be offered only in select Law Schools and Law Colleges.

The BCI has recently given green signal to this course as one which entitles a person to enroll as a lawyer.

The papers for the LL.B.(Hons.) programme shall be the following. The detailed rubrics are given in chapter IV.

1. Compensatory Discrimination
2. Gender Justice
3. Forest and the Law
4. Agrarian Reforms: Selected Problems
5. Judicial Power and Judicial Process
6. Law and the Disabled
7. Implementation of Human Rights Standards
8. Disarmament and Peace Strategy
9. Educational Process, Planning and the Law
10. Legal Profession and Legal Ethics
11. Public Health Law
12. Problems of Access, Governance, Public Participation and Legal Institutions
13. Law and Public Servants
14. Plan and the Law
15. Law and Mass Disasters
16. Law and Child
17. Legislative Drafting
18. Law and Credit
19. Corporate Finance
20. Unorganized Labour and Law
21. Labour Adjudication: Select Aspects
22. Tax Policies, Planning and Tax Evasion
23. Socio-economic Offences
24. Law of Monopolies



The zonal meetings of Deans of faculties of Law and chairpersons of boards of studies were of the view that the LL.B. honours programme is the need of the hour. It has more potential than that of an essential transitional strategy. Besides being an instrument of revamping legal education, LL.B (Honours) courses can be accepted as part of a long term policy for maintaining higher standards in the field of legal education in the country. The programme helps to eliminate mediocrity and is a viable alternative with better student involvement, better facilities and better pedagogy and learning. The difficulty of dual control by BCI and UGC is substantially reduced to the extent that the latter will be in a position to provide more help and assistance to the LL.B honours courses in conformity with its statutory responsibility of maintaining standards of higher education.

Finance is a perennial problem in the path of implementation of innovative curricula. Industry support for fellowships and academic chairs shall always be confined to certain limited areas and subjects in which the interests of the sponsors are safeguarded. No wonder major part of curriculum reforms on courses involving social issues may fail to attract the sponsoring agencies. Socially relevant educational strategies shall not be defeated on the plea of financial crunch but on the contrary, it is absolutely essential that they should get attention and support from the UGC, government and professional agencies. The LL.B Honours courses deserve to be considered for such liberal support. Law schools and colleges competent to offer the courses shall be eligible candidates for the support.

### ***Rationale of the course***

Unlike other professional courses like medicine, engineering and accountancy, the LL.B programme is not confined to training for professional lawyers; the training is only one among the various objectives of the course. This aspect of legal education has been emphasized by CDC report Vol.I, para. 3.6 pp.16 and 17).

"Legal education has a very crucial role to play in development of the law as a hermeneutical profession, since it is an educational process which equips the future lawyer, judge, administrator, counsellor and legal scientist to fashion and refashion ways of peaceful and ordered attainment of ideals of human governance on the one hand and democratic right on the other."

The panel reiterated this view that legal education ought to be a device for Human Resource Development in law with the object of attaining social justice and democratic development. As pointed again by CDC in Paragraph 7.1 to 7.3 of its report Vol.I there is a need to renovate legal education drastically for this purpose. But the existing realities do not, and cannot, provide for pedagogic innovation and full utilization of learning and teaching potential, nor do they ease the restructuring process. The LL.B Honours, as recommended by the CDC, refashioned by the panel and now updated by the special UGC committee is a viable strategy for such a transformation.

Undoubtedly, the UGC has to play a key role in this respect as contemplated in Section 12 of the UGC Act for promotion and co-ordination of education and maintenance of standards of teaching. In addition to Bar Council of India (BCI) requirements for LL.B., the scheme for the LL.B honours works for more academic inputs, pedagogic innovation and modern evaluation techniques.

There had been long deliberations in the matter by the UGC. There were national seminars before CDC gave their report. The recommendations of the CDC were since discussed thoroughly in various workshops sponsored by the UGC. Deans and Chairpersons of Faculties and Boards of Studies in Law and other front line legal academics discussed in detail and approved the LL.B (Hons.) programme.

The panel did not agree with the arbitrary choice by the CDC in recommending certain University Law Schools for UGC support for LL.B Honours programme. Essentially, the UGC will have to select the law schools on certain substantive criteria. The following guidelines can be considered for identification of Law colleges and University Departments/Schools of Law for UGC assistance to LL.B Honours programme.

1. Faculty position
2. Diversity of specialization
  - a. Faculty
  - b. Optional courses
3. Courses offered
  - a. Annual
  - b. Semester

4. Research projects
5. Teacher student ratio
6. Library facilities
7. Pedagogic method
8. Doctoral degrees awarded
9. Potential for doctoral programmes
10. Extension and legal aid programmes
11. Publication of law journal
12. Student participation in editing law journals
13. Publication of books, articles, reviews and notes
  - a. Teachers
  - b. Students
14. Alumni Placement

The panel examined the model syllabi and suggested readings prescribed by CDC. They are modified and updated. The syllabi are in chapter IV. The panel was of the opinion that 054 "Public Regulation of Business" need not be suggested as a separate course. Hence it is dropped.

The panel had thorough deliberations on the modalities of holding the honours course. Its views are given below. **The panel suggests that these matters may form part of the Regulations framed by Universities proposing to start LL.B honours programme.**

- (i) There shall be semesterisation of all courses and papers offered for LL.B Honours
- (ii) The relation between external valuation and internal assessment shall be 60:40.
- (iii) The students have to be asked to opt for at least six courses out of which one - 039 implementation of Human Rights or 043 Public Health Law - shall be a seminar course. The individual law school is free to offer a seminar course on an emerging area other than the two seminar courses given in the syllabi.
- (iv) The six courses are to be offered as courses in addition to the minimum number of papers to be studied as per the Bar Council of India Regulations in their E (Cir. No. 4/1997) dated 21.11.1997.

- (v) The maximum number of student enrolment shall be 30
- (vi) New pedagogic strategies including problem-cum-case and seminar methods and audio visual techniques including use of internet facilities are to be followed
- (vii) There should be constant performance auditing by the UGC of the institutions helped to start LL.B Honours programme.
- (viii) The LL.B Honours courses should emphasise on self-learning process by the students.
- (ix) There should be student evaluation of the programme
- (x) Admission should be on the basis of entrance test, preferably, at national level.
- (xi) There should be transparent continuous assessment
- (xii) There should be a grievance committee to look into the problems of internationalization.

Excellence at graduate level and competence to do postgraduation in a better manner are the manifest gains of LL.B(Honours) Courses. However, it is left to each University to decide what credit be given to LL.B Honours holders for LL.M admission. Obviously, the UGC can consider directing to prefer LL.B (Honours) to LL.B holders for teacher selection provided other requisite qualifications are satisfied.

## CHAPTER II

### LL.B. PROGRAMME

#### ***BCI C 01 JURISPRUDENCE***

##### ***Objectives of the course***

At the heart of the legal enterprise is the concept of law. Without a deep understanding of this concept neither legal education nor legal practice can be a purposive activity oriented towards attainment of justice in society. Moreover, without a comprehension of the cognitive and teleological foundations of the discipline, pedagogy becomes a mere teaching of the rules. It is unable to present various statutes, cases, procedure, practices and customs as a systematic body of knowledge, nor is it able to show the inter-connection between these various branches of law, procedures and principles. The fact that the basic nature and purpose of law should be clear to every student and that it should be the very foundation of law teaching needs little argument. A course in jurisprudence should, primarily, induct the student into a realm of questions concerning law so that he is able to live with their perplexity or complexity and is driven to seek out answers for himself.

It may not be possible that a one year jurisprudence course can impart knowledge of doctrines about law and justice, developed over the years, in various nations and historical situations. At best an undergraduate course should impart the analytical skill and equip the student with the basic problems concerning law and the types of solutions sought. Thus, the student not only will be able to use this skill in practice but also is motivated to take up detailed historical studies on his own after the course. Since a basic idea in the designing of this course is to bring jurisprudence closer to our reality, in the selection of cases and reading materials the teacher should try to make use of the Indian material as far as possible.

The course will comprise of 84 units of one hour duration.

##### ***Syllabus***

#### **1. Introduction**

**units 10**

- 1.1. Meaning of the term 'jurisprudence'
- 1.2. Norms and the normative system.

- 1.2.1. Different types of normative systems, such as of games, languages, religious orders, unions, clubs and customary practice.
- 1.2.2. Legal system as a normative order: similarities and differences of the legal system with other normative systems.
- 1.3. Nature and definition of law.

## **2. Schools of Jurisprudence**

**units 15**

- 2.1. Analytical positivism
- 2.2. Natural law
- 2.3. Historical school
- 2.4. Sociological school
- 2.5. Economic interpretation of law
- 2.6. The Bharat jurisprudence
  - 2.6.1. The Ancient: the concept of 'Dharma'
  - 2.6.2. The Modern: PIL, social justice, compensatory jurisprudence

## **3. Purpose of Law**

- 3.1. Justice
  - 3.1.1. Meaning and kinds
  - 3.1.2. Justice and law: approaches of different schools
  - 3.1.3. Power of the Supreme Court of India to do complete justice in a case: Article 142
  - 3.1.4. Critical studies
  - 3.1.5. Feminist jurisprudence

## **4. Sources of Law**

**units 20**

- 4.1. Legislation
- 4.2. Precedents: concept of stare decisis
- 4.3. Customs
- 4.4. Juristic writings

<b>5. Legal Rights: the Concept</b>	<b>units 6</b>
5.1. Rights: kinds	
5.2. Right duty correlation	
<b>6. Persons</b>	<b>units 3</b>
6.1. Nature of personality	
6.2. Status of the unborn, minor, lunatic, drunken and dead persons]	
6.3. Corporate personality	
6.4. Dimensions of the modern legal personality: Legal personality of non-human beings	
<b>7. Possession: the Concept</b>	<b>units 3</b>
7.1. Kinds of possession	
<b>8. Ownership :the Concept</b>	<b>units 3</b>
8.1. Kinds of ownership	
8.2. Difference between possession and ownership	
<b>9. Title</b>	<b>units 2</b>
<b>10. Property: the concept</b>	<b>units 3</b>
10.1. Kinds of property	
<b>11. Liability</b>	<b>units 15</b>
11.1. Conditions for imposing liability	
11.1.1. Wrongful act	
11.1.2. Damnum sine injuria	
11.1.3. Causation	
11.1.4. Mens rea	
11.1.5. Intention	

- 11.1.6. Malice
- 11.1.7. Negligence and recklessness
- 11.1.8. Strict liability
- 11.1.9. Vicarious liability

**12. Obligation: Nature and kinds**

**units 2**

- 12.1. Sources of obligation

**13. Procedure**

**units 2**

- 13.1. Substantive and procedural laws: difference
- 13.2. Evidence: Nature and kinds

***Select bibliography***

Bodenheimer *Jurisprudence—The Philosophy and Method of Law* (1996), Universal , Delhi.

Fitzgerald,(ed.) *Salmond on Jurisprudence* (1999) Tripathi, Bombay

W. Friedmann, *Legal Theory* (1999) Universal, Delhi.

V.D. Mahajan, *Jurisprudence and Legal Theory* (1996 re-print) , Eastern, Lucknow

M.D.A Freeman (ed.), *Lloyd's Introduction t Jurisprudence*, (1994), Sweet & Maxwell

Paton G.W., *Jurisprudence* (1972) Oxford, ELBS

H.L.A. Hart, *The Concepts of Law* (1970) Oxford, ELBS

Roscoe Pond, *Introduction to the Philosophy of Law* (1998 Re-print) Universal, Delhi.

Dias, *Jurisprudence* (1994 First Indian re-print), Adithya Books, New Delhi.

Dhyani S.N., *Jurisprudence: A study of Indian Legal Theory* (1985), Metropolitan, New Delhi.



## **BCI C 02 CONTRACT - I ( GENERAL PRINCIPLES OF CONTRACT AND SPECIFIC RELIEF)**

### ***Objectives of the course***

Every man in his day to day life from dawn to dusk makes a variety of contracts. Man's contract making activities increase with the increasing trade, commerce and industry. In a way living in a modern society would be impossible if the law did not recognise this contract making power of a person. This prompted Roscoe Pound to make his celebrated observation: "Wealth, in a commercial age, is made up largely of promises". In this sense India is also a "promissory" society.

The conferment and protection by the law of this contract making power of persons gives them a considerable leeway to strike best bargain for the contract making persons. In a way they are permitted to regulate and define their relations in a best possible manner they chose. However, the contours of contractual relations in a feudal, colonial and capitalist society of pre-independence India cannot necessarily be the same in an independent and developing Indian society. Whatever may be the nature of a given society, the contractual relations, as are obtained in that society, are governed by certain principles which are more or less of a general and basic nature. In India these general principles are statutised in the form of the Indian Contract Act 1972.

This course is designed to acquaint a student with the conceptual and operational parameters of these various general principles of contractual relations.

Specific enforcement of contract is an important aspect of the the law of contracts. Analysis of the kinds of contracts that can be specifically enforced and the methods of enforcement forms a significant segment of this study.

The following syllabus prepared with this perspective will comprise of about 84 Units of one-hour duration.

### ***Syllabus***

- |   |                 |
|---|-----------------|
| <b>1. General Principles of Law of contract</b>               | <b>units 40</b> |
| 1.1. History and nature of contractual obligations            |                 |
| 1.2. Agreement and contract: definitions, elements and kinds. |                 |

- 1.3. Proposal and acceptance- their various forms, essential elements, communication and revocation- proposal and invitations for proposal- floating offers- tenders- dumping of goods.
- 1.4. Consideration - its need, meaning, kinds, essential elements - nudum pactum - privity of contract and of consideration- its exceptions- adequacy of consideration- present, past and adequate consideration- unlawful consideration and its effects- views of Law Commission of India on consideration- evaluation of the doctrine of consideration.
- 1.5. Capacity to contract- meaning- incapacity arising out of status and mental defect- minor's agreements- definition of 'minor'- accessories supplied to a minor- agreements beneficial and detrimental to a minor - affirmation- restitution in cases of minor's agreements- fraud by a minor- agreements made on behalf of a minor- minor's agreements and estoppel- evaluation of the law relating to minor's agreements- other illustrations of incapacity to contract.
- 1.6. Free consent- Its need and definition- factors vitiating free consent.
  - 1.6.1. Coercion- definition- essential elements- duress and coercion- various illustrations of coercion- doctrine of economic duress- effect of coercion
  - 1.6.2. Undue Influence- definition- essential elements- between which parties can it exist? Who is to prove it? Illustrations of undue influence- independent advice- pardahanashin women- unconscionable bargains - effect of undue influence.
  - 1.6.3. Misrepresentation - definition - misrepresentation of law and of fact- their effects and illustration.
  - 1.6.4. Fraud - definition - essential elements - suggestion falsi-suppressio veri - when does silence amounts to fraud? Active- concealment of truth - importance of intention.
  - 1.6.5. Mistake - definition - kinds- fundamental error - mistake of law and of fact - their effects - when does a mistake vitiate free consent and when does it not vitiate free consent?
- 1.7. Legality of objects :
  - 1.7.1. Void agreements - lawful and unlawful considerations, and objects - void, voidable, illegal and unlawful agreements and their effects.

- 1.7.2. Unlawful considerations and objects:
  - 1.7.2.1. Forbidden by law
  - 1.7.2.2. Defeating the provision of any law
  - 1.7.2.3. Fraudulent
  - 1.7.2.4. Injurious to person or property
  - 1.7.2.5. Immoral
  - 1.7.2.6. Against public policy
- 1.7.3. Void Agreements:
  - 1.7.3.1. Agreements without consideration
  - 1.7.3.2. Agreements in restraint of marriage
  - 1.7.3.3. Agreements in restraint of trade- its exceptions- sale of goodwill, section 11 restrictions, under the partnership Act, trade combinations, exclusive dealing agreements, restraints on employees under agreements of service.
  - 1.7.3.4. Agreements in restraint of legal proceedings- its exceptions.
  - 1.7.3.5. Uncertain agreements
  - 1.7.3.6. Wagering agreement - its exception.
- 1.8. Discharge of a contract and its various modes.
  - 1.8.1. By performance- conditions of valid tender of performance- How? By whom? Where? When? In what manner? Performance of reciprocal promises- time as essence of contract.
  - 1.8.2. By breach - anticipatory breach and present breach.
  - 1.8.3. Impossibility of performance- specific grounds of frustration- application to leases- theories of frustration- effect of frustration- frustration and restitution.
  - 1.8.4. By period of limitation
  - 1.8.5. By agreement- rescission and alteration - their effect- remission and waiver of performance - extension of time- accord and satisfaction.
- 1.9. Quasi-contracts or certain relations resembling those created by contract
- 1.10. Remedies in contractual relations:

- 1.10.1. Damages-kinds-remoteness of damages- ascertainment of damages
- 1.10.2. Injunction- when granted and when refused- Why?
- 1.10.3. Refund and restitution
- 1.10.4. Specific performance- When? Why?

**2. Government as a Contracting Party** **units 10**

Constitutional provisions - government power to contract- procedural requirements- kinds of government contracts- their usual clauses- performance of such contracts- settlements of disputes and remedies.

**3. Standard Form Contracts** **units 10**

Nature, advantages - unilateral character, principles of protection against the possibility of exploitation- judicial approach to such contracts- exemption clauses - clash between two standard form contracts- Law Commission of India's views

**4. Multi-national Agreement** **units 6**

**5. Strategies and constraints to enforce contractual obligations** **units 8**

- 5.1. Judicial methods- redressal forum, remedies
- 5.2. Other methods like arbitration, Lok Adalat, Nyaya Panchayat and other such non formal methods
- 5.3. Systemic constraints in settling contractual disputes
  - 5.3.1. Court fees, service of summons, injunctions, delay.

**6. Specific relief** **Units 10**

- 6.1. Specific performance of contract
  - 6.1.1. Contract that can be specifically enforced
  - 6.1.2. Persons against whom specific enforcement can be ordered
- 6.2. Rescission and cancellation
- 6.3. Injunction
  - 6.3.1. Temporary

- 6.3.2. Perpetual
- 6.4. Declaratory orders
- 6.5. Discretion and powers of court

### **Select bibliography**

Beatsen (ed.), *Anson's Law of Contract* (27th ed. 1998)

P.S.Atiya, *Introduction to the Law of Contract* 1992 reprint (Claredon Law Series)

Avtar Singh, *Law of Contract* (2000) Eastern, Lucknow

G.C.Cheshire, and H.S.Fifoot and M.P. Furmston, *Law of Contract* (1992) ELBS with Butterworths

M. Krishnan Nair, *Law of Contracts*, (1998)

G.H. Treitel, *Law of Contract*, Sweet & Maxwell (1997 Reprint)

R.K.Abichandani,(ed.), *Pollock and Mulla on the Indian Contract and the Specific Relief Act* (1999),  
Tripathi

Banerjee. S.C, *Law of Specific Relief* (1998), Universal

Anson, *Law of Contract* (1998), Universal

*Dutt on Contract* (2000), Universal

Anand and Aiyer, *Law of Specific Relief* (1999), Universal

**BCI C 03 CONTRACT - II (INDIAN CONTRACT ACT, INDIAN PARTNERSHIP ACT, SALE OF GOODS ACT AND OTHER SPECIFIC CONTRACTS)**

***Objectives of the course***

This course is to be taught after the students have been made familiar with the general principles of contract in which the emphasis is on understanding and appreciating the basic essentials of a valid contract and on the existence of contractual relationship in various instances. Obviously, a course on special contracts should initiate the students to different kinds of contracts with emphasis on the intricacies therein. This course also should provide an insight into the justification for special statutory provisions for certain kinds of contracts.

The paper comprises of about 84 units of one hour duration.

***Syllabus***

**1. Indemnity**

**units 3**

- 1.1. The concept
- 1.2. Need for indemnity to facilitate commercial transactions.
- 1.3. Methods of creating indemnity obligations.
- 1.4. Definition of Indemnity
- 1.5. Nature and extent of liability of the indemnifier
- 1.6. Commencement of liability of the indemnifier
- 1.7. Situations of various types of indemnity creations.
- 1.8. Documents/agreements of indemnity
- 1.9. Nature of indemnity clauses.
- 1.10. Indemnity in cases of International transactions
- 1.11. Indemnity by governments during interstate transactions.

**2. Guarantee****units 7**

- 2.1. The concept.
- 2.2. Definition of guarantee: as distinguished from indemnity.
- 2.3. Basic essentials for a valid guarantee contract.
- 2.4. The place of consideration and the criteria for ascertaining the existence of consideration in guarantee contracts.
- 2.5. Position of minor and validity of guarantee when minor is the principal debtor, creditor or surety.
- 2.6. Continuing guarantee.
  - 2.6.1. Nature of surety's liability
  - 2.6.2. Duration and termination of such liability
- 2.7. Illustrative situations of existence of continuing guarantee.
  - 2.7.1 Creation and identification of continuing guarantees.
- 2.8. Letters of credit and bank guarantees as instances of guarantee transactions
- 2.9. Rights of surety:
  - 2.9.1. Position of surety in the eye of law
  - 2.9.2. Various judicial interpretations to protect the surety.
- 2.10. Co-surety and manner of sharing liabilities and rights.
- 2.11. Extent of surety's liability.
- 2.12. Discharge of surety's liability.

**3. Bailment****units 6**

- 3.1. Identification of bailment contracts in day today life.
  - 3.1.1. Manner of creation of such contracts
- 3.2. Commercial utility of bailment contracts
- 3.3. Definition of bailment
- 3.4. Kinds of bailees

3.5. Duties of Bailor and Bailee towards each other

3.6. Rights of bailor and bailee

3.7. Finder of goods as a bailee.

3.7.1. Liability towards the true owner.

3.7.2. Obligation to keep the goods safe

3.7.3. Right to dispose off the goods.

#### **4. Pledge**

**units 4**

4.1. Pledge: comparison with bailment

4.2. Commercial utility of pledge transactions

4.3. Definition of pledge under the Indian contract Act

4.4. Other statutory regulations(State & Centre)regarding pledge, reasons for the same

4.5. Rights of the pawner and pawnee.

4.5.1. Pawnee's right of sale as compared to that of an ordinary bailee

4.6. Pledge by certain specified persons mentioned in the Indian Contract Act.

#### **5. Agency**

**units 10**

5.1. Identification of different kinds of agency transactions in day to day life in the commercial world

5.2. Kinds of agents and agencies.

5.2.1. Distinction between agent and servant.

5.3. Essentials of a agency transaction

5.4. Various methods of creation of agency

5.5. Delegation

5.6. Duties and rights of agent

5.7. Scope and extent of agent's authority.

5.8. Liability of the principal for acts of the agent including misconduct and tort of the agent



- 5.9. Liability of the agent towards the principal.
- 5.10. Personal liability towards the parties
- 5.11. Methods of termination of agency contract
- 5.11.1. Liability of the principal and agent before and after such termination.

## **6. Sale of Goods**

**units 22**

- 6.1. Concept of sale as a contract
- 6.2. Illustrative instances of sale of goods and the nature of such contracts.
- 6.3. Essentials of contract of sale
- 6.4. Essential conditions in every contract of sale
- 6.5. Implied terms in contract of sale
- 6.6. The rule of caveat emptor and the exceptions thereto under the Sale of Goods Act.
- 6.7. Changing concept of caveat emptor
- 6.8. Effect and meaning of implied warranties in a sale
- 6.9. Transfer of title and passing of risk
- 6.10. Delivery of goods: various rules regarding delivery of goods.
- 6.11. Unpaid seller and his rights
- 6.1.2. Remedies for breach of contract

## **7. Partnership**

**units 20**

- 7.1. Nature of partnership: definition
- 7.2. Distinct advantages and disadvantages vis-à-vis partnership and private limited company
- 7.3. Mutual relationship between partners
- 7.4. Authority of partners
- 7.5. Admission of partners.
- 7.6. Outgoing of partners.

7.7. Registration of Partnership

7.8. Dissolution of Partnership

## **8. Negotiable Instruments**

**units 12**

8.1. The concept

8.2. Various kinds

8.3. Essential requirements to make an instrument negotiable.

8.4. Competent parties for making and negotiation

8.5. Acceptance of the instrument.

8.6. Dishonour by non acceptance and remedies available to the holder

8.7. Holder and holder in due course: meaning, essential conditions rights and privileges of holder in course and indorsee from the holder in due course.

8.8. Negotiation of the instrument.

8.9. Presentment of the instrument.

8.10. Cheques: rules regarding payment of cheque

8.10.1. Liability of the collecting banker and paying banker.

8.10.2. Dishonour of cheque and its effect.

8.10.3. Discharge from liability

8.11. Kinds of bills

8.12. Evidence

8.12.1. Special rules of evidence regarding negotiable instruments

### **Select bibliography.**

R.K.Abhichandani (ed.), *Pollock and Mulla on Contracts and Specific Relief Acts* (1999) Tripathi, Bombay

Avtar Singh, *Contract Act* (2000), Eastern, Lucknow.

Krishnan Nair, *Law of Contract*, (1999) Orient

Avtar Singh, *Principles of the Law of Sale of Goods and Hire Purchase* (1998), Eastern, Lucknow

J.P.Verma (ed.), Singh and Gupta, *The Law of Partnership in India* (1999), Orient Law House, New Delhi.

A. G. Guest (ed.), *Benjamin`s Sale of Goods* (1992), Sweet & Maxwell.

Bhashyam and Adiga, *The Negotiable Instruments Act* (1995), Bharath, Allahabad

M.S.Parthasarathy (ed.), J. S. Khergamvala, *The Negotiable Instruments Act*

Beatson (ed.), *Ansons' Law of Contract*, (1998), Oxford, London

Saharay, h.k., *Indian Partnership and Sale of Goods Act* (2000), Universal

Ramnainga, *The Sales of Goods Act* (1998), Universal

**BCI C 04 TORT AND CONSUMER PROTECTION LAWS*****Objectives of the course***

With rapid industrialization, tort action came to be used against manufacturers and industrial units for products injurious to human beings. Presently, the emphasis is on extending the principles not only to acts, which are harmful, but also to failure to comply with standards that are continuously changing due to advancement in science and technology. Product liability is now assuming a new dimension in developed economics.

In the modern era of consumer concern of goods and services, the law of torts has an added significance with this forage into the emerging law of consumer protection. It operates in disputes relating to the quality of goods supplied and services rendered and in those areas relating to damage suffered by consumers. The law relating to consumer protection, lying scattered in myriad provisions of various legislation and judicial decisions in India, so connected with the human rights for a healthy life and environment, has now a core subject to be taught as an indispensable part of a socially relevant curriculum.

The BCI proposed a combination of laws of torts and consumer protection as a single paper. The following syllabus is prepared with this perspective.

The following syllabus prepared with this perspective will comprise of about 84 units of one hour duration.

***Syllabus***

- 1. Evolution of Law of Torts** **units 1**
  - 1.1. England - forms of action - specific remedies from case to case
  - 1.2. India - principles of justice equity and good conscience - uncodified character-advantages and disadvantages
  
- 2. Definition, Nature, Scope and Objects** **units 2**
  - 2.1. A wrongful act- violation of duty imposed by law, duty which is owed to people generally (in rem) - damnum sine injuria and injuria sine damnum.

- 1.11. Tort distinguished from crime and breach of contract
- 1.12. The concept of unliquidated damages,
- 1.13. Changing scope of law of torts : expanding character of duties owed to people generally due to complexities of modern society
- 1.14. Objects- prescribing standards of human conduct, redressal of wrongs by payment of compensation, proscribing unlawful conduct by injunction.

### **3. Principles of Liability in Torts**

**units 2**

- 3.1. Fault:
  - 3.1.1. Wrongful intent
  - 3.1.2. Negligence
- 3.2. Liability without fault
- 3.3. Violation of ethical codes
- 3.4. Statutory liability:
- 3.5. Place of motive in torts

### **4. Justification in Tort**

**units 2**

- 4.1. Volenti non fit injuria
- 4.2. Necessity, private and public
- 4.3. Plaintiff's default
- 4.4. Act of God
- 4.5. Inevitable accident
- 4.6. Private defense
- 4.7. Statutory authority
- 4.8. Judicial and quasi-judicial acts
- 4.9. Parental and quasi-parental authority

- 5. Extinguishment of liability in certain situations** **units 2**
- 5.1. Actio personalis moritur cum persona - exceptions
  - 5.2. Waiver and acquiescence
  - 5.3. Release
  - 5.4. Accord and satisfaction
  - 5.5. Limitation
- 6. Standing** **units 2**
- 6.1. Who may sue - aggrieved individual - class action - social action group
  - 6.2. Statutes granting standing to certain persons or groups
  - 6.3. Who may not be sued ?
- 7. Doctrine of sovereign immunity and its relevance in India** **units 2**
- 8. Vicarious Liability** **units 3**
- 8.1. Basis, scope and justification
    - 8.1.1. Express authorization
    - 8.1.1. Ratification
    - 8.1.2. Abetment
  - 8.2. Special Relationships:
    - 8.2.1. Master and servant - arising out of and in the course of employment - who is master? - the control test - who is servant? - borrowed servant - independent contractor and servant, distinguished
    - 8.2.2. Principal and agent
    - 8.2.3. Corporation and principal officer
- 9. Torts against persons and personal relations** **units 7**
- 9.1. Assault, battery, mayhem
  - 9.2. False imprisonment

- 9.3. Defamation- libel, slander including law relating to privileges
- 9.4. Marital relations, domestic relations, parental relations, master and servant relations
- 9.5. Malicious prosecution
- 9.6. Shortened expectation of life
- 9.7. Nervous shock

**10. Wrongs affecting property** **units 3**

- 10.1. Trespass to land, trespass ab initio, dispossession
- 10.2. Movable property- trespass to goods, detinue, conversion
- 10.3. Torts against business interests - injurious falsehood, misstatements, passing off

**11. Negligence** **units 6**

- 11.1. Basic concepts
  - 11.1.1. Theories of negligence
  - 11.1.2. Standards of care, duty to take care, carelessness, inadvertence
  - 11.1.3. Doctrine of contributory negligence
  - 11.1.4. Res ipsa loquitur and its importance in contemporary law
- 11.2. Liability due to negligence : different professionals
- 11.3. Liability of common carriers for negligence
- 11.4. Product liability due to negligence : liability of manufacturers and business houses for their products

**12. Nuisance** **units 2**

- 12.1. Definition, essentials and types
- 12.2. Acts which constitute nuisance- obstructions of highways, pollution of air, water, noise, and interference with light and air

**13. Absolute/Strict liability** **units 2**

- 13.1. The rule in Rylands v. Fletcher
- 13.2. Liability for harm caused by inherently dangerous industries

**14. Legal remedies****units 2**

14.1. Legal remedies:

14.1.1. Award of damages- simple, special, punitive

14.1.2. Remoteness of damage- foreseeability and directness

14.1.3. Injunction

14.1.4. Specific restitution of property

14.2. Extra-legal remedies- self-help, re-entry on land, re-capture of goods, distress damage feasant and abatement of nuisance.

**15. Consumer movements: historical perspectives****units 2**

15.1. Common law protection: contract and torts

15.2. Consumerism in India: food adulteration, drugs and cosmetics - essential Commodities

15.2.1. Criminal sanction: Sale of noxious and adulterated substances, false weights and measures. Use of unsafe carriers

**16. Consumer, the concept****units 2**

16.1. General Perspectives

16.2. Statutory and government services: to be included or not?

16.2. Definition and scope: the Consumer Protection Act 1986 (CPA)

16.3.1. Who is not a consumer?

**17. Unfair Trade Practices****units 2**

17.1. Misleading and false advertising

17.2. Unsafe and hazardous products

17.3. Disparaging competitors

17.4. Business ethics and business self-regulation

17.5. Falsification of trade marks.



**18. Consumer of goods****units 12**

- 18.1. Meaning of defects in goods.
- 18.2. Standards of purity, quality, quantity and potency
  - 18.2.1. Statutes: food and drugs, engineering and electrical goods.
  - 18.2.2. Common law: decision of courts
- 18.3. Price control
  - 18.3.1. Administrative fixation
  - 18.3.2. Competitive market
- 18.4. Supply and distribution of goods

**19. Supply of essential commodities****Units 3**

- 19.1. Quality control
- 19.2. Sale of goods and hire purchase law
- 19.3. Prescribing standards of quality - BIS and Agmark, Essential commodities law.

**20. Consumer Safety****units 5**

- 20.1. Starting, distribution and handling of unsafe and hazardous products.
- 20.2. Insecticides and pesticides and other poisonous substances

**21. Service****units 10**

- 21.1. Deficiency - meaning
- 21.2. Professional services
  - 21.2.1. Medical Services
  - 21.2.2. How to determine negligence
  - 21.2.3. Violation of statute
  - 21.2.4. Denial of medical service: violation of human rights
  - 21.2.5. Lawyering services: duty-towards-court and duty-to-client dilemma, break of confidentiality - negligence and misconduct.

- 21.3. Public Utilities
  - 21.3.1. Supply of electricity
  - 21.3.2. Telecommunication and postal services
  - 21.3.3. Housing
  - 21.3.4. Banking

**22. Commercial services****units 5**

- 22.1. Hiring
- 22.2. Financing
- 22.3. Agency services

**23. Enforcement of consumer rights****units 5**

- 23.1. Consumer fora under CPA: jurisdiction, powers and functions
  - 23.1.1. Execution of orders
  - 23.1.2. Judicial review
- 23.2. PIL
- 23.3. Class action
- 23.4. Remedies:
- 23.5. Administrative remedies

**Select bibliography**

Salmond and Heuston - *On the Law of Torts* (2000) Universal, Delhi.

D.D.Basu, *The Law of Torts* (1982), Kamal, Calcutta.

D.M.Gandhi, *Law of Tort* (1987), Eastern, Lucknow

P.S.Achuthan Pillai, *The law of Tort* (1994) Eastern, Lucknow

Ratanlal & Dhirajlal, *The Law of Torts* (1997), Universal, Delhi.

Winfield and Jolowiz on *Tort* (1999), Sweet and Maxwell, London.

Saraf, D.N., *Law of Consumer Protection in India* (1995), Tripathi, Bombay

Avtar Singh, *The Law of Consumer Protection: Principles and Practice* (2000), Eastern Book Co., Lucknow

J.N.Barowalia, *Commentary on Consumer Protection Act 1986* (2000), Universal, Delhi.

P.K.Majundar, *The Law of Consumer Protection In India* (1998), Orient Publishing Co. New Delhi.

R.M. Vats, *Consumer and the Law* (1994), Universal, Delhi

## **BCI C 05 & C 06 FAMILY LAW I AND II**

### ***Objectives of the course***

The course structure is designed mainly with three objectives in view. One is to provide adequate sociological perspectives so that the basic concepts relating to family are expounded in their social setting. The next objective is to give an overview of some of the current problems arising out of the foundational inequalities writ large in the various family concepts. The third objective is to view family law not merely as a separate system of personal laws based upon religions but as the one cutting across the religious lines and eventually enabling us to fulfill the constitutional directive of uniform civil code. Such a restructuring would make the study of familial relations more meaningful.

The Bar Council of India has suggested that the Family Law is to be taught in two courses while the CDC had prepared the syllabus for a comprehensive full course on Family Law. The CDC syllabi being elaborate embracing various aspects of Family Law, each University Board of Studies has the discretion to divide the CDC paper on Family Law into two.

The following syllabus prepared with this perspective will, thus, comprise about 168 units of one-hour duration.

### ***Syllabus***

- |  |                |
|--|----------------|
| <b>1. Marriage and Kinship</b>   | <b>units 6</b> |
| 1.1. Evolution of the institution of marriage and family.  |                |
| 1.2. Role of religious rituals and practices in moulding the rules regulating to marital relations |                |
| 1.3. Types of family based upon  |                |
| 1.3.1. Lineage- patrilineal matrilineal  |                |
| 1.3.2. Authority structure- patriarchal and matriarchal  |                |
| 1.3.3. Location- patrilocal and matrilocal   |                |
| 1.3.4. Number of conjugal units - nuclear, extended, joint and composite.                          |                |
| 1.4. Emerging concepts : maitri sambandh and divided home  |                |

**2. Customary practices and State regulation** **units 8**

- 2.1. Polygamy
- 2.2. Concubinage
- 2.3. Child marriage
- 2.4. Sati
- 2.5. Dowry

**3. Conversion and its effect on family** **units 8**

- 3.1. Marriage
- 3.2. Adoption
- 3.3. Guardianship
- 3.4. Succession

(In view of the conflict of inter-personal laws, conversion is causing problems. How conversion affects the family and whether it is compatible with the concept of secularism and to what extent such problems would stand resolved with the enactment of a uniform civil code are some of the basics that need to be examined).

**4. Joint Family** **units 30**

- 4.1. Mitakshara joint family
- 4.2. Mitakshara coparcenary- formation and incidents
- 4.3. Property under Mitakshara law- separate property and coparcenary property
- 4.4. Dayabhaga coparcenary- formation and incidents
- 4.5. Property under Dayabhaga law.
- 4.6. Karta of the joint family - his position, powers, privileges and obligations
- 4.7. Alienation of property- separate and coparcenary.
- 4.8. Debts - doctrines of pious obligations and antecedent debt.
- 4.9. Partition and re-union

4.10. Joint hindu family as a social security institution and impact of Hindu Gains of Learning Act and various tax laws on it.

4.11. Matrilineal joint family

## **5. Inheritance**

**units 36**

5.1. Hindus

5.1.1. Historical perspective of traditional Hindu law as a background to the study of Hindu Succession Act 1956.

5.1.2. Succession to property of a Hindu male dying intestate under the provisions of Hindu Succession Act 1956.

5.1.3. Devolution of interest in Mitakshara coparcenary with reference to the provisions of Hindu Succession Act 1956

5.1.4. Succession to property of Hindu female dying intestate under the Hindu Succession Act 1956.

5.1.5. Disqualification relating to succession

5.1.6. General rules of succession

5.1.7. Marumakkattayam and Aliyasantana laws governing people living in Travancore - Cochin and the districts of Malabar and South Kanara.

5.2. Muslims

5.2.1. General rules of succession and exclusion from succession.

5.2.2. Classification of heirs under Hanafi and Ithna Ashria schools and their shares and distribution of property.

5.3. Christians, Parsis and Jews

5.3.1. Heirs and their shares and distribution of property under the Indian Succession Act of 1925.

## **6. Matrimonial Remedies**

**units 20**

6.1. Non-judicial resolution of marital conflicts.

a. Customary dissolution of marriage - unilateral divorce, divorce by mutual consent and other modes of dissolution.

b. Divorce under Muslim personal law - talaq and talaq-e-tafweez.

- 6.2. Judicial resolution of marital conflicts : the family court
- 6.3. Nullity of marriage
- 6.4. Option of puberty
- 6.5. Restitution of conjugal rights
- 6.6. Judicial separation
- 6.7. Desertion: a ground for matrimonial relief
- 6.8. Cruelty: a ground for matrimonial relief
- 6.9. Adultery: a ground for matrimonial relief
- 6.10. Other grounds for matrimonial relief
- 6.11. Divorce by mutual consent under: Special Marriage Act 1954; Hindu Marriage Act 1955; Muslim law (Khula and Mubaraat).
- 6.12. Bar to matrimonial relief:
  - 6.12.1. Doctrine of strict proof
  - 6.12.2. Taking advantage of one's own wrong or disability
  - 6.12.3. Accessory
  - 6.12.4. Connivance
  - 6.12.5. Collusion
  - 6.12.6. Condonation
  - 6.12.7. Improper or unnecessary delay
  - 6.12.8. Residuary clause - no other legal ground exists for refusing the matrimonial relief.

## **7. Alimony and maintenance**

**units 16**

- 7.1. Maintenance of neglected wives, divorced wives, minor children, disabled children, and parents who are unable to support themselves: provisions under the Code of Criminal Procedure 1973.
- 7.2. Alimony and maintenance as an independent remedy: a review under different personal laws - need for reforming the law

- 7.3. Alimony and maintenance as an ancillary relief
- 7.4. Maintenance of divorced Muslim women under the Muslim Women (Protection of Rights on Divorce) Act 1986 : a critical review.
  
- 8. Child and the Family units 14**
  - 8.1. Legitimacy
  - 8.2. Adoption
  - 8.3. Custody, maintenance and education
  - 8.4. Guardianship and parental rights - welfare of the child principle.
  
- 9. Family and its changing patterns units 10**
  - 9.1. New emerging trends:
    - 9.1.1. Attenuation of family ties
    - 9.1.2. Working women and their impact on spousal relationship : composition of family, status and role of women
    - 9.1.3. New property concepts, such as skill and job as new forms of property.
  - 9.2. Factors affecting the family: demographic, environmental, religious and legislative.
  - 9.3. Processes of social change in India: sanskritization, westernization, secularization, universalization, parochialization, modernization, industrialization and urbanization.
  
- 10. Settlement of spousal property units 4**
  - 10.1. Need for development of law
  
- 11. Establishment of Family Courts units 8**
  - 11.1. Constitution, power and functions
  - 11.2. Administration of gender justice
  
- 12. Uniform Civil Code - need for units 8**
  - 12.1. Religious pluralism and its implications
  - 12.2. Connotations of the directive contained in Article 44 of the Constitution



- 12.3. Impediments to the formulation of the Uniform Civil Code
- 12.4. The idea of Optional Uniform Civil Code.

### **Select bibliography**

Paras Diwan, *Law of Intestate and Testamentary Succession* (1998), Universal

Basu, N.D., *Law of Succession* (2000), Universal

Kusem, *Marriage and Divorce Law Manual* (2000) Universal

Machanda.S.C., *Law and Practice of Divorce in India* (2000) Universal

P.V.Kane, *History of Dharmasastras* Vol.2 pt.1 at 624-632 (1974)

A.Kuppuswami (ed.) *Mayne's Hindu Law and Usage* Ch.4(1986)

B.Sivaramayys, *Inequalities and the Law*, (1985)

K.C.Daiya, "Population control through family planning in India," *Indian Journal of Legal Studies*, 85 (1979)

J.D.M. Derrett, *Hindu Law: Past and Present*

J.D.M. Derrett, *Death of Marriage Law*

A.A.A.Fyzee, *Outline of Muhammadan Law*, (1998)

Alladi Kuppuswami,(ed.) *Mayne's Hindu Law and Usage*, (1986)

J.D.M.Derret, *A Critique of Modern Hindu Law*, (1970)

Paras Diwan, *Hindu Law* (1985)

S.T.Desai (ed.) *Mulla's Principles of Hindu Law*, (1998)- Butterorths-India.

Pares Diwan, *Family Law: Law of Marriage and Divorce in India*, (1984).

A.M.Bhattachargee, *Muslim Law and the Constitution* (1994) Eastern Law House, Calcutta.

A.M.Bhattachargee, *Hindu Law and the Constitution* (1994) Eastern Law House, Calcutta.

Paras Diwan, *Law of Adoption, Ministry, Guardianship and Custody* (2000), Universal

**BCI C 07 LAW OF CRIMES*****Objectives of the course***

The Indian society has changed very rapidly since Independence. A proper understanding of crimes, methods of controlling them and the socio-economic and political reasons for their existence is now extremely important in the larger context of India's development, if students are to use their knowledge and skills to build a just and humane society. The curriculum outlined here attempts to bring in these new perspectives.

The following syllabus will comprise of about 84 Units of one hour duration.

***Syllabus***

- |  |                 |
|--|-----------------|
| <b>1. General</b>  | <b>units 10</b> |
| 1.1. Conception of crime   |                 |
| 1.1.1. Pre-colonial notions of crime as reflected in Hindu, Muslim and tribal law. |                 |
| 1.1.2. Macaulay's draft based essentially on British notions.                      |                 |
| 1.2. State's power to determine acts or omissions as crimes                        |                 |
| 1.3. State's responsibility to detect, control and punish crime.                   |                 |
| 1.4. Distinction between crime and other wrongs.                                   |                 |
| 1.5. IPC : a reflection of different social and moral values.                      |                 |
| 1.6. Applicability of I.P.C.   |                 |
| 1.6.1. Territorial   |                 |
| 1.6.2. Personal  |                 |
| 1.7. Salient features of the I.P.C   |                 |
| <b>2. Elements of criminal liability</b>   | <b>units 5</b>  |
| 2.1. Author of crime - natural and legal person                                    |                 |
| 2.2. Men rea - evil intention  |                 |

- 2.3. Importance of mens rea
- 2.4. Recent trends to fix liability without mens rea in certain socio-economic offences.
- 2.5. Act in furtherance of guilty intent
- 2.6. Omission
- 2.7. Injury to another

### **3. Group liability**

**units 10**

- 3.1. Stringent provision in case of combination of persons attempting to disturb peace.
- 3.2. Common intention
- 3.3. Abetment:
  - 3.3.1. Instigation, aiding and conspiracy
  - 3.3.2. Mere act of abetment punishable
- 3.4. Unlawful assembly:
  - 3.4.1. Basis of liability
- 3.5. Criminal conspiracy
- 3.6. Rioting as a specific offence

### **4. Stages of a crime units 6**

- 4.1. Guilty intention - mere intention not punishable
- 4.2. Preparation
  - 4.2.1. Preparation not punishable
  - 4.2.2. Exception in respect of certain offences of grave nature or of peculiar kind such as possession of counterfeit coins, false weights and measures.
- 4.3. Attempt:
  - 4.3.1. Attempt when punishable - specific provisions of IPC
  - 4.3.2. Tests for determining what constitutes attempt - proximity, equivocality and social danger
  - 4.3.3. Impossible attempt

- 5. Factors negating guilty intention** **units 10**
- 5.1. Mental incapacity
    - 5.1.1. Minority
    - 5.1.2. Insanity- impairment of cognitive faculties, emotional imbalance
    - 5.1.3. Medical and legal insanity
  - 5.2. Intoxication - involuntary
  - 5.3. Private defence- justification and limits
    - 5.3.1. When private defence extends to causing of death to protect body and property
    - 5.3.2. Necessity
    - 5.3.3. Mistake of fact
- 6. Types of punishment** **units 8**
- 6.1. Death:
    - 6.1.1. Social relevance of capital punishment
    - 6.1.2. Alternatives to capital punishment
  - 6.2. Imprisonment - for life, with hard labour, simple imprisonment
  - 6.3. Forfeiture of property
  - 6.4. Fine
  - 6.5. Discretion in awarding punishment:
    - 6.5.1. Minimum punishment in respect of certain offences
- 7. Specific offences against human body** **units 10**
- 7.1. Causing death of human beings
    - 7.1.1. Culpable homicide
    - 7.1.2. Murder
  - 7.2. Distinction between culpable homicide and murder

- 7.2.1. Specific mental element : requirement in respect of murder
- 7.3. Situation justifying treating murder as culpable homicide not amounting to murder
  - 7.3.1. Grave and sudden provocation
  - 7.3.2. Exceeding right to private defense
  - 7.3.3. Public servant exceeding legitimate use of force
  - 7.3.4. Death in sudden fight
  - 7.3.5. Death caused by consent of the deceased- euthanasia and surgical operation
  - 7.3.6. Death caused of person other than the person intended
  - 7.3.7. Miscarriage with or without consent
- 7.4. Rash and negligent act causing death
- 7.5. Hurt- grievous and simple
- 7.6. Assault and criminal force
- 7.7. Wrongful restraint and wrongful confinement- kidnapping from lawful guardianship and from outside India.
- 7.8. Abduction

## **8. Offences against women**

**units 10**

- 8.1. Insulting the modesty of woman
- 8.2. Assault or criminal force with intent to outrage the modesty of woman
- 8.3. Causing miscarriage without woman's consent:
  - 8.3.1. Causing death by causing miscarriage without woman's consent
- 8.4. Kidnapping or abducting woman to compel her to marry or force her to illicit intercourse
- 8.5. Buying a minor for purposes of prostitution
- 8.6. Rape:
  - 8.6.1. Custodial rape

- 8.6.2. Marital rape
- 8.7. Prevention of immoral traffic
- 8.8. Cruelty by husband or his relatives
- 8.8.1. Prevention of Sati
- 8.9. Prohibition of indecent representation of women

**9. Offences against Property** **units 5**

- 9.1. Theft
- 9.2. Cheating
- 9.3. Extortion
- 9.4. Robbery and dacoity
- 9.5. Mischief
- 9.6. Criminal misrepresentation and criminal breach of trust

**10. New kinds of crimes such as terrorism, pollution and adulteration** **units 5**

**11. Law Reforms** **units 5**

***Bibliography***

K.D. Gaur, *Criminal Law: Cases and Materials* (1999), Butterworths, India

Ratanlal-Dhirajlal's *Indian Penal Code* (1994 reprint)

K.D.Gaur, *A Text Book on the Indian Penal Code* (1998), Universal, Delhi.

P.S.Achuthan Pillai, *Criminal Law* (1995) Eastern, Lucknow.

Hidayathullaw, M., et.al., Ratanlal and Dhirajlats *The Indian Penal Code* (1994 reprint), Wadhwa & Co., Nagpur.

B.M.Gandhi, *Indian Penal Code* (1996), Eastern, Nagpur

**BCI C 08 CRIMINAL PROCEDURE CODE, JUVENILE JUSTICE ACT AND PROBATION OF OFFENDERS ACT**

***Objective of the course***

The criminal process involves increasing expenditure of government resources. At the same time it confronts a crisis of intrusion into individual rights in order to protect the common weal. Obviously, criminal procedure has to be just, fair and reasonable to the accused as well as to the victims. Undoubtedly the process is to be carried out in an objective manner. Criminal procedure, thus, makes a balance of conflicting interests. This imposes a duty upon those connected with the working of the criminal process to abide by the law and to exercise discretion conferred on them in the best manner. Code of Criminal Procedure, originally enacted years ago, had undergone many trials and experiments, too enormous to be placed within a class room discussion. However, the students should obtain a fair idea how the code works as the main spring of the criminal justice delivery system and should be exposed to the significant riddles of the procedure.

Juvenile justice and probation of offenders are combined with the study of criminal procedure. These topics also do have their roots in criminal procedure. The rubrics under their head are intended to render an essential grasp of the areas.

This paper with the above perspectives comprises about 84 units of one-hour duration.

**1. Introductory**

**units 5**

- 1.1. The rationale of criminal procedure: the importance of fair trial.
- 1.2. Constitutional perspectives: Articles 14, 20 & 21.
- 1.3. The variety of criminal procedures ( the class should examine, in particular the procedure for trial of special offences, especially, offences under the Prevention of Corruption Act and Narcotic Drugs and Psychotropic Substances Act )
- 1.4. The organisation of police, prosecutor, defence counsel and prison authorities and their duties, functions and powers.



- 2. Pre-trial process : arrest** **units 6**
- 2.1. The distinction between cognisable and non-cognisable offences: relevance and adequacy problems.
  - 2.2. Steps to ensure accused's presence at trial : warrant and summons.
  - 2.3. Arrest with and without warrant (Section 70-73 and 41).
  - 2.4. The absconder status (Section 82, 83, 84 and 85)
  - 2.5. Right of the arrested person
  - 2.6. Right to know grounds of arrest (Section 50(1), 55, 75).
  - 2.7. Right to be taken to magistrate without delay (Section 56, 57).
  - 2.8. Right of not being detained for more than twenty-four hours (section 57): 2.9 Article 22(2) of the Constitution of India.
  - 2.9. Right to consult legal practitioner, legal aid and the right to be told of rights to bail
  - 2.10. Right to be examined by a medical practitioner (Section 54).
- 3. Pre-trial process: Search and Seizure** **units 5**
- 3.1. Search warrant (Section 83, 94, 97, 98) and searches without warrant (Section 103)
  - 3.2. Police search during investigation (Section 165, 166, 153)
  - 3.3. General principles of search (section 100)
  - 3.4. Seizure (Section 102)
  - 3.5. Constitutional aspects of validity of search and seizure proceedings
- 4. Pre-trial Process: FIR** **units 5**
- 4.1. F.I.R. (section 154)
  - 4.2. Evidentiary value of F.I.R. (See Sections 145 and 157 of Evidence Act)
- 5. Pre-trial Process: Magisterial Powers to Take Cognizance** **units 5**

**6. Trial Process****units 6**

- 1.1. Commencement of proceedings: (Section 200, 201, 202)
- 1.2. Dismissal of complaints (Section 203, 204)
- 1.3. Bail: concept, purpose : constitutional overtones
  - 1.3.1. Bailable and Non- Bailable offences (Section 436, 437, 439)
  - 1.3.2. Cancellation of bail (Section 437 (5) )
  - 1.3.3. Anticipatory bail (Section 438)
  - 1.3.4. Appellate bail powers (Section 389(1), 395 (1), 437(5))
  - 1.3.5. General principles concerning bond (Sections 441-450)

**7. Fair Trial****units 6**

- 7.1. Conception of fair trial
- 7.2. Presumption of innocence.
- 7.3. Venue of trial.
- 7.4. Right of the accused to know the accusation (Section 221-224)
- 7.5. The right must generally be held in the accused's presence (Section 221-224)
- 7.6. Right of cross -examination and offering evidence in defence: the accused's statement
- 7.7. Right to speedy trial

**8. Charge****units 6**

- 8.1. Framing of charge
- 8.2. Form and content of charge (Section 211, 212, 216)
- 8.3. Separate charges for distinct offence (Section 218, 219, 220,221,223)
- 8.4. Discharge - pre-charge evidence

- 9. Preliminary pleas to bar the trial** **units 6**
- 9.1. Jurisdiction (Section 26, 177-188, 461,462,479)
  - 9.2. Time limitations: rationale and scope (section 468-473)
  - 9.3. Pleas of autrefois acquit and autrefois convict (Section 300, 22D)
  - 9.4. Issue-Estoppel
  - 9.5. Compounding of offences
- 10. Trial Before a Court of Sessions: Procedural Steps and Substantive Rights** **units 5**
- 11. Judgement** **units 5**
- 11.1. Form and content (Section 354)
  - 11.2. Summary trial
  - 11.3. Post-conviction orders in lieu of punishment: emerging penal policy (Section 360,361, 31)
  - 11.4. Compensation and cost (Section 357, 358)
  - 11.5. Modes of providing judgement (Section 353, 362, 363)
- 12. Appeal, Review, Revision** **units 7**
- 12.1. No appeal in certain cases (Section 372, 375, 376)
  - 12.2. The rationale of appeals, review, revision.
  - 12.3. The multiple range of appellate remedies:
    - 12.3.1. Supreme Court of India (Sections 374, 379, Articles 31, 132,134,136)
    - 12.3.2. High Court (Section 374)
    - 12.3.3. Sessions court (Section 374)
    - 12.3.4. Special right to appeal (Section 380)
    - 12.3.5. Governmental appeal against sentencing (Section 377, 378)
    - 12.3.6. Judicial power in disposal of appeals (Section 368)
    - 12.3.7. Legal aid in appeals.

12.4. Revisional jurisdiction (Sections 397-405)

12.5. Transfer of cases (Section 406, 407)

**13. Juvenile delinquency**

**units 7**

13.1. Nature and magnitude of the problem

13.2. Causes

13.3. Juvenile court system

13.4. Treatment and rehabilitation of juveniles

13.5. Juveniles and adult crime

13.6. Legislative and judicial protection of juvenile offender

13.7. Juvenile Justice Act 1988

**14. Probation**

**units 7**

14.1. Probation of offenders law

14.2. The judicial attitude

14.3. Mechanism of probation : standards of probation services.

14.4. Problems and prospects of probation

14.5. The suspended sentence

**15. Reform of criminal procedure**

**units 2**

***Bibliography***

Retanalal Dhirajlal, *Criminal Procedure Code* (1999) Universal, Delhi.

Chandrasekharan Pillai ed., *Kelkar Lectures on Criminal Procedure* (1998) Eastern, Lucknow

Princip's, *Commentaries on the Code of Criminal Procedure*, 2 vol.(2000) Universal

Woodroffe: *Commentaries on Code of Criminal Procedure*, 2 vol. (2000) Universal.

Chandrasekharan Pillai (ed.) *Kelkar's Outlines of Criminal Procedure* (2001), Eastern, Lucknow.

**BCI C 09 CONSTITUTIONAL LAW*****Objective of the course***

India is a democracy and her Constitution embodies the main principles of the democratic government- how it comes into being, what are its powers, functions, responsibilities and obligations- how power is limited and distributed. Whatever might have been the original power base of the Constitution, today it seems to have acquired legitimacy as a highest norm of public law. A good understanding of the Constitution and the law, which has developed through constitutional amendments, judicial decisions, constitutional practice and conventions is, therefore, absolutely necessary for a student of law. He must also know the genesis, nature and special features and be aware of the social, political and economic influence on the Constitution.

The purpose of teaching constitutional law is to highlight its never-ending growth. Constitutional interpretation is bound to be influenced by one's social, economic or political predilections. A student must, therefore, learn how various interpretations of the constitution are possible and why a significant interpretation was adopted in a particular situation. Such a critical approach is necessary requirement in the study of constitutional law.

Judicial review is an important aspect of constitutional law. India is the only country where the judiciary has the power to review even constitutional amendments. The application of basic structure objective in the evaluation of executive actions is an interesting development of Indian constitutional law. *Pari pasu* the concept of secularism and federalism engraved in the constitution are, and are to be, interpreted progressively.

The following syllabus prepared with this perspective will comprise of about 84 Units of one-Hour duration.

***Syllabus*****1. Historical Perspective****units 8**

- 1.1. Constitutional developments since 1858 to 1947
- 1.2. Gandhi Era - 1919 to 1947: social, political, economic and spiritual influence.

- 1.3. Making of Indian Constitution
- 1.4. Nature and special features of the constitution.

## **2. Parliamentary Government**

**units 15**

- 2.1. Westminster model - choice of parliamentary government at the Centre and States.
- 2.2. President of India
  - 2.1.1. Election, qualifications, salary and impeachment
  - 2.1.2. Powers : legislative, executive and discretionary powers
- 2.3. Council of Ministers
- 2.4. Governor and state government - constitutional relationship.
- 2.5. Legislative process
  - 2.5.1. Practice of law-making.
  - 2.5.2. Legislative privileges and fundamental rights.
- 2.6. Prime Minister - cabinet system - collective responsibility-individual responsibility.
- 2.7. Coalition Government: Anti-defection Law.

## **3. Federalism**

**units 8**

- 3.1. Federalism - principles: comparative study
- 3.2. Indian Federalism: identification of federal features
  - 3.2.1. Legislative relations
  - 3.2.2. Administrative relations
  - 3.2.3. Financial relations .
- 3.3. Governor's role
- 3.4. Centre's powers over the states - emergency
- 3.5. J & K - special status
- 3.6. Challenges to Indian federalism

- 4. Constitutional Processes of Adaptation and Alteration** **units 5**
- 4.1. Methods of constitutional amendment
  - 4.2. Limitations upon constituent power
  - 4.3. Development of the basic Structure : Doctrine judicial activism and restraint
- 5. Secularism** **units 3**
- 5.1. Concept of secularism : historical perspective
  - 5.2. Indian constitutional provision
  - 5.3. Freedom of religion - scope
  - 5.4. Religion and the state: the limits
  - 5.5. Minority rights
- 6. Equality and Social Justice** **units 5**
- 6.1. Equality before the law and equal protection of laws
  - 6.2. Classification for differential treatment: constitutional validity
  - 6.3. Gender justice
  - 6.4. Justice to the weaker sections of society: scheduled castes, scheduled tribes and other backwards classes
  - 6.5. Strategies for ameliorative justice
- 7. Freedoms and Social Control** **units 10**
- 7.1. Speech and expression
    - 7.1.1. Media, press and information
  - 7.2. Freedom of speech and contempt of court
  - 7.3. Freedom of assembly
  - 7.4. Freedom of association
  - 7.5. Freedom of movement
  - 7.6. Freedom to reside and settle.

- 7.7. Freedom of profession/business
- 7.8. Property: from fundamental right to constitutional right

**8. Personal Liberty** **units 5**

- 8.1. Rights of an accused - double jeopardy - self-incrimination retroactive punishment
- 8.2. Right to life and personal liberty : meaning, scope and limitations
- 8.3. Preventive detention - constitutional policy

**9. Fundamental Rights and Directive Principles** **units 5**

- 9.1. Directive Principles- directions for social change- A new social order.
- 9.2. Fundamental Rights and Directive Principles - inter-relationship - judicial balancing.
- 9.3. Constitutional amendments - to strengthen Directive Principles.
- 9.4. Reading Directive Principles into Fundamental Rights

**10. Fundamental duties** **units 3**

- 10.1. The need and status in constitutional set up
- 10.2. Interrelationship with fundamental rights and directive principles

**11. Emergency** **units 5**

- 11.1. Emergency. meaning and scope
- 11.2. Proclamation of emergency - conditions -effect of emergency on Centre- State relations.
- 11.3. Emergency and suspension of fundamental rights

**12. Judiciary under the Constitution** **units 10**

- 12.1. Judicial process
  - 12.1.1. Court system
  - 12.1.2. The Supreme Court
  - 12.1.3. High Courts



- 12.1.4. Subordinate judiciary
- 12.1.5. Judges : appointment, removal, transfer and condition of service: judicial independence
- 12.2. Judicial review : nature and scope

### **13. Services under the Constitution**

**units 3**

- 13.1. Doctrine of pleasure (Art. 310)
- 13.2. Protection against arbitrary dismissal, removal, or reduction in rank (Art.311)
- 13.3. Exceptions to Art.311

### **Select bibliography**

G. Austin, *History of Democratic Constitution: The Indian Expenditure* (2000) Oxford

D.D.Basu, *Shorter Constitution of India*, (1996), Prentice Hall of India, Delhi

Constituent Assembly Debates Vol. 1 to 12 (1989)

H.M.Seervai, *Constitution of India*, Vol.1-3(1992), Tripathi, Bombay

M.P.Singh(ed.), V.N.Shukla, *Constitutional Law of India* (2000)' Oxford

G. Austin, *Indian Constitution: Cornestone of a Nation* (1972).

M. Galanter, *Competing Equalities - Law and the Backward Classes in India* (1984) Oxford

B. Sivaramayya, *Inequalities and the Law* (1984) Eastern, Lucknow.

S.C.Kashyap, *Human Rights and Parliament* (1978) Metropolitan, New Delhi

## **BCI C 10 PROPERTY LAW INCLUDING TRANSFER OF PROPERTY ACT AND EASEMENT ACT**

### ***Objectives of the course***

The course on property conventionally deals with the Transfer of Property Act 1882. More than a century has elapsed since the passing of the Act and far-reaching changes have occurred in the field in property laws owing to altered social conditions. While archaic feudal rules enacted by the colonial administration like the rule against perpetuities find a place in the Act, the post-independence development relating to control and use of agricultural land do not find a place. The obsolescence of the Transfer of Property Act, can be best illustrated by citing the provisions relating to leases on immovable properties. The provisions relating to leases under the Act are not applicable to agricultural leases; and even with respect to urban immovable property, the provisions are not applicable to the most dominant type, namely, housing under the rent control legislation. Thus the existing syllabus does not touch upon agrarian property relations, which affect the vast majority of people or aspects relating to intellectual property which are important in the context of development. The proposed syllabus attempts at overcoming these deficiencies and imbalances.

The following syllabus prepared with this perspective will comprise about 84 units of one-hour duration.

### ***Syllabus***

- |   |                |
|---|----------------|
| <b>1. Jurisprudential Controls of Property</b>  | <b>units 5</b> |
| 1.1. Concept and meaning of property - new property - governmental largesse.  |                |
| 1.2. Kinds of property - movable and immovable property - tangible and intangible property - intellectual property - copyright - patents and designs - trademarks |                |
| 1.3. The concept of common property resources-  |                |
| 1.4. Possession and ownership as man - property relationship - finder of lost goods.  |                |

## **2. Resources Use Patterns and Concepts in India: Who owns land? Sovereign or the Subject? units 7**

- 2.1. Pre-colonial position.
  - 2.1.1. Hindu theory
  - 2.1.2. Muslim theory
  - 2.1.3. Tribal approaches
- 2.2. Position under colonial administration
  - 2.2.1. Introduction of permanent settlement
  - 2.2.2. Ryotwari settlement
  - 2.2.3. Evaluation of eminent domain under company administration.
- 2.3. Effects of colonial revenue administration.
  - 2.3.1. Intermediaries
  - 2.3.2. Tenancies
  - 2.3.3. "Land going to the market"
  - 2.3.4. Inequalities in landholding
- 2.4. Requisitioning and acquisition of immovable property.
  - 2.4.1. Land Acquisition: inquiry- notice and hearing - should ecological moves be examined?
    - 2.4.1.1. Concept of public purpose
  - 2.4.2. Requisitioning: powers, right, exemption and release
  - 2.4.3. Inadequacies

## **3. Forms of Control Urban Property units 5**

- 3.1. Right to Housing and Shelter.
  - 3.1.1. Slum Clearance or slum improvement?
  - 3.1.2. Housing Policy



- 6. Trusts** **units 3**
- 6.1. Definition and classification
  - 6.2. Trust distinguished from agency, bailment and a wakf.
  - 6.3. Charitable trusts. Resulting and constructive trusts.
- 7. Law Relating to Certain Intangible Properties** **units 5**
- 7.1. Goodwill
  - 7.2. Trademarks
  - 7.3. Patents and designs
  - 7.4. Copyright
  - 7.5. Video piracy
  - 7.6. Software
- 8. Easements** **units 6**
- 8.1. Nature, characteristics and extinction
  - 8.2. Creation of easements
  - 8.3. Riparian rights
  - 8.4. Licenses
- 9. Recordation of Property Rights** **units 4**
- 9.1. Law relating to registration of documents affecting property relations - Exemptions of leases and mortgages in favour of land development bank from registration.
  - 9.2. Recordation of rights in agricultural land with special reference to respective states.
  - 9.3. Investigation of title to property.
  - 9.4. Law relating to stamp duties.
    - 9.4.1. Of the liability of instruments to duty.
    - 9.4.2. Duties by whom payable.
    - 9.4.3. Effect of not duly stamping instruments: Examination and impounding of instruments; inadmissibility on evidence; impounding of instruments.

***Bibliography***

Mulla, *Transfer of Property Act*, (1999) Universal, Delhi.

Subbarao, *Transfer of Property Act*, (1994), C. Subbiah Chetty, Madras

B.Sivaramayya, *The equalities and the Law*, (1997) Eastern Book Co., Lucknow.

P.C.Sen, *The General Principles of Hindu Jurisprudence* (1984 reprint) Allahabad Law Agency

B.H.Baden-Powell, *Land Systems of British India*, Vol.1 to 3. (1892), Oxford.

V.P.Sarathy, *Transfer of Property* (1995), Eastern, Lucknow.

**BCI C 11 LAW OF EVIDENCE*****Objectives of the course***

The law of evidence, is an indispensable part of both substantive and procedural laws. It imparts credibility to the adjudicatory process by indicating the degree of veracity to be attributed to 'facts' before the forum. This paper enables the student to appreciate the concepts and principles underlying the law of evidence and identify the recognized forms of evidence and its sources. The subject seeks to impart to the student the skills of examination and appreciation of oral and documentary evidence in order to find out the truth. The art of examination and cross-examination, and the shifting nature of burden of proof are crucial topics. The concepts brought in by amendments to the law of evidence are significant parts of study in this course.

This paper with above-mentioned perspectives in view comprises about 84 units of one-hour duration.

***Syllabus***

- |   |                |
|---|----------------|
| <b>1. Introductory</b>  | <b>units 6</b> |
| 1.1. The main features of the Indian Evidence Act 1861.                       |                |
| 1.2. Other acts which deal with evidence (special reference to CPC, CrPC).    |                |
| 1.3. Problem of applicability of Evidence Act                                 |                |
| 1.3.1. Administrative   |                |
| 1.3.2. Administrative Tribunals   |                |
| 1.3.3. Industrial Tribunals   |                |
| 1.3.4. Commissions of Enquiry   |                |
| 1.3.5. Court-martial  |                |
| 1.4. Disciplinary authorities in educational institutions                     |                |
| <b>2. Central Conceptions in Law of Evidence</b>                              | <b>units 9</b> |
| 2.1. Facts : section 3 definition: distinction -relevant facts/facts in issue |                |
| 2.2. Evidence : oral and documentary.   |                |

- 2.3. Circumstantial evidence and direct evidence
- 2.4. Presumption (Section 4)
- 2.5. "Proving", "not providing" and "disproving"
- 2.6. Witness
- 2.7. Appreciation of evidence

### **3. Facts : relevancy**

**units 4**

- 3.1. The Doctrine of res gestae (Section 6,7,8,10)
- 3.2. Evidence of common intention (Section 10)
- 3.3. The problems of relevancy of "Otherwise" irrelevant facts (Section 11)
- 3.4. Relevant facts for proof of custom (Section 13)
- 3.5. Facts concerning bodies & mental state (Section 14, 15)

### **4. Admissions and confessions**

**units 20**

- 4.1. General principles concerning admission (Section 17, 23)
- 4.2. Differences between "admission" and "confession"
- 4.3. The problems of non-admissibility of confessions caused by "any inducement, threat or promise" (Section 24)
- 4.4. Inadmissibility of confession made before a police officer (Section 25)
- 4.5. Admissibility of custodial confessions (Section 26)
- 4.6. Admissibility of "information" received from accused person in custody; with special reference to the problem of discovery based on "joint statement" (Section 27)
- 4.7. Confession by co-accused (Section 30)
- 4.8. The problems with the judicial action based on a "retracted confession"

### **5. Dying Declarations**

**units 4**

- 5.1. The justification for relevance on dying declarations (Section 32)
- 5.2. The judicial standards for appreciation of evidentiary value of dying declarations.



- 6. Other Statements by Persons who cannot be called as Witnesses** **units 4**
- 6.1. General principles.
  - 6.2. Special problems concerning violation of women's rights in marriage in the law of evidence
- 7. Relevance of Judgments** **units 4**
- 7.1. General principles
  - 7.2. Admissibility of judgments in civil and criminal matters (Section 43)
  - 7.3. "Fraud" and "Collusion" (Section 44)
- 8. Expert Testimony** **units 4**
- 8.1. General principles
  - 8.2. Who is an expert? : types of expert evidence
  - 8.3. Opinion on relationship especially proof of marriage (Section 50)
  - 8.4. The problems of judicial defence to expert testimony.
- 9. Oral and Documentary Evidence** **units 5**
- 9.1. General principles concerning oral evidence (Sections 59-60)
  - 9.2. General principles concerning Documentary Evidence (Sections 67-90)
  - 9.3. General Principles Regarding Exclusion of Oral by Documentary Evidence
  - 9.4. Special problems: re-hearing evidence
  - 9.5. Issue estoppel
  - 9.6. Tenancy estoppel (Section 116)
- 10. Witnesses, Examination and Cross Examination** **units 8**
- 10.1. Competency to testify (Section 118)
  - 10.2. State privilege (Section 123)
  - 10.3. Professional privilege (Section 126, 127, 128)

- 10.4. Approval testimony (Section 133)
- 10.5. General principles of examination and cross examination (Section 135-166)
- 10.6. Leading questions (Section 141-143)
- 10.7. Lawful questions in cross-examination (Section 146)
- 10.8. Compulsion to answer questions put to witness
- 10.9. Hostile witness (Section 154)
- 10.10. Impeaching of the standing or credit of witness (Section 155)

## **11. Burden of Proof**

**unit 8**

- 11.1. The general conception of onus probandi (Section 101)
- 11.2. General and special exceptions to onus probandi
- 11.3. The justification of presumption and of the doctrine of judicial notice
- 11.4. Justification as to presumptions as to certain offences (Section 111A)
- 11.5. Presumption as to dowry death (Section 113-B)
- 11.6. The scope of the doctrine of judicial notice (Section 114)

## **12. Estoppel**

**unit 8**

- 12.1. Why estoppel? The rationale (Section 115)
- 12.2. Estoppel, res judicata and waiver and presumption
- 12.3. Estoppel by deed
- 12.4. Estoppel by conduct
- 12.5. Equitable and promissory estoppel
- 12.6. Questions of corroboration (Section 156-157)
- 12.7. Improper admission and of witness in civil and criminal cases.

**Select bibliography**

Sarkar and Manohar, *Sarkar on Evidence* (1999), Wadha & Co., Nagpur

Indian Evidence Act, (Amendment up to date)

Rattan Lal, *Dhiraj Law: Law of Evidence* (1994), Wadhwa, Nagpur

Polein Murphy, *Evidence* (5th Edn. Reprint 2000), Universal, Delhi.

Albert S.Osborn, *The Problem of Proof* (First Indian Reprint 1998), Universal, Delhi.

Avtar Singh, *Principles of the Law of Evidence* (1992), Central Law Agency, New Delhi.

**BCI C 12 CIVIL PROCEDURE AND LIMITATION ACT*****Objectives of the course***

Civil Procedure Code is a subject of daily use by the courts and lawyers and a student cannot afford to have scant knowledge of civil procedure when he goes out to practise as a lawyer. True that it is through experience one gets expert knowledge of civil procedure. However, it is necessary to have good grounding in the subject before one enters the profession. While the substantive law determines the rights of parties, procedural law sets down the norms for enforcement. Whenever civil rights of persons are affected by action, judicial decisions will supply the omissions in the law.

The Code of Civil Procedure in India has a chequered history and lays down the details of procedure for redressal of civil rights. Many questions may prop up when one goes to indicate one's civil rights. The court where the suit is to be filed, the essential forms and procedure for institution of suit, the documents in support and against, evidence taking and trial, dimensions of an interim order, the peculiar nature of the suits, the complexities of executing a decree and provisions for appeal and revision are all matters which a lawyer for any side is to be familiar with.

A delay in filing the suit, besides indicating the negligence of the plaintiff in effectively agitating the matter on time, may place courts in a precarious situation. They may not be in a position to appreciate the evidence correctly. Evidence might have been obliterated. Hence, the statute of limitation fixes a period within which a case has to be filed.

This paper with the above mentioned perspectives comprises of about 84 units of one hour duration.

**1. Introduction units 5**

1.1. Concepts

1.1.1. Affidavit, order, judgement, decree, plaint, restitution, execution, decree-holder, judgment-debter, mesne profits, written statement.

1.1.2. Distinction between decree and judgment and between decree and order.

**2. Jurisdiction units 7**

2.1. Kinds

2.1.1. Hierarchy of courts

- 2.2. Suit of civil nature - scope and limits
- 2.3. Res-subjudice and Resjudicata
- 2.4. Foreign judgment - enforcement
- 2.5. Place of suing
- 2.6. Institution of suit
  - 2.6.1. Parties to suit: joinder, mis-joinder or non-joinder of parties : representative suit.
    - 2.6.1.1. Frame of suit : cause of action
  - 2.6.2. Alternative disputes resolution (ADR)
  - 2.6.3. Summons

### **3. Pleadings**

**units 7**

- 3.1. Rules of pleading, signing and verification.
  - 3.1.1. Alternative pleadings
  - 3.1.2. Construction of pleadings
- 3.2. Complaint : particulars
  - 3.2.1. Admission, return and rejection
- 3.4. Written statement : particulars, rules of evidence
  - 3.3.1. Set off and counter claim : distinction
- 3.4. Discovery, inspection and production of documents.
  - 3.4.1. Interrogatories
  - 3.4.2. Privileged documents
  - 3.4.3. Affidavits

### **4. Appearance, examination and trial**

**units 8**

- 4.1. Appearance
- 4.2. Ex-parte procedure

- 4.3. Summary and attendance of witnesses
- 4.4. Trial
- 4.5. Adjournments
- 4.6. Interim orders: commission, arrest or attachment before judgment, injunction and appointment of receiver
- 4.7. Interests and costs

**5. Execution units 12**

- 5.1. The concept
- 5.2. General principles
- 5.3. Power for execution of decrees
- 5.4. Procedure for execution (ss. 52-54)
- 5.5. Enforcement, arrest and detection (ss. 55-59)
- 5.6. Attachment (ss. 60-64)
- 5.7. Sale (ss.65-97)
- 5.8. Delivery of property
- 5.9. Stay of execution

**6. Suits in particular cases units 12**

- 6.1. By or against government (ss.79-82)
- 6.2. By aliens and by or against foreign rulers or ambassadors (ss.83-87A)
- 6.3. Public nuisance (ss.91-93)
- 6.4. Suits by or against firm
- 6.5. Suits in forma pauperis
- 6.6. Mortgages
- 6.7. Interpleader suits
- 6.8. Suits relating to public charities

- 7. Appeals** **units 8**
- 7.1. Appeals from original decree
  - 7.2. Appeals from appellate decree
  - 7.3. Appeals from orders
  - 7.4. General provisions relating to appeal
  - 7.5. Appeal to the Supreme Court
- 8. Review, reference and revision** **units 5**
- 9. Miscellaneous** **units 4**
- 9.1. Transfer of cases
  - 9.2. Restitution
  - 9.3. Caveat
  - 9.4. Inherent powers of courts
- 10. Law reform: Law Commission on Civil Procedure- amendments** **units 4**
- 11. Law of Limitation** **units 14**
- 11.1. The concept - the law assists the vigilant and not those who sleep over the rights.
  - 11.2. Object
  - 11.3. Distinction with laches, acquiescence, prescription.
  - 11.4. Extension and suspension of limitation
  - 11.5. Sufficient cause for not filing the proceedings
    - 11.5.1. Illness
    - 11.5.2. Mistaken legal advise
    - 11.5.3. Mistaken view of law
    - 11.5.4. Poverty, minority and Purdha
    - 11.5.5. Imprisonment

- 11.5.6. Defective vakalatnama
- 11.6. Legal liabilities
- 11.7. Foreign rule of limitation : contract entered into under a foreign law
- 11.8. Acknowledgement - essential requisites
- 11.9. Continuing tort and continuing breach of contract.

### **Select bibliography**

Mulla, *Code of Civil Procedure* (1999), Universal, Delhi.

C.K.Thacker, *Code of Civil Procedure* (2000), Universal, Delhi.

M.R..Mallick(ed.), *B.B.Mitra on Limitation Act* (1998), Eastern, Lucknow

Majumdar.P.K and Kataria.R.P., *Commentary on the Code of Civil Procedure, 1908* (1998), Universal, Delhi.

Saha.A.N., *The Code of Civil Procedure* (2000), Universal, Delhi.

Sarkar's *Law of Civil Procedure*, Vols.(2000) Universal, Delhi.

Universal's *Code of Civil Procedure*, (2000).



**BCI C 13 LEGAL LANGUAGE/LEGAL INCLUDING GENERAL ENGLISH*****Objectives of the course***

Command of language is an essential quality of a lawyer for presentation of not only pleadings but also arguments before a court of law. Efficiency of advocacy depends upon communication skill to a substantial extent. No doubt, he should be conversant with the legal terminology. Precision, clarity and cogence are governing principles of legal writing and dialogue. A student of law should get an opportunity to be familiar with the writings of eminent jurists of the past. This exposition will stand him in good stead in understanding the intricate problems of law and will equip him with the faculty of articulation and sound writing.

This paper with the above perspectives in view comprises about 84 units of one hour duration.

***Syllabus***

- |  |                 |
|--|-----------------|
| <b>1. Introduction to Legal Language</b>                                   | <b>units 10</b> |
| 1.1. Characteristics of Legal Language                                     |                 |
| 1.2. History of Legal Language   |                 |
| 1.3. Legal Language in India   |                 |
| 1.4. English as a medium of communication for legal transaction in India   |                 |
| <b>2. Introduction to oral communication skills</b>                        | <b>units 6</b>  |
| 2.1. Passive and active listening - questioning - non-verbal communication |                 |
| 2.2. Listening comprehension   |                 |
| 2.3. Passive and active listening - questioning - non-verbal communication |                 |
| <b>3. Vocabulary</b>   | <b>units 8</b>  |
| 3.1. Consulting a dictionary - consulting a thesaurus                      |                 |
| 3.2. Synonyms and antonyms - related words - regular vocabulary exercises  |                 |

**4. Phonetics theory and practice** **units 8**

- 4.1. The phonetic script
- 4.2. Consulting a dictionary for pronunciation - exercise with audio aids
- 4.3. Reading exercises - stress, accent and intonation suitable for Indian speaker with emphasis on clarity of speech and felicity of expression
  - 4.3.1. Reading comprehension of principles and practice

**5. Legal terminology** **units 10**

- 5.1. Terms used in civil law and criminal law
- 5.2. Latin words and expressions - law register

**6. Fundamental principles of Legal Writing**

- 6.1. Concision - clarity - cogency - simplicity of structure
- 6.2. Attention and awareness of practical legal import of sentences
- 6.3. Brief writing and drafting of law reports
- 6.4. Writing of case comments
- 6.5. Essay writing on topics of legal interest

**7. General juristic writings in English** **units 10****8. Proficiency in regional language** **units 20**

( Every student should acquire skills of understanding, analysis, writing and communication in the regional language which he has to use in the interaction with the potential clientele. Necessarily, the proficiency in the language will contribute in a substantial measure to a successful practice in law. The university academic bodies are given the discretion to evolve 20 units for this purpose)

***Selected bibliography***

Abbet Parry, Seven Lamps of Advocacy

Mogha's, Conveyancing

Mogha's, Forms and Precedents

Mogha's, Pleadings

Law and Language

Bhatnagar, R.P. & R.Bhargava, *Law and Language*, New Delhi: Macmillan,

Brown, Gordon W. *Legal Terminology*, New Jersey: Prentice Hall, 1990

Cochrane, Michael, *Legal English*, Paris Cujas, 1979

Cross, Ian et al. *Skills for Lawyers*, Jordan Publishing Co., 1997 Bristol.

Cutts, Martin, *The Plain English Guide*, Oxford University Press, 1995

Garner, Bryan, *A Dictionary of Modern Legal Usage*, New York: OUP, 1987

Gibbons, John, (ed.) *Language and the Law*, Longman, 1996 London.

Gibbons, John, (ed.) "*Language and the Law*", *Annual Review of Applied Linguistics* (1999) 19, 156-173.

Kelkar, Ashok R. "Communication and Style in Legal Language", *Indian Bar Review* Vol.10(3): 1993

Lord Denning, "Command of Language", *The Discipline of the Law*, New Delhi: Aditya Books, 1993.

Lord Denning, "Plain English", *The Closing Chapter*, New Delhi: Aditya Books, 1993.

Melinkoff, David, *The Language of the Law*, Boston: Little Brown & Co., 1963.

Molynenux, Hael. *Legal Problems*, Macmillan, London

Herbert Brown, *A Selection of Legal Maxims* (Reprint 1998) Sweet and Maxwell.

M.C.Setalvad, *MyLife, Law Other things*, (2000), Universal, Delhi.

Olivercrona, K. "Legal Language and Reality" in M.D.A. Freeman, *Introduction to Jurisprudence*.

Riley, Alison, *English for Law*, London: Macmillan, 1991.

Williams, Glanville, "*Language and the Law*" in Freeman, pp.1350-53.

Thomson, A.J. & A.V. Martinet, *A Practical English Grammar*, Oxford: OUP

Turton, N.D.7 J.B. Heaton, *Longman Dictionary of Common Errots*

Williams, Glanville, *Language and the Law*, in Freeman. Pp.1350-53.

Williams, Glanville, *Learning The Law*, (2000), Universal, New Delhi.

Blacks' Law Dictionary, (2000), Universal, New Delhi.

Broom's Legal Magazines (2000), Universal, New Delhi.

James and Stebbings, *A Dictionary of Legal Quotations*(1997) Universal, New Delhi.

Latin For Lawyers, (1997), Sweet and Maxwell, Universal, New Delhi.

Trayner's Latin Magazines, (1997) University, New Delhi.

**BCI C 14 ADMINISTRATIVE LAW*****Objectives of the course***

The modern state governs in the traditional sense, that is, it maintains law and order, adjudicates upon disputes and regulates economic and social life of individuals and groups in the state. At the same time it is also the provider of essential services. In the event of need occasioned by unforeseen hazards of life in a complex society, it engages itself in giving relief and helps the citizenry towards self-reliance. The assumption of unprecedented responsibilities by the state has necessitated devolution on authority of numerous state functionaries. The number of functionaries in carrying out these tasks has ever been on the increase due to proliferation of human needs in an age of science and technology. The aggregate of such functionaries is an essential component of modern administration.

A formidable body of law has come into existence for the purpose of exercising control over administration. For long administrative lawyers have primarily been concerned with such matters as excess or abuse of power, mal administration and abuse of discretion. However, in recent years there has been a shift in emphasis from finding what the administration may not do to what it must do. The courts in India, no doubt, strike down administrative acts which are ultra vires or in violation of procedural norms; however, not much has so far been achieved in compelling the administration to perform statutory duties, though a beginning has been made in respect of matters relating to fundamental human liberties. Most of the statutory duties imposed on administrative agencies or authorities remain largely in the realm of discretion.

A course on administrative law must, therefore, lay emphasis on understanding the structure and modus operandi of administration. It must take note of developmental perspectives and attainment of social welfare objectives through bureaucratic process. It should go into matters, which facilitate or hinder the attainment of these objectives.

Though in the matter of protection of rights of individuals against administration the role of courts can not be minimised, it is no less important to know the advantages of informal methods of settlement. Many new methods of grievance redressal have been devised which are not only efficacious but also inexpensive and less time consuming.

Remedies available for administrative deviance need a critical study and evaluation in the context of realities.

The following syllabus prepared with this perspective will comprise of about 84 units of one hour duration.

**1. Evolution, Nature and Scope of Administrative Law** **units 8**

- 1.1. From a laissez-faire to a social welfare state
  - 1.1.1. State as regulator of private interest
  - 1.1.2. State as provider of services
  - 1.1.3. Other functions of modern state : relief, welfare
- 1.2. Evolution of administration as the fourth branch of government- necessity for delegation of powers on administration.
- 1.3. Evolution of agencies and procedures for settlement of disputes between individual and administration
  - 1.3.1 Regulatory agencies on the United States
  - 1.3.2 Conseil d'Etat
  - 1.3.3 Tribunalization in England and India
- 1.4. Definition and scope of administrative law
- 1.5. Relationship between constitutional law and administrative law
- 1.6. Separation of powers
- 1.7. Rule of law

**2. Civil Service in India** **units 8**

- 2.1. Nature and organization of civil service: from colonial relics to democratic aspiration
- 2.2. Powers and functions
- 2.3. Accountability and responsiveness: problems and perspectives
- 2.4. Administrative deviance- corruption, nepotism, mal-administration.

**3. Legislative Powers of Administration****units 8**

- 3.1. Necessity for delegation of legislative power
- 3.2. Constitutionality of delegated legislation - powers of exclusion and inclusion and power to modify statute
- 3.3. Requirements for the validity of delegated legislation
  - 3.3.1. Consultation of affected interests and public participation in rule-making
  - 3.3.2. Publication of delegated legislation
- 3.4. Administrative directions, circulars and policy statements
- 3.5. Legislative control of delegated legislation
  - 3.5.1. Laying procedures and their efficacy
  - 3.5.2. Committees on delegated legislation - their constitution, function and effectiveness
  - 3.5.3. Hearings before legislative committees
- 3.6. Judicial control of delegated legislation
- 3.7. Sub-delegation of legislative powers

**4. Judicial Powers of Administration****units 8**

- 4.1. Need for devolution of adjudicatory authority on administration
- 4.2. Administrative tribunals and other adjudicating authorities : their ad-hoc character
- 4.3. Tribunals - need, nature, constitution, jurisdiction and procedure
- 4.4. Jurisdiction of administrative tribunals and other authorities
- 4.5. Distinction between quasi-judicial and administrative functions
- 4.6. The right to hearing- essentials of hearing process
  - 4.6.1. No man shall be judge in his own cause
  - 4.6.2. No man shall be condemned unheard
- 4.7. Rules of evidence - no evidence, some evidence and substantial evidence rules
- 4.8. Reasoned decisions

- 4.9. The right to counsel
- 4.10. Institutional decisions
- 4.11. Administrative appeals

## **5. Judicial Control of Administrative Action**

**units 20**

- 5.1. Exhaustion of administrative remedies
- 5.2. Standing : standing for Public interest litigation (social action litigation) collusion, bias
- 5.3. Laches
- 5.4. Res judicata
- 5.5. Grounds
  - 5.5.1. Jurisdictional error/ultra vires
  - 5.5.2. Abuse and non exercise of jurisdiction
  - 5.5.3. Error apparent on the face of the record
  - 5.5.4. Violation of principles of natural justice
  - 5.5.5. Violation of public policy
  - 5.5.6. Unreasonableness
  - 5.5.7. Legitimate expectation
- 5.6. Remedies in judicial Review:
  - 5.6.1. Statutory appeals
  - 5.6.2. Mandamus
  - 5.6.3. Certiorari
  - 5.6.4. Prohibition
  - 5.6.5. Quo-Warranto
  - 5.6.6. Habeas Corpus
  - 5.6.7. Declaratory judgments and injunctions
  - 5.6.8. Specific performance and civil suits for compensation



**6. Administrative Discretion** **units 8**

- 6.1. Need for administrative discretion
- 6.2. Administrative discretion and rule of law
- 6.3. Limitations on exercise of discretion
  - 6.3.1. Malafide exercise of discretion
  - 6.3.2. Constitutional imperatives and use of discretionary authority
  - 6.3.3. Irrelevant considerations
  - 6.3.4. Non-exercise of discretionary power

**7. Liability for Wrongs (Tortious and Contractual)** **units 8**

- 7.1. Tortious liability: sovereign and non-sovereign functions
- 7.2. Statutory immunity
- 7.3. Act of state
- 7.4. Contractual liability of government
- 7.5. Government privilege in legal proceedings- state secrets, public interest
- 7.6. Transparency and right to information
- 7.7. Estoppel and waiver

**8. Corporations and Public Undertakings** **units 8**

- 8.1. State monopoly- remedies against arbitrary action or for acting against public policy
- 8.2. Liability of public and private corporations - departmental undertakings
- 8.3. Legislative and governmental control
- 8.4. Legal remedies
- 8.5. Accountability- Committee on Public Undertakings, Estimates Committee, etc.

**9. Informal Methods of Settlement of Disputes and Grievance Redressal Procedures****Units 8**

- 9.1. Conciliation and mediation through social action groups
- 9.2. Use of media, lobbying and public participation
- 9.3. Public inquiries and commissions of inquiry
- 9.4. Ombudsman : Lok Pal, Lok Ayukta
- 9.5. Vigilance Commission
- 9.6. Congressional and Parliamentary Committees

**Select Bibliography**

C.K.Allen, *Law & Orders* (1985)

D.D.Basu, *Comparative Administrative Law* (1998)

M.A.Fazal, *Judicial Control of Administrative Action in India, Pakistan and Bangladesh* (2000), Butterworths - India

Franks, *Report of the Committee on Administrative Tribunals and Inquiries*, HMSO, 1959

Peter Cane, *An Introduction to Administrative Law* (1996) Oxford

Wade, *Administrative Law* (Seventh Edition, Indian print 1997), Universal, Delhi.

J.C.Garner, *Administrative Law* (1989), Butterworths (ed. B.L. Jones)

M.P.Jain , *Cases and Materials on Indian Administrative Law*, Vol.I and II (1996), Universal, Delhi.

Jain & Jain, *Principles of Administrative Law* (1997), Universal, Delhi.

S.P.Sathe, *Administrative Law* (1998) Butterworths-India, Delhi

De Smith, *Judicial Review of Administrative Action* (1995) Swest and Maxwell with Supplement

B. Schwartz, *An Introduction to American Administrative Law*

Indian Law Institute, *Cases and Materials on Administrative Law in India*, Vol.I(1996), Delhi.

**BCI C 15 COMPANY LAW****Objectives of the course**

Industrialisation plays a very vital role in the economic development of India. In the post Independence era, industrial regulation is employed as a principal means in the strategy for attaining constitutional values. Companies are no doubt powerful instruments for development. Besides bringing returns and financial benefits to the capital and labour they help amelioration of the living conditions of masses. In a developing society like India, vast varieties of consumer goods are manufactured or produced and different kinds of public utility services are generated both for general welfare and consumption purposes. Obviously, it is beyond the capacity of one or a few entrepreneurs to engage into such activities. Because the problem of raising large capital needed for such enterprises, there is a looming danger of market risks. Hence, taking recourse to the device of incorporation is the only efficacious way to surmount all such hurdles.

This course is comprises of about 84 units of one-hour duration.

**Syllabus****1. Meaning of Corporation**

- 1.1. Theories of corporate personality **units 2**
- 1.2. Creation and extinction of corporations.

**2. Forms of Corporate and Non-Corporate Organisations **units 2****

- 2.1. Corporations, partnerships and other associations of persons, state corporations, government companies, small scale, co-operative, corporate and joint sectors.

**3. Law relating to companies - public and private - Companies Act, 1956**

- 3.1. Need of company for development formation of a company registration and incorporation. **units 3**
- 3.2. Memorandum of association - various clauses - alteration therein -doctrine of ultra vires. **units 4**

- 3.3. Articles of association - binding force - alteration - its relation with memorandum of association - doctrine of constructive notice and indoor management - exceptions. **units 4**
- 3.3.1. Prospectus - issue - contents - liability for misstatements - statement in lieu of prospectus. **units 2**
- 3.4. Promoters - position - duties and liabilities **units 2**
- 3.4.1. Shares - general principles of allotment statutory restrictions - share certificate its objects and effects - transfer of shares - restrictions on transfer - procedure for transfer - refusal of transfer- role of public finance institutions - relationship between transferor and transferee - issue of shares at premium and discount - depository receipts - dematerialised shares(DEMAT) **units 2**
- 3.4.2. Shareholder - who can be and who cannot be a shareholder - modes of becoming a shareholder - calls on shares - forfeiture and surrender of shares - lien on shares. **units 2**
- 3.4.3. Share capital - kinds - alteration and reduction of share capital - further issue of capital - conversion of loans and debentures into capital - duties of courts to protect the interests of creditors and share holders **units 2**
- 3.5. Directors - position - appointment - qualifications - vacation of office - removal - resignation - powers and duties of directors - meeting, registers, loans - remuneration of directors - role of nominee directors - compensation for loss of office - managing directors - compensation for loss of office - managing directors and other managerial personnel **units 15**
- 3.5.1. Meetings - kinds - procedure - voting **units 2**
- 3.5.2. Dividends - payment - capitalisation - profit **units 2**
- 3.6. Audit and accounts **units 1**
- 3.7. Borrowing powers - powers - effect of unauthorised borrowing - charges and mortgages - loans to other companies - investments - contracts by companies **units 3**
- 3.8. Debentures - meaning - fixed and floating charge - kinds of debentures - shareholder and debenture holder - remedies of debenture holders **units 2**

3.9.	Protection of minority rights	<b>units 3</b>
3.10.	Protection of oppression and mismanagement - who can apply? - powers of the company , court and of the central government	<b>units 5</b>
3.11.	Investigation - powers	<b>units 1</b>
3.12.	Private companies - nature and advantages - government companies - holding and subsidiary companies	<b>units 6</b>
3.13.	Regulation and amalgamation	<b>units 2</b>
3.14.	Winding up - types - by court -reasons - grounds - who can apply - procedure - powers of liquidator - powers of court - consequences of winding up order - voluntary winding up by members and creditors - winding up subject to supervision of courts - liability of past members - payment of liabilities - preferential payment, unclaimed dividends - winding up of unregistered company	<b>units 6</b>
<b>4.</b>	<b>Law and Multinational Companies</b>	<b>units 2</b>
4.1.	International norms for control	
4.2.	National law FEMA (Foreign Exchange Management Act 1999) controls joint - ventures - investment in India - repatriation of project.	
4.3.	Collaboration agreements for technology transfer	
<b>5.</b>	<b>Corporate Liability</b>	<b>units 2</b>
5.1.	Legal liability of companies - civil and criminal	
5.2.	Remedies against them civil, criminal and tortuous - Specific Relief Act, writs, liability under special statutes.	

### ***Bibliography***

Avtar Singh, *Indian Company Law* (1999), Eastern, Lucknow.

L.C.B. Gower, *Principles of Modern Company Law* (1997) Sweet and Maxwell, London

Palmer, *Palmer's Company Law* (1987), Stevens, London.

R.R. Pennington, *Company Law* (1990), Butterworths.

A. Ramaiya, *Guide to the Companies Act*, (1998), Wadha.

S.M. Shah, *Lectures on Company Law* (1988), Tripathi, Bombay

## **BCI C 16 HUMAN RIGHTS AND INTERNATIONAL LAW**

### ***Objectives of the course***

The main thrust of this course shall be development of human rights (HR) law and jurisprudence at international, regional and national levels. There need not be an attempt to teach the whole gamut of international law in this course. This is because many areas of international law are taught in optional papers like International Economic Law(BCI O 01), Air and Space Law(BCI O 11) and Maritime Law(BCI O 15). The HR dimensions shall be discussed in other papers like Environmental Law(BCI C18), Labour Law(BCI C19) and Women and Law And Law Relating To Child (BCI O 13A). Needless to say that this course is to be confined to deliberation of international law topics relevant to the growth of HR law and how international norms and directions are applied in the municipal law of the country.

This paper comprises about 84 units of one-hour duration.

### ***Syllabus***

- |           |  |                 |
|-----------|--|-----------------|
| <b>1.</b> | <b>Theoretical Foundations of Human Rights and International Law</b>   | <b>units 12</b> |
| 1.1.      | Basic principles : sovereign equality of states - non-intervention - non use of force - international co-operation - peaceful settlement of disputes |                 |
| 1.2.      | Individuals as subjects of international law   |                 |
| 1.3.      | State jurisdiction on terrorism, hijacking, narcotics, war crimes and crimes against peace   |                 |
| 1.4.      | Treatment of aliens  |                 |
| <b>2.</b> | <b>Historical development of the concept of human rights</b>   | <b>units 10</b> |
| 1.15.     | Human rights in Indian tradition : ancient, medieval and modern  |                 |
| 2.2.      | Human rights in Western tradition  |                 |
| 2.2.1.    | Concept of natural law   |                 |
| 2.2.2.    | Concept of natural rights  |                 |
| 2.3.      | Human rights in legal tradition: International Law and National Law  |                 |

- 3. UN and Human Rights** **units 14**
- 3.1. Universal Declaration of Human Rights (1948) - individual and group rights
  - 3.2. Covenant on Political and Civil Rights (1966)
  - 3.3. Covenant on Economic, Social and Cultural Rights (1966)
  - 3.4. I L O and other Conventions and Protocols dealing with human rights
  - 3.5. Solidarity rights
  - 3.6. Disarmament: threat to human rights
  - 3.7. International HR Commission
    - 3.7.1. Mandates to States
  - 3.8. Right to development
- 4. Role of Regional Organizations** **units 10**
- 4.1. European Convention on Human Rights
  - 4.2. American Convention on Human Rights
  - 4.3. African Convention on Human Rights
  - 4.4. SAARC
- 5. Protection agencies and mechanisms** **units 14**
- 5.1. International Commission of Human Rights
    - 5.1.1. Amnesty International
    - 5.1.2. Non-Governmental Organizations (NGOs)
  - 5.2. European Commission on Human Rights/Court of Human Rights.
  - 5.3. U.N. Division of Human Rights
  - 5.4. International Labour Organization
  - 5.5. UNESCO
  - 5.6. UNICEF

**6. Impact and implementation of international human rights norms in India units 14**

- 6.1. Human rights norms reflected in fundamental rights in the Constitution
- 6.2. Directive Principles: legislative and administrative implementation of international human rights norms
- 6.3. Implementation of international human rights norms through judicial process

**7. Enforcement of Human Rights in India units 10**

- 7.1. Role of courts: the Supreme Court, High Courts and other courts
- 7.2. Statutory commissions- human rights, women's, minority and backward class

**Select bibliography**

S.K.Avesti and R.P.Kataria, *Law Relating to Human Rights*, Chh IV, V, VIII, XIV, XXIX and XXXIX (2000) Orient, New Delhi

S.K.Varma, *Public International Law* (1998), Prentice-Hall, New Delhi

Peter J. Van Krieken (ed.), *The Exclusion on Clause* (1999), Kluwer

*Human Rights Watch Women's Rights Project*, The Human Rights Watch Global Report on Women's Human Rights (2000), Oxford

Ermacora, Nowak and Tretter, *International Human Rights* (1993), Sweet & Maxwell.

Wallace, *International Human Rights: Text & Materials* (1996), Sweet & Maxwell

Muntarhorn, *The Status of Refugees in Asia* (1992), Oxford.

*Human Rights and Global Diversity* (2001), Frank Cass, London

Nirmal.C.J. (ed.), *Human Rights in India* (2000), Oxford

Nirmal.B.C., *The Right to Self determination in International Law* (1995), Deep & Deep.

P.R.Gandhi, *International Human Rights Documents* (1999) Universal, Delhi.



**BCI C 17 ARBITRATION, CONCILIATION AND ALTERNATE  
DISPUTE RESOLUTION SYSTEM**

***Objectives of the course***

The major concern of law is conflict resolution. Familiarization with the modalities and techniques of resolution of conflict is a necessary component in the endeavours of developing expertise in juridical exercise. The traditional justice delivery system through adjudication by courts had already given way to a large extent to many an alternative mode of dispute resolution in the common law countries. The advent of globalisation has enthused this transformation everywhere. The study of ADR is highly significant in moulding the students of law to act as soldiers of justice in the ever-changing socio-economic scenario. The course aims to give the students an insight into the processes of arbitration, conciliation and mediation in areas where the traditional judicial system had its sway in the past and in the new areas of conflicts that demand resolution by alternative methods. No doubt, the course has to be taught with comparative and international perspectives with a view to bringing out the essential awareness of the national and international systems emerging at the present context.

This paper with the above-mentioned perspectives comprises about 84 units of one hour duration.

***Syllabus***

- |  |                 |
|--|-----------------|
| <b>1. Arbitration : meaning, scope and types</b> | <b>units 15</b> |
| 1.1. Distinctions                                |                 |
| 1.1.1. 940 law and 1996 law: UNCITRAL model law  |                 |
| 1.1.2. Arbitration and conciliation              |                 |
| 1.1.3. Arbitration and expert determination      |                 |
| 1.2. Extent of judicial intervention             |                 |
| 1.3. International commercial arbitration        |                 |

- 2. Arbitration agreement** **units 15**
- 2.1. Essentials
  - 2.2. Kinds
  - 2.3. Who can enter into arbitration agreement
  - 2.4. Validity
  - 2.5. Reference to arbitration
  - 2.6. Interim measures by court
- 3. Arbitration Tribunal** **units 10**
- 3.1. Appointment
  - 3.2. Challenge
  - 3.3. Jurisdiction of arbitral tribunal
    - 3.3.1. Powers
    - 3.3.2. Grounds of challenge
  - 3.4. Procedure
  - 3.5. Court assistance
- 4. Award** **units 10**
- 4.1. Rules of guidance
  - 4.2. Form and content
  - 4.3. Correction and interpretation
  - 4.4. Grounds of setting aside an award
    - 4.4.1. Can misconduct be a ground?
    - 4.4.2. Incapacity of a party, invalidity of arbitration agreement
    - 4.4.3. Want of proper notice and hearing
    - 4.4.4. Beyond the scope of reference

- 4.4.5. Contravention of composition and procedure
- 4.4.6. Breach of confidentiality
- 4.4.7. Impartiality of the arbitrator
- 4.4.8. Bar of limitation, res judicata
- 4.4.9. Consent of parties
- 4.5. Enforcement
  
- 5. Appeal and revision** **units 7**
  
- 6. Enforcement of foreign awards** **units 7**
  - 6.1. New York convention awards
  - 6.2. Geneva convention awards
  
- 7. Conciliation** **units 10**
  - 7.1. Distinction between "Conciliation", "negotiation", "mediation", and "arbitration".
  - 7.2. Appointment
  - 7.3. Statements to conciliator
  - 7.4. Interaction between conciliator and parties
    - 7.4.1. Communication
    - 7.4.2. Duty of the parties to co-operate
    - 7.4.3. Suggestions by parties
    - 7.4.4. Confidentiality
  - 7.5. Resort to judicial proceedings
  - 7.6. Costs
  
- 8. Rule -making power** **units 5**
  - 8.1. High Court
  - 8.2. Central Government

**9. Legal Services Authorities Act : Scope****units 5*****Select Bibliography***

B.P.Saraf and M.Jhunjhunuwala, *Law of Arbitration and Conciliation* (2000), Snow white, Mumbai

Gerald R.Williams (ed.), *The New Arbitration and Conciliation Law of India*, Indian Council of Arbitration (1998), New Delhi

A.K.Bansal, *Law of International Commercial Arbitration* (1999) , Universal, Delhi

P.C.Rao & William Sheffield, *Alternative Disputes Resolution- What it is and How it works?* (1997) Universal, Delhi

G.K.Kwatra, *The Arbitration and Conciliation Law of India* (2000), Universal, Delhi

Basu.N.D, *Law of Arbitration and Conciliation* (9th edition reprint 2000), Universal, Delhi

Johari, *Commentary on Arbitration and Conciliation Act 1996* (1999) Universal, Delhi

Markanda.P.C, *Law relation to Arbitration and Conciliation* (1998) Universal, Delhi

**BCI C 18 ENVIRONMENTAL LAW*****Objectives of the course***

The Environmental law programme, in contrast to other law curricula, has certain characteristics which make it unique and is one of the best instruments for breaking the ice of colonial legal education. Its uniqueness lies in the fact that the problems it raises do not relate merely to specific individuals but about such matters as national development, industrial policy, policies concerning natural resources, injustice to communities, inter generational equity and prevention of pollution. All these issues relate to problematic about construction of a just, humane and healthy society. Secondly, environmental law necessarily demands an inter-disciplinary approach. Thirdly, uniqueness of the subject is borne out by the new epistemological outlook which ecology-related knowledge has brought about in recent times. The development of ecological knowledge has necessitated an overall change not only in managerial studies but also in socio-legal explorations. This approach to the growing dimensions of environmental law is essential.

This paper with the above- mentioned perspectives comprises of about 84 units of one-hour duration.

**1. Concept of environment and Pollution units 4**

- 1.1. Environment
  - 1.1.1. Meaning and contents
- 1.2. Pollution
  - 1.2.1. Meaning
  - 1.2.2. Kinds of pollution
  - 1.2.3. Effects of pollution

**2. Legal control: historical perspectives units 4**

- 2.1. Indian tradition : dharma of environment
- 2.2. British Raj - industrial development and exploitation of nature
  - 2.2.1. Nuisance: penal code and procedural codes

2.3. Free India - continuance of British influence

2.3.1. Old laws and new interpretations

### **3. Constitutional Perspectives**

**units 15**

3.1. Constitution making - development and property oriented approach

3.2. Directive principles

3.2.1. Status, role and interrelationship with fundamental rights and fundamental duties.

3.3. Fundamental Duty

3.3.1. contents

3.3.2. judicial approach

3.4. Fundamental Rights

3.4.1. Rights to clean and healthy environment

3.4.2. Right to education

3.4.3. Right to information

3.4.4. Environment v. Development

3.5. Enforcing agencies and remedies

3.5.1. Courts

3.5.2. Tribunal

3.5.3. Constitutional, statutory and judicial remedies

3.6. Emerging principles

3.6.1. Polluter pays: public liability insurance

3.6.2. Precautionary principle

3.6.3. Public trust doctrine

3.6.4. Sustainable development

- 4. Water and Air Pollution** **Units 4**
- 4.1. Meaning and standards
  - 4.2. Culprits and victims
  - 4.3. Offences and penalties
  - 4.4. Judicial approach
- 5. Noise Pollution** **Units 4**
- 5.1. Legal control
  - 5.6. Court's of balancing : permissible and impermissible noise
- 6. Environment Protection** **units 15**
- 6.1. Protection agencies: power and functions
  - 6.2. Protection : means and sanctions
  - 6.3. Emerging protection through delegated legislation
    - 6.3.1. Hazardous waste,
    - 6.3.2. Bio-medical waste
    - 6.3.3. Genetic engineering
    - 6.3.4. Disaster emergency preparedness
    - 6.3.5. Environment impact assessment.
    - 6.3.6. Coastal zone management
    - 6.3.7. Environmental audit and eco mark
  - 6.4. Judiciary : complex problems in administration of environmental justice
- 7. Town and country planning** **units 4**
- 7.1. Law : enforcement and constrain
  - 7.3. Planning - management policies

- 8. Forest and greenery** **units 10**
- 8.1. Greenery conservation laws
    - 8.1.1. Forest conservation
    - 8.1.2. Conservation agencies
    - 8.1.3. Prior approval and non-forest purpose
    - 8.1.4. Symbiotic relationship and tribal people
    - 8.1.5. Denudation of forest : judicial approach
  - 8.2. Wild life
    - 8.2.1. Sanctuaries and national parks.
    - 8.2.2. Licensing of zoos and parks
    - 8.2.3. State monopoly in the sale of wild life and wild life articles
    - 8.2.4. Offences against wild life.
- 9. Bio-diversity** **units 4**
- 9.1 Legal control
  - 9.2 Control of eco-unfriendly experimentation on animals, plants, seeds and micro organism.
- 10. International regime** **units 15**
- 10.1. Stockholm conference
  - 10.2. Green house effect and ozone depletion
  - 10.3. Rio conference
  - 10.4. Bio-diversity
  - 10.5. U.N. declaration on right to development.
  - 10.6. Wetlands



**Select bibliography**

Aarmin Rosencranz, et al., (eds.), *Environmental Law and Policy in India*, (2000), Oxford

R.B.Singh & Suresh Misra, *Environmental Law in India* (1996), Concept Publishing Co., New Delhi.

Kailash Thakur, *Environmental Protection Law and Policy in India* (1997), Deep & Deep publications, New Delhi.

Richard L.Riversz, et.al. (eds.) *Environmental Law, the Economy and Sustainable Development* (2000), Cambridge.

Christopher D.Stone, *Should Trees Have Standing and other Essays on Law, Morals and the Environment* (1996), Oceana

Leelakrishnan, P et. al. (eds.), *Law and Environment* (1990), Eastern, Lucknow

Leelakrishnan, P, *The Environmental Law in India* (1999), Butterworths-India

Department of Science and Technology, Government of India, *Report of the Committee for Recommending Legislative Measures and Administrative Machinery for Ensuring Environmental Protection* (1980) (Tiwari Committee Report).

Indian Journal of Public Administration, *Special Number on Environment and Administration*, July-September 1988, Vol. XXXV, No.3, pp.353-801

Centre for Science and Environment, *The State of India's Environment 1982, The State of India's Environment 1984-85 and The State of Indian Environment 1999-2000*.

World Commission on Environment and Development, *Our Common Future* (1987), Oxford.

**BCI C 19 LABOUR LAW*****Objectives of the course***

Protection of labour is a constitutional mandate. A constitution inspired by the vision of social justice is committed to the cause of upliftment of labour. Well balanced industrial development leads to increased productivity which in turn is a factor of national progress. Labour makes significant contribution in this respect.

Is labour merely a commodity? Is it only a factor in production? There may be different approaches towards this question. One fact is certain. Today's labour is engaged in a battle for position of honour and status equal with management. The law and practice relating to labour is the story of this battle. In this context, the study of labour law is not to be confined to mastering of the rules and regulations relating to the employment of the work force. Its wings spread wider. It has its aim on the societal impulses on, and state reactions to, the complex socio-economic, human and political problems arising out of the constant conflicts between different classes.

The student should get an insight into the mechanics of socio-legal control of labour relations and should be aware of the history, the present norms, the emerging areas and possible future techniques of labour jurisprudence.

The following syllabus prepared with this perspective will comprise about 84 units of one hour duration.

***Syllabus***

- |  |                |
|--|----------------|
| <b>1. Historical perspectives on Labour</b>  | <b>units 6</b> |
| 1.1. Labour through the ages - slave labour - guild system - division on caste basis - labour during feudal days.  |                |
| 1.2. Colonial labour law and policy  |                |
| 1.3. Labour capital conflicts: exploitation of labour, profit motive, poor bargaining power, poor working conditions, unorganised labour, bonded labour, surplus labour, division of labour and super-specialisation - lack of alternative employment. |                |
| 1.4. Theories of labour and surplus value  |                |

- 1.5. From laissez faire to welfarism and to globalisation: transition from exploitation to protection and from contract to status : changing perspectives on labour.

## **2. Trade unionism Units 10**

- 2.1. Labour movement as a counter measure to exploitation - history of trade union movement in India.
- 2.2. Right to trade union as part of human right to freedom of association - international norms and the Indian Constitution.
- 2.3. Legal control and protection of trade union: registration, amalgamation, rights, immunities, liabilities and dissolution.
- 2.4. Problems: multiplicity of unions, over politicisation - intraunion and inter-union rivalry, outside leadership, closed shop and union-shop, recognition of unions.

## **3. Collective bargaining units 9**

- 3.1. The concept
- 3.2. International norms - conditions precedent - merits and demerits.
- 3.3. Bargaining process
  - 3.3.1. Negotiation
  - 3.3.2. Techniques of pressurization : strike and lockout, go-slow, work to rule, gherao, bundh
- 3.4. Structure of bargaining : plant, industry and national levels
- 3.5. Duration and enforcement of bipartite agreement
- 3.6. Reforms in law

## **4. State Regulation of Industrial Relations units 15**

- 4.1. Theoretical foundations: social justice, labour welfare, public interest, productivity, industrial peace and development and price control.
- 4.2. Methods of regulation:
  - 4.2.1. Recognition of mutual arrangements

- 4.2.2. Assistance to bipartite settlement: conciliation, voluntary arbitration, formulation of standing orders.
- 4.2.3. State prescription of machinery: reference for adjudication (the political overtones), the adjudicatory mechanisms (How do they differ from courts?), award and its binding nature, judicial review of awards.
- 4.2.4. State prescription of standards in lay off, strike, lockout, retrenchment, closure and transfer of undertakings
- 4.3. The conceptual conundrum : industry, industrial dispute, workmen.
- 4.4. Unfair labour practices.

## **5. Discipline in industry**

**units 8**

- 5.1. Doctrine of hire and fire - history of management's prerogative.
- 5.2. Fairness in disciplinary process:
  - 5.1.1. Punishment for misconduct - meaning of misconduct
  - 5.1.2. The right to know : the charge sheet
  - 5.1.3. The right to defend : domestic enquiry, notice, evidence, cross-examination, representation, unbiased inquiry officer and reasoned decision.
  - 5.1.4. Prenatal (permission) and postnatal (approval) control during pendency of proceedings (S.33 of the I.D. Act.)
- 5.3. Role of management and labour

## **6. Remuneration for Labour**

**units 12**

- 6.1. Theories of wages : marginal productivity, subsistence, wages fund, supply
- 6.2. Concepts of wages (minimum wages, fair wages, living wages, need-based minimum wages)
- 6.3. Components of wages : dearness allowance, principle of fixation.
- 6.4. Disparity in wages in different sectors - need for rationalisation and national approach
- 6.5. Wage determining process - modes and modalities.

- 6.5.1. Unilateral fixation by employer
- 6.5.2. Bilateral fixation
- 6.5.3. Conciliation, arbitration and adjudication
- 6.5.4. Wage Board and Pay Commission
- 6.5.5. Principles of wage fixation
- 6.6. Concept of bonus - computation of bonus
- 6.7. Protection of wages : non-payment, delayed payment, unauthorised deductions - remedial measures.

## **7. Health and Safety**

**units 10**

- 7.1. Obligations for health and safety of workmen - legislative controls : factory, mines and plantations.
- 7.2. Employer's liability:
  - 7.2.1. Workmen's compensation
  - 7.2.2. Employee's State Insurance
  - 7.2.3. Liability for hazardous and inherently dangerous industries - environmental protection

## **8. Labour Welfare**

**units 9**

- 8.1. Welfare provided by the employers and through bipartite agreements and by statutory prescription.
- 8.2. Provident fund and family pension.
- 8.3. Gratuity
- 8.4. Insurance
- 8.5. Inter-state migrant workmen - regulation of employment and conditions of service.
- 8.6. Employment of young persons : prohibition of employment of children, regulation of employment of young persons.
- 8.7. Woman and labour force
  - 8.7.1. Equal remuneration law, maternity benefits, protective provisions for women under factories, plantations and mines laws

**9. Protection of the weaker sectors of labour****units 5**

- 9.1. Tribal labour : need for regulation
- 9.2. Unorganised labour like domestic servants : problems and perspectives
- 9.3. Bonded labour : socio-economic programmes for rehabilitation.
- 9.4. Contract labour - regulation
- 9.5. Daily wage workers.

**Select bibliography**

John Bowers and Simon Honeyball, *Text Book on Labour Law* (1996), Blackstone, London

Srivastava K.D., *Commentaries on Payment of Wages Act 1936* (1998), Eastern, Lucknow

Srivastava K.D., *Commentaries on Minimum Wages Act 1948* (1995), Eastern, Luknow

Rao.S.B., *Law and Practice on Minimum Wages* (1999) , Law Publishing House, Allahabad

Seth.D.D., *Commentaries on Industrial Disputes Act 1947* (1998), Law Publishing House, Allahabad

Srivastava K.D., *Disciplinary Action against Industrial Employees and Its Remedies* (1990), Eastern, Lucknow

Srivastava. K .D., *Commentaries on Factories Act 1948* (2000), Eastern, Luknow

R.C. Saxena, *Labour Problems and Social Welfare* Chapters 1, 5 and 6.(1974)

V.V. Giri, *Labour Problems in Indian Industry* Chs. 1 and 15, (1972).

Indian Law Institute, *Labour Law and Labour Relations* (1987)

(1982) *Cochin University Law Review*, Vol. 6 pp. 153-210.

*Report of the National Commission on Labour*. Ch. 14-17, 22, 23 and 24.

O.P. Malhotra, *The Law of Industrial Disputes* (1998), Universal, Delhi.

S.C. Srivastava, *Social Security and Labour Laws* Pts. 5 and 6 (1985).Universal, Delhi.

S.C.Srivastava, *Commentary on the Factories Act 1948* (1999) Universal, Delhi.

**BCI C 20 INTERPRETATION OF STATUTES*****Objectives of the course***

Legislation is the major source of law of the modern era. Legislatures enact laws after much deliberation. No doubt in this process they have to take into account the present and future needs of the people. What are the matters to be reckoned with by legislature while enacting laws? With the emergence of legislation, interpretation of statutes became a method by which judiciary explores the intention behind the statutes. Judicial interpretation involves construction of words, phrases and expressions. In their attempt to make the old and existing statutes contextually relevant, courts used to develop certain rules, doctrines and principles of interpretation. Judiciary plays a highly creative role in this respect. What are the techniques adopted by courts in construing statutes? How far are they successful in their strategy?

With the above problems and perspectives in view, this paper comprises of about 84 units of one hour duration.

***Syllabus***

- |  |                 |
|--|-----------------|
| <b>1. Principles of Legislation</b>  | <b>units 19</b> |
| 1.1. Law-making - the legislature, executive and the judiciary                             |                 |
| 1.2. Principle of utility  |                 |
| 1.3. Relevance of John Rawls and Robert Nozick - individual interest to community interest |                 |
| 1.4. Operation of these principles upon legislation  |                 |
| 1.5. Distinction between morals and legislation  |                 |
| <b>2. Interpretation of Statutes</b>   | <b>units 8</b>  |
| 2.1. Meaning of the term 'statutes'  |                 |
| 2.2. Commencement, operation and repeal of statutes  |                 |
| 2.3. Purpose of interpretation of statutes.  |                 |

**3. Aids to Interpretation****units 12**

- 3.1. Internal aids
  - 3.1.1. Title
  - 3.1.2. Preamble
  - 3.1.3. Headings and marginal notes.
  - 3.1.4. Sections and sub-sections
  - 3.1.5. Punctuation marks.
  - 3.1.6. Illustrations, exceptions, provisos and saving clauses
  - 3.1.7. Schedules
  - 3.1.8. Non-obstante clause.
- 3.2. External aids
  - 3.2.1. Dictionaries
  - 3.2.2. Translations
  - 3.2.3. Travaux Preparatoires
  - 3.2.4. Statutes in pari materia
  - 3.2.5. Contemporanea Exposito
  - 3.2.6. Debates, inquiry commission reports and Law Commission reports

**4. Rules of Statutory Interpretation****units 5**

- 4.1 Primary Rules
  - 4.1.1. Literal rule
  - 4.1.2. Golden rule
  - 4.1.3. Mischief rule (rule in the Heydon's case)
  - 4.1.4. Rule of harmonious construction
- 4.2. Secondary Rules
  - 4.2.1. Noscitur a sociis



- 4.2.2. Eiusdem generis
- 4.2.3. Reddendo singula singulis

**5. Presumptions in statutory interpretation**

**units 7**

- 5.1. Statutes are valid
- 5.2. Statutes are territorial in operation
- 5.3. Presumption as to jurisdiction
- 5.4. Presumption against what is inconvenient or absurd
- 5.5. Presumption against intending injustice
- 5.6. Presumption against impairing obligations or permitting advantage from one's own wrong
- 5.7. Prospective operation of statutes

**6. Maxims of Statutory Interpretation**

**units 13**

- 6.1. Delegatus non potest delegare
- 6.2. Expressio unius exclusio alterius
- 6.3. Generalia specialibus non derogant
- 6.4. In pari delicto potior est conditio possidentis
- 6.5. Utres valet potior quam pareat
- 6.6. Expressum facit cessare tacitum
- 6.7. In bonam partem

**7. Interpretation with reference to the subject matter and purpose**

**units 10**

- 7.1. Restrictive and beneficial construction
  - 7.1.1. Taxing statutes
  - 7.1.2. Penal statutes
  - 7.1.3. Welfare legislation

- 7.2. Interpretation of substantive and adjunctival statutes
- 7.3. Interpretation of directory and mandatory provisions
- 7.4. Interpretation of enabling statutes
- 7.5. Interpretation of codifying and consolidating statutes
- 7.6. Interpretation of statutes conferring rights
- 7.7. Interpretation of statutes conferring powers.

## **8. Principles of Constitutional Interpretation**

**units 10**

- 8.1. Harmonious construction
- 8.2. Doctrine of pith and substance
- 8.3. Colourable legislation
- 8.4. Ancillary powers
- 8.5. "Occupied field"
- 8.6. Residuary power
- 8.7. Doctrine of repugnancy

### ***Select bibliography***

G.P.Singh, *Principles of Statutory Interpretation*, (7th Edition) 1999, Wadhwa, Nagpur.

P. St. Langan (Ed.). *Maxwell on The Interpretation of Statutes* (1976) N.M.Tripathi, Bombay

K.Shanmukham, N.S.Bindras's *Interpretation of Statutes*, (1997) The Law Book Co. Allahabad.

V.Sarathi, *Interpretation of Statutes*, (1984) Eastern, Lucknow

M.P.Jain, *Constitutional Law of India*, (1994) Wadhwa & Co.

M.P.Singh, (Ed.) V.N.Sukla's *Constitution of India*, (1994) Eastern, Lucknow.

U.Baxi, Introduction to Justice K.K.Mathew's, *Democracy Equality and Freedom* (1978) Eastern, Lucknow

**BCI C 21 LAND LAWS INCLUDING CEILING AND ANY OTHER LOCAL LAWS*****Objectives of the course***

The legislative power to make laws relating to land and land ceiling is in the state list. Different states have enacted their own laws on this subject. The Constitutional perspectives relating to this subjects have to be taught as an essential part of this course. The provisions in the Constitution in Part III, IV and XII as well as those in Schedule VII relating to distribution of legislative powers over land are essentially to be taught with emphasis. The law relating to land in the state where the students take the course will have to be selected by the University Boards of Studies as part of the syllabus for this paper. This paper comprises of 84 units of one hour duration.

***Syllabus***

- |                                     |                 |
|-------------------------------------|-----------------|
| <b>1. Constitutional provisions</b> | <b>units 20</b> |
| 1.1. Fundamental Rights             |                 |
| 1.1.1. Agricultural reform          |                 |
| 1.2. Property as legal right        |                 |
| 1.3. Legislative powers             |                 |
| 1.3.1. The Union                    |                 |
| 1.3.2. States                       |                 |
| 1.3.3. Local bodies                 |                 |

- |                             |                 |
|-----------------------------|-----------------|
| <b>2. State Legislation</b> | <b>units 64</b> |
|-----------------------------|-----------------|

(Different laws enacted in the states where the course is offered, are to be studied in depth. This may include such topics as land acquisition, land tax, land utilization and conversion, land conservation and land assignment. The State and Union agencies constituted for the purpose of the land development are to be studied in this course)

## OPTIONAL COURSES

### **BCI 001 INTERNATIONAL ECONOMIC LAW**

#### ***Objective of the course***

The course focuses on the problems of International attempts in making an International economic order. The agencies at the international level had already been envisaged with the birth of United Nations. However, as the economic interdependence among nations grew, the role of these specialized agencies became more prominent. The declaration of the new economic order and the declaration on the right to development coupled with the impact of Drunkel draft gave new dimensions resulting in the establishment of World Trade Organization (WTO) to regulate the liberalized trade at global level. This course goes into the different parameters of the developments whose implications the students will have to be familiar with.

The following syllabus will comprise of 84 units of one-hour duration.

#### ***Syllabus***

- 1. Historical perspectives units 4**
  - 1.1. United Nations: GATT
  - 1.2. Evolution of New International Economic Order (NIEO)
    - 1.2.1. Essential components of NIEO
    - 1.2.2. State acceptance and practice of NIEO principles
  
- 2. Charter of Economic Rights and Duties units 4**
  - 2.1. Sovereignty over wealth and natural resources
  - 2.2. TNCS
  - 2.3. Foreign investment
  - 2.4. Transfer of technology

- 2.5. Elimination of colonisation, apartheid, racial discrimination
- 2.6. Extension of tariff preferences
- 2.7. Most favoured nation treatment
- 2.8. North-south gap widened or narrowed.?

### **3. Institutions**

**units 4**

- 3.1. UNCTAD (United Nations Conference on Trade and Development)
- 3.2. UNCITRAL
- 3.3. GATT
  - 3.3.1. Objectives
  - 3.3.2. Strengths and weaknesses
  - 3.3.3. Salient features of GATT 1994 (Final Act of Uruguay Round)

### **4. WTO**

**units 15**

- 4.1. Structure, principles and working
- 4.2. Difference between GATT and WTO
- 4.3. Problems:
  - 4.3.1. Agriculture
  - 4.3.2. Sanitary and phyto sanitary measures (SPS)
  - 4.3.3. Technical barriers of trade (TBT)
  - 4.3.4. Textiles and clothing
  - 4.3.5. Anti-dumping
  - 4.3.6. Customs valuation
  - 4.3.7. Services
  - 4.3.8. TRIPS
  - 4.3.9. TRIMS
  - 4.3.10. Disputes settlement

- 4.3.11 Labour
- 4.3.12 Transfer of technology
- 4.3.13 Trade facilitation
- 4.3.14 E-Commerce
- 4.3.15 Information and technology agreement
- 4.4 Special permission for developing and less developed countries
- 4.5 Trade and development committee
- 4.6 Balance of payment provisions in WTO
- 4.7 India and WTO
  
- 5. Trade in Goods** **units 2**
  
- 6. Trade related investment measures (TRIMS)** **units 6**
  - 6.1. Relationships with GATT
  - 6.2. Inalienable rights of member countries
  
- 7. General Agreements on Trade in Services (GATS)** **units 7**
  - 7.1. Principle: non-discrimination
  - 7.2. Benefits to India
  
- 8. Trade Related Intellectual Property Rights (TRIPS)** **units 10**
  - 8.1. Structure
  - 8.2. Principles
  - 8.3. Minimum Standards
    - 8.3.1. Copy rights and related rights
    - 8.3.2. Trade marks
    - 8.3.3. Geographical indications
    - 8.3.4. Industrial designs

- 8.3.5. Patents
- 8.3.6. Undisclosed information
- 8.3.7. Anti competitive practice
- 8.4. Enforcement of IPR
- 8.5. Transparency
- 8.6. New issues

## **9. Dispute settlement**

**units 10**

- 9.1. Judicial system: Dispute Settlement Board (DSB)
  - 9.1.1. Elements of the system
    - 9.1.1.1. Prompt settlement
    - 9.1.1.2. Balancing of rights and obligations
    - 9.1.1.3. Objective of satisfactory settlements
  - 9.1.2. Outcomes
    - 9.1.2.1. Withdrawal of the measure - violation of WTO
    - 9.1.2.2. Continuation of the measure with compensation for the loss suffered by the affected country
    - 9.1.2.3. Continuation of the measures with retaliation by the affected country to make good the loss suffered by the affected country
  - 9.1.3. Special steps of DSB and WTO Secretaries for developing countries
- 9.2. Process of settlement by DSB

## **10. International Monetary Fund**

**units 6**

- 10.1. Structure and functions
- 10.2. Concept of par value systems
- 10.3. Currency convertibility
- 10.4. Breakdown of par value system
- 10.5. Re-structuring of IMF

- 11. International Bank for Reconstruction and Development** **units 6**
- 11.1. Structure and functions
  - 11.2. International financial co-operation
  - 11.3. International development association
  - 11.4. Lending by World Bank
- 12. Regional Development Banks** **units 4**
- 12.1. Structure and functions
    - 12.1.1. Asian Development Bank
    - 12.1.2. Inter American Development Bank
    - 12.1.3. Banking in relation to European Union
- 13. Sustainable Development** **units 6**
- 13.1. The concept
  - 13.2. Stockholm to Rio: developments of the concept
  - 13.3. Right to development
    - 13.3.1. Basic concept
    - 13.3.2. State acceptance and practice
  - 13.4. UNCED (UN Commission on Environment and Development) report
    - 13.4.1. Principles
  - 13.5. Rio principles related to sustainable developments

### ***Select Bibliography***

Bandari Surendra, *World Trade Organization and Developing Countries* (1995), Universal, Delhi

Myneni Srinivasa Rao, *International Economic Law* (1996), Pioneer Books, New Delhi.

Arun Goyal(ed.), *WTO in the new Millennium* (2000), Academy of Business Studies, New Delhi-110002.



Schwarzenberger, *Economic World Order* (1970) Manchester University Press.

Jayanta Bagchi, *World Trade Organization : An Indian Perspective* (2000), Eastern Law House, Calcutta.

J.G.Starke, *Introduction to International Law* (1989) Butterworths

UNCED, *Our Common Future* (1986), Oxford.

**BCI 002 BANKRUPTCY LAWS*****Objectives of the course***

The main concern of law is the regulation and balancing of socio-economic and political interests. In regulating the economic front, law has to take into account of negative economic impact in the situations of socio-legal problems. The bankruptcy law becomes relevant in this context. The Constitution confers on the union and the states to legislate on bankruptcy- the inability to pay debts. The Indian laws contain elaborate provisions on the status of insolvent person, legal conditions of insolvency, insolvency proceedings, distribution of property of the insolvent and on litigation by and against insolvent person. These laws have to be looked at with a comparative approach. The course excludes questions of bankruptcy in relation to company and partnership since they are dealt with in the compulsory papers.

This course with the above perspectives comprises of about 84 units of one-hour duration.

***Syllabus***

- |  |                 |
|--|-----------------|
| <b>1. Introductory</b>   | <b>units 10</b> |
| 1.1. The concept: inability to pay debt  |                 |
| 1.2. Comparative perspectives  |                 |
| 1.2.1. England: Insolvency Act, Bankruptcy Act                                 |                 |
| 1.2.3. United States   |                 |
| 1.3. India: concurrent jurisdiction - the central and state legislation        |                 |
| <b>2. Insolvency jurisdiction</b>  | <b>units 2</b>  |
| 2.1. Courts  |                 |
| 2.2. Powers of court   |                 |
| <b>3. Accts of Insolvency</b>  | <b>units 8</b>  |
| 3.1. Transfer of property to a third person for benefit of creditors generally |                 |
| 3.2. Transfer with intent to defeat creditors.                                 |                 |

- 3.3. Fraudulent preferences in transfer of property
- 3.4. Absconding with intent to defeat the creditors
- 3.5. Sale of property in execution of decree of court.
- 3.6. Adjudication as insolvent
- 3.7. Notice to creditors about suspension of payment of debt.
- 3.8. Imprisonment in execution of a decree of a court
- 3.9. Notice by creditor
  
- 4. Insolvency petition** **units 6**
  - 4.1. By creditor
  - 4.2. By debtor
  - 4.3. Contents of the petition
  - 4.4. Admission
  - 4.5. Procedure
  
- 5. Appointment of interim receiver** **units 4**
  
- 6. Interim proceedings against the debtor** **units 2**
  
- 7. Duties of Debtors** **units 2**
  
- 8. Release of debtor** **units 2**
  
- 9. Procedure at hearing** **units 2**
  
- 10. Dismissal of petition filed by a creditor** **units 4**
  
- 11. Order of adjudication** **units 2**
  - 11.1. Effect
  - 11.2. Publication of order

- 12. Proceedings, consequent on order of adjudication** **units 7**
- 12.1. Protection order from arrest or detension
  - 12.2. Power to arrest after adjudication per attempt abscond
  - 12.3. Schedule of creditors
  - 12.3.1. Burden of creditors to prove the debt.
- 13. Annulment of adjudication** **units 5**
- 13.1. Power to annul
  - 13.2. Effect
  - 13.3. Failure to apply for discharge
- 14. Post adjudicatory scheme for satisfaction of the debt** **units 2**
- 15. Discharge of debtor** **units 2**
- 16. Effect of insolvency on antecedent transaction** **units 5**
- 16.1. On rights of creditor under execution
  - 16.2. Duties of court executing decree on the property taken in execution
  - 16.3. Avoidance of voluntary transfer
  - 16.4. Avoidance of preference
- 17. Realization of property** **units 4**
- 17.1. Appointment of receiver
    - 17.1.1. Duties and powers
    - 17.1.2. Appeal against receiver
- 18. Distribution of property** **units 4**
- 18.1. Priority of debts
  - 18.2. Dividends

<i>Law</i>	120
<b>19. Offences by debtors</b>	<b>units 2</b>
<b>20. Disqualification of insolvent</b>	<b>units 2</b>
<b>21. Appeal</b>	<b>units 3</b>
<b>22. Indigent persons</b>	<b>units 4</b>
22.1. Suit by indigent persons	

### ***Select bibliography***

The Provincial Insolvency Act 1920

Insolvency Acts of various States

Halsbury's Laws of England, Vol.3(2) on *Bankruptcy and Insolvency* (1989)

Henry R. Cheeseman, *Business Law*, Ch.28 (1998), Prentice Hall, New Jersey

C.K.Thakker, *Code of Civil Procedure* (2000) Eastern, Lucknow.

Aiyar.S.K., *Law of Bankruptcy* (1998) Universal, Delhi.

**BCI 003 TAXATION LAWS*****Objectives of the course***

Power to tax had been described as the power to destroy. This idea is being floated often whenever the state introduces a new tax. Is this true? Is it not necessary that in order to raise revenue and place the economy on solid foundation, the taxing power should be conferred on the state? The power to tax shall not go unregulated. In the context of a federal structure the distribution of the taxing powers assumes added significance. Obviously, a study of the constitutional framework on taxation becomes important. Along with this, an analysis of the different laws enacted in exercise of these powers with their safeguards and remedies sheds light on the mechanics of the taxation by the Union and the States.

The following syllabi prepared with this perspective in view comprises of about 84 units of one-hour duration.

***Syllabus***

- |   |                 |
|---|-----------------|
| <b>1. General Perspective</b>   | <b>units 24</b> |
| 1.1. History of tax law in India  |                 |
| 1.2. Fundamental principles relating to tax laws  |                 |
| 1.3. Governmental financial policy, tax structure and their role in the national economy. |                 |
| 1.4. Concept of tax:  |                 |
| 1.4.1. Nature and characteristics of taxes  |                 |
| 1.4.2. Distinction between:   |                 |
| 1.4.2.1. Tax and fee  |                 |
| 1.4.2.2. Tax and cess   |                 |
| 1.4.2.3. Direct and indirect taxes  |                 |
| 1.4.2.4. Tax evasion and tax avoidance  |                 |
| 1.5. Scope of taxing powers of Parliament, state Legislature and local bodies.            |                 |

**2. Income Tax****units 30**

- 2.1. Basic Concepts:
  - 2.1.1. Income
  - 2.1.2. Total income
  - 2.1.3. Income not included in total income
  - 2.1.4. Deemed income
  - 2.1.5. Clubbing of income
- 2.2. Assessee
- 2.3. Person
- 2.4. Tax Planning
- 2.5. Chargeable income
  - 2.5.1. Heads of income
    - 2.5.1.1. Salaries
    - 2.5.1.2. Income from house property
    - 2.5.1.3. Income from business or profession
    - 2.5.1.4. Capital gains
    - 2.5.1.5. Income from other sources
  - 2.5.2. Deductions, relief and exemptions
  - 2.5.3. Rate of income tax
- 2.6. Income Tax Authorities:
  - 2.6.1. Power and functions
- 2.7. Offences and penal sanctions:
- 2.8. Settlement of grievances:
  - 2.8.1. Authorities, powers and functions

**3. Other Tax Laws****units 30**

- 3.1. Wealth Tax
  - 3.1.1. Taxable wealth, determination of value of assets, exemptions and rate of wealth tax
  - 3.1.2. Wealth tax authorities
  - 3.1.3. Offences and penalties
- 3.2. Central Sales Tax and or State Sales Tax
  - 3.2.1. Sale or purchase of goods:
    - 3.2.1.1. Meaning of sale
    - 3.2.1.2. Sale in the course of inter-state trade and commerce
    - 3.2.1.3. Sale to take place outside a state
    - 3.2.1.4. Sale in the course of export or import
  - 3.2.2. Charge of tax
  - 3.2.3. Exemption and rebate
  - 3.2.4. Sales tax authorities
  - 3.2.5. Offences and penalties
- 3.3. Service Tax
  - 3.3.1. Taxable service
    - 3.3.1.1. Meaning and importance of service tax
    - 3.3.1.2. Constitutional perspective
    - 3.3.1.3. Salient provisions of the service tax law
    - 3.3.1.4. Valuation of taxable service
    - 3.3.1.5. Offences and penalties



**Select bibliography**

Remesh Sharma, *Supreme Court on Direct Taxes* (1998), Bharath Law House, New Delhi.

Sampath Iyengar, *Law of Income Tax* (1998), Bharath Law House, New Delhi.

Diwan B.K. and Sanjay Mehtani, *Formation, Taxation and Assessment Charitable and Religious Trusts* (1999), Bharath Law House New Delhi

Kanga and Palkiwala, *The Law and Practice of Income Tax* (1999), Wadha, Nagpur.

K. Parameswaran, *Power of Taxation under the Constitution* (1987), Eastern, Lucknow

V. Ramachandran & T.A. Ramakrishnan (eds.) *A.N.Aiyar's Indian Tax Laws* (2000) Company Law Institute of India Pvt. Ltd. Chennai.

S.Bhattacharya & H.R. Garg, *Handbook of Direct Taxes* (1990) Eastern Law House, Calcutta.

C.A. Gularickar, *Law and Practice of Wealth Tax and Valuation* (1998), Gularikar, Mumbai.

Walter R. Mahler, *Sales and Excise Taxation in India* (1970) Orient Longman, Delhi.

R.V.Pattel, *The Central Sales Tax Act* (1966) Thripathi, Bombay.

S.D. Singh, *Principles of Law of Sales Tax* (1973), Eastern, Lucknow

**BCI 004 COMPARATIVE LAW*****Objectives of the course***

Comparative law is a source of inestimable enlightenment. It teaches us above all those legal and juristic problems which we tend to consider "unique" and are often the common experience of world's legal systems. A course in comparative law also makes one understand the influences that shape one's own legal thought and practice. It indicates pathways of systemic change - liberation from what might be called juristic xenophobia.

Comparative studies are a rich and growing field. Varieties of starting points are available. Thus one may design a comparative law course around comparison of judicial institutions (liability, contract, precedent, family, commercial law) or one may look at historic evolution of law as such (law in a kin - based society, law in settled agricultural society, law in era of expanding commerce, colonial law in industrial revolution and late capitalism). Finally, without being exhaustive, one may also look at endeavours at global unification of law.

An introductory course must sensitise teacher and taught to all these approaches. This is a complex and demanding task. The course-content offers one approach but other approaches can also be explored. It has to be born in mind that in India, insofar as attention is given at all to comparative law, the emphasis is on "common law" and "civil law". This Euro centric focus has to change. A comparative law course in India must concentrate on the development in the law of the Third world.

This paper with the above perspective in view comprises of about 84 units one hour-duration.

***Syllabus*****1. Introductory****units 5**

- 1.1. The nature and Scope of Comparative Law
- 1.2. Historical development
- 1.3. Notions of "Comparison"
- 1.4. Methods of Comparison

1.5. Types of Comparison

1.6. Problems of Method

**2. World's Major Legal Systems : An Overview**

**units 12**

2.1. Roman Law

2.2. Jewish Law

2.3. Islamic Law

2.4. Hindu Law

2.5. Chinese Law

2.6. African Law

2.7. Common Law

2.8. Civil Law

**3. Contemporary Traditions of Law**

**units 10**

3.1. Capitalist/bourgeois Law

3.2. Socialist Law

3.3. "Third World" Law

**4. Trends in Unification of World Law**

**units 16**

4.1. Principle unification agencies at work : a survey

4.2. The International Law Commission

4.3. UNICITRAL

4.4. The World Intellectual Property Organisation (WIPO)

4.5. The International Labour Organisation

4.6. The U.N. Human Rights Agencies

4.7. The World Trade Organization

**5. Certain Comparable Areas in "Third World" Law and Jurisprudence** **units 40**

- 5.1. Comparative studies of emergency and constitutionalism
- 5.2. Comparative judicial process
- 5.3. Comparative study of legal professions
- 5.4. Comparative study of law reform
- 5.5. Comparative studies of gender justice
- 5.6. Comparative studies of environmental law
- 5.7. Comparative analyses of contract law
- 5.8. Comparative family law
- 5.9. Comparative studies to access to law
- 5.10. Religion, tradition and custom
- 5.11. Comparative legislative process
- 5.12. Comparative criminal justice system

**Note:** Only four out of the twelve sub-units in Unit 5 need be included in the study of this paper. The concerned university bodies shall have the discretion to select these papers

**Select bibliography**

Werner F. Menski, Comparative Law in a Global Context - *The Legal Systems of Asia and Africa*, (2000), Platinum Publishing Ltd., London

O. Khan Freund, *Collected Essays* (1978)

Indian Law Institute, *An Introduction to the Study of Comparative Law* Reprint (!979).

J.D.M. Derrett (ed.), *An Introduction to Legal Systems*

G. Eorsi, *Comparative Civil Law* (1979)

International Commission of Jurists, *States of Emergency : Impact on Human Rights* (1983).

Y. Ghai, et.al (ed.), *The Political Economy of Law : A Third World Reader* 559-648(1987).

Indian Law Institute, *Contractual Law Remedies in Asian Countries* (1975).

Indian Law Institute, *Family Law Reform in the Muslim World* (1972).

See, M. Cappelletti et.al., *Towards Equal Justice : A Comparative Study of Legal Aid in Modern Societies* (1975)

J.D.M. Derrett, *Religion, Law and the State in India* (1999), Oxford

H.C. Gutteridge, *Comparative Law*

I.W.F. Allilou, *A Continental Distinction in the Common Law* (1999) Oxford

Indrani Chatterjee, *Gender, Slavery and Law in Colonial India* (1999) Oxford

Eric Stokes, *The English Utilitarian and India* (1992) Oxford, Delhi.

In addition, the Encyclopaedia of Comparative Law provides a whole variety of materials in the course.

Rane Davis N.E., *Comparative law*.

**BCI 004 A LEGAL HISTORY*****Objectives of the course***

Study of law relating to a particular country is not complete without understanding the history and development of the laws and legal institutions. India is a country rich in history and traditions. A student of law should be exposed to the ancient social order and religious philosophy as well as to the systems of dispute settlement mechanisms existing in those days. The medieval period had influence in the development of legal system. The advent of the British was an event, which also had its influence. The growth of judicial and legislative institutions after this event has to be taught in order to give an insight and awareness of how the present system had emerged from the ancient and medieval times.

This paper with the above mentioned perspectives will comprises of about 84 units of one hour duration.

***Legal History of India***

- |   |                 |
|---|-----------------|
| <b>1. Judicial Systems in Ancient India</b>                                       | <b>units 10</b> |
| 1.1. Judicial system in ancient India: Hindu period                               |                 |
| 1.2. Ancient Hindu social order and religions philosophy                          |                 |
| 1.3. Administration of justice  |                 |
| 1.4. Judicial system in medieval India: Muslim period                             |                 |
| 1.5. The Mughal period: judicial system   |                 |
| <b>2. Administration of Justice in Bombay, Madras and Calcutta</b>                | <b>unit 6</b>   |
| 2.1. Emergence of the East India Company: development of authority under charters |                 |
| 2.2. Trading body to a territorial power: subsequent charters.                    |                 |
| 2.3. Administration of justice in Madras from 1639 to 1726.                       |                 |
| 2.4. Administration of justice in Bombay 1668 -1726                               |                 |
| 2.5. Administration of justice in Calcutta 1619 - 1726                            |                 |

- 3. The Mayors Court** **units 5**
- 3.1. Genesis of the charter of 1726
  - 3.2. Provisions of the charter
  - 3.3. Working of judicial system
  - 3.4. Charter of 1753
  - 3.5. Defects of judicial systems
- 4. Adalat System** **units 7**
- 4.1. Grant of Diwani
  - 4.2. Execution of Diwani functions
  - 4.3. Judicial plan of 1772
  - 4.4. Defects of the plan
  - 4.5. New plan of 1774
  - 4.6. Reorganization of adalats in 1780
  - 4.7. Reforms of 1781
  - 4.8. The first civil code
  - 4.9. Reforms in the administrations of criminal justice.
- 5. The Regulating Act 1773** **units 7**
- 5.1. Charter of 1774 and the Supreme Court of Calcutta
  - 5.2. Some land mark cases
    - a. Issue of Raj Nandkumar (1775): whether a judicial murder?
    - b. The Patna case (1777-79)
    - c. The Cossijurah case (1779-80)
  - 5.3. Act of settlement 1781
    - 5.3.1. Major defects
  - 5.4. Supreme Courts at Calcutta, Madras and Bombay.
  - 5.5. Law and administration in the Supreme Court

**6. Judicial Reforms****units 7**

- 6.1. Judicial reforms of Cornwallis
- 6.2. Problems of judicial reforms 1793-1833
- 6.3. Impact of reforms by Cornwallis 1793
- 6.4. Reforms of Sir John Shore (1793)
- 6.5. Reforms of Lord Wellesley (1798)
- 6.6. Reforms of Lord Cornwallis (1805)
- 6.7. Reforms of Lord Minto (1807)
- 6.8. Lord Hastings' administration of justice (1813)
- 6.9. Judicial reforms of Lord Bentick (1828)
  - 6.9.1. Defects of the systems

**7. Establishment of the High Courts****units 7**

- 7.1. The Indian High Courts Act 1861
- 7.2. Charter of Calcutta High Court
- 7.3. Allahbad High Court
- 7.4. The Indian High Courts Act 1911
- 7.5. The Government of India Act 1915 : other High Courts
- 7.6. Government of India Act 1935 : more high courts created
- 7.7. Jurisdiction of high courts
- 7.8. Posts constitutional developments

**8. The Federal Court of India****units 5**

- 8.1. Foundation of the Federal Court
- 8.2. Jurisdiction
- 8.3. Authority of law
- 8.4. Expansion of Jurisdiction



- 8.5. Abolition of the Federal Court
- 8.6. An assessment
- 9. Privy Council** **units 5**
  - 9.1. Jurisdiction
  - 9.2. Appeals from India
  - 9.3. A unique institution
- 10. The Supreme Court of India** **units 3**
  - 10.1. Origin
  - 10.2. Constitution
  - 10.3. Jurisdiction and powers
  - 10.4. Doctrine of precedents and the Supreme Court
  - 10.5. Recent changes
- 11. Development of legislative authorities in India from 1861-1935** **units 8**
- 12. Growth of Criminal Law** **units 2**
- 13. Growth of personal Law of Hindus and Muslims** **units 2**
- 14. Charters Act 1833** **units 2**
- 15. Influence of English Law in India** **units 2**
- 16. Prerogative writs in India** **units 2**
- 17. Racial discrimination** **units 2**
- 18. Growth of justice, equity and good conscience** **units 2**

**Select Bibliography**

Courtney Ilbert, *Government of India* (1962)

Courtney Ilbert, *The Mechanics of Law Making* (1914)

M.P.Jain, *Constitutional Law of India* (1987) Tripathi, Bombay

M.P.Jain, *Outlines of Legal History* (1998), Tripathi

M. Rama Jois, *Legal and constitutional History of India* (1984) (Two volumes)

A.B.Keith, *Constitutional History of India 1600-1936* (1936)

Rankin.G.C. *Background to Indian Law* (1946)

V.D.Kulshreshtha's, *Landmarks in Indian Legal History* (1992), Eastern Lucknow.

Eric Stakes, *The English Utilitarians and India 1992*, Oxford, Delhi.

**BCI 005 INSURANCE LAW****Statement of objectives**

The insurance idea is an old-institution of transactional trade. Even from olden days merchants who made great adventures gave money by way of consideration, to other persons who made assurance, against loss of their goods, merchandise ships and things adventured. The rates of money consideration were mutually agreed upon. Such an arrangement enabled other merchants more willingly and more freely to embark upon further trading adventures.

The operational framework of insurance idea is provided by the general principles of contract. The insurance policy, being a contract, is subject to all the judicial interpretative techniques of rules of interpretation as propounded by the judiciary. Besides, the insurance idea has a compensatory justice component.

This course is designed to acquaint the students with the conceptual and operational parameters, of insurance law.

This course with above perspectives comprises of about 84 units of one-hour duration.

**Syllabus**

- |   |                 |
|---|-----------------|
| <b>1. Introduction</b>  | <b>units 10</b> |
| 1.1. Definition, nature and history of insurance  |                 |
| 1.2. Concept of Insurance and law of contract and law of torts future of insurance in globalized economy.                   |                 |
| 1.3. History and development of insurance in India.   |                 |
| 1.4. Insurance Regulatory Authority - role and functions.   |                 |
| <b>2. General principles of law of Insurance</b>  | <b>units 14</b> |
| 1.1. Contract of Insurance - classification of contract of insurance nature of various insurance contracts, parties thereto |                 |

- 1.2. Principle of good faith-non-disclosure-misrepresentation in insurance contract
- 1.3. Insurable interest
- 1.4. The risk
- 1.5. The policy, classification of policies-its form and contents, its commencement, duration, cancellation, alteration, rectification, renewal, assignment, construction
- 1.6. Conditions of the policy
- 1.7. Alteration of the risk
- 1.8. Assignment of the subject matter

### **3. Life Insurance**

**units 15**

- 1.1. Nature and scopoe of life insurance, definition, kinds of life insurance, the policy and formation of a life insurance contract
- 1.2. Event insured against life insurance contract
- 1.3. Circumstances affecting the risk
- 1.4. Amounts recoverable under life policy
- 3.5. Persons entitled to payment
- 3.6. Settlement of claim and payment of money

### **4. Marine Insurance**

**units 14**

- 4.1. Nature and scope
- 4.2. Classification of marine policies
  - 4.1.1. The Marine Insurance Act1963
  - 4.1.2. Insurable interest, insurable value
  - 4.1.3. Marine insurance policy - conditions - express warranties construction of terms of policy
  - 4.1.4. Voyage - deviation
  - 4.1.5. Perils of the sea

4.1.6. Partial loss of ship and of freight, salvage, general average, particular charges

4.1.7. Measure of indemnity, total valuation, liability to third parties

**5. Insurance Against Third Party Risks** **units 10**

5.1. The Motor Vehicles Act, 1988 (Chapter VIII)

5.1.1. Nature and scope, persons governed, definitions of 'use', 'drives', 'motor vehicle', requirements of policy, statutory contract between insurer and drive rights of third parties, limitations on third party's rights duty to inform third party

5.1.2. Effect of insolvency or death on claims, insolvency and death of parties, certificate of insurance

5.1.3. Conditions to be satisfied

5.1.4. Claims tribunal, constitution, functions, application for compensation - who can apply? - procedure and powers of claims tribunal-its award.

5.1.5. Co-operative insurance (Motor Vehicles Rules)

**3. Social Insurance in India** **units 14**

6.1. Important elements in social insurance, its need

6.2. Commercial insurance and social insurance

6.3. Workmen's compensation - scope, risks covered, industrial accidents, occupational diseases, cash benefits, incapacity, amount of compensation, nature of injuries, dependents, schedule

6.4. Sicknes insurance, Adarkar scheme, Stack and Rao scheme for wage earners and others, risks covered, maturity and other benefits

6.5. Old age, premature death and invalidity insurance or pension insurance, public provident fund, jeevandhara policy

6.6. Unemployment insurance

6.7. Social insurance for people like seamen, circus workers and agricultural, workers

**7. Public Liability Insurance**

**units 5**

7.1. The scheme

7.2. Authorities

**8. The emerging legislative trends**

**units 2**

***Select bibliography***

Singh, Bridge Anand, *New Insurance Law* (2000) Union Book Publishers, Allahabad.

Ivamy, *Case Book on Insurance Law* (1984), Butterworths.

Ivamy, *General Principles of Insurance Laws* (1993), Butterworths

John Birds, *Modern Insurance Law* (1988), Sweet and Maxwell

Sreenivasan. M.N., *Principles of Insurance Law* (1997), Ramaniya Publishers, Bangalore.

**BCI 006 CONFLICT OF LAWS*****Objectives of the course***

Conflict of law and also private international law is perhaps one of the few courses which have been least codified and is always growing. Initially, after Independence we were still drawing guidance from English Private International Law and even to-day we do it often, but with a distinct determination that we have to develop this subject on our own.

Our courts have taken this challenge well. Indian Private International Law course cannot be taught in isolation but with guidance from English Private International law rules since our roots in this area, like many others, have been to common law

The following syllabus prepared with this perspective will comprise about 84 units of one hour duration.

***Syllabus*****1. Introductory****units 8**

- 1.1. What and why of conflict of laws: its function, bases like comity, convenience and justice.
- 1.2. Difference between Public and Private International law.
- 1.3. Development and history - England and India - a comparative sketch with reference to USA and other countries.
- 1.4. Unification effects: In Europe and America.
- 1.5. Unification effects : In Europe and America
- 1.6. Modern theories:  
Statutory, territorial, international, local law and justice.
- 1.7. Stage in a Private International law case
- 1.8. Choice of Jurisdiction

- 1.9. Choice of law (lex cause)
- 1.10. Recognition and enforcement of foreign judgements/awards.

**2. Choice of Jurisdiction (First stage) units 8**

- 2.1. Meaning, bases of jurisdiction, limitations like effectiveness principles - Relevant C.P.C. provisions regarding jurisdiction -ss. 15-20, 83, 84, and 86
- 2.2. Kinds of jurisdiction:
  - 2.2.1. Actions in personam - contract and tort.
  - 2.2.2. Actions in rem - such as matrimonial causes and probate
  - 2.2.3. Admiralty action - S VI the Admiralty Courts Act.
  - 2.2.4. Actions under assumed discretionary jurisdiction (inherent jurisdiction) (Indian Context : ss. 10 and 151 of C.P.C.

**3. Choice of Law-Lex Causae (Second Stage) units 8**

- 3.1. Classification/characterization/categorization - allocation of juridical category to the foreign element case.
- 3.2. Necessity for classification - different legal concepts with different content - matters like domicile, talaq and dower in different legal systems.
- 3.3. Various theories - leading cases
- 3.4. Connecting factor - What is connection factor; lex fori to determine.  
Selection of lex causae through connecting factor.
- 3.5. Application of lex causae - three meanings of Lex Causae - Renvoi: partial and total(foreign court theory) - critical analysis of Renvoi - Indian position

**4. Limitations on application or exclusion of foreign law units 4**

- 4.1. When foreign law is excluded: grounds - Public Policy, Revenue Laws and Penal Law

**5. Incidental Question and Time Factor in private International law units 4**



- 6. Concept of Domicile** **units 8**
- 6.1. General principles/fundamental Principles
  - 6.2. Elements - intention and residence
  - 6.3. Kinds
    - 6.3.1. Domicile of Origin
    - 6.3.2. Domicile of Choice
    - 6.3.3. Domicile of dependence: married women's position in English and Indian laws.
    - 6.3.4. Domicile of corporation.
- 7. Status** **units 4**
- 7.1. What is Status?
  - 7.2. Incidents
  - 7.3. What law governs status
  - 7.4. Universality of status
- 8. Marriage** **units 8**
- 8.1. Marriage as a contract and also status how different from other contracts (social personal contract)
  - 8.2. Kinds of Marriage
  - 8.3. How in India, marriage as a concept moved from partially polygamous towards monogamous type and total sacrament to secularization to some extent.
  - 8.4. Questions of format and essential validity:
    - 8.4.1. Formal validity by *lex loci celebrationis*
    - 8.4.2. Essential/material/intrinsic validity.
  - 8.5. Capacity to marriage
    - 8.5.1. Consent
    - 8.5.2. Not within prohibited degrees.

- 8.5.3. Not previously married
- 8.5.4. Physical incapacity
- 8.5.5. Of proper age.
- 8.6. Essential validity usually governed by *lex domicilii*:
  - 8.6.1. English cases
  - 8.6.2. Indian position clarified in cases

## **9. Matrimonial Causes**

**units 3**

- 9.1. Concept of matrimonial cause (Relief) - English and Indian positions.
- 9.2. Available Reliefs
  - 9.2.1. Divorce, Nullity, judicial separation
  - 9.2.2. Restitution of Conjugal Rights (in English law)
  - 9.2.3. Restitution of Conjugal Rights has no place now:
  - 9.2.4. Choice of Jurisdiction and Choice of Law to be examined.

## **10. Legitimacy and Legitimation**

**units 3**

- 10.1. What is legitimacy
- 10.2. What law governs legitimacy
- 10.3. Validity of marriage
- 10.4. Legitimation
  - 10.4.1. What it is
  - 10.4.2. How affected
  - 10.4.3. Legitimation and Succession.

## **11. Adoption**

**units 3**

- 11.1. Purpose of adoption
  - 11.1.2. Common law

11.1.3. Indian Law

11.1.3.1. Hindu law

11.2. Recognition of foreign adoption

## **12. Custody and Guardianship**

**units 3**

12.1. Purpose

12.2. Adoption and succession.

## **13. Property**

**units 8**

13.1. Distinction between movable and immovable property (English idea of personal and real property).

13.2. Immovables governed by lex situs - exceptions in English Law - S.16 C.P.C. lex situs rule

13.3. Succession to immovable property - lex patrae.

13.3. Movables: tangible and intangible - choses in possession and choses in action in English Law - Choses in action as actionable claims in India Law with some exception (SS 3 and 130 T.P. Act 1882.)

13.4. Transfer of Tangible Movables (Particular Assignment).

13.5.1. Different theories

13.5.2. Assignment of Intangible Movables

13.5.3. Kinds of assignment-voluntary and involuntary

13.5.4. Formal and essential validity

## **14. Succession**

**units 3**

14.1. Testate and in testate (Involuntary Assignment) - relevant provisions of Indian succession Act.

14.2. In testate succession

14.3. Wills- Formal and Essential Validity

14.4. Capacity-lex domicilii to make will (movables generally)

14.5. In case of immovables, lex situs governs

**15. Contracts** **units 3**

- 15.1. Contract- a leading relationship in private international law system
- 15.2. Validity of contracts
- 15.3. Capacity to contract-Main four theories Lex Loci, Lex Domicilii, lex situs and proper law.
- 15.4. Formal validity - lex loci contractus governs
- 15.5. Essential validity - proper law is usually accepted as governing.
- 15.6. Discharge of contract - Lex loci solutions governing.
- 15.7. Doctrine of "proper law" of contract subjective and objective Theories.

**16. Torts** **units 3**

- 16.1. Traditional theories
- 16.2. Ideas of tort of recent importance in private International Law such as drugs, environments, transport and satellite communication

**17. Recognition and Enforcement of Foreign Judgments** **units 3**

- 17.1. Need recognizing foreign judgements
- 17.2. Limitations in recognising and enforcement
- 17.3. Section 13,14 and 444 of C.P.C. and S. 41 of the Indian Evidence Act.

**Select bibliography**

Paras Diwan, *Private International law* (1998), Deep & Deep, New Delhi

Cheshire, *Private International Law*

Strumberg, *Private International Law*

A.V.Dicey, *Conflict of Laws*

**BCI 007 BANKING LAWS INCLUDING NEGOTIABLE INSTRUMENTS ACT****Objectives of the course**

The modern society functions, contrary to the old barter system, on monetary transactions. In a developing country like India, the banking system takes off and becomes quite common even among the common people. The services banks render to the general public do have a significant contribution to the development of the economy. Pari passu, the security to the assets money as well as other valuable belonging to individuals and family units is to a large extent assured through the service of the banks. The variety of assistance tended by the banks to the common people and business community cannot be overemphasized in this context. The process of the working of the banks and the legal control over them as well as the protection to the consumers of banking services are areas which a student of law is necessarily familiar with.

This paper with the perspectives comprises about 84 units of one hour duration.

- |  |                 |
|--|-----------------|
| <b>1. Introduction</b>   | <b>units 7</b>  |
| 1.1. Banking: definition- common law and statutory                                     |                 |
| 1.2. Commercial banks: functions.  |                 |
| 1.2.1. Essential functions   |                 |
| 1.2.2. Agency services   |                 |
| 1.2.3. General utility services  |                 |
| 1.2.4. International trading service   |                 |
| 1.2.5. Information services  |                 |
| 1.2.6. Emergence of multi functional dimensions.                                       |                 |
| 1.3. Systems of Banking: Unit banking, branch banking, group banking and chain banking |                 |
| 1.3. Banking companies in India  |                 |
| <b>2. Banks and Customers</b>  | <b>units 10</b> |
| 2.1. Customer: meaning   |                 |
| 2.2. Legal character of banker- customer relationship                                  |                 |

- 2.3. Rights and obligations of banks
  - 2.3.1. Right of set-off
  - 2.3.2. Banker's lien
  - 2.3.3. Right to charge interest and commission
  - 2.3.4. Obligation to honour customers' cheques
  - 2.3.5. Duty of confidentiality
    - 2.3.5.1. Nature and justification of the duty
    - 2.3.5.2. Exceptions to the duty
  - 2.3.6. Garnishee orders
- 2.4. Accounts of customers
  - 2.4.1. Current Accounts
  - 2.4.2. Deposit Accounts
  - 2.4.3. Joint Accounts
  - 2.4.4. Trust Accounts
- 2.5. Special types of customers:- Lunatics, minors, agents, administrators and executors, partnership firms and companies

### **3. Control over Banks**

**units 10**

- 3.1. Control by Government and its agencies
  - 3.1.1. Need for- elimination of systemic risk, avoidance money laundering, consumer protection, promotion of fair competition. On management
  - 3.1.2. On account and audit
  - 3.1.3. On money lending
  - 3.1.4. Reorganization and reconstruction
  - 3.1.5. On suspension and winding up
- 3.2. Control by Ombudsman
- 3.3. RBI.

**4. Control Banking Theory and the RBI****units 16**

- 4.1. Evolution of Central Banks
- 4.2. Characteristics and functions of central banks
- 4.3. Central bank as banker and adviser of the State
- 4.4. Central bank as banker's bank
- 4.5. The Reserve Bank of India as central bank in India
  - 4.5.1 Objectives and organizational structure
  - 4.5.2 Functions
  - 4.5.3 Regulations of the monetary system
  - 4.5.4 Monopoly of note issue
  - 4.5.5 Credit control
  - 4.5.6 Determination of bank rate policy
  - 4.5.7 Open market operations
  - 4.5.8 Banker to government
  - 4.5.9 Control over Non-banking financial institutions
  - 4.5.10 Economic and statistical research.
  - 4.5.11 Staff training
  - 4.5.12 Control and supervision of other banks

**5. Lending by Banks****units 15**

- 5.1. Principles of good lending
- 5.2. Securities for bank advances
  - 5.2.1. pledge
  - 5.2.2. mortgage
  - 5.2.3. charge
  - 5.2.4. goods or documents of title to goods
  - 5.2.5. life insurance policies as security

- 5.2.6. debentures as security
- 5.2.7. guarantees as security
  - 5.2.7.1. contract of guarantee and contract of indemnity
  - 5.2.7.2. kinds of guarantees: specific & continuing
  - 5.2.7.3. surety's rights and liabilities.
- 5.3. Repayment
  - 5.3.1. Interest: Rule against penalties
- 5.4. Default and Recovery
  - 5.4.1. Recovery of Debts Due to Banks and Financial Institutions Act, 1993
  - 5.4.2. Establishment of; debt recovery tribunals- constitution and functioning

**6. Merchant Banking** **units 5**

- 6.1. Merchant Banking in India
- 6.2. SEBI (Merchant Bankers) Regulations, . 1992

**7. Letter of Credit and Demand Guarantee** **units 5**

- 7.1. Letter of Credit
  - 7.1.1. Basic features
  - 7.1.2. Parties to a letter of credit
  - 7.1.3. Fundamental principles
- 7.2. Demand Guarantee
  - 7.2.1. Legal character
- 7.3. Distinction between irrevocable letter of credit and demand guarantees

**8. Law Relating to Negotiable Instruments** **units 17**

- 8.1. Negotiable instruments Kinds
- 8.2. Holder and Holder in due course
- 8.3. Parties



- 8.4. Negotiation
- 8.5. Presentiment
- 8.6. Discharge from liability
- 8.7. Dishonour
- 8.8. Civil liability
- 8.9. Liability: procedure for prosecution: extent of penalty
- 8.10. The Paying Banker
- 8.11. Duty to honour customers' cheques
- 8.12. Conditions
- 8.13. Exceptions to the duty to honour cheques
- 8.14. Money paid by mistake
- 8.15. The Collecting Banker
  - 8.15.1. Liability for conversion
  - 8.15.2. Duties
  - 8.15.3. Good faith and statutory protection to the collecting banker

### **Select bibliography**

M.S. Parthasarathy (Ed.), *Kherganvala on the Negotiable Instruments Act* (1998) Buterworth, New Delhi.

M.L.Tannen, *Tannen's Banking Law and Practice in India*, (2000) India Law House, New Delhi.

S.N.Gupta, *The Banking Law in Theory and Practice*, (1999) Universal, New Delhi

G.S.N.Tripathi (Ed.), *Sethi's Commentaries on Banking Regulation Act 1949 and Allied Banking Laws* (2000) Law Publishers, Allahabad.

Bashyam and Adiga, *The Negotiable Instruments Act* (1997) Bharath Law House, New Delhi.

S.N.Gupta, *Banks and the Consumer Protection Law* (2000) Universal, Delhi.

Mukherjee. T.K., *Banking Law and Practice* (1999), Universal, Delhi.

**BCI 008 INVESTMENT AND SECURITY LAWS****Objectives of the course**

There is a revolution in the laws relating to the investment and security. The economic and social development depends on security market at national and global levels. In the global level there is a trend for unification of controls of securities and investments. Reflection of this global phenomenon is essentially to be felt in India. The new laws and regulations now fall in line with the global requirements at times transcending the constitutional limitations. Needless to say that the study of law relating to investment and securities attains new dimensions.

This paper is designed keeping in view the changes that are taking place in the Indian context and comprises of 84 units of one hour duration.

- 1. Historical Background of securities and investment laws** **units 6**
  - 1.1. Securities : the concept
  - 1.2. England: Banking corporate finance and private financial services
  - 1.3. India: from usury laws to the modern system
  
- 2. Securities: Kinds** **units 7**
  - 2.1. Government Securities
  - 2.2. Securities issued by banks
  - 2.3. Securities issued by corporations
  - 2.4. Securities in mutual fund and collective investment scheme
  - 2.5. Depository receipts
  
- 3. Government Securities** **units 10**
  - 1.1. Bonds issued by government and semi government institutions
  - 3.1. Role of Central Bank (the RBI in India)
  - 3.2. Impact of issuance of bonds on economy
  - 3.3. Government loan from the general public

- 3.4. External borrowing
- 3.5.1. World Bank
- 3.5.2. I.M.F.
- 3.5.3. Assian Development Bank
- 3.5.4. Direct from foreign government.
- 3.5. Government loan: the constitutional dilemma and limitations
- 3.6. Can a state go for external loans?
- 3.7. Impact on economic sovereignty
- 3.8. Dilution of power of the Central Bank (RBI)
- 3.9. Treasury deposits

#### **4. Securities Issued by Banks**

**units 10**

- 4.1. Bank notes: is it the exclusive privilege of the central bank in the issue
- 4.2. Changing functions of banks from direct lending and borrowing to modern System
- 4.3. Bank draft, travellers' cheques, cheque cards, credit cards, cast cards
- 4.4. Deposits' nature: current, saving and fixed deposits, interest warrants

#### **5. Corporate Securities**

**units 25**

- 5.1. Shares
- 5.2. Debentures
- 5.3. Company deposits
- 5.4. Control over corporate securities
  - 5.4.1. Central government: Company Law Board
  - 5.4.2. SEBI : guide lines on capital issues
  - 5.4.3. RBI
- 5.5. Protection of investor
  - 5.5.1. Administrative regulation

5.5.2. Disclosure regulation

5.5.3. Protection by criminal sanction

**6. Collective Investment**

**units 12**

6.1. Unit Trust of India

6.2. Venture capital

6.3. Mutual fund

6.4. Control over issue and management of UTI, venture capital and mutual funds

6.5. Plantations and horti-culture farms

6.5.1. General control

6.5.2. Control by rating

6.5.3. Regulation on rating.

**7. Depositories**

**units 6**

7.1. Denationalized securities

7.2. Recognition of securities

7.3. Types of depository receipts: IDR, ADR, GDR and Euro receipts

7.4. SEBI guideline on depositories

**8. Investment in non-banking financial institutions**

**units 5**

8.1. Control by usury laws

8.2. Control by RBI

8.3. Regulation on non-banking financial and non-financial companies

8.3.1. Private-financial companies: registration and regulation

8.3.2. Chit funds

**9. Foreign Exchange Control Regime in India**

**units 3**

9.1. Concept of foreign exchange regulation

9.2. Administration of exchange control

**Select bibliography**

Farrar, John, H. and Hanniyan, Brenda, *Farr's Comopany Law*, (1998) Butterworths, London

Gupta, S.N., *The Banking Law in Theory and Practice*, (1999) Universal, New Delhi.

Tannan, M.L., *Tannan's Banking Law and Practice in India*, (2000) India Law House, New Delhi

Ramaiya, A., *Guide to the Companies Act*, (1998) Wadhwa and Co., New Delhi.

Bhandari, M.C., *Guide to Company Law Procedures*, (1996) Wadhwa and Co., New Delhi.

Ford, Haj A.M., et. al. *Ford's Principles of Corporations Law*, (1999) Butterworths, London.

**BCI 009 TRUSTS, EQUITY AND FIDUCIARY RELATIONSHIPS****Objectives of the course**

Trust being an obligation connected with property, the law has to play a key role in protecting interests of persons for whose benefit trust is created and for balancing the rights and duties of persons connected with trust transactions. There are also instances where even in the absence of specific trust, law has to protect the beneficial interests of persons on equitable considerations. Trusts may also be created for public purposes of charitable and religions nature. The existing laws in respect of trusts, equitable and fiduciary relations connected with property are to be taught in detail. Students should also to be conscientized of the emerging public trust doctrine of common property resources.

This paper with the above perspectives comprises of 84 units of one-hour duration.

**Syllabus**

- |   |                |
|---|----------------|
| <b>1. Introduction</b>  | <b>units 5</b> |
| 1.1 The concept of trust : distinction with agency and contract |                |
| 1.2 Development of law: common law and equity                   |                |
| 1.3 Trusts : classification                                     |                |
| <b>2. Definition and Nature of trusts under the Indian law</b>  | <b>units 3</b> |
| 2.1. Creation of trusts : rules                                 |                |
| <b>3. Duties of trustees</b>                                    | <b>units 8</b> |
| 3.1. Execution  |                |
| 3.2. Acquittance with the nature of property                    |                |
| 3.3. Duties in respect of title                                 |                |
| 3.4. Duty of care   |                |
| 3.5. Conversion   |                |
| 3.6. Impartiality   |                |

- 3.7. Prevention of waste
- 3.8. Keeping of accounts and giving of information
- 3.9. Investment
- 3.10. Sale
- 3.11. Liability for breach of trust

**4. Rights of Trustees** **units 8**

- 4.1. Title deed
- 4.2. Reimbursement
- 4.3. Indemnity
- 4.4. Seeking direction from court
- 4.5. Settlement of accounts
- 4.6. General authority

**5. Powers of trustees** **units 8**

- 5.1. Sale
- 5.2. Varying of investment
- 5.3. Property of minors
- 5.4. Giving receipts
- 5.5. Power to compound, compromise and settle
- 5.6. Exercising authority on death or disclaimer of one of the trustees
- 5.7. Suspension of trustee's power

**6. Disabilities of trustees** **units 2**

**7. Rights of beneficiaries** **units 8**

- 7.1. Rents and profits
- 7.2. Specific execution
- 7.3. Inspection and information

- 7.4. Transfer
  - 7.5. Suit for execution
  - 7.6. To have proper trustees
  - 7.7. Right to compel the trustee to do the duties
  - 7.8. Rights on wrongful purchase or acquisition by trustees
  - 7.9. Follow up of trust properties in the hands of third parties
  - 7.10. Blending of property by trustee
  - 7.11. Wrongful application of trust property by partner trustee for partnership purposes.
- 8. Liabilities of Beneficiaries** **units 2**
- 9. Discharge of Trustees** **units 3**
- 10. Appointment of New Trustees** **units 3**
- 11. Extinction of Trust** **units 3**
- 12. Constructive trusts : the equitable and fiduciary Relationship** **units 20**
- 12.1. Transfer without intent to dispose beneficial Interest
  - 12.2. Trust incapable of execution and trusts executed fully without exhausting property - the cypress doctrine
  - 12.3. Transfer and request for illegal purpose
  - 12.4. Transfer pursuant to rescindable contract
  - 12.5. Debtor becoming creditor's representative
  - 12.6. Advantage from undue influence
  - 12.7. Advantage by qualified owner
  - 12.8. Property acquired with notice of existing contract
  - 12.9. Purchase by person contracting to buy property to be held on trust
  - 12.10. Possession of property without whole beneficial interest
  - 12.11. Duties of constructive trustees
  - 12.12. Rights of bonafide purchasers



**13. Special legislation** **units 8**

13.1. Charitable and religious trust

**14. Common property resources and public trust doctrine** **units 3****Select bibliography**

S.Krishnamurthy Aiyar and Harbans Lal Swin, *Principles and Digest of Trusts Laws* (1998), University Book Agency, Allahabad.

R.H.Mandsley and E.H.Burn, *Trust and Trustees : Cases and Materials* (1978) Butterworths, London.

R.E.Megarry and P.V.Baker, *Snell's principles of Equity* (1964) ELBS, Sneet and Maxwell.

Philip H.Pettit, *Equity and Law of Trust* (1970)

Iyer N., *Indian Trust Act* (1997), Delhi Law House, New Delhi

Ahmedullah Khan, *The Law of Wakf in India* (1997) Delhi Law House, Delhi

Rajarathnam, Natarajan and Thankaraj, *Commentary on Charitable Trusts and Religious Institutions* (2000) Universal, Delhi

Mukerjee, *Commentary on Indian Press Act* (1999) Universal, Delhi.

Rao.C.R, *The Indian Trust Act and Allied Laws* (1999)

**BCI 010 CRIMINOLOGY AND PENOLOGY*****Objectives of the course***

The course is designed to acquaint students with advances made by sociology and psychiatry in understanding human behaviour, particularly, deviant behaviour. In the past criminality was confined to acts of violence or unlawful acts of commission or omission. Thus the purpose behind criminality in the past was to do acts of revenge or to commit it for personal gain. The concept of crime has changed considerably in recent years. Unscrupulous members of society to indulge in anti-social behaviour with impunity have devised sophisticated methods. The perpetrators of crime include persons in high places, public officials, public and private enterprise against whom it is difficult to procure conviction under the traditional criminal law process due to abuse of power or power of the purse. Criminal gangs have come on the scene and indulge in offences such as smuggling, illegal trafficking in drugs and bootlegging. Communal and cast warfare has been a recurring phenomenon in recent times and the enormity of suffering of innocent persons has necessitated re-examination of our pre-conceived notions regarding the causes of crime and the methods used for its prevention and control. In view of the magnitude of the problem the existing machinery for control of crime, namely the police and the courts have come under severe criticism.

Emphasis will be laid on understanding the weak and strong points of the existing system in order to determine whether it can meet the challenge and carry new burdens. Much has been said against capital punishment and imprisonment as methods of preventing and control of crime. Nevertheless these continue to be the backbone of the system in India. Several alternatives such as conditional release, parole and commutation of sentences have been suggested in this regard. The course shall dwell on these themes with a view to develop among students a greater understanding of social costs of crime and the effective ways of lessening them.

Rehabilitation process is undoubtedly an important component of criminal justice system. The advances made in this respect in developed countries will be discussed to create awareness among the students of the problems in the context of Indian conditions.

The following syllabus prepared with this perspective will comprise about 84 units of one hour duration.

**Syllabus**

- 1. Dimensions of Crime in India** **units 14**
- 1.1. Nature and extent of crime in India
  - 1.2. General approaches to crime control.
  - 1.3. Crimes of the powerful
    - 1.3.1. Organised crime - smuggling, traffic in narcotics.
    - 1.3.2. White collar crime - corruption in public life
    - 1.3.3. Socio-economic crime: adulteration of foods and drugs; fraudulent trade practices.
    - 1.3.4. Crimes in the professions - medical, legal, engineering.
    - 1.3.5. Criminality by agencies of the state.
  - 1.4. Perpetrators of ordinary crime
    - 1.4.1. The situational criminal.
    - 1.4.2. The chronic offender.
    - 1.4.3. Criminality of women
    - 1.4.4. Young offenders
    - 1.4.5. Criminal gangs.
- 2. Causes of Criminal Behaviour** **units 14**
- 2.1. Nature of the problem : some unscientific theories
  - 2.2. The constitutional School of Criminology - Lombroso and others (heredity and mental retardation as causes of crime)
  - 2.3. Sociological theories Anomies
  - 2.4. Modern sociological theories - Sutherland's differential association theory: Reckless's social vulnerable theory.
  - 2.5. Economic theories and their relevance.
  - 2.6. Environment - home and community influences, urban and rural crimes.
  - 2.7. The ghetto, broken homes, the effect of motion pictures, T.V. and video, press, narcotics and alcohol.

- 2.8. Caste and community tensions : caste wars and communal riots - their causes and demoralising effects; atrocities against scheduled cadres.
- 2.9. Emotional disturbance and other psychological factors.
- 2.10. Multiple causation approach to crime.

### **3. Police and the criminal justice**

**units 13**

- 3.1. The police system
- 3.2. Structural organisation of police at the centre and the states.
- 3.3. Mode of recruitment and training.
- 3.4. Powers and duties of police under the police acts, Criminal Procedure Code and other laws.
- 3.5. Arrest, search and seizure and constitutional imperatives.
- 3.6. Methods of police investigation
- 3.7. Third degree methods
- 3.8. Corruption in police
- 3.9. Relationship between police and prosecution.
- 3.10. Liability of police for custodial violence.
- 3.11. Police public relations
- 3.12. Select aspects of National Police Commission report.

### **4. Punishment of Offenders**

**units 15**

- 4.1. Some discarded modes of punishment
  - 4.1.1. Corporal punishment : whipping and flogging : mutilation and branding
  - 4.1.2. Transportation
  - 4.1.3. Public execution
- 4.2. Punishments under the Indian criminal law
  - 4.2.1. Capital punishment
  - 4.2.2. Imprisonment

- 4.2.3. Fine
- 4.2.4. Cancellation or withdrawal of licences
- 4.3. The prison system:
  - 4.3.1. Administrative organisation of prisons.
  - 4.3.2. Mode of recruitment and training
  - 4.3.3. The Jail Manual.
  - 4.3.4. Powers of prison officials.
  - 4.3.5. Prisoners classification - male, female : juvenile and adult : undertrial and convicted prisoners
  - 4.3.6. Constitutional imperatives and prison reforms
  - 4.3.7. Prison management: prisoners right and security compulsions.
  - 4.3.8. Open prisons
  - 4.3.9. Prison labour
  - 4.3.10. Violation of prison code and its consequences.
- 4.4. Appraisal of imprisonment as a mode of punishment.

## **5. Treatment of Correction of Offenders**

**units 15**

- 5.1. The need for reformation and rehabilitation of offenders undergoing punishment/ imprisonment.
- 5.2. Classification of offenders through modern diagnostic techniques.
- 5.3. The role of psychiatrists, psychoanalysts and social workers in the prison.
- 5.4. Vocational and religious education, and apprenticeship programmes for the offenders.
- 5.5. Group counselling and re-socialisation programmes.
- 5.6. Prisoners organisations for self-government.
- 5.7. Participation of inmates in community services.
- 5.8. An appraisal of reformatory techniques.

- 5.9. Efficacy of imprisonment as a measure to combat criminality and the search for substitutes

**6. Re-socialisation processes**

**units 13**

- 6.1. Parole:
- 6.1.1. Nature of parole.
  - 6.1.2. Authority for granting parole.
  - 6.1.3. Supervision of parolees.
  - 6.1.4. Parole and conditional release.
- 6.2. Release of the offender:
- 6.2.1. Problems of the released offender.
  - 6.2.2. Attitudes of the community towards released offender.
  - 6.2.3. Prisoner aid societies and other voluntary organisations.
  - 6.2.4. Governmental action.
  - 6.2.5. An appraisal.

**Select Bibliography**

Katherine S Williams, *Text Book on Criminology* (1997), Blackstone, London

Loveland, *The Frontiers of Criminality* (1995), Sweet & Maxwell.

Martin Wasik, *Emmins on Sentencing* (1998), Blackstone, London.

Hall, J. Law, *Social Science and Criminal Theory* (1982).

Manheim, H. *Comparative Criminology : A Text Book* (1965).

Ross, H. (Lawrence Ed.) *Law and Deviance* (1981).

Sutherland, E. and Cressy, *Principles of Criminology* (1978).

Walker, N. *Crime and Criminology : A Critical Introduction* (1987).

S. Rao, *Crime in Our Society*, (1983).

J.M. Sethna, *Society and the Criminal* (1980).

A. Siddique, *Criminology : Problems and Perspectives* (1997).

E. Sutherland, *White Collar Crime* (1949).

S. Kaldate, *Society, Delinquent and Juvenile Courts* (1982).

W.C. Reckless, *The Prevention of Juvenile Delinquency* (1972).

D.C.Pandey, *Habitual Offenders and the law* (1983).

D. Abrahansen, *David : Crime and the Human Mind* (1979).

Conrad, John. P.: *Crime and its Correction: An international survey of Attitudes and Practices*.

Krishna Iyer *Report on Female Prisoners* (1986).

*Mulla Committee Report*, (1983).

P. Rajgopal, *Violence and Response: A Critique of Indian Criminal Justice System* (1988).

**BCI 011 AIR AND SPACE LAW*****Objectives of the course***

There were only a few regulations relating to air and space in the past. There are at present unprecedented activities both in air space and outer space. This leads to multiplicity of multilateral and bilateral conventions and agreements in international air transportation and in outer space exploration. Questions of safety of flights are not merely questions of municipal law but are challenges to the international norms of newly developing air and space law. As in other branches, globalisation and liberalisation had their impact on these branches too. Terrorism against aviation is a matter of serious concern with the escalation of international civil aviation. Advancement of science and technology has pushed man to have sway into the outer space. Thus sharing of geo-stationary orbits and control over experimentation in outer space have thrown new problems. This course deals with all these aspects which do bring in several conventions and treaties - multilateral, regional, bilateral - into focus.

This paper with the above mentioned perspectives will comprise of eighty four units of one hour duration.

***Syllabus***

- 1. Introduction units 5**
  - 1.1. Definition of Air law
  - 1.2. Nature, scope and source
  - 1.3. Development of air law ( Paris Convention 1910, Paris Convention 1919, Madrid Convention 1926, Havana Convention 1928, Warsaw Convention and Chicago Convention 1944 )
  
- 2. Regulation units 5**
  - 2.1. Freedom of the air and sovereignty in the air
  - 2.2. Membership and organs of ICAO
    - 2.2.1. Legislative, administrative and judicial functions
    - 2.2.2. Economic and technical regulations



- 3. Bilateralism and multi-lateralism** **units 5**
  - 3.1. Concept of bilaterlism
  - 3.2. Views on multi-lateralism
  - 3.3. Merits and demerits
  - 3.4. Regionalism in civil aviation
- 4. India and bilateral agreements** **units 5**
- 5. Safety and Security in civil aviation** **units 5**
  - 5.1. The concept
  - 5.2. Aviation terrorism
  - 5.3. International norms: conventions, protocols and regulations
  - 5.4. Regulations in India
    - 5.4.1. Air safety provisions
- 6. Air traffic management** **units 5**
  - 6.1. Legal regime of air space and outer space
    - 6.1.1. Problems of application of air, space and telecommunication laws
    - 6.1.2. State obligation to provide air navigation services
    - 6.1.3. Sovereign rights of States
- 7. New Development in India** **units 5**
  - 7.1. Technology development and problems in civil aviation
  - 7.2. Airports: leasing and privatization - legal issues
- 8. Liability in international civil aviation** **units 5**
  - 8.1. Manufacturers, operators, operators' agents and maintenance contractors
  - 8.2. Third party liability for surface damage
- 9. Changing Global trends** **units 5**
  - 9.1. Globalization, de-regulation and liberlisation in international civil aviation: infra structural problems of air port

- 9.2. Private involvement in ownership, operation and management of air ports
- 9.3. International regulatory framework
- 10. Rights and Privileges of air passengers** **units 5**
  - 10.1. Consumer protection in civil aviation
    - 10.1.1. Liability for death, injury and delay
      - 10.1.1.1. Global trends
      - 10.1.1.2. Indian law
- 11. Air Cargo** **units 5**
  - 11.1. International Conventions and Regulations
  - 11.2. India: regulations
- 12. Aviation related Environmental Problems** **units 5**
- 13. Aircraft financing and leasing** **units 2**
- 14. Aviation Insurance** **units 2**
- 15. Settlement of Aviation Related Disputes** **units 2**
  - 15.1. General Principles
  - 15.2. Role of ICAO and ICJ
  - 15.3. Arbitration
  - 15.4. Settlement under municipal law
- 16. Space Law** **Units 3**
  - 16.1. Definition, nature, scope and development
  - 16.2. Sources
- 17. UN and Outer Space** **units 3**
  - 17.1. Space technology: establishment of COPUOS
  - 17.2. International co-operation for peaceful use

17.3. Development by General Assembly resolutions

17.4. UN space treaties: strengths and needs

**18. Development of law by treaties**

**units 3**

18.1. The space treaty 1967

18.2. The rescue Agreement 1968

18.3. The Liability Convention 1972

18.4. The Registration Convention 1975

18.5. The Moon Treaty 1979

18.6. Partial Test Ban Treaty 1963

18.7. Weather Modification Convention 1977

**19. International and Intergovernmental Organizations**

**units 2**

**20. Non-governmental Organizations and Space Activities**

**units 2**

**21 Bilateral Agreements in Space Activity**

**units 2**

21.1. Liability

21.2. Satellite Broadcasting and Telecommunications

21.3. Space based Observation, monitoring remote sensing, tracking telemetry and communications

**22 Use of Space technology**

**units 2**

22.1. Peaceful and non-peaceful

22.2. Remote sensing

22.3. Environmental protection

22.4. Disaster prediction, warning and mitigation

22.5. Management of earth resources

22.6. Satellite navigation and location

22.7. Space communication

- 23. Commercialization of Space Activities** **units 2**
- 23.1. Public and private sector activities
  - 23.2. Industry-government partnership
  - 23.3. IPR rights
- 24. Dispute Settlement** **units 2**
- 25. India and Space Law** **units 2**
- 25.1. Contribution to development of international law
  - 25.2. Organisation of Space activities: DOS, ISRO
  - 25.3. Space policy
  - 25.4. Need for the law in the country

### **Select bibliography**

Azbeyratne, RIR,. *Legal and Regulatory Issues in International Aviation* (1996), Transnational Publishers, NY.

Bhatt S., *The New Aviation Policy of India: Liberalization and Deregulation*, (1997), Lancers Books, N. Delhi.

Bhatt S. et. al. (ed.), *Air Law and Policy in India* (1994), Lancers Books, N.Delhi

Blacklock, Mark. (ed.), *International Civil Aviation Organization: 50 Years Global Celebrations 1944-1994*. (1995), International Systems and Communications Ltd., London

Blackshaw, Carole, *Aviation Law and Regulation-A Framework for Civil Aviation Industry* (1992), Pitman Publishing, London

Button, Kennath, (ed.), *Airline Deregulation: International Experience* (1991), Fulton Publishers, London

Groenewege, A.D., *Compendium of International Civil Aviation* (1996), International Civil Aviation Corprn., Montreal

Mani V.S., et.al., (eds.), *Recent Trends in International Space and Policy*,(1997), Lancers Books, N.Delhi.

Wassenbergh, H.A., *Principles and Practices in Air Transport Regulations* (1993), ITA Press, Paris

Jerome Morenoff, *Wold Peace through Space Law* (1967), The Michie Co., Virginia.

**BCI 012 LAW AND MEDICINE****Objective of the course**

The Constitution of India has certain norms to be operative in the field of health care. Coupled with these constitutional norms, there have been many legislative measures. The judiciary had a leap forward and contributed significantly in the area. But there are gaps to be filled. While law aims at just society by adjusting and balancing the rights and duties of individuals, medicine aims at creating a healthy society by concentrating on the health of individuals. Law and medicine are thus areas of high social concern. The law in its relation to medicines is significant as justice and fairness in health care.

This course is designed to expose the students to the various problems of medicine and law and to acquaint them with the existing law and its missing links. Those taking up this optional course should acquire the capability to evaluate the adequacy of law in solving the problems with comparative perspectives.

This paper with the above perspectives comprises of 84 units of one-hour duration.

**Syllabus**

- |   |                 |
|---|-----------------|
| <b>1. Introduction</b>                            | <b>units 10</b> |
| 1.1. General background                           |                 |
| 1.1.1. Interrelationship between law and medicine |                 |
| 1.1.1.1. Issues involved                          |                 |
| 1.1.1.2. Need of legal control                    |                 |
| 1.2. Constitutional perspectives                  |                 |
| 1.2.1. Rights to life : Fundamental right         |                 |
| 1.2.1.1. Right to health                          |                 |
| 1.2.1.2. Right to emergency medical care          |                 |
| 1.2.2. Directive principles                       |                 |
| 1.2.2.1. Health of workers                        |                 |

- 1.2.2.2. Public assistance in sickness and disability
- 1.2.2.3. Raising the level of nutrition and public health
- 1.3. Power to make law

**2. Regulation of medical and paramedical profession** **units 7**

- 2.1. Regulatory authorities
- 2.2. Disciplinary controls
- 2.3. Doctors and Para-medical professionals
- 2.4. Controls on institutions
  - 2.4.1. Hospitals
  - 2.4.2. Testing laboratories
  - 2.4.3. Institutions for research and experiments

**3. Regulation on manufacture, storage and sale of medicines** **units 10**

- 3.1. Production, transport and storage
- 3.2. Sale
- 3.3. Advertisement

**4. Liability for professional negligence** **units 10**

- 4.1. Tort
  - 4.1.1. Standard of care
  - 4.1.2. problems of evidence
- 4.2. Contractual liability
- 4.3. Criminal liability
- 4.4. Liability of doctors and hospitals under the consumer protection law

**5. Science and Technology** **units 4**

- 5.1. Transplantations of organs
- 5.2. Test tube basics

5.3. Artificial insemination

5.4. Genetic engineering

**6. Population control** **units 4**

6.1. Law, practice and society

6.2. Family planning : legality of coercive methods

6.3. Sterilisation of unfit.

6.4. Social Response

**7. Medical wastes** **units 4**

7.1 Controls on handling and disposal of bio- medical wastes

**8. Experiments on human beings** **units 6**

8.1. The concept

8.2. Kinds

8.3. Subjects of experimentation

8.4. Controls

**9. Surrogate Motherhood** **units 10**

9.1. Historical background

9.2. The contractual aspect and enforceability

9.3. Parent-hood - who is the legal parent?

9.3.1. Problems of consent in caesarean surgery

9.4. Rights of husband against the right of the wife for surrogate motherhood

9.5. Rights and duties of surrogate mother when genetic parents refuse to accept the child.

**10. Aids Law** **units 10**

10.1. Nature and scope

10.1.1. Regulation of blood and blood products

- 10.1.2. Regulation of sexual activity
- 10.2. Rights and freedom
  - 10.2.1. Privacy and liability to report
  - 10.2.2. Liberty and security
  - 10.2.3. Movement
  - 10.2.4. Marriage and setting up of a family
  - 10.2.5. Work
  - 10.2.6. Education
  - 10.2.7. Social security
  - 10.2.8. Right against degrading treatment
  - 10.2.9. Equality before law

## **11. The unborn**

**units 5**

- 11.1. Has the unborn constitutional or other legal rights?
- 11.2. Causing miscarriage and injuries to the unborn - liability
- 11.3. Amniocentesis
- 11.4. Medical termination of pregnancy

## **12. International norms**

- 12.1 Council of Europe Convention on Human rights and Bio medicine 1997
  - 12.1.1. Health care
  - 12.1.2. Professional standards
  - 12.1.3. Consent
  - 12.1.4. Privacy and right to information
  - 12.1.5. Non-discrimination
  - 12.1.6. Genetic texts
  - 12.1.7. Organ transplantation
  - 12.1.8. Scientific research



**Select bibliography**

Digumarti Bhaskara Rao (ed.) *HIV/AIDS and Ethics and Human Rights* (2000) Discovery Publishing House, New Delhi

Austen Garwood - Gowers, *Living Donor Organ Transplantation : Key Legal and Ethical Issues* (1999) Dart Month Publishing Company, England

S.V.Jogaroo, *Current Issues in Criminal Justice and Medical law* (1999) eastern, Calcutta

Jonathan Montgomery, *Health Care Law*, (1997), Oxford.

Carol Levine, *Taking Sides: Clashing Views On Controversial Bio-Ethical Issues* (1984) Dushkin Publishing group, Inc. Conneticut

Eileen. McDonagh, *Breaking the Abortion Dead lock* (1996), Oxford

Malcolm Khan and Michelle Robson, *Medical Negligence* (1997) Cavendish Publishing Limited, London.

William H. Roache, (Jr.) et. al. *Medical Records and the Law* (1998), Aspen Publishers, Maryland

Edward P.Richards, and Katharine C.Rathbun, *Medical Care Law* (1999) Aspen Publishers, Mary Land

R.K.Bag, *Law of Medical Negligence and Compensation* (1996) Eastern Law House, Calcutta

36 International Legal Materials 817 (1997).

R.K.Nayak(ed.), The Indian Law Institute, *Global Health Law*, (1998), World Health Organization, Regional Office for South East Asia, New Delhi.

Mason and Mc Call Smith, *Law and Medical Ethics* (1991) Butterworths, London.

Anoop K. Kaushal, *Medical Negligence and Legal Remedies with Special reference to Consumer Protection Act*, (1999), Universal.

**BCI 013A WOMEN AND LAW AND LAW RELATING TO CHILD*****Objectives of the course***

The need to study gender and juvenile justice as special subjects are to be emphasised as the constitutional guarantees have not achieved the desired results. The fundamental rights did not preclude having special provisions.

The planners and the policy makers therefore treated women only as beneficiaries of welfare measures. The hope was the benefits of development would percolate below to all including women and therefore there was no need for special efforts to bring them into the mainstream. This trickle down theory of development is still to be materialised in spite of the positive action of woman's representation in local bodies. Women are discriminated in almost all sectors.

Children constitute the weakest and most vulnerable, most helpless as well as the most precious segment of the human society. By law they are denied participation in decision making even indirectly and by nature they lack effective articulation and indication of their rights. Children are recognised as legal persons for many purposes if not for all legal rights are conferred by the legal system. The course should draw attention to the helpless condition of children and their exploitation and the sufferings of children in poverty. The legal limitation on their capacity and legal rights and protection provided in the constitution and in varieties of laws are to be studied critically with the understanding that either the parents or the society or state shall be held legally responsible for the survival, development of personality and happiness of the children.

The course will study the above mentioned problems and comprises of about 84 units one-hour duration.

***Syllabus***

- |  |                |
|--|----------------|
| <b>1. International concerns and conventions</b> | <b>Units 2</b> |
| <b>2. Women in India</b>                         | <b>units 5</b> |
| 2.1. Pre-independence period                     |                |
| 2.1.1. Social and legal inequality               |                |

2.1.2. Social Reform Movement in India

2.1.3. Karachi Congress - Fundamental Rights Resolution, Equality of Sexes

**3. Women in post independence India** **units 5**

3.1. Preamble of the Constitution: equality provisions in Fundamental Rights and Directive Principles of State Policy

3.2. Personal laws - unequal position of women

3.3. Uniform Civil Code towards gender justice.

**4. Sex Inequality in Inheritance Rights** **units 5**

4.1. Feudal institution of joint family - women's inheritance position

4.2. Hindu Law

4.3. Muslim Law

4.4. Matrimonial property

4.5. Movement Towards Uniform Civil Code

**5. Guardianship** **units 5**

5.1. Right of women to adopt a child

5.2. Problems of women guardianing

**6. Divorce** **units 5**

6.1 Indian Divorce Act

6.2 Christian Law

6.3 Muslim Law

**7. Criminal Law** **units 2**

7.1. Adultery

7.2. Rape

- 8. Social Legislation** **units 2**
- 8.1. Dowry Prohibition
  - 8.2. Prevention of immoral traffic
- 9. Woman participation in democratic government** **units 2**
- 9.1. Parliament
  - 9.2. State Legislation
  - 9.3. Local bodies
- 10. Women and Employment** **units 4**
- 10.1. Labour force
  - 10.2. Protective Laws
  - 10.3. Exploitation and harassment in workplaces
- 11. Protection and enforcement agencies** **units 6**
- 11.1. Courts
  - 11.2. Family courts
  - 11.3. Commission for women
  - 11.4. NGOs.
- 12. Social Constitutional and International Legal Status of Child** **units 6**
- 12.1. Magnitude of the problem
  - 12.2. Special status of child - national policis
  - 12.3. Constitutional concern - Article 15(3), Article 24 and Article 45
  - 12.4. International concern and endeavour for the welfare of the children:
    - 12.4.1. Minimum Age conventions
    - 12.4.2. Child rights conventions
    - 12.4.3. U.N. Declaration of the rights of the child, 1924, 1959.

- 13. Problems of conception, birth and nuourishment and health of the child      Units 5**
- 13.1.    Legal status of child in work
  - 13.2.    Tortious liability against injuries to unborn children.
  - 13.3.    Coparcenary and property rights of the unborn children.
  - 13.5.    Law relating to maternity benefit and relief
  - 13.6.    Lack of legal protection of children of impoverished parentage
- 14. State responsibility for the education of children      units 2**
- 14.1.    Evaluation of the efforts of the State towards the provision of education to children.
  - 14.2.    Pre-primary and nursery education - elementary education.
  - 14.3.    Contributions by International Organizations for elementary education - UNESCO, UNICEF.
- 15. Legal Control of Child Labour      units 7**
- 15.1.    Regulation of the employment: protection of the health and well-being
  - 15.2.    International conventions and recommendations of the ILO.
  - 15.3.    Recommendations of the National Commission of Labour.
  - 15.4.    Legislation relating to factories, plantation labour, mines, merchant shipping, motor transport workers, apprentices, shop & establishments and child labour
- 16. Family Relations and Child      units 3**
- 16.1.    The status of a child in matters of marriage, legitimacy, guardianship, adoption, maintenance and custody.
  - 16.2.    Provisions in the statutes relaing to hindu marriages, restraint on child marriage, guardians and wards, hindu minority and guardianship, hindu adoptions and maintenance and in the Indian Evidence Act 1872;
- 17. Child and Contractual Liability      units 2**
- 17.1.    Minors Agreements

- 17.2. Testimony of children
- 17.3. Suits by and against minors.

**18. Child and Criminal Liability****units 5**

- 18.1. Crimes committed by child; crimes committed by others in relation to children;
- 18.2. Implementation of social policy through criminal sanctions in relation to child;
- 18.3. Variation of procedure in case of child offender
- 18.4. Judicial proceedings in criminal cases relating to children
- 18.5. Statutory provisions - Sections 82 , 83, 299 Exp.3, 363A, 372 and 376 of IPC - Suppression of Immoral Traffic Act 1956 (SITA) - penal provisions contained in Child Marriage Restraint Act 1929 as amended in 1978 - Young Persons Harmful Publications Act 1956 - The Children Act 1960 - Section
- 18.6. 27 of the Cr. P.C. - Reformatory Schools Act 1897 - Juvenile Delinquency Act, 1986.

**19. Law and Offences Against Child****units 8**

- 19.1. Protection of neglected children
- 19.2. Institutions for the protection of neglected children;
- 19.3. Juvenile Justice Act
- 19.4. Juvenile delinquency : law and offences against child
- 19.5. Contribution by parents; licensing;
- 19.6. Protection of girls from immoral traffic;
- 19.7. Prevention of vagrancy and beggary;

**20. Discrimination Against Female Children****units 4**

- 20.1. Amniocentesis,
- 20.2. Deferred infanticide through based nutritional discrimination)
- 20.3. Termination of pregnancy.

**Select bibliography**

Gandhi to the Women (ed. Hingorani) 1941, Position of Women .12 Tear Down the Purdah p. 213, Young India 1918.

Jawaharlal Nehru thoughts on women-economic bondage of Indian women (Produced Memorial and Library)

7th Plan. Ch. 14 Socio economic programmes for women.

Relevant case Law

Revasia & Revasia, Women Social Justice & Human Right (1998) PP.H. Publishing, New Delhi

Ajnes, Flavia, Law as Gender inequality, N.Delhi, Oxford (1999)

Sumithra Vishnu V. Union of India 1985 SC 1618.

42nd Report Law Commission, the Dissenting Note of Justice Anna Chandy on provision of adultery, p.366.

Towards Equality - Report of the Committee on the Status of Women (Govt. of India), Chapters IV & Section IV General Conclusions & Recommendations.

Balram - Women workers the labour legislation in India 1984(2) I.L.J.1527.

Lotika Sarkar, The Law Commission of India (1988).

Indian Law Institute, Child and the Law (1979, S.N. Jain ed.)

U.Baxi, Law and Poverty: Critical Essays(1988), Eastern, Luknow

Students should be encouraged to look at the distinctive legal problems of children in the area where instructions is imparted. The literature on children's plight is vast and varied. But it is important that the focus of the course be on understanding of the distinctively legal problems in the region and ways in which we can contribute to change.

**BCI 013B LAW, POVERTY AND DEVELOPMENT*****Objectives of the course***

The State of India's poor does not feature much in Indian law Curricula. Only a few law schools offer an optional course. The Constitution of India - especially Article 39-A since 1976 commands innovation of legal system in such ways that no one, especially because of economic condition, is denied access to the law and its benefits. In so far as legal education is a state-funded or sponsored action and even otherwise, this Directive Principle must apply to renovation of legal education.

The constitutional programme of social justice displays a dramatic concern for the "weaker sections of society". Steadily, legislation protecting their entitlements has grown to impressive proportion in the last forty years. They would be advocates, counsellors, judges, teachers, scientists in law ought to have a complete grounding in these legal processes of "development". The burgeoning "poverty law" involves: (a) constitutional provisions' (b) legislation; (c) administrative anti-poverty programmes aimed at improving economic condition f the poor; (d) legal services programmes; (e) adjudication on the entitlement of the poor through social action litigation. All these need careful study in this compulsory course.

The following syllabus prepared with this perspective will comprise of about 84 units of one hour duration.

***Syllabus***

- |   |                 |
|---|-----------------|
| <b>1. The concept of poverty</b>                        | <b>units 10</b> |
| 1.1. Economical   |                 |
| 1.2. Cultural   |                 |
| 1.3. Situational  |                 |
| 1.4. Distinction between "natural" and "social" poverty |                 |
| 1.5. Absolute and relative poverty                      |                 |
| 1.6. Sociological                                       |                 |
| 1.7. Religion and poverty                               |                 |



**2. Identification and Measurement****units 12**

- 2.1. The struggle over conceptualisation of Improverishment.
- 2.2. Poverty line as a way of identifying the improverished.
- 2.3. Problems of data and India-wide generalization.
- 2.4. Nutritional norm of poverty line (Debate between Dandeker and Sukhatme)
- 2.5. "Income" and "consumption" criteria
- 2.6. The PQIL (the Quality of Life) indices of poverty
- 2.7. The problems of heterogeneity of the poor and poverty line conceptions.
- 2.8. The debate on "Crossing of the Poverty Line"
- 2.9. Constitutionality of criteria of poverty line as a basis of state action.

**3. The "Determinants" of Impoverishment****units 10**

- 3.1. Population growth as determinant.
- 3.2. Legal system as a determinant of Impoverishment.
- 3.3. Planning as a determinant of poverty:
  - 3.3.1. The Nehru Phase : 1950-1964
  - 3.3.2. The Green Revolution and basic needs strategies: 1964-1977
  - 3.3.3. The anti-poverty Programme strategy : 1977-1988
  - 3.3.4. The Lackadaisical agrarian reforms programme.

**4. Poverty of Planning and Anti-poverty Programmes****units 10**

- 4.1. SFDA (Small Former Development Programme)
- 4.2. MFAL (Project for Marginal Farmers and Agricultural Labourers)
- 4.3. DPAP (The Drought - Prone Areas Programme)
- 4.4. IRDP (Integrated Rural Development Programme0
- 4.5. NREP (National Rural Employment Programme)
- 4.6. RLEGP (Rural Landless Labour Employment Guarantee Programme).

- 4.7. "Food For Work", "Anti-Poverty Programme, "with special reference for IRDP:
- 4.8.1. Identification of beneficiaries
- 4.8.2. Arbitrariness and application of "Poverty line" measures.
- 4.8.3. Lack of differentiation among the impoverished constituencies (age, gender, health).
- 4.8.4. Administrative structure weaknesses.
- 4.8.5. Bribery, corruption, leakages, maladministration, (the problem of the IRDP cow").
- 4.8.6. Bank financing of IRDP.
- 4.8.7. Bank loans for poor and landless
- 4.9. Constitutional Aspects of the Anti-poverty Programmes:
- 4.9.1. Non-legislative character.
- 4.9.2. Right to access to information
- 4.9.3. Problem of legal accountability
- 4.9.4. Judicial remedies for maladministration
- 4.9.5. Constitutionality of measures such as identification of beneficiaries and bank financing
- 4.9.6. Federal autonomy questions in centrally sponsored anti-poverty programmes.

## **5. Criminal Law and the Poor**

**units 5**

- 5.1. Anti-poor biases of the criminal justice system
- 5.2. Poor and right to die: prosecution of the poor for attempt to suicide.
- 5.3. The right to bail
- 5.4. The problem of undertrials.
- 5.5. Compensation to victims of crime, especially to the impoverished in communal riots or civil disturbances.
- 5.6. Corruption laws, effective prosecution and their impact on poverty.
- 5.7. Sentences: Is imprisonment in default of fine constitutional in relation to the "poorest of the poor"?

- 6. The Bonded Labour Abolition** **units 5**
- 6.1. Conceptions of bonded labour
  - 6.2. Administrative processes under the Act of 1976
  - 6.3. Awareness of the act and legal services.
  - 6.4. Bandhua Mukti Morcha : Problems of judicial effectiveness
  - 6.5. Effective law reform.
- 7. The Scheduled Casters and the Law** **units 5**
- 1.1.0. The Protection of Civil Rights Act: Problems of definition, pitfalls in implementation.
  - 1.2.0. The Problems of scavengers and sweepers.
  - 1.3.0. Atrocities against Scheduled Casters and the legal process.
  - 1.4.0. Access to drinking water : special problems in rural India.
  - 1.5.0. Violation women : need for an appropriate legal framework including compensatory rehabilitatory arrangement.
- 8. The Scheduled Tribes and the Legal Order** **units 5**
- 8.1. Notions of "Scheduled Tribes"
  - 8.2. Deforestation and tribals.
  - 8.3. Public project, especially dams, and displacement.
  - 8.4. The regime of the Forest Act.
- 9. Unorganized Rural Labour and the legal response** **units 5**
- 9.1. Conceptions of "unorganised labour"
  - 9.2. Causes of "unorganization" and "disorganization".
  - 9.3. Social security legislation for rural labour.
  - 9.4. Minimum wages.
  - 9.5. Migrant and contract labour
  - 9.6. Child labour.

**10. Marginalized Communities****units 5**

- 10.1. Beggars and the law
- 10.2. Ex-Criminal tribes
- 10.3. Vagrants
- 10.4. Physically and psychologically
- 10.5. Aged
- 10.6. Juveniles.

**11. Women, Poverty and the Law****units 10**

- 11.1. Special features of impact of gender discrimination on the Impoverished Women
- 11.2. Specific domains
  - 11.2.1. Bidi workers
  - 11.2.2. Wage discrimination by public financial institutions
- 11.3. Atrocities against women
  - 11.3.1. Rape, sexual assault including custodial rape.
  - 11.3.2. Institutionalised abuse
  - 11.3.3. Trafficing in women
  - 11.3.4. Devadasi system
  - 11.3.5. Sati
  - 11.3.6. Dowry

**12. Legal services of the poor****units 7**

- 12.1. Concept of legal aid
- 12.2. Growth of legal aid movement in India
- 12.3. Krishna Iyer report
- 12.4. Bhagwati report.
- 12.5. The Tamil Nadu legal services programmes

- 12.6. Case law on legal services
- 12.7. The Legal Services and Lok Adalat Act, 1986.
- 12.8. Role of students and teachers

Select bibliography

D.R. Saxena, *Tribals and the Law* (1997), Deep and Deep, New Delhi.

L.P.Vidyarthi (ed.), *Tribal Development and its Administration* (1986) Concept Publishing Company, New Delhi

U. Baxi (ed.), *Law and Poverty* (1988) Tripathi, Mumbai

A.W. Murphy, et.al., *Law and Poverty* (1973), Tripathi, Mumbai.

Government of Indian, Planning documents relating to poverty alleviation programme at different times.

J.S. Gandhi, *Law and Social Change* (1989) Rawat, Jaipur.

Leelakrishnan.P, et.al.(eds.), *Tribal Welfare: Law and Practice* (1985), Cochin University Department of Law.

**BCI 014 INTELLECTUAL PROPERTY LAW*****Objectives of the course***

The importance of this branch of the law is to be sufficiently realised in the Indian legal education. Compendious courses on the law of copyright, trademarks and patents are offered in few law schools as optional courses, but these do not either integrate the significance of these subject matters under any comprehensive aspect of 'modernisation' or 'development' nor do they spread even emphasis between and among the subject areas represented by these three interconnected bodies of the law.

The three areas are now internationally conceptualised as representing intellectual property. It is often the case that while the law of patents and trademarks is referred to as industrial property, the law relating to copyright is named intellectual property. While both these terms could be suitably invoked, we here speak of intellectual property as signifying all the three bodies of the law as well as the law on industrial designs.

Unlike other forms of property, intellectual property refers to regimes of legal recognition of, primarily, the products of the mind or imagination. The subject matter of property relations is here pre-eminently based on mental labour. The law relating to intellectual property protects the right to mental labour.

The law confers rights of proprietary nature on relative intellectual labour primarily on the basis that it is in the interests of society and state to promote creativeness and inventiveness. Limited monopoly provides incentive for greater inventive and innovative efforts in society. An important aspect of the exploration in this course would be the ways in which the laws strike a fair balance between the interests and rights of the intellectual labourers on the one hand and organized industrial enterprises on the other. Another dimension is a study of the ways in which this regime of laws militates against, or favours, community property in national cultures.

As concerns 'modernization' crucial questions arise in the field of copyright protection in computer software and hardware, internet, electronic music and scientific research. Both copyright, trademarks, design and patent law here relate basically to the law of unfair competition and constitute an aspect of consumer protection and welfare not only in the context of national perspectives but

also in view of the waves of globalisation already set in. Both from the standpoint of human resources development, modernisation and justice it is important that the curricular change takes serious notice of these areas.

The following syllabus prepared with the above objectives will comprise of 84 units each of one hour duration.

### **Syllabus**

#### **1. Introductory units 20**

- 1.1. The meaning of Intellectual property
- 1.2. Competing rationales of the legal regimes for the protection of intellectual property
- 1.3. The main forms of intellectual property : copyright trademarks, patents, designs
- 1.4. The competing rationales for protection of rights in
  - 1.4.1. Copyright
  - 1.4.2. Trade marks
  - 1.4.3. Patents
  - 1.4.4. Designs
  - 1.4.5. Trade secrets
  - 1.4.6. Other new forms such as plant varieties and geographical Indians
- 1.5. Introduction to the leading international instruments concerning intellectual property rights: the Berne Convention, Universal Copyright Convention, the Paris Union TRIPS the World Intellectual Property Rights Organisation (WIPO) and the UNESCO.

#### **2. Select aspects of the law of copyright in India units 20**

- 2.1. Historical evolution of the law
- 2.2. Meaning of copyright
- 2.3. Copyright in literary, dramatic and musical works
- 2.4. Copyright in sound records and cinematograph films
- 2.5. Copyright in computer programme

- 2.6. Ownership of copyright
- 2.7. Assignment of copyright
- 2.8. Author's special rights
- 2.9. Notion of infringement
- 2.10. Criteria of infringement
- 2.11. Infringement of copyright by films of literary and dramatic works.
- 2.12. Importation and infringement
- 2.13. Fair use provisions
- 2.14. Piracy in internet
- 2.15. Aspects of copyright justice
- 2.16. Remedies, especially, the possibility of Anton pillar injunctive relief in India.

### **3. Intellectual Property in Trademarks**

**units 20**

- 3.1. The rationale of protection of trademarks as (a) an aspect of commercial and (b) of consumer rights.
- 3.2. Definition and concept of trademarks
- 3.3. Registration
- 3.4. Distinction between trademark and property mark
- 3.5. The doctrine of honest Current User
- 3.6. The doctrine of deceptive similarity
- 3.7. Protection of well-known marks
- 3.8. Passing off and infringement
- 3.9. Criteria of infringement
- 3.10. Standards of proof in passing off action
- 3.11. Remedies

### **4. The law of intellectual property : patents**

**units 24**

- 4.1. Concept of patent



- 4.2. Historical view of the patents law in India
- 4.3. Patentable inventions with special reference to biotechnology products entailing creation of new forms of life.
- 4.4. Patent protection for computer programme
- 4.5. Process of obtaining a patent : application, examination, opposition and sealing of patents : general introduction
- 4.6. Procedure for filing patents. Patent co-operation treaty
- 4.7. Some grounds for opposition
  - 4.7.1. The problem of limited locus standi to oppose, specially in relation to inventions having potential of ecological and mass disasters
  - 4.7.2. Wrongfully obtaining the invention
  - 4.7.3. Prior publication or anticipation
  - 4.7.4. Obviousness and the lack of inventive step
  - 4.7.5. Insufficient description
- 4.8. Rights and obligations of a patentee
  - 4.8.1. Patents as chose in action
  - 4.8.2. Duration of patents : law and policy considerations
  - 4.8.3. Use and exercise rights
  - 4.8.4. Right to secrecy
  - 4.8.5. The notion of "abuse" of patent rights
  - 4.8.6. Compulsory licenses
- 4.9. Special Categories
  - 4.9.1. Employee Invention : Law and Policy Consideration
  - 4.9.2. International Patents, Transfer of Technology, Know-How and problems of self reliant development
- 4.10. Infringement

- 4.10.1. Criteria of infringement
- 4.10.2. Onus of Proof
- 4.10.3. Modes of Infringement : the Doctrine of Colourable Variation
- 4.10.4. Defences in suits of infringement
- 4.10.5. Injunctions and related remedies.

### **Select bibliography**

Cornish W.R., *Intellectual Property, Patents, Trade Marks, Copy Rights and Allied Rights* (1999), Asia Law House, Hyderabad.

Vikas Vashishth, *Law and Practice of Intellectual Property* (1999), Bharat Law House, Delhi.

P. Narayanan, *Intellectual Property Law* (1999), (ed) Eastern Law House, Calcutta.

Bibeck Debroy (ed.) *Intellectual Property Rights* (1998) Rajiv Gandhi Foundation, Delhi.

U.I.F. Anderfelt, *International Patent Legislation and Developing Countries* (1971).

W.R. Cornish, *Intellectual Property*(3rd ed.) (1996) Sweet and Maxwell

W.R. Mann, *Transfer of Technology* (1982)

Mata Din, *Law of Passing off and Infringement Action of Trade Marks* (1986).

P.S. Sangal and Kishore Singh, *Indian Patent System and Paris Convention : Legal Perspectives* (1987).

K. Thairani, *Copyright : The Indian Experience* (1987)

W.R. Cornish, *Para and Materials on Intellectual Property* (1999), Sweet & Maxwell

**BCI 015 MARITIME LAW*****Objective of the course***

There is a sea change and conceptual revolution in maritime law. With more interactions between nations and nations as well as between persons, natural and legal, in one country to others in another country led to evolution of new norms of behaviour in maritime scenario. Changes in the extent of territorial waters, exploration into and exploitation of, zonal and deep sea living and non living resources, the need for liberal approach to transit and innocent passage of ships and the all important demand for elimination of marine pollution from any source have thrown new challenges. This course is intended to look at the problems more from a public law point of view than from private law perspectives and to provide a basic knowledge that helps one to study more about the widening frontiers of maritime law in the years to come.

The paper comprise of about 84 units of one-hour duration.

***Syllabus***

- |  |                |
|--|----------------|
| <b>1. Maritime law: sources</b>  | <b>units 6</b> |
| 1.1. Custom  |                |
| 1.1.1. Binding nature  |                |
| 1.2. International conventions   |                |
| 1.2.1. Law-making treaties   |                |
| 1.2.2. Multi-lateral and bilateral   |                |
| 1.3. Resolution and recommendation of international organisations such as IMO(International Maritime Organisation), International Sea Bed Authority and UNEP (United National Environmental Programme) |                |
| 1.4. Decisions of courts: ICJ, international arbitration and national courts   |                |
| 1.5. State practices   |                |
| 1.6. Juristic writings   |                |

- 2. Internal waters** **units 8**
- 2.1. Meaning
  - 2.2. Maritime boundary
    - 2.2.1. Baseline concept : determination of baseline
  - 2.3. Innocent passage: scope of coastal state interference
  - 2.4. Regime of maritime ports
    - 2.4.1. Port state jurisdiction : civil and criminal
    - 2.4.2. Attachment of ships: arrest of ships
    - 2.4.3. Access of foreign ships to ports
      - 2.4.3.1. Ships in distress
      - 2.4.3.2. Quarantine regulations
- 3. Territorial waters** **units 8**
- 3.1. Territorial sea : concept and development
  - 3.2. Width, conflicting claims of coastal states
    - 3.2.1. Coastal state jurisdiction
    - 3.2.2. Access of ships to the territorial sea
    - 3.2.3. Scientific research: jurisdiction on
- 4. Contiguous Zone** **units 2**
- 4.1. Concept and relevance in present times
  - 4.2. Coastal state jurisdiction over customs and law and order confined to contiguous or not
- 5. Exclusive Economic zone** **unit 10**
- 5.1. Definition
  - 5.2. Jurisdiction

**6. Delimitation of Maritime Boundary****units 4**

- 6.1. Opposite state
- 6.2. Adjacent state
- 6.3. Equitable doctrine
- 6.4. Regional agreement

**7. Continental shelf****units 10**

- 7.1. Development of the concept
- 7.2. Coastal state claim: legal basis
  - 7.2.1. Submerged territory theory
  - 7.2.2. Contiguous area theory
  - 7.2.3. Recognition of the state claim over sea bed and subsoil
- 7.3. Nature of the state rights
- 7.4. Width and limits
- 7.5. Jurisdiction over foreign ships
  - 7.5.1. Protection of equipment and installations
- 7.6. Scientific research

**8. International straits and archipelagos****units 8**

- 8.1. Regime of international straits
  - 8.1.1. Transit passage
  - 8.1.2. Jurisdiction of coastal states
- 8.2. Archipelagos: Meaning
  - 8.2.1. Distinction from islands
  - 8.2.2. Archipelago waters
  - 8.2.3. Innocent passage
  - 8.2.4. Resource jurisdiction

**9. International fisheries****units 8**

- 9.1. Conflicting state claims
- 9.2. Migratory species
- 9.3. Marine mammals
- 9.4. Sedentary species
- 9.5. Protection of endangered species
- 9.6. International co-operation for conservation
- 9.7. Optimum utilization and surplus sharing
- 9.8. Fisheries in high seas
  - 9.8.1. Special protection:
  - 9.8.2. Atlantic ocean
  - 9.8.3. Pacific ocean

**10. High Seas****units 10**

- 10.1. Concept of patrimonial sea and common heritage of mankind
- 10.2. Access to high seas : conflict between maritime states and land locked states
- 10.3. Piracy
- 10.4. Hot pursuit
- 10.5. International sea bed authority : constitution, power and jurisdiction
- 10.6. Exploration and exploitation of sea bed
- 10.7. Pioneer investors

**11. Conservation and Exploitation of Maritime Resources****units 10**

- 11.1. Living and Non-living resources: Importance, kinds
- 11.2. Conservation and management of the resources
  - 11.2.1. Jurisdiction
  - 11.2.2. Problems

- 11.2.3. Dispute settlement mechanism
- 11.3. Exploitation of the resources
  - 11.3.1. Transfer of technology as a tool for exploitation
  - 11.3.2. Right to development and sustainable development
  - 11.3.3. Jurisdiction
  - 11.3.4. Limitations
- 11.4. Marine pollution
  - 11.4.1. Meaning and its impact
  - 11.4.2. Kinds
  - 11.4.3. Pollution
  - 11.4.4. Accidents at sea
  - 11.4.5. Tests
  - 11.4.6. Control and enforcement

### **Select bibliography**

Orrego Vicuna, *The Changing International Law of the High seas Fisheries* (1999), Cambridge

Ian Brownlie, *Principles of Public International Law* (1998), Clarendon press, oxford

P. Chandrasekhara Rao, *The New law of Maritime Zones* (1983) miling publications, New Delhi

Samir Mankababy, *The International Shipping Rules* (1986), Croom Helm, London

Nagendra Singh, *International Maritime law Conventions, Vol.I Navigation* (1983) Stevens & Maxwell, London.

Myron H. Nordquist and John Norton Moor (eds.), *Ocean Policy - New Institutions, Challenges and Opportunities* (1999), Kluwer.

**CHAPTER III**  
**LL.M. SYLLABUS**  
**COMPULSORY COURSES**

**01 LAW AND SOCIAL TRANSFORMATION IN INDIA.**

***Objectives of the course***

This course is designed to offer the teacher and the taught with - (a) awareness of Indian approaches to social and economic problems in the context of law as a means of social control and change; and (b) a spirit of inquiry to explore and exploit law and legal institutions as a means to achieve development within the framework of law. The endeavour is to make the students aware of the role the law has played and has to play in the contemporary Indian society

The following syllabus prepared with this perspectives will be spread over a period of one semester

***Syllabus***

**1. Law and social change**

- 1.1. Law as an instrument of social change.
- 1.2. Law as the product of traditions and culture. Criticism and evaluation in the light of colonisation and the introduction of common law system and institutions in India and its impact on further development of law and legal institutions in India.

**2. Religion and the law**

- 2.1. Religion as a divisive factor.
- 2.2. Secularism as a solution to the problem.
- 2.3. Reform of the law on secular lines: Problems.
- 2.4. Freedom of religion and non-discrimination on the basis of religion.
- 2.5. Religious minorities and the law.



**3. Language and the law**

- 3.1. Language as a divisive factor: formation of linguistic states.
- 3.2. Constitutional guarantees to linguistic minorities.
- 3.3. Language policy and the Constitution: Official language; multi-language system.
- 3.4. Non-discrimination on the ground of language.

**4. Community and the law**

- 4.1. Caste as a divisive factor
- 4.2. Non-discrimination on the ground of caste.
- 4.3. Acceptance of caste as a factor to undo past injustices.
- 4.4. Protective discrimination: Scheduled castes, tribes and backward classes.
- 4.5. Reservation; Statutory Commissions., Statutory provisions.

**5. Regionalism and the law**

- 5.1. Regionalism as a divisive factor.
- 5.2. Concept of India as one unit.
- 5.3. Right of movement, residence and business; impermissibility of state or regional barriers.
- 5.4. Equality in matters of employment: the slogan "Sons of the soil" and its practice.
- 5.5. Admission to educational institutions: preference to residents of a state.

**6. Women and the law**

- 6.1. Crimes against women.
- 6.2. Gender injustice and its various forms.
- 6.3. Women's Commission.
- 6.4. Empowerment of women: Constitutional and other legal provisions.

**7. Children and the law**

- 7.1. Child labour.
- 7.2. Sexual exploitation.
- 7.3. Adoption and related problems.
- 7.4. Children and education.

**8. Modernisation and the law**

- 8.1. Modernisation as a value: Constitutional perspectives reflected in the fundamental duties.
- 8.2. Modernisation of social institutions through law.
  - 8.2.1. Reform of family law
  - 8.2.2. Agrarian reform - Industrialisation of agriculture.
  - 8.2.3. Industrial reform: Free enterprise v. State regulation - Industrialisation v. environmental protection.
- 8.3. Reform of court processes.
  - 8.3.1. Criminal law: Plea bargaining; compounding and payment of compensation to victims.
  - 8.3.2. Civil law: (ADR) Confrontation v. consensus; mediation and conciliation; Lok adalats.
  - 8.3.3. Prison reforms.
- 8.4. Democratic decentralisation and local self-government.

**9. Alternative approaches to law**

- 9.1. The jurisprudence of Sarvodaya--- Gandhiji, Vinoba Bhave; Jayaprakash Narayan ---Surrender of dacoits; concept of grama nyayalayas.
- 9.2. Socialist thought on law and justice: An enquiry through constitutional debates on the right to property.
- 9.3. Indian Marxist critique of law and justice.
- 9.4. Naxalite movement: causes and cure.

**Select Bibliography**

Marc Galanter (ed.), *Law and Society in Modern India* (1997 ) Oxford,

Robert Lingat, *The Classical Law of India* (1998), Oxford

U. Baxi, *The Crisis of the Indian Legal System* (1982). Vikas, New Delhi.

U. Baxi (ed.), *Law and Poverty Critical Essays* (1988). Tripathi, Bombay.

Manushi, *A Journal About Women and Society*.

Duncan Derret, *The State, Religion and Law in India* (1999). Oxford University Press, New Delhi.

H.M. Seervai, *Constitutional Law of India* (1996), Tripathi.

D.D. Basu, *Shorter Constitution of India* (1996), Prentice - Hall of India (P) Ltd., New Delhi.

Sunil Deshta and Kiran Deshta, *Law and Menace of Child Labour* (2000) Armol Publications, Delhi.

Savitri Gunasekhare, Children, *Law and Justice* (1997), Sage

Indian Law Institute, *Law and Social Change : Indo-American Reflections*, Tripathi (1988)

J.B. Kripalani, *Gandhi: His Life and Thought*, (1970)Ministry of Information and Broadcasting, Government of India

M.P.Jain, *Outlines of Indian Legal History*, (1993), Tripathi, Bombay.

Agnes, Flavia, *Law and Gender Inequality: The Politics of Women's Rights in India* (1999), Oxford

**002 INDIAN CONSTITUTIONAL LAW: THE NEW CHALLENGES.*****Objectives of the Course***

The Constitution, a living document, is said to be always in the making. The judicial process of constitutional interpretation involves a technique of adapting the law to meet changing social mores. Constitution being the fundamental law, an insight into its new trends is essential for a meaningful understanding of the legal system and processes. The post graduate students in law who had the basic knowledge of Indian Constitutional Law at LL.B level, should be exposed to the new challenges and perspectives of constitutional development while they are allowed to choose an area of law for specialisation. Obviously, rubrics under this paper require modification and updating from time to time.

The following syllabus prepared with this perspective will be spread over a period of one semester.

***Syllabus*****1. Federalism**

- 1.1. Creation of new states
- 1.2. Allocation and share of resources - distribution of grants in aid
  - 1.2.1. The inter-state disputes on resources
- 1.3. Rehabilitation of internally displaced persons.
- 1.4. Centre's responsibility and internal disturbance within States.
- 1.5. Directions of the Centre to the State under Article 356 and 365
- 1.6. Federal Comity : Relationship of trust and faith between Centre and State.
- 1.7. Special status of certain States.
  - 1.7.1. Tribal Areas, Scheduled Areas

**2. "State" : Need for widening the definition in the wake of liberalisation.****3. Right to equality: privatisation and its impact on affirmative action.****4. Empowerment of women.**

**5. Freedom of press and challenges of new scientific development**

- 5.1. Freedom of speech and right to broadcast and telecast.
- 5.2. Right to strikes, hartal and bandh.

**6. Emerging regime of new rights and remedies**

- 6.1. Reading Directive Principles and Fundamental Duties into Fundamental Rights
- 6.11. Compensation jurisprudence
- 6. 1.2. Right to education
  - 6.1.2.1. Commercialisation of education and its impact.
  - 6.1.2.2. Brain drain by foreign education market.

**7. Right of minorities to establish and administer educational institutions and state control.****8. Secularism and religious fanaticism.****9. Separation of powers: stresses and strain**

- 9.1. Judicial activism and judicial restraint.
- 9.2. PIL: implementation.
- 9.3. Judicial independence.
  - 9.3.1. Appointment, transfer and removal of judges.
- 9.4. Accountability: executive and judiciary.
- 9.5. Tribunals

**10. Democratic process**

- 10.1. Nexus of politics with criminals and the business.
- 10.2. Election
- 10.3. Election commission: status.
- 10.4. Electoral Reforms

- 10.5. Coalition government, 'stability, durability, corrupt practice'
- 10.6. Grass root democracy.

### ***Select bibliography***

No specific bibliography is suggested for this course since the course materials obviously depends upon the latest developments. These developments in the areas specified in the course can be gathered from the recent materials such as case law, changes and amendments of laws, critical comments, studies and reports, articles and research papers and lastly contemporary emerging ethos impacting on constitutional values.

### **03 JUDICIAL PROCESS**

#### ***Objectives of the course***

A lawyer, whether academic or professional, is expected to be competent to analyse and evaluate the legal process from a broader juristic perspective. Hence a compulsory paper on Judicial Process is essential in the LL.M curriculum. The objective of this paper is to study the nature of judicial process as an instrument of social ordering. It is intended to highlight the role of court as policy maker, participant in the power process and as an instrument of social change. This paper further intends to expose the intricacies of judicial creativity and the judicial tools and techniques employed in the process.

Since the ultimate aim of any legal process or system is pursuit of justice, a systematic study of the concept of justice and its various theoretical foundations is required. This paper, therefore, intends to familiarise the students with various theories, different aspects and alternative ways, of attaining justice.

The following syllabus prepared with the above perspective will spread over a period of one semester

#### ***Syllabus***

##### **1. Nature of judicial process**

- 1.1. Judicial process as an instrument of social ordering
- 1.2. Judicial process and creativity in law - common law model - Legal Reasoning and growth of law - change and stability.
- 1.3. The tools and techniques of judicial creativity and precedent.
- 1.4. Legal development and creativity through legal reasoning under statutory and codified systems.

##### **2. Special Dimensions of Judicial Process in Constitutional Adjudications.**

- 2.1. Notions of judicial review
- 2.2. 'Role' in constitutional adjudication - various theories of judicial role.

- 2.3. Tools and techniques in policy-making and creativity in constitutional adjudication.
- 2.4. Varieties of judicial and juristic activism
- 2.5. Problems of accountability and judicial law-making.

### **3. Judicial Process in India**

- 3.1. Indian debate on the role of judges and on the notion of judicial review.
- 3.2. The "independence" of judiciary and the "political" nature of judicial process
- 3.3. Judicial activism and creativity of the Supreme Court - the tools and techniques of creativity.
- 3.4. Judicial process in pursuit of constitutional goals and values - new dimensions of judicial activism and structural challenges
- 3.5. Institutional liability of courts and judicial activism - scope and limits.

### **4. The Concepts of Justice**

- 4.1. The concept of justice or Dharma in Indian thought
- 4.2. Dharma as the foundation of legal ordering in Indian thought.
- 4.3. The concept and various theories of justice in the western thought.
- 4.4. Various theoretical bases of justice: the liberal contractual tradition, the liberal utilitarian tradition and the liberal moral tradition.

### **5. Relation between Law and Justice**

- 5.1. Equivalence Theories - Justice as nothing more than the positive law of the stronger class
- 5.2. Dependency theories - For its realisation justice depends on law, but justice is not the same as law.
- 5.3. The independence of justice theories - means to end relationship of law and justice - The relationship in the context of the Indian constitutional ordering.
- 5.4. Analysis of selected cases of the Supreme Court where the judicial process can be seen as influenced by theories of justice.



**Select Bibliography**

Julius Stone, *The Province and Function of Law*, Part II, Chs. 1. 8-16 (2000), Universal, New Delhi.

Cardozo, *The Nature of Judicial Process* (1995) Universal, New Delhi

Henry J.Abraham , *The Judicial Process* (1998), Oxford.

J.Stone, *Precedent and the Law: Dynamics of Common Law Growth* (1985) Butterworths

W.Friedmann, *Legal Theory* (1960), Stevens, London

Bodenheimer, *Jurisprudence - the Philosophy and Method of the Law* (1997), Universal, Delhi

J..Stone, *Legal System and Lawyers' Reasonings* (1999), Universal, Delhi

U.Baxi, *The Indian Supreme Court and Politics* (1980), Eastern,Lucknow.

Rajeev Dhavan, *The Supreme Court of India - A Socio -Legal Critique of its Juristic Techniques* (1977), Tripathi, Bombay.

John Rawls, *A Theory of Justice* (2000), Universal, Delhi

Edward H.Levi, *An Introduction to Legal Reasoning* (1970), University of Chicago.

**004 LEGAL EDUCATION AND RESEARCH METHODOLOGY*****Objectives of the course***

A post-graduate student of law should get an insight into the objectives of legal education. He should have an exposure to programmes like organisation of seminars, publication of law journals and holding of legal aid clinics.

Law is taught in different ways in different countries. The LL.M course, being intended also to produce lawyers with better competence and expertise, it is imperative that the student should familiarise himself with the different systems of legal education. The lecture method both at LL.B level and LL.M level has many demerits. The existing lacunae can be eliminated by following other methods of learning such as case methods, problem method, discussion method, seminar method and a combination of all these methods. The student has to be exposed to these methods so as to develop his skills.

Growth of legal science in India depends on the nature and career of legal research. The syllabus is designed to develop also skills in research and writing in a systematic manner.

***Syllabus***

- 1. Objectives of Legal Education**
- 2. Lecture Method of Teaching - Merits and demerits**
- 3. The Problem Method**
- 4. Discussion method and its suitability at postgraduate level teaching**
- 5. The Seminar Method of teaching**
- 6. Examination system and problems in evaluation - external and internal assessment.**
- 7. Student participation in law school programmes - Organisation of Seminars, publication of journal and assessment of teachers**
- 8. Clinical legal education - legal aid, legal literacy, legal survey and law reform**

## **9. Research Methods**

- 9.1. Socio Legal Research
- 9.2. Doctrinal and non-doctrinal
- 9.3. Relevance of empirical research
- 9.4. Induction and deduction

## **10. Identification of Problem of research**

- 10.1. What is a research problem?
- 10.2. Survey of available literature and bibliographical research.
  - 10.2.1. Legislative materials including subordinate legislation, notification and policy statements
  - 10.2.2. Decisional materials including foreign decisions; methods of discovering the "rule of the case" tracing the history of important cases and ensuring that these have not been over-ruled; discovering judicial conflict in the area pertaining to the research problem and the reasons thereof.
  - 10.2.3. Juristic writings - a survey of juristic literature relevant to select problems in India and foreign periodicals.
  - 10.2.4. Compilation of list of reports or special studies conducted relevant to the problem.

## **11. Preparation of the Research Design**

- 11.1. Formulation of the Research problem
- 11.2. Devising tools and techniques for collection of data : Methodology
  - 11.2.1. Methods for the collection of statutory and case materials and juristic literature
  - 11.2.2. Use of historical and comparative research materials
  - 11.2.3. Use of observation studies
  - 11.2.4. Use of questionnaires/interview
  - 11.2.5. Use of case studies
  - 11.2.6. Sampling procedures - design of sample, types of sampling to be adopted.
  - 11.2.7. Use of scaling techniques

- 11.2.8. Jurimetrics
- 11.3. Computerized Research - A study of legal research programmes such as Lexis and West law coding
- 11.4. Classification and tabulation of data - use of cards for data collection - Rules for tabulation. Explanation of tabulated data.
- 11.5. Analysis of data

### ***Bibliography***

High Brayal, Nigel Dunean and Richard Crimes, *Clinical Legal Education: Active Learning in your Law School*, (1998) Blackstone Press Limited, London

S.K.Agrawal (Ed.), *Legal Education in India* (1973), Tripathi, Bombay.

N.R. Madhava Menon, (ed) *A Handbook of Clinical Legal Education*, (1998) Eastern Book Company, Lucknow.

M.O.Price, H.Bitner and Bysiewiez, *Effective Legal Research* (1978)

Pauline V. Young, *Scientific Social Survey and Research*, (1962)

William J. Grade and Paul K. Hatt, *Methods in Social Research*, Mc Graw-Hill Book Company, London

H.M.Hyman, *Interviewing in Social Research* (1965)

Payne, *The Art of Asking Questions* (1965)

Erwin C. Surrency, B.Fielf and J. Crea, *A Guide to Legal Research* (1959)

Morris L. Cohan, *Legal Research in Nutshell*, (1996), West Publishing Co.

Havard Law Review Association, *Uniform System of Citations*.

ILLI Publication, *Legal Research and Methodology*.

**05 DISSERTATION OPTIONAL GROUPS****GROUP - A: INTERNATIONAL LAW AND ORGANIZATIONS****A 006 INTERNATIONAL ORGANISATIONS : LAW, PRACTICE AND FUTURE*****Objectives of the course***

The years following the Second World War have witnessed a phenomenal growth of international organizations. The United Nations has become increasingly complex in its functioning, and the range of its activities has widened beyond manageable proportions. It has therefore become imperative to understand the modes of operation of the numerous organs and agencies of the U.N. system, the decision-making pattern, financing and accountability. The interactions between the members and the Organisation over the years to cope up with their numerous responsibilities have been handicapped with non-availability of funds and non-co-operation of the certain members.

In order to give students an in-depth understanding, it would be useful to conduct intensive studies of some agencies such as the UNDP and the FAO. There have also come into existence well known non-governmental organizations whose expertise is made use of by various UN Agencies in the capacity of consultants. The role played by such NGOs would also be assessed in the light of the objectives of the organization.

The course will explore the areas of co-operation in international relations which are likely to bring about cohesion and integration, and assess the role of international organization in fostering change. It will also provide an opportunity for understanding the major issues of law and policy which are presently being faced by international organizations.

The following syllabus prepared with this perspective will be spread over a period of one semester.

***Syllabus***

- 1. Evolution of International organization : The Concert of Europe, the League of Nations and the United Nations.**

## **2. United Nations as a Constitutional and Political System.**

- 2.1. Organs and Their functions
- 2.2. Law creating processes including Resolutions and Declarations of the General Assembly and Specialized Agencies
- 2.3. Financing and Problems of financial crisis
- 2.4. Amendment process
- 2.5. Secretary General of the United Nations.

## **3. The Political Process**

- 3.1. Blocks and Alliances
- 3.2. Non-aligned movement and its impact on voting in the various organs of the United Nations.
- 3.3. African and Latin American Groups
- 3.4. India and the United Nations
- 3.5. The Big Two and the United Nations.

## **4. Peace-Keeping**

- 4.1. UN peace-keeping functions.
- 4.2. UN peace-keeping force - case studies
- 4.3. Problems of peace-enforcement through the UN

## **5. Special Agencies and Non Governmental Organisations**

- 5.1. Constitution and functions of specialized agencies
- 5.2. Case studies of some agencies such as FAO and UNDP as illustrative organizations within the UN system.
- 5.3. Select studies of NGOs serving as consultants.
  - 5.3.1. Amnesty International
  - 5.3.2. International Commission of Jurists.

## **6. Peaceful Change through United Nations**

- 6.1. Dispute settlement machinery of the United Nations
- 6.2. The Role of ECOSOC in bringing about peaceful change
- 6.3. UN operational programmes in the Social Field
- 6.4. UN operational programmes in the Economic Field
- 6.5. Anti-colonial consensus
- 6.6. Disarmament and human rights.

### **Select bibliography**

D.W. Bowett, *Law of International Institutions*, (1982)

Ingrid Detter, *Law Making by the International Organisation*, (1965)

Stephen S.Goodspeed, *Nature and Function of International Organisation*, (1967)

Wilfred Jenks, *The proper Law of International Organisations*, (1962)

E.P.Walters, *History of the League of Nations* (1965)

D.W.Bowett, *United Nations Forces: A Legal Study* (1969)

Leland M. Goodrich, *Charter of the United Nations* (1969)

Leland M. Goodrich, *United Nations in a Changing World* (1974).

Rosalyn Higgins, *Development of International Law through Political Organs of the United Nations* (1963)

Hans Kelsen, *Law of the United Nations* (1954)

Rahmathullah Khan, *Implied Powers of the United Nations* (1970)

Edward Macwhinney, *United Nations Law Making* (1984)

M.S.Rajan, *United Nations and Domestic Jurisdiction* (1961)

## **A 007 DISARMAMENT AND PEACE STRATEGIES**

### ***Objectives of the course***

Disarmament has been a major issue in international relations for creating conditions of peace. The mad race for conventional and nuclear arms among the super powers has been going on unabated. Even the newly emergent poor nations have found it essential to divert their resources for the acquisition of sophisticated arms and upkeep of military hardware.

Developed nations with nuclear capabilities are spending billions of dollars for creating balance of terror. These nations are the most important source for the supply of arms to developing nations. The implications of transfer of technology are grave and need a thorough understanding of the issues involved. The ownership patterns for mass production of armaments need a close scrutiny and the methods used by giant manufacturers of sophisticated armaments to push sales have recently come under severe attack. These have a direct bearing on national policies for production and sale of armaments.

Nations individually and collectively have been involved in devising methods for disarmament and non-proliferation of nuclear weapons. The UN has been fully absorbed for the last several decades in initiating dialogues on disarmament. In the course of years the impediments which stand in the way of arriving at an international understanding have been laid bear.

The course will explore the alternative strategies for creating conditions of peace. This would involve a critical examination of dispute resolution and crisis management techniques, equitable allocation of world's resources and economic development of less developed countries.

The following syllabus prepared with this perspective will be spread over a period of one semester.

### ***Syllabus***

#### **1. The Conceptions of Disarmament**

- 1.1. Disarmament and world security, military alliances, arms trade
- 1.2. Changing conceptions of disarmament.



**2. The dynamics of the Arms Race**

- 2.1. The reasons of arms race, including nuclear weapons
- 2.2. Consequences of arms race in terms of resources and economic development
- 2.3. International implications of the arms race

**3. Disarmament and the United Nations**

- 3.1. History of the failure of disarmament efforts
- 3.2. UN Disarmament Commission, its achievements and limitations.
- 3.3. U.N. Disarmament Decades of 1970's and 1980's
- 3.4. Negotiations leading to the signing of SALT I and SALT II

**4. Nuclear Disarmament: Problems and Perspectives**

- 4.1. Nuclear Non-Proliferation treaty and Intermediate range Missile Treaty.
- 4.2. International regulation of nuclear weapons

**5. International Regulation of Biological and Chemical or Weapons of Mass Destruction****6. International regulation and Control of Militarization of Outer Space and the Ocean Bed****7. Conserving the world's resources**

- 7.1. Assisting the economic development of less developed countries.
- 7.2. Harnessing science and technology for development
- 7.3. Protection of human rights.
- 7.4. Peaceful settlement of international disputes
- 7.5. Towards a balanced world trade.
- 7.6. Peace research and its significance

**Select bibliography**

Burns H. Weston, *Toward Nuclear Disarmament and Global Security: a Search for Alternatives* (1980)

J. Schell, *The Fate of the Earth* (1982)

J.N. Singh, *Use of Force Under International Law* (1984)

Julius Stone, *Legal Controls of International Law* (1954)

M. Walzer, *Just and Unjust Wars* (1979)

R. Kothari, *Transformation and survival: In Search of Human World Order* (1988)

R. Falk, et.al., *International Law: A Contemporary Perspective* pp.473-519 (1985)

R. Falk, *The End of World Order* pp.155-276 (1983).

Report of the Secretary General: Chemical and Bacteriological (Biological weapons and the effects of their Possible Use. (UN Doc.A/7575 Rev.1 S/9292 Rev. I (1969)

**A 008 INTERNATIONAL HUMANITARIAN LAW*****Objectives of the course***

International Law has traditionally been a law which regulates relations among states. Individuals have been objects and not subjects of International Law. A logical extension of these principles led to the theory that international law could not confer rights nor impose duties on individuals. What it could do was to appeal to conscience of the nations that unnecessary suffering of human being should be avoided. In view of territorial and personal character of sovereignty of a state, treatment of its own nationals and stateless persons, subject to limited exceptions remained under the exclusive jurisdiction of a state. Although this unsatisfactory state of law was hardly adequate to prevent ill-treatment of individuals, particularly during war, it became the starting point for a new branch of international law towards the end of the last century.

The total character of modern war and threat of annihilation due to use of nuclear weapons have been responsible for a new concern for survival of humanity. To meet this challenge the United Nations and other voluntary international agencies have been actively involved in prescribing standards of treatment based upon dictates of humanity and overseeing their implementation in difficult situations. The underlying purpose is to ensure a human treatment of all individuals, a minimum standard of treatment which may not be departed from even under the necessities of war or grave provocation. The following syllabus prepared with this perspective will be spread over a period of one semester.

***Syllabus*****1. International Movement for Humanization of Warfare**

Contributions of classical writers; history of the Red Cross; Geneva conventions of 1864 for Amelioration of the Condition of wounded Soldiers in Land Army, St. Petersburg Declaration, 1868. The Hague Conventions of 1899 and 1907, Geneva Conventions of 1929 and 1949 on treatment of Prisoners of war, Wounded and Sick persons and Civilian Persons.

**2. International Efforts to Outlaw Slavery, Slave Trade and Practices Similar to Slavery, Forced Labour and Trafficking in Human Beings.**

**3. United Nations and Humanitarian Law**

The Role of ECOSOC and ILO; Crusade against discrimination in respect of employment and occupation; Racial Discrimination.

**4. International Refugees**

The UN Relief and Rehabilitation Administration and other International Refugee Organizations; Conventions relating to Status of Refugees and Stateless persons; Genocide Convention.

**5. Implementation of the Right to Self-determination**

Declaration on the grant of independence to colonial countries and people, humanitarian treatment of peoples living under colonial rule and trusteeships.

**6. Eliminating Discrimination Against Women Through International Co-operation.*****Select bibliography***

C.Hosoya, N.Ando, Y.Onuma, R.Minear, *The Tokyo War Crimes Trial* (1986).

G.Tunkin, *Theory of International Law* (1974)

G.Schwarzenberger, *The Law of Armed Conflicts* (Vol.II)

J.Stone, *Legal Controls of International Conflicts* (1959)

R.Falk, "The Shimoda Case" 69 *Am. J. Int. Law* (1965)

T.Taylor, *Nuremberg and Vietnam : An American Tragedy* (1971)

**A 009 LAW AND DIPLOMACY*****Objectives of the course***

The importance of diplomacy in international relations cannot be underestimated. Even before and after the emergence of the modern state system and the generally agreed rules of international law, diplomacy has been the most outstanding means for influencing decisions relating to maintenance of international law.

The course will dwell on structural inequalities and geopolitical realities which shape national policies. The role of diplomacy from ancient to modern times will be assessed and salient features of the "new" diplomacy highlighted. Momentous developments in technology giving rise to arms race and military alliances have in no small measure been responsible for utilizing new strategies by powerful states to control foreign policies of nations.

In this connection it will be necessary to understand the conduct of diplomacy in the various forums of the United Nations. Inasmuch as delegations of all the members remain more or less present throughout the year at the United Nations Headquarters, it becomes relatively easy to handle some difficult situations. To provide an insight of the subject, the use of diplomacy in crisis management in contemporary international society will be discussed.

The following syllabus prepared with this perspective will be spread over a period of one semester.

***Syllabus*****1. Contemporary International System**

International stratification, neo-colonialism, dependence and domination, geopolitical considerations.

**2. Beginning of Diplomacy: Various Diplomatic Traditions, Greek, Byzantine and Indian; Golden age of Classical Diplomacy of 18th and 19th Centuries in Europe.**

- 3. Transition from "old" to "new" diplomacy, Impact of the First World War and the Russian Revolution.**
- 4. Impact of Technology on the Conduct of Diplomacy, Impact of the Nuclear Weapons, Military Alliance.**
- 5. Secret v. Open Diplomacy, Democratic Control of Foreign Policy**
- 6. Diplomacy in contemporary world.**
  - 6.1. Cold war and its impact on diplomacy
  - 6.2. Diplomacy of the Summit
  - 6.3. Diplomacy in the United Nations
  - 6.4. Development and diplomacy
  - 6.5. Diplomacy through mass media and propaganda
- 7. Crisis Management**
  - 7.1. Nicaragua
  - 7.2. Namibia
  - 7.3. Palestine
  - 7.4. Sri Lanka
  - 7.5. Iran-Iraq conflict
  - 7.6. Diplomacy in the Law of the Sea Convention
  - 7.7. Diplomacy and new human rights conceptions
    - 7.7.1. Diplomacy and Right to Development Declaration
    - 7.7.2. The Stockholm Declaration on Environment.
- 8. Diplomacy and Resources**

**Select bibliography**

A.Ball, *Modern Intentional Negotiations* (1969)

I.Clark, *Reform and Resistance in International Order* (1980)

I.Clark, "The Satisfied and' the Dissatisfied States Negotiate International Law: A Case Study," 18  
World Politics 20-41 (1965)

H.Nicolson, *Diplomacy* (1969)

J.Stone, *Law and Nations* (1974)

L.Hanken, *How Nations Behave* (1968)

R.L.Friedheim, *Parliamentary Diplomacy - A Survey* (1976)

R.P.Anand, *International Courts and Contemporary Conflict* (1979)

**A 010 LAW OF THE SEA*****Objectives of the course***

There have been momentous changes in the law of the sea for the last fifty years. An almost settled branch of international law has been reopened in response to the needs of the international community to appropriate limitless resources of the sea for common good. Although the importance of sea as a means of communications has lessened in recent years, new scientific and technological developments have brought to the fore the need of devising an equitable system for the distribution of vast living and non-living resources of the sea. The problems of conservation of vast living and non-living resources are complex. States have been using the sea rather recklessly with the result that there is the danger of pollution and consequent loss of animal life and contamination of the environment.

The course on the Law of the sea will, therefore, focus attention on resources of sea as common heritage of mankind. It will necessitate examinations of policy goals of various uses of the sea in the context of dwindling resources on the landmass. It will address itself to problems of conservation, pollution and equitable distribution of resources of the sea-to-sea to nations, large and small, with a seacoast or landlocked.

The following syllabus prepared with this perspective will be spread over a period of one semester.

***Syllabus*****1. Historical introduction to the law of the Sea**

Contributions of Seldon, Grotius, Bynkershock and others to the development of the early law: the Anglo-Norwegian Fisheries case and its aftermath; the technological revolution and utilization of the new resources of the sea; population explosion and its impact on the law, the U.N. Conferences on the Law of the Sea; Developing nations and the uses of sea.

**2. Changing concepts of Maritime Frontiers**

- 2.1. Rights of states over territorial waters and contiguous zone
- 2.2. Continental Shelf



- 2.3. Exclusive Economic Zone
- 2.4. Principles for determination of maritime frontiers and Maritime Boundaries under the customary and conventional law

### **3. Exploitation of Deep Sea-Bed Resources.**

3.1. International Sea Bed Authority, its functions and powers, Decision-making; settlement of disputes, principles governing joint ventures; transfer of data and training of personnel of the Authority; Problems and Perspectives.

### **4. Conservation of Living Resources of the High Sea: Problems of Maritime Pollution.**

### **5. Land-locked States and the Law of the Sea**

### **6. Sea as Common Heritage of Mankind; the Future of the Law of the Sea**

### **7. International Sea Tribunal to Settle Disputes**

### ***Select bibliography***

Orrego Vicuna, *The Changing International Law of the High seas Fisheries* (1999), Cambridge

Ian Brownlie, *Principles of Public International Law* (1998), Clarendon press, Oxford.

P. Chandrasekhara Rao, *The New law of Maritime Zones* (1983) Miling Publications, New Delhi

Samir Mankababy, *The International Shipping Rules* (1986), Croom Helm, London

Nagendra Singh, *International Maritime law Conventions, Vol.I Navigation* (1983) Stevens & Maxwell, London.

Myron H. Nordquist and John Norton Moor (eds.), *Ocean Policy - New Institutions, Challenges and Opportunities* (1999), Kluwer

R.P. Anand, *Law of the Sea,. Caracas and beyond* (1978)

D.W. Bowett, *Law of the Sea*

D.W. Bowett, *Legal Regime of Islands in International Law*

John Colombos, *International Law of The Sea* (1962)

J.H. Hargrove, *Who Protects the Ocean: Environment and the Development of the Law of the Sea*

Devendra Kaushik, *Indian Ocean Towards a Peace Zone* (1983)

Myres S. McDougal and W. Burke, *The Public Order of the Oceans* (1962)

D.P. P'Connel, *International Law of the Sea, Vols. 1 & 11* (1982)

**A 011 INTERNATIONAL AND CONTEMPORARY ISSUES*****Objectives of the course***

This course focuses on the problems of international law in the making. The major normative instruments to be explored are: no New international economic order, the Declaration on the Right to Development and Continuing Struggle for North-South Equity, which continue for crystallize new human rights.

The following syllabus prepared with this perspective will be spread over a period of one semester

***Syllabus*****1. The New International Economic Order. (NIEO)**

- 1.1. Background
- 1.2. Essential component of the NIEO
- 1.3. State acceptance and practice of NIEO principles.
- 1.4. Critique of NIEO

**2. The Right to Development**

- 2.1. The 1979 G.A. Resolution
- 2.2. Progress towards enunciation of the Declaration of Right for Development
- 2.3. Basic Concepts of right to development
- 2.4. State acceptance and practice.
- 2.5. Critique.

**3. Towards Sustainable Development**

- 3.1. The Context of U.N. Commission on Environment and Development
- 3.2. Our Common Future: the Report of the Commission.
- 3.3. Proposed legal principles for environmental protection and sustainable development.
- 3.4. State acceptance and practice
- 3.5. Critique.

**Select bibliography**

H.W. Singer & J.A. Ansari, *Rich and Poor Countries* (1982)

P. Alston, "Development and the Rule of Law; Prevention Versus Cure as a Human Rights Strategy" in *Human Right and Rule of law* 83 (1981)

R. Falk, *The End of the World Order* (1983)

S. Gwrge, *How the other Half Dies: The Real Persons for World Hunger* (1976)

U. Bad, "The New International Economic Order, Basic Needs and Rights: Notes Towards Development of the Right to Development": in *Role of Law and Judiciary in Transformation of Society: India G.D.R. Experiments* 178-205 (1984) D.A. Desai ed.) and see the literature there in cited. This paper is also published in the J. of the Indian Society of international Law.

UN Report of the Secretary General: "The International Dimensions of the Right to Development as a Human Right with other Human Right Based on International Cooperation, including the Right to Peace, Taking into Account the Requirement of the New International Economic Order and the Fundamental Human Needs".EICN-41374.

U.N., *Our Common Future: The World Commission on Environment and Development* (1987)

**GROUP-B CRIMINAL LAW****B 012 COMPARATIVE CRIMINAL PROCEDURE****Objectives of the course**

Criminal Procedure is being taught as a compulsory paper at the level of LL.B. today. However, a jurisprudential thrust has to be given to this subject at the post-graduate level as this is a subject which has constitutional undertones and jurisprudential importance. A study of comparative criminal procedure helps students develop an ecumenical approach and broadens their vision. It inspires them renew and revise their laws to be in tune with developed systems. The paper is taught with reference to India, England, France and China

**Syllabus****1. Organisation of Courts and Prosecuting Agencies**

- 1.1. Hierarchy of criminal courts and their jurisdiction
  - 1.1.1. Nyaya Panchayats in India
    - 1.1.1.1. Panchayats in tribal areas
- 1.2. Organisation of prosecuting agencies for prosecuting criminals
  - 1.2.1. Prosecutors and the police
- 1.3. Withdrawal of prosecution.

**2. Pre-trial Procedures**

- 2.1. Arrest and questioning of the accused
- 2.2. The rights of the accused
- 2.3. The evidentiary value of statements / articles seized / collected by the police
- 2.4. Right to counsel
- 2.5. Roles of the prosecutor and the judicial officer in investigation.

### **3. Trial Procedures**

- 3.1. The accusatory system of trial and the inquisitorial system
- 3.2. Role of the judge, the prosecutor and defence attorney in the trial
- 3.3. Admissibility and inadmissibility of evidence
  - 3.3.1. Expert evidence
- 3.4. Appeal of the court in awarding appropriate punishment.
- 3.5. Plea bargaining

### **4. Correction and Aftercare services**

- 4.1. Institutional correction of the offenders
- 4.2. General comparison - After - care services in India and France
- 4.3. The role of the court in correctional programmes in India.

### **5. Preventive Measures in India**

- 5.1. Provisions in the Criminal Procedure Code
- 5.2. Special enactments

### **6. Public Interest Litigation**

- 6.1. Directions for criminal prosecution.

### ***Select bibliography***

Celia Hamptom, *Criminal Procedure*

Wilkins and Cross, *Outline of the Law of Evidence*

Archbold, Pleading, *Evidence and Practice in Criminal Cases*

Sarkar, *Law of Evidence*

K.N.Chandrasekharan Pillai(ed.), *R.V. Kelkar's Outlines of Criminal Procedure* (2000), Eastern,

Lucknow.

Patric Devlin, *The Criminal Prosecution in England*

*American Series of Foreign Penal Codes Criminal Procedure Code of People's Republic of China.*

John N. Ferdico, *Criminal Procedure* (1996), West

Sanders & Young, *Criminal Justice* (1994)

Christina Van Den Wyngart, *Criminal Procedure Systems in European Community* Joel Samaha,  
*Criminal Procedure* (1997), West

*Criminal Procedure Code, 1973*

*The French Code of Criminal Procedure,*

*14th and 41st Reports of Indian Law Commission.*

The Paper will be taught with reference, wherever necessary, to the procedures in India, England,  
US France, Russia and China

**B 013 PENOLOGY: TREATMENT OF OFFENDERS*****Objectives of the course***

This course offers a specialist understanding of criminal policies including theories of punishment, their supposed philosophical and sociological justifications and the problematic of discretion in the sentencing experience of the 'developing' societies, a focus normally absent in law curricula so far.

The expert work of the U.N. Committee on Crime Prevention and Treatment of Offenders will be availed of in this course. Especially, at each stage, the three 'D's will be explored as offering a range of alternatives: decriminalisation, dependization, deinstitutionalization. Broadly, the course will concern itself with:

- (a) Theories of Punishment
- (b) Approaches to Sentencing
- (c) Alternatives to Imprisonment
- (d) The State of Institutional Incarceration in India: Jails and other custodial institutions
- (e) The problematic of Capital Punishment
- (f) Penology in relation to privileged class deviance
- (g) Penology in relation to marginalized deviance or criminality
- (h) The distinctive Indian (historical and contemporary) approaches to penology

The following syllabus prepared with this perspective will be spread over a period of one semester.

***Syllabus*****1. Introductory**

- 1.1. Definition of Penology

**2. Theories of Punishment**

- 2.1. Retribution
- 2.2. Utilitarian prevention: Deterrence

- 2.3. Utilitarian: Intimidation
- 2.4. Behavioural prevention: Incapacitation
- 2.5. Behavioural prevention: Rehabilitation - Expiation
- 2.6. Classical Hindu and Islamic approaches to punishment.

### **3. The Problematic of Capital Punishment**

- 3.1. Constitutionality of Capital Punishment
- 3.2. Judicial Attitudes Towards Capital Punishment in India - An inquiry through the statute law and case law.
- 3.3. Law Reform Proposals

### **4. Approaches to Sentencing**

- 4.1. Alternatives to Imprisonment
  - 4.1.1. Probation
  - 4.1.2. Corrective labour
  - 4.1.3. Fines
  - 4.1.4. Collective fines
  - 4.1.5. Reparation by the offender/by the court

### **5. Sentencing**

- 5.1. Principal types of sentences in the Penal Code and special laws
- 5.2. Sentencing in white collar crime
- 5.3. Pre-sentence hearing
- 5.4. Sentencing for habitual offender
- 5.5. Summary punishment
- 5.6. Plea-bargaining



## 6. Imprisonment

- 6.1. The state of India's jails today
- 6.2. The disciplinary regime of Indian prisons
- 6.3. Classification of prisoners
- 6.4. Rights of prisoner and duties of custodial staff.
- 6.5. Deviance by custodial staff
- 6.6. Open prisons
- 6.7. Judicial surveillance - basis - development reforms

### **Select bibliography**

S. Chhabbra, *The Quantum of Punishment in Criminal Law* (1970),

H.L.A. Hart, *Punishment and Responsibility* (1968)

Herbert L. Packer, *The Limits of Criminal Sanction* (1968)

Alf Ross, *On Guilt, Responsibility and Punishment* (1975)

A. Siddique, *Criminology* (1984) Eastern, Lucknow.

Law Commission of India, *Forty-Second Report* Ch. 3 (1971)

K.S. Shukla, "Sociology of Deviant Behaviour" in 3 ICSSR *Survey of Sociology and Social Anthropology* 1969-179 (1986)

Tapas Kumar Banerjee, *Background to Indian Criminal Law* (1990), R. Campray & Co., Calcutta.

## **B 014 PRIVILEGED CLASS DEVIANCE**

### ***Objectives of the course***

This course focuses on the "Criminality of the "Privileged classes". The definition of "privileged classes" in a society like India should not pose major problem at all; the expression nearly includes wielders of all forms of state and social (including religious) power. Accordingly, the course focusses on the relation between privilege power and deviant behaviour. The traditional approaches which highlight "white-collar offences", "socio-economic offences" or "crimes of the powerful" deal mainly with the deviance of the economically resourceful. The dimension of deviance associated with bureaucracy, the new rich (nouveau riche), religious leaders and organizations, professional classes and the higher bourgeoisie are not fully captured here.

In designing teaching materials for this course, current developments in deviance, as reflected in newspapers/journals, law reports, and legislative proceedings should be highlighted.

It should be stressed that the objectives of the course include:

- (a) Dispelling of the commonly held belief that deviance crime is usually associated with the impoverished or improvident;
- (b) Construction of model so understanding the reality of middle and upper; middle class deviance criminality in India;
- (c) Critical analyses of legal system responses and
- (d) Issues and dilemmas in penal and sentencing policies.

The following syllabus prepared with the above objectives will be spread over a period of one semester.

### ***Syllabus***

#### **1. Introduction**

- 1.1. Conceptions of white collar crimes
- 1.2. Indian approaches to socio-economic offences
- 1.3. Notions of privileged class deviance as providing a wider categorization of understanding Indian development

- 1.4. Typical forms of such deviance
  - 1.4.1. Official deviance (deviance by legislators, judges, bureaucrats)
  - 1.4.2. Professional deviance: journalists, teachers, doctors, lawyers, engineers, architects and publishers
  - 1.4.3. Trade union deviance (including teachers, lawyers/urban property owners)
  - 1.4.4. Landlord deviance (class/caste based deviance)
  - 1.4.5. Police deviance
  - 1.4.6. Deviance on electoral process (rigging, booth capturing, impersonation, corrupt practices)
  - 1.4.7. Gender-based aggression by socially, economically and politically powerful

**NOTE:** Depending on specialist interest by the teacher and the taught any three areas of deviance of privileged class may be explored. What follows is only illustrative of one model of doing the course.

## **2. Official Deviance**

- 2.1. Conception of official deviance - permissible limit of discretionary powers.
- 2.2. The Chambal valley dacoit Vinoba Mission and Jai Prakash Narain Mission - in 1959 and 1971
- 2.3. The Chagla Commission Report on LIC-Mundhra Affair
- 2.4. The Das Commission Report on Pratap Singh Kairon
- 2.5. The Grover Commission Report on Dev Raj Urs
- 2.6. The Maruti Commission Report
- 2.7. The Ibakkar-Natarajan Commission Report on Fairfax.

## **3. Police Deviance**

- 3.1. Structures of legal restraint on police powers in India
- 3.2. Unconstitutionality of "third-degree" methods and use of fatal force by police
- 3.3. "Encounter" killings
- 3.4. Police atrocities
- 3.5. The plea of superior orders

- 3.6. Rape and related forms of gender-based aggression by police and para-military forces
- 3.7. Reform suggestions especially by the National Police Commissions

#### **4. Professional Deviance**

- 4.1. Unethical practices at the Indian bar
- 4.2. The Lentin Commission Report
- 4.3. The Press Council on unprofessional and unethical journalism
- 4.4. Medical malpractice

#### **5. Response of Indian Legal Order to the Deviance of Privileged Classes**

- 5.1. Vigilance Commission
- 5.2. Public Accounts Committee
- 5.3. Ombudsman
- 5.4. Commissions of Enquiry
- 5.5. Prevention of Corruption Act, 1947
- 5.6. The Antulay Case

#### **Select bibliography**

Upendra Baxi, *The Crisis of the Indian Legal System* (1982) Vikas Publishing House, New Delhi.

Upendra Baxi (ed.), *Law and Poverty: Essays* (1988)

Upendra Baxi, *Liberty and Corruption: The Antulay Case and Beyond* (1989)

Surendranath Dwevedi and G.S. Bbargava, *Political Corruption in India* (1967)

A.R. Desai (ed.) *Violation of democratic Rights in India* (1986)

A.G. Noorani, *Minister's Misconduct* (1974)

B.B. Pande, 'The Nature and Dimensions of Privileged Class Deviance' in *The Other Side of Development* 136 (1987; K.S. Shukla ed.).

Indira Rothermund, 'Patterns of Trade Union Leadership in Dhanbad Coal fields' 23 J.I.L.I 522 (1981)

**B 015 DRUG ADDICTION, CRIMINAL JUSTICE AND HUMAN RIGHTS*****Objectives of the course***

Almost all the major dilemmas of criminal policy surface rather acutely in combating drug addiction and trafficking through the legal order. The issue of interaction between drug abuse and criminality is quite complex. At least three important questions have been recently identified as crucial for comparative research. First, to what extent drug dependence contributes to criminal behaviour? Second, in what ways do criminal behaviour patterns determine drug abuse? Third, are there any common factors which contribute to the determination of both drug abuse and criminal behaviour?

Apart from these causal issues, there is the broad questions of the social costs-benefits of criminalization of addictive behaviour. Should drug-taking remain in the category of "crime without victims?" Or should it be viewed as posing an ever-growing threat to human resource development and be subjected to state control, over individual choices as to survival and life-styles?

The problems here are not merely ideological or theoretical. User of drugs for personal, non-therapeutic purposes may well be linked with international trafficking in psychotropic substance. It has even been suggested that encouragement of drug-dependency may have, in addition to motivation of high profits, politically subversive aspects.

Assuming that both addiction and trafficking have to be regulated, what penal policies should be appropriate? What human rights costs in the administration of criminal justice should be considered acceptable? The international response to these questions is indicated by the Single Convention on Narcotic Drugs, 1954, adopted in New York, 30 March 1954 and as amended by 1972 Protocol in Geneva, 25 March, 1972 and the Convention on Psychotropic substances, adopted in Vienna, 21 February 1971. India has recently adopted the basic principles of these conventions in the Narcotic Drugs and Psychotropic Substances Act, 1986

Broadly, penal policy dilemmas here relate to: (a) management of sanctions relating to production, distribution and illicit commerce in Narcotic Substances and, (b) ways of prevention of abuse of drugs, including speedy diagnosis, treatment, correction, aftercare, rehabilitation, and realization of persons affected.

Important problems of method in studying the impact of regulation need evaluated at every stage.

The following syllabus prepared with the above perspective will be spread over a period of one semester.

### **Syllabus**

#### **1. Introductory**

- 1.1. Basic conceptions
  - 1.1.1. Drugs ' narcotics" "psychotropic substances"
  - 1.1.2. "Dependence," "addiction"
  - 1.1.3. "Crimes without victims"
  - 1.1.4. "Trafficking" in "drugs"
  - 1.1.5. "Primary drug abuse"

#### **2. How Does One Study the Incidence of Drug Addiction and Abuse?**

- 2.1. Self-reporting
- 2.2. Victim-studies
- 2.3. Problems of comparative studies

#### **3. Anagraphic and Social Characteristics of Drug Users**

- 3.1. Gender
- 3.2. Age
- 3.3. Religiousness
- 3.4. Single individuals/cohabitation
- 3.5. Socio-economic level of family
- 3.6. Residence patterns (urban/rural/urban)
- 3.7. Educational levels
- 3.8. Occupation
- 3.9. Age at first use

- 3.10. Type of drug use
- 3.11. Reasons given as cause of first use
- 3.12. Method of Intake
- 3.13. Pattern of the -Use
- 3.14. Average Quantity and Cost
- 3.15. Consequences on addict's health (physical/psychic)

**NOTE:** Since no detailed empirical studies exist in India, the class should be in this topic sensitised by comparative studies. The principal objective of this discussion is to orient the class to a whole variety of factors which interact in the 'making' of a drug addict.

#### **4. The International Legal Regime**

- 4.1. Analysis of the background, text and operation of the Single Convention on Narcotic Drugs, 1961, 1972
- 4.2. Analysis of the Convention on Psychotropic Substances, 1972
- 4.3. International collaboration in combating drug addiction
- 4.4. The SARC, and South-South Cooperation
- 4.5. Profile of international market for psychotropic substances

#### **5. The Indian Regulatory System**

- 5.1. Approaches to narcotic trafficking during colonial India
- 5.2. Nationalist thought towards regulation of drug trafficking and usage
- 5.3. The penal provisions (under the IPC and the Customs Act)
- 5.4. India's role in the evolution of the two international conventions
- 5.5. Judicial approaches to sentencing in drug trafficking and abuse
- 5.6. The Narcotic Drugs and Psychotropic Substances Act, 1985
- 5.7. Patterns of resource investment in India: policing adjudication, treatment, aftercare and rehabilitation

## 6. Human Rights Aspects

- 6.1. Deployment of marginalized people as carrier of narcotics
- 6.2. The problem of juvenile drug use and legal approaches
- 6.3. Possibilities of misuse and abuse of investigative prosecutory powers
- 6.4. Bail
- 6.5. The Problem of differential application of the Ugal Regimes, especially in relation to the resource less

## 7. The Role of Community In Combating Drug Addiction

- 7.1. Profile of Community initiatives in inhibition of dependence and addiction (e.g. de addiction and aftercare)
- 7.2. The role of educational systems
- 7.3. The role of medical profession
- 7.4. The role of mass media
- 7.5. Initiatives for compliance with regulatory systems
- 7.6. Law reform initiatives

### **Select bibliography**

H.S. Becker, *Outsiders : The Studies in Sociology of Deviance* (1966)

J.A. Incard, C.D. Chambers, (eds.), *Drugs and the Criminal Justice System* (1974)

R. Cocken, *Drug Abuse and personality in Young Offenders* (1971)

G. Edwards Busch, (ed.) *Drug Problems in Britain : A Review of Ten Years* (1981)

P. Kondanram and Y.N. Murthy, "Drug Abuse and Crime : A Preliminary Study" *7 Indian Journal of Criminology*, 65-68 (1979)



P.R. Rajgopat *Violence and Response: A Critique of the Indian Criminal System* (1988)

United Nations, *Economic and Social Reports of the Commission on Narcotic Drugs*, United Nations Social Defence, Research Institute (UNSDRI) *Combating Drug Abuse and Related Crimes* (Rome, July 1984, Publication No. 21).

Lok Sabha and Rajya Sabha Debates on 1986 Bill on Psychotropic Substances. Useful Journals in this area are:

- (i) *The Law and Society Review* (USA)
- (ii) *Journal of Drug Issues* (Tallahassee Florida)
- (iii) *International Journal of Addictions* (New York)
- (iv) *British Journal of Criminology*
- (v) *Journal of Criminal Law, Criminology and Police Science* (Baltimore , Md.)
- (vi) *Journal of Criminal Law and Criminology* (Chicago, Ill)
- (vii) *International Journal of Offender Therapy and Comparative Criminology* (London)
- (viii) *Bulletin on Narcotics* (United Nations)

**B 016 JUVENILE DELINQUENCY*****Objectives of the course***

Juvenile delinquency is considered an important branch of criminology. The impact of juvenile delinquency upon the formation of Indian criminology tradition does not seem to be noticeable. No understanding of crimes and treatment of offenders can be complete without a sure grasp of causes, carrots, and cures of juvenile delinquency.

Increasingly, it is being also realized that young offenders require a wholly different centre of criminal justice system and should not be treated in the same way as the adult offenders. Juvenile Justice System, although a part of the criminal justice system has now its own autonomous characteristics.

In addition, the state and the law have to deal with juveniles in certain situations, as *parens patriae*. The category of 'neglected children' defines the burdens of care which state and society have to assume for neglected children. Most categories of neglected children are also themselves the victims of crime. The institutional care of children poses its own distinctive dilemmas. These, too, should be discussed, especially, at the level of resource investment compared with the extent of need.

The following syllabus prepared with this perspective will extend to a period of one semester.

***Syllabus*****1. The Basic Concepts**

- 1.1. The conception of 'child' in Indian Constitution and Penal Code.
- 1.2. Delinquent juvenile
- 1.3. "Neglected" juvenile
- 1.4. The overall situation of children/young persons in India, also with reference to crime statistics (of crimes by and against children)

**2. Determining Factors of Juvenile Delinquency**

- 2.1. Differential association

- 2.2. Anomie
- 2.3. Economic pressure
- 2.4. Peer group influence
- 2.5. Gang sub-culture
- 2.6. Class differentials

### **3. Legislative Approaches**

- 3.1. Legislative approaches during the late colonial era.
- 3.2. Children's Act
- 3.3. Legislative position in various States
- 3.4. The Juvenile Justice Act
  - 3.4.1. Constitutional aspects.
  - 3.4.2. Distinction between "Neglected" and "delinquent" juveniles.
  - 3.4.3. Competent authorities
  - 3.4.4. Processual safeguards for juveniles
  - 3.4.5. Powers given to government
  - 3.4.6. Community participation as envisaged under the Act

### **4. Indian Context of Juvenile Delinquency**

- 4.1. The child population percentage to total sex-ratio, urban/rural/rural-urban
- 4.2. Neglected - below poverty line, physically and mentally disabled, orphans, destitutes, vagrants.
- 4.3. Labourers
  - 4.3.1. In organised industries like zari, carpet, bidi, glass
  - 4.3.2. In unorganised sector like domestic servant, shops and establishments, rag-pickers family trade.
- 4.4. Delinquent - number, sex-ratio, ratio to adult crime, types of offences committed, recidivism, rate of increase background
- 4.5. Drug addicts

- 4.6. Victims
  - 4.6.1. Of violence - sexual abuse, battered, killed by parents
  - 4.6.2. Of criminal activities like bootlegging, drug pollution as a response of protective approach

## **5. Judicial Contribution**

- 5.1. Social action litigation concerning juvenile justice
- 5.2. Salient judicial decisions
- 5.3. Role of legal profession in juvenile justice system.

## **6. Implementation**

- 6.1. Institutions, bodies, personnel
- 6.2. Recruiting and funding agencies
- 6.3. Recruitment qualifications and salaries or fund
- 6.4. Other responsibilities of each agency/person
- 6.5. Coordination among related agencies
- 6.6. Accountability-annual reports and accessibility of public to juvenile justice institution.

## **7. Preventive Strategies**

- 7.1. State Welfare programmes health, nutrition, ICWS, grants-in-aid
- 7.2. Compulsory education
- 7.3. Role of community, family, voluntary, bodies, individuals.

## **Select bibliography**

*National institute of Social Defence, Model Rules under the Juvenile Justice Act, 1986, (1986)*

*K.S. Shukla, Adolescent Offender (1985)*

*United Nations, Beijing Rules on Treatment of Young Offenders (1985)*

*Myron Weiner, The Child and State in India (1990)*

The United Nations Declaration on the Rights of Children

UNICEF periodic materials

**B 017 COLLECTIVE VIOLENCE AND CRIMINAL JUSTICE SYSTEM*****Objectives of the course***

This is a crucial area of Indian development with which traditional, western, criminology is not overly preoccupied. Collective political violence (CPV) is the order of the day, whether it is agrarian (feudal) violence, or it is atrocities against untouchables, communal riots, electoral violence, police violence (encounters), political violence by militant and extremist groups, gender-based violence or violence involved in mercenary terrorism and its containment.

It is not very helpful in such contexts, to mouth the generalities such as "criminalization" or "lumpenization" of Indian politics. Closer scientific investigation of these phenomena is crucial, which should help us understand both the aetiology and the prognosis of CPV. Instead of political analysis the course should focus on a broader social understanding of the political economy of law in India. Each specific form of violence will be examined with a view to identifying the course of its evolution, the state-law response policies of management of sanctions, compensation and rehabilitation of victims of violence, social and political costs. The growth of police and paramilitary forces will also, in this context, be an object of study. Primary materials here will be governmental and citizen investigative reports. The emphasis of the course will be on fashioning overall democratic understanding and responses to meet this problem.

The following syllabus prepared with this perspective will be spread over a period of one semester.

***Syllabus*****1. Introductory**

- 1.1. Notions of "force", "coercion", "violence"
- 1.2. Distinctions: "symbolic" violence, "institutionalised" violence, "structural violence"
- 1.3. Legal order as a coercive normative order
- 1.4. Force-monopoly of modern law
- 1.5. "Constitutional" and "criminal" speech: Speech as incitement to violence

- 1.6. "Collective political violence" and legal order
- 1.7. Notion of legal and extra-legal "repression"

## **2. Approaches to Violence in India**

- 2.1. Religiously sanctioned structural violence: Caste and gender based
- 2.2. Ahimsa in Hindu, Jain, Buddhist, Christian, and Islamic traditions in India
- 2.3. Gandhiji's approach to non-violence
- 2.4. Discourse on political violence and terrorism during colonial struggle
- 2.5. Attitudes towards legal order as possessed of legitimate monopoly over violence during the colonial period

## **3. Agrarian Violence and Repression**

- 3.1. The nature and scope of agrarian violence in the 18-19 centuries India
- 3.2. Colonial legal order as a causative factor of collective political (agrarian) violence
- 3.3. The Telangana struggle and the legal order
- 3.4. The Report of the Indian Human Rights Commission on Arwal Massacre

## **4. Violence against the Scheduled Castes**

- 4.1. Notion of Atrocities
- 4.2. Incidence of Atrocities
- 4.3. Uses of Criminal Law to combat Atrocities or contain aftermath of Atrocities
- 4.4. Violence Against Women

## **5. Communal Violence**

- 5.1. Incidence and courses of "communal" violence
- 5.2. Findings of various commissions of enquiry
- 5.3. The role of police and para-military systems in dealing with communal violence
- 5.4. Operation of criminal justice system tiring, and in relation to, communal violence

**NOTE:** Choice of further areas will have to be made by the teacher and the taught

**Select bibliography**

U. Baxi, "Dissent, Development and Violence" in R. Meagher (ed.) *Law and Social Change: Indo-American Reflections* 92 (1988)

U. Baxi (ed.), *Law and Poverty: Critical Essays*, (1988)

A.R. Desai, (ed.) *Peasant Struggles in India*, (1979)

A.R. Desai, *Agrarian Struggles in India: After Independence* (1986) A.R. Desai, Violation of democratic Rights in India (1986)

D.A. Dhangare, *Peasant Movement in India: 1920-1950* (1983)

Ranjit Guha, *Element any Aspects of Peasant Insurgency in Colonial India* (1983) Ranjit Guba, (ed,) *Subaltern Studies* Vol. 1-6 (1983-1988)

T. Honderich, *Violence for Equality* (1980)

Mark Juergensmeyer, "The Logic of Religious Violence: The Case of Punjab" *22 Contributions to Indian Sociology* 65 (1988)

Rajni Kothari, *State Against Democracy* (1987)

G. Shah, *Ethnic Minorities and Nation Building: Indian Experience* (1984)

K.S. Shukla, "Sociology of Deviant Behaviour," in 3 *ICSSR Survey of Sociology and Social Anthropology* 1969-1979 (1986)

**GROUP - C: BUSINESS LAW****C 018 LAW OF INDUSTRIAL AND INTELLECTUAL PROPERTY*****Objectives of the course***

The concept of intellectual property rights as developed in India cannot be divorced from the developments in the international arena as well as in the nation-to-nation relations. The impact of IPR regime on the economic front is emphasised in this paper. In particular, greater attention would be given here to the law relating to unfair and restrictive trade practices as affecting the regime of intellectual property rights. New areas of development, especially plant patenting and patenting of new forms of life (biotechnology) should receive special attention. Evidentiary aspects of infringement, and human right dimensions of the regime of intellectual property law will also be addressed.

The following syllabus prepared with this perspective will be spread over a period of one semester.

***Syllabus***

- 1. IPR and International Perspectives**
- 2. Trademarks and Consumer Protection (Study of UNCTAD report on the subject)**
- 3. The Legal Regime of Unfair Trade Practices and of Intellectual Industrial Property**
  - 3.1. United Nations approaches (UNCTAD, UNCITRAL)
  - 3.2. EEC approaches
  - 3.3. Position in U.S.
  - 3.4. The Indian situation.
- 4. Special Problems of the Status of Computer Software in Copyright and Patent Law: A Comparative Study.**
- 5. Biotechnology Patents:**
  - 5.1. Nature and types of biotechnology patents



- 5.2. Patent over new forms of life : TRIPS obligations
- 5.3. Plant patenting
- 5.4. Sui generis protection for plant varieties
- 5.5. Multinational ownership
- 5.6. Regulation of environment and health hazards in biotechnology patents
- 5.7. Indian policy and position.

## **6. Patent Search, Examination and Records:**

- 6.1. International and global patent information retrieval systems (European Patent Treaty).
- 6.2. Patent Co-operation Treaty( PCT )
- 6.3. Differences in resources for patent examination between developed and developing societies
- 6.4. The Indian situation

## **7. Special Problems of Proof of Infringement:**

- 7.1. Status of intellectual property in transit - TRIPS obligation - Indian position.
- 7.2. The evidentiary problems in action of passing off.
- 7.3. The proof of non-anticipation, novelty of inventions protected by patent law
- 7.4. Evidentiary problems in piracy : TRIPS obligation - reversal of burden of proof in process patent
- 7.5. Need and Scope of Law Reforms.

## **8. Intellectual Property and Human Right**

- 8.1. Freedom of speech and expression as the basis of the regime of intellectual property right - copyright protection on internet - WCT (WIPO Copyright Treaty, 1996).
- 8.2. Legal status of hazardous research protected by the regime of intellectual property law.
- 8.3. Human right of the impoverished masses intellectual property protection of new products for healthcare and food security
- 8.4. Traditional knowledge - protection- biodiversity convention- right of indigenous people.

**Select bibliography**

Special attention should be given to literature of the U.N. System, WIPO and the UNESCO.

Terenee P. Stewart (ed.), *The GATT Uruguay Round: A Negotiating History (1986-1994) the End Game (Part - 1)*(1999), Kluwer

Iver P. Cooper, *Biotechnology and Law* (1998), Clerk Boardman Callaghan, New York.

David Bainbridge, *Software Copyright Law* (1999), Butterworths

Sookman, *Computer Law* (1998), Carswell

Carlos M. Correa(ed.), *Intellectual Property and International Trade* (1998), Kluwer

*Patent Co-operation Treaty Hand Book* (1998), Sweet and Maxwell

Christopher Wadlow, *The Law Of Passing-Off* (1998), Sweet and Maxwell

W.R.Cornish, *Intellectual Property Law* (1999), Sweet and Maxwell

**C 019 LEGAL REGULATION OF ECONOMIC ENTERPRISES*****Objectives of the course***

After independence we have placed greater emphasis on the growth of our economy. The focus is on growth, both in public and private sectors, so as to cope up with the problems of population explosion. We have found that there is now almost a circle from laissez faire to welfare state and again back to laissez faire. Adoption of the concept of global economy in the presence of the socialistic perspectives in the Constitution presents a dilemma. The trends of liberalisation starting in the early nineties and continuing to this day bring a shift in focus of regulation in diverse fields of economic activities.

This course is designed to acquaint the students of the eco-legal perspectives and implications of such developments. It will comprise of about 42 units of one-hour duration each spread over a period of one semester.

***Syllabus*****1. The Rationale of Government Regulation**

- 1.1. Constitutional perspectives
- 1.2. The new economic policy - Industrial policy resolutions, declarations and statements
- 1.3. The place of public, small scale, co-operative, corporate, private and joint sectors - in the changing context
- 1.4. Regulation of economic activities
  - 1.4.1. Disclosure of information
  - 1.4.2. Fairness in competition
  - 1.4.3. Emphasis on consumerism

**2. Development and Regulation of Industries****3. Take-over of Management and Control of Industrial Units**

- 4. Sick Undertakings: Nationalisation or Winding Up?**
- 5. Licensing Policy and Legal Process - Growing Trends of Liberalisation**
- 6. Deregulation of essential commodities: developmental sign or a social mishap?**
- 7. Financial Services : Changing Techniques of Regulation**
- 8. Critical Issues Regarding the Capital Issues**
  - 8.1. Equity and debt finance
  - 8.2. Global depositories
  - 8.3. De-materialised securities
- 9. Problems of Control and Accountability: Regulation of Hazardous Activity**
  - 9.1. Mass disaster and environmental degradation : legal liability and legal remedies
  - 9.2. Public Liability Insurance : adequacy
  - 9.3. Issues in zoning and location of industrial units
- 10. Special Aspects of Legal Regulation of Select Public Enterprises**

(Universities may select some such representative public enterprises for transport, mining and energy).

  - 10.1. Telecom Regulatory Authority
  - 10.2. Insurance Regulatory Authority
  - 10.3. Broadcasting Regulatory Authority
- 11. Legal Regulation of Multi-Nationals**
  - 11.1. Collaboration agreements for technology transfer
  - 11.2. Development and regulation of foreign investments
    - 11.2.1. Investment in India : FDIs and NRIs
    - 11.2.2. Investment abroad

**Select bibliography**

S.Aswani Kumar, *The Law of Indian Trade Mark* (2001), Commercial Law House, Delhi.

Industrial Policy Resolutions of 1948,1956, 1991

Industrial Licensing Policy 1970,1975

Industrial Policy Statements 1973,1977, 1980

Reports of Committees on Public Undertakings of Parliament.

Industries (Development and Regulation) Act, 1951

U. Baxi (ed.), *Inconvenient Forum and Convenient Catastrophe The Bhopal Case*, (1986) U. Baxi & T. Paul (eds.), *Mass Disasters and Multinational Liability* (1986)

U. Baxi & A. Dhandba, *Valiant Victims and Lethal Litigation: The Bhopal Case* (1989)

Indian Law Institute, *Law of international Trade Transactions*, (1973)

## **C 020 LAW OF EXPORT IMPORT REGULATION**

### ***Objectives of the course***

After independence India has embarked upon all round efforts to modernise her economy through developmental ventures. Greater and greater emphasis is placed on increase of production in both industrial and agricultural sectors. Besides, there was the ever-pressing need for raising capital for investment in certain basic and key industries. All these required a considerably high rate of investment of capital. The process of modernisation necessitated the adoption of newer technologies for industry and agriculture. These technologies had to be borrowed from other developed countries. This, in turn, needed foreign exchange which could be earned by the increased exports of goods and raw materials from India.

The need for accelerating the export trade of India's developing economy can hardly be over emphasised. Export earnings enable a developing country to finance its massive requirements of growth, to maintain its essential imports and thereby stimulate the process of its economic developments. In the words of Prof. V.K. R.V. Rao: "In fact, expansion of exports may well be described as an integral part of the development process, neglect of which can only be at the peril of development itself".

Increasing exports have been necessitated to meet the growing needs of defence. India is a country rich in natural resources. One of the approaches to combat its economic backwardness could be in large-scale production and in maximization of its exports.

Import and export of goods and raw materials is a complex, complicated and intricate activity. It involves elaborate economic, fiscal, budgetary and monetary policy considerations. Export and Import control policy is also closely connected with country's balance of payment position.

The detailed procedures for imports and exports are provided in the Hand Book. The Union Government used to declare its import and export policy for a three-year period. At present they declare the policy for five years. The controls on exports and imports are closely connected with the Foreign Trade Regulation Act 1992.

This course is designed to acquaint the students about the parameters of legal controls on imports and exports.

The following syllabus prepared with these objectives will comprise about 42 units of one-hour duration each spread over a period of one semester.

### **Syllabus**

#### **1. Introduction**

- 1.1. State control over import and export of goods - from rigidity to liberalisation.
- 1.2. Impact of regulation on economy.

#### **2. The Basic Needs of Export and Import Trade**

- 2.1. Goods
- 2.2. Services
- 2.3. Transportation

#### **3. International Regime**

- 3.1. WTO agreement
- 3.2. WTO and tariff restrictions
- 3.3. WTO and non-tariff restrictions
- 3.4. Investment and transfer of technology
- 3.5. Quota restriction and anti-dumping
- 3.6. Permissible regulations
- 3.7. Quarantine regulation
- 3.8. Dumping of discarded technology and goods in international market
- 3.9. Reduction of subsidies and counter measures.

#### **4. General Law on Control of Imports and Exports**

- 4.1. General scheme

- 4.2. Legislative control
  - 4.2.1. Power of control : Central government and RBI
  - 4.2.2. Foreign Trade Development and Regulation Act 1992
  - 4.2.3. Restrictions under customs law
    - 4.2.3.1. Prohibition and penalties
- 4.3. Export-Import formulation : guiding features
  - 4.3.1. Control under FEMA
  - 4.3.2. Foreign exchange and currency
    - 4.3.2.1. Import of goods
    - 4.3.2.2. Export promotion councils
    - 4.3.2.3. Export oriented units and export processing zones

## **5. Control of Exports**

- 5.1. Quality control
- 5.2. Regulation on goods
- 5.3. Conservation of foreign exchange
  - 5.3.1. Foreign exchange management
  - 5.3.2. Currency transfer
  - 5.3.3. Investment in foreign countries

## **6. Exim Policy : Changing Dimensions**

- 6.1. Investment policy : NRIs, FII (foreign institutional investors), FDIs
- 6.2. Joint venture
- 6.3. Promotion of foreign trade
- 6.4. Agricultural products
- 6.5. Textile and cloths



- 6.6. Jewellery
- 6.7. Service sector

## **7. Law Relating to Customs**

- 7.1. Prohibition on importation and exportation of goods
- 7.2. Control of smuggling activities in export-import trade
- 7.3. Levy of, and exemption from, customs duties
- 7.4. Clearance of imported goods and export goods
- 7.5. Conveyance and warehousing of goods

## **8. Regulation on Investment**

- 8.1. Borrowing and lending of money and foreign currency
- 8.2. Securities abroad - issue of
- 8.3. Immovable property - purchase abroad
- 8.4. Establishment of business outside
- 8.5. Issue of derivatives and foreign securities - GDR(global depositories receipts), ADR (American depository receipts) and Uro
- 8.6. Investment in Indian banks
- 8.7. Repatriation and surrender of foreign securities

## **9. Technology transfer**

- 9.1. Restrictive terms in technology transfer agreements
- 9.2. Automatic approval schemes

**Select bibliography**

Government of India, Handbook of Import Export Procedures, (Refer to the latest edition)

Government of India *Import and Export Policy* (1997 -2002)

The Students should consult the relevant volumes of the *Annual Survey of Indian Law*, Published by the Indian law Institute, New Delhi.

Foreign Trade Development and Regulation Act 1992 and Rules

Foreign Exchange Management Act 1999

Marine Products Export Development Authority Act 1972

Customs Manual (Latest edition)

Final Treaty of GATT, 1994.

**C 021 BANKING LAW*****Objectives of the course***

A vitally important economic institution the banking system is deeply influenced by socio-political and economic changes. The emerging changes in India, particularly after the initiation of the planning process as an instrument of rapid economic development had moulded and affected the banking structure, policies, patterns and practices. A significant development in the banking system is diversification in banks financing. The commercial banks entered 'into the field of wide ranging financial assistance to industry, both large and small scale, requiring the need for social control of the banking system eventually leading to the nationalisation of banks.

The conventional banking system, found to be deficient for planned developmental purposes, paved the way for developmental banking. The fag end of the last millennium witnesses influx of foreign banking companies into India and a shift in the banking policy as part of the global phenomenon of liberalisation. The legal system is adopting itself into the new mores.

This course is designed to acquaint the students with the conceptual and operational parameters of banking law, the judicial interpretation and the new and emerging dimensions of the banking system.

The course will comprise of about 42 units of one-hour duration each spread over a period of one semester.

***Syllabus*****1. Introduction**

- 1.1. Nature and development of banking
- 1.2. History of banking in India and elsewhere -indigenous banking-evolution of banking in India - different kinds of banks and their functions.
- 1.3. Multi-functional banks - growth and legal issues.

**2. Law Relating to Banking Companies in India**

- 2.1. Controls by government and its agencies.

- 2.1.1. On management
- 2.1.2. On accounts and audit
- 2.1.3. Lending
- 2.1.4. Credit policy
- 2.1.5. Reconstruction and reorganisation
- 2.1.6. Suspension and winding up
- 2.2. Contract between banker and customer: their rights and duties

### **3. Social Control over Banking**

- 3.1. Nationalization
- 3.2. Evaluation: private ownership, nationalisation and disinvestment
- 3.3. Protection of depositors
- 3.4. Priority lending
- 3.5. Promotion of under privileged classes

### **4. Deposit Insurance**

- 4.1 The Deposit Insurance Corporation Act 1961: objects and reasons
  - 4.1.2 Establishment of Capital of DIC
  - 4.1.3 Registration of banking companies insured banks, liability of DIC to depositors
  - 4.1.4 Relations between insured banks, DIC and Reserve Bank of India

### **5. The Central Bank**

- 5.1. Evolution of Central Bank
- 5.2. Characteristics and functions
- 5.3. Economic and social objectives
- 5.4. The Central Bank and the State - as bankers' bank
- 5.5. The Reserve Bank of India as the Central Bank

- 5.5.1. Organisational structure
- 5.6. Functions of the RBI
  - 5.6.1. Regulation of monetary mechanism of the economy
    - 5.6.1.1. Credit control
    - 5.6.1.2. Exchange control
    - 5.6.1.3. Monopoly of currency issue
    - 5.6.1.4. Bank rate policy formulation
  - 5.7. Control of RBI over non-banking companies
    - 5.7.1. Financial companies
    - 5.7.2. Non-financial companies

## **6. Relationship of Banker and Customer**

- 6.1. Legal character
- 6.2. Contract between banker and customer
- 6.3. Banker's lien
- 6.4. Protection of bankers
- 6.5. Customers
  - 6.5.1. Nature and type of accounts
  - 6.5.2. Special classes of customers - lunatics, minor, partnership, corporations, local authorities
- 6.6. Banking duty to customers
- 6.7. Consumer protection: banking as service

## **7. Negotiable Instruments**

- 7.1. Meaning and kinds
- 7.2. Transfer and negotiations
- 7.3. Holder and holder in due course

7.4. Presentment and payment

7.5. Liabilities of parties

## **8. Lending by Banks**

8.1. Good lending principles

8.1.1. Lending to poor masses

8.2. Securities for advances

8.2.1. Kinds and their merits and demerits

8.3. Repayment of loans : rate of interest, protection against penalty

8.4. Default and recovery

8.4.1. Debt recovery tribunal

## **9. Recent Trends of Banking System in India**

9.1. New technology

9.2. Information technology

9.3. Automation and legal aspects

9.4. Automatic teller machine and use of internet

9.5. Smart card

9.6. Use of expert system

9.7. Credit cards

## **10. Reforms in Indian Banking Law**

10.1. Recommendations of committees: a review

### ***Select bibliography***

Basu, A. *Review of Current Banking Theory and Practise* (1998) Mac millan

M. Hapgood (ed.), *Pagets' Law of Banking* (1989) Butterworths, London

R. Goode, *Commercial Law*, (1995) Penguin, London.

Ross Cranston, *Principles of Banking Law* (1997) Oxford.

L.C. Goyle, *The Law of Banking and Bankers* (1995) Eastern

M.L. Tannan, *Tannan's Banking Law and Practice in India* (1997) India Law House, New Delhi, 2 volumes

K.C. Shekhar, *Banking Theory and Practice* (1998) UBS Publisher Distributors Ltd. New Delhi.

M. Dassel, S. Isaacs and G. Pen, E.C. *Banking Law*, (1994) Lloyds of London Press, London

V. Conti and Hamai (eds.), *Financial Markets' Liberalization and the Role of Banks'*, Cambridge University Press, Cambridge, (1993).

J. Dermine (ed.), *European Banking in the 1990s'* (1993) Blackwell, Oxford.

C. Goodhart, *The Central Bank and the Financial System* (1995), Macmillan, London

S. Chapman, *The Rise of Merchant Banking* (1984) Allen Unwin, London

K. Subrahmanyam, *Banking Reforms in India* (1997) Tata McGraw Hill, New Delhi.

Subodh Markandeya and Chitra Markandeya, *Law Relating to Foreign Trade in India: Being a Commentary on the Foreign Trade, (Development and Regulation) Act 1992*, Universal Law Publishing Co. Pvt. Ltd. Delhi.

R.S. Narayana, *The Recovery of Debts due to Banks and Financial Institutions Act, 1993 (51 of 1993)*, Asia Law House, Hyderabad.

M.A. Mir, *The Law Relating to Bank Guarantee in India* (1992), Metropolitan Book, New Delhi.

Anthony Pierce, *Demand Guarantees in International Trade* (1993) Sweet & Maxwell,

Ross Cranston (ed.) *European Banking Law: The Banker-Customer Relationship* (1999) LLP, London

Mitra, *The Law Relating to Bankers' Letters of Credit and Allied Laws*, (1998) University Book Agency, Allahabad.

R.K. Talwar, *Report of Working Group on Customer Service in Banks*

Janakiraman Committee Report on Securities Operation of Banks and Financial Institution (1993)

Narasimham Committee report on the Financial System (1991)- Second Report (1999)

**C 022 INSURANCE LAW*****Objectives of the course***

As early as in 1601 one finds an excellent exposition of the insurance idea expressed in these words of an Act of British Parliament "the loss lighteth rather easily, upon many than heavily upon few". The insured person transfers from his own shoulders to the insurers, who, in return for agreeing to assume a potential risk of loss receive a payment known as premium. The insurers rely on the probability that only some of the losses, they insure against will in fact occur within any given period. They calculate, therefore, that they will be left with a profit. The insurer, on the other hand, is better able to risk his capital in trade since he knows that certain events which he cannot control, such as fire, shipwreck, will not cause him to lose his investment.

The insurance idea is an old-institution of transactional trade. The age old form of insurance was the marine insurance. There is nothing like disaster to set men's minds to work. Consequently, in due course of time fire and life insurance, made their appearance. Within the last hundred years the insurance principle is being extended wider. Today one finds insurance cover for accidents, motor vehicles, glass, live stock, crop, burglary and various other disasters.

Insurance is a device not to avert risks, calamities and disasters; but to mitigate their rigours and financial losses. The function of insurance is to spread such loss arising from risks of life over a large number of persons.

The operational framework of insurance idea is provided by the general principles of contract. The insurance policy, being a contract, is subject to all the judicial interpretative techniques. Besides, the insurance idea has a compensatory justice component. This brings it in the arena of the law of tort as well. It is even suggested that a fully grown and developed law of insurance may, if not totally displace, decrease the significance of the law of tort.

This course is designed to acquaint the students with the conceptual and operational parameters of insurance law in the context of the development of the general principles of law and judicial interpretation to inform the students about the use of law for the establishment of "just" order in insurance and to develop the appreciative and evaluative faculties of the students.



The following syllabus prepared with the above perspective will be spread over a period of one semester

## **Syllabus**

### **1. Introduction**

- 1.1. Nature of insurance contract, various kinds of insurance, proposal, policy, parties, consideration, need for utmost good faith, insurable interest, indemnity
- 1.2. Insurance policy, law of contract and law of torts-future of insurance : need, importance and place of insurance
- 1.3. Constitutional perspectives- the Entries 24,25,29,30,47 of List 1 Union List; 23, 24, of List III

### **2. General Principles of Law of Insurance**

- 2.1. Definition, nature and history
- 2.2. The risk - commencement, attachment and duration
- 2.3. Assignment and alteration
- 2.4. Settlement of claim and subrogation
- 2.5. Effect of war upon policies

### **3. Indian Insurance Law: General**

- 3.1. History and development
- 3.2. The Insurance Act 1938 and the Insurance Regulatory Authority Act 2000
- 3.3. Mutual insurance companies and cooperative life insurance societies
- 3.4. Double Insurance and re-insurance

### **4. Life Insurance**

- 4.1. Nature and scope
- 4.2. Event insured against life insurance contract
- 4.3. Circumstances affecting the risk

- 4.4. Amounts recoverable under life policy
- 4.5. Persons entitled to payment
- 4.6. Settlement of claim and payment of money

## **5. Marine Insurance**

- 5.1. Nature and Scope
- 5.2. Classification of marine policies
  - 5.2.1. The Marine Insurance Act, 1963
  - 5.2.2. Marine insurance
  - 5.2.3. Insurable interest, insurable value
  - 5.2.4. Marine insurance policy - condition. - express warranties construction of terms of policy
  - 5.2.5. Voyage-deviation
  - 5.2.6. Perils of the sea
  - 5.2.7. Assignment of policy
  - 5.2.8. Partial laws of ship and of freight, salvage, general average, particular charges
  - 5.2.9. Return of premium

## **6. Insurance Against Accidents**

- 6.1. The Fatal Accidents Act, 1855
  - 6.1.1. Objects and reasons
  - 6.1.2. Assessment of compensation
  - 6.1.3. Contributory negligence,
  - 6.1.4. Apportionment of compensation and liability
- 6.2. The Personal Injuries (Compensation insurance) Act 1963
  - 6.2.1. Compensation payable under the Act
  - 6.2.2. Compensation insurance scheme under the Act-Compulsory insurance

## **7. Property Insurance**

- 7.1. Fire insurance
- 7.2. The Emergency Risks (Factories) Insurance
- 7.3. The Emergency Risks (Goods) Insurance
- 7.4. Policies covering risk of explosion
- 7.5. Policies covering accidental loss, damage to property
- 7.6. Policies covering risk of storm and tempest
- 7.7. Glass-plate policies
- 7.8. Burglary and theft policies
- 7.9. Live stock policies
- 7.10. Goods in transit insurance
- 7.11. Agricultural insurance

## **8. Insurance Against Third Party Risks**

### 8.1 The Motor Vehicles Act, 1988

#### 8.1.1 Nature and scope

8.1.2 Effect of insolvency or death on claims of insolvency and death of parties, certificate of insurance

8.1.3 Claims tribunal: constitution, functions, application for compensation, procedure, powers and award

### 8.2 Liability Insurance

#### 8.2.1 Nature and kinds of such insurance

#### 8.2.2 Public liability insurance

#### 8.2.3 Professional negligence insurance

## **9. Miscellaneous Insurance Schemes: New Dimensions**

### 9.1 Group life insurance

### 9.2 Mediclaim, sickness insurance

**Select bibliography**

John Hanson and Christopals Henly, *All Risks Property Insurance* (1999), LLP Asia, Hongkong.

Peter Mac Donald Eggers and Patric Foss, *Good Faith and Insurance Contracts* (1998) LLP Asia, Hongkong

Banerjee, *Law of Insurance* (1994), Asia Law House, Hyderabad.

Mitra B.C, *Law Relating to Marine Insurance* (1997) Asia Law House, Hyderabad

JCB Gilmar and Mustill, *Arnold on the Law of Marine Insurance*, (1981), Sweet & Maxwell

Birds, *Modern Insurance Law* (1997) Sweet & Maxwell

Colinvaux's *Law of Insurance* (1997), Sweet & Maxwell

*O'Mary on Marine Insurance* (1993), Sweet & Maxwell.

International Labour Office, *Administration Practice of social Insurance* (1985)

E.R. Hardy Ivamy, *General Principles of insurance Law* (1979)

Edwin W. Patterson, *Cases and Materials on Law of insurance* (1955)

M. N. Sreenivasan *Law and the Life Insurance Contract* (1914)

**C 023 CORPORATE FINANCE*****Objectives of the course***

Industrialisation has played, and has to play, a very vital role in the economic development of India. In the post independent era, industrial development is regarded, and hence employed, as principal means in the strategy for achieving the goal of economic and social justice envisioned in the Constitution. Corporations, both public and private, are viewed as a powerful instrument for development. In a developing society like India enormous varieties of consumer goods are manufactured or produced. Obviously, the situation raises the issues of procuring, utilising and managing the finances. For this purpose a science of financial management techniques has been evolved. The faculties of commerce, business and management studies have since last decades started to impart instruction so as to turn out sufficiently well equipped and adequately trained financial personnel. However, the legal and juristic aspects of corporate finance have been more or less not effectively taken care of.

In view of the above perspectives the broad objectives of this course may be formulated as follows-

- (i) To understand the economic and legal dimensions of corporate finance in the process of industrial development in establishing social order in the context of constitutional values
- (ii) To acquaint the students with the normative, philosophical and economic contours of various statutory rules relating to corporate finance
- (iii) To acquaint the students with the organisation, functions, lending, and recovery procedures, conditions of lending and accountability of international national and state financing institutions and also of commercial banks; and
- (iv) To acquaint the students with the process of the flow and outflow of corporate finance.

The following syllabus prepared with the above perspective will be spread over a period of one semester.

***Syllabus*****1. Introduction**

- 1.1. Meaning, importance and scope of corporation finance
- 1.4. Capital needs - capitalisation - working capital - securities-borrowings-deposits debentures

- 1.5. Objectives of corporation finance - profit maximisation and wealth maximisation
- 1.6. Constitutional perspectives - the entries 37, 38, 43, 44, 45, 46, 47, 52, 82, 85, and 86 of List 1 - Union List; entry 24 of List 11 - State List.

## **2. Equity Finance**

- 2.1. Share capital
  - 2.1.1. Prospectus - information disclosure
  - 2.1.2. Issue and allotment
  - 2.1.3. Shares without monetary consideration
  - 2.1.4. Non-opting equity shares

## **3. Debt Finance**

- 3.1. Debentures
  - 3.1.2. Nature, issue and class
  - 3.1.3. Deposits and acceptance
  - 3.1.4. Creation of charges
    - 3.1.4.5. Fixed and floating charges
  - 3.1.5. Mortgages
  - 3.1.6. Convertible debentures

## **4. Conservation of Corporate Finance**

- 4.1. Regulation by disclosure
- 4.2. Control on payment of dividends
- 4.3. Managerial remuneration
- 4.4. Payment of commissions and brokerage
- 4.5. Inter-corporate loans and investments
- 4.6. Pay-back of shares
- 4.7. Other corporate spending

**5. Protection of creditors**

- 5.1. Need for creditor protection
  - 5.1.1. Preference in payment
- 5.2. Rights in making company decisions affecting creditor interests
- 5.3. Creditor self-protection
  - 5.3.1. Incorporation of favourable terms in lending contracts
  - 5.3.2. Right to nominate directors
- 5.4. Control over corporate spending

**6. Protection of Investors**

- 6.1. Individual share holder right
- 6.2. Corporate membership right
- 6.3. Derivative actions
- 6.4. Qualified membership right
- 6.5. Conversion, consolidation and re-organisation of shares
- 6.6. Transfer and transmission of securities
- 6.7. Dematerialisation of securities

**7. Corporate Fund Raising**

- 7.1. Depositories - IDR(Indian depository receipts), ADR(American depository receipts), GDR(Global depository receipts)
- 7.2. Public financing institutions - IDBI, ICICI, IFC and SFC
- 7.3. Mutual fund and other collective investment schemes
- 7.4. Institutional investments - LIC, UTI and banks
- 7.5. FDI and NRI investment - Foreign institutional investments (IMF and World bank)

**8. Administrative Regulation on Corporate Finance**

- 8.1. Inspection of accounts
- 8.2. SEBI

- 8.3. Central government control
- 8.4. Control by registrar of companies
- 8.5. RBI control

### **Select bibliography**

Alastair Hundson, *The Law on Financial Derivatives* (1998), Sweet & Maxwell

Eil's Ferran, *Company Law and Corporate Finance* (1999), Oxford.

Jonathan Charkham, *Fair shares: the Future of Shareholder Power and Responsibility* (1999), Oxford.

Ramaiya A, *Guide to the Companies Act* (1998), Vol. I, II and III.

H.A.J. Ford and A.P. Austen, *Fords' principle of Corporations Law* (1999) Butterworths.

J.H. Farrar and B.M. Hanniyan, *Farrar's company Law* (1998) Butterworths

Austen R.P., *The Law of Public Company Finance* (1986) LBC

R.M. Goode, *Legal Problems of Credit and Security* (1988) Sweet and Maxwell

Altman and Subrahmanyam, *Recent Advances in Corporate Finance* (1985) LBC

Gilbert Harold, *Corporation Finance* (1956)

Henry E. Hoagland, *Corporation Finance* (1947)

Maryin M. Kristein, *Corporate Finance* (1975)

R.C. Osborn, *Corporation Finance* (1959)

S.C. Kuchhal *Corporation finance : Principles and Problems* (6th ed. 1966)

V.G. Kulkarni, *Corporate Finance* (1961)

Y.D. Kulshreshta, *Government Regulation of Financial management of Private Corporate Sector in India* (1986)

Journals - Journal of Indian Law Institute, Journal of Business Law, Chartered Secretary, Company Law Journal, Law and Contemporary Problems.

Statutory Materials - Companies Act and laws relating SEBI, depositories, industrial financing and information technology.



**GROUP-D: LABOUR, CAPITAL AND LAW****D 024 COLLECTIVE BARGAINING*****Objectives of the Course***

In a rapidly industrializing country like India, balancing the conflicting interests in the industrial sector is necessary for the sustainable growth of economy. It is conspicuous that the social, economic and political forces influence the process of collective bargaining in more ways than one. Conversely, the process makes a great impact upon many factors of our socio-economic system. Necessarily, norms and standards are to be evolved in order to bring our industrial peace. The limits, the scope and the conceptual dimensions of collective bargaining have to be learned in a detailed manner and with a comparative emphasis wherever possible.

The following syllabus prepared with these perspectives will, to spread over a period of one semester.

***Syllabus*****1. Freedom of Organization**

- 1.1. International norms: right to association of industrial and unorganised labour 1.2  
Right to association in India: the constitutional and legal aspects

**2. Collective Bargaining Conceptual and Processual Issues**

- 2.1. Conception of collective bargaining: a comparative appraisal
- 2.2. Methodological aspects

**3. Bargaining Process**

- 3.1. Empirical Indian studies
- 3.2. Types of bargaining: plant level, industry level and national level

**4. Legal Control of Collective Bargaining Endeavours**

- 4.1. Strike (pen-down, tool down, go slow, work to rule, stay in, sit in, picketing)
- 4.2. Gherao
- 4.3. Lock out

**5. Factors Affecting on Collective Bargaining**

- 5.1. Multi-unionism
- 5.2. Other factors
- 5.3. Conditions for successful functioning: comparative analysis

**6. Economic Implications of Collective Bargaining**

- 6.1. Wage policy
- 6.2. Work discipline
- 6.3. National income and profit

**7. Collective Bargaining and Political Processes**

- 7.1. Problem of outsiders in the union
- 7.2. Affiliation of unions to political parties
- 7.3. Policies towards workers, participation in management - role of state.

**Select bibliography**

Gillian S.Morris and Timothy J.Archer, *Collective Labour Law* (2000), Oxford

Nick Humphrey, *Trade Union Law* (1997), Blackstone, London

John Bowers and Simon Hentyball, *Text book on Labour Law* (1998), Blackstone, London

Stephen Dery and Richard Mitchell, *Employment Relations Individualisation and Union Exclusion* (1999), Blackston,London.

Roger Blanpain, Chris Engels(Eds.), *Comparative Labour Law and Industrial Relations in Industrialised Market Economies* (1999) Kluver

Indian Law Institute, *Labour Law and Labour Relations*, (1987)

ILO, *Collective Bargaining*

ILO, *Collective Bargaining in Industrialised Market Economies*

Mary Sur, *Collective Bargaining* (1965)

R.W. Rideout, *Principles of Labour Law*, Chs. 8,9 and 10 (1983)

Otto Kahn-Freund, *Labour and the Law*, (1977)

A.V. Rajagopalan, "Approaches to collective Bargaining - Intricacies" 1982 Vol. II *Labour Law Notes* P.J. 42

B.R. Patil, "Sectionalised Bargaining in Textile Industry in Coimbatore" 20 *Indian Journal of Industrial Relations* 44. (1985)

Elias T. Ramos, "Growth of Collective Bargaining in the Philippines, 1953-74", 14 *Indian Journal of Industrial Relations* 559 (1987)

T.O. Ekeehukwu, "Collective Bargaining and Process of Settling Industrial Disputes in Nigeria" 18 *Indian Journal of industrial Relations* 607 (1983)

Y.R.K. Reddy, "Determination of collective Bargaining Agency Search for a Procedure" 14 *Indian Journal of Industrial Relations* 73 (1978)

Sahab Dayat "Revival of Collective Bargaining in India: Some Recent Evidence" 17 *Indian Journal of industrial Relations* 329 (1982)

**D 025 INDUSTRIAL ADJUDICATION*****Objectives of the course***

The appropriate governments hold the reins of industrial adjudication. The scope and extent of discretion in referring a dispute as well as in implementing a decision present complex questions and are areas of interesting study. What are the international norms relating to industrial adjudication? Are they followed in India? Is the statutory silence on the criteria for adjudication conducive to bringing industrial peace? How did the process of judicial review help evolving significant formulations on certain core areas of industrial relations despite the statutory prescription of finality of industrial adjudication? These problems are to be studied from a critical angle and with a comparative thrust on development in other common law countries.

The following syllabus prepared with this perspective will be spread over a period of one semester.

***Syllabus*****1. Constitutional Perspectives and Foundations**

- 1.1. Constitutional authorization for institutional framework (legislative entries, Article 323. B)
- 1.2. Constitutional goals protecting capital and labour enshrined in the fundamental rights and duties and the directive principles

**2. Access to Adjudicatory Justice**

- 2.1. Threshold control by government: reference
  - 2.1.1. Extent of governmental discretion: time, expediency and matters for adjudication
  - 2.1.2. Limitations on discretion
  - 2.1.3. Political overtones and pressure tactics
  - 2.1.4. Judicial restraint or liberalism, the ideal juristic approach
  - 2.1.5. Direct access to adjudicatory authority by employer and employee: problems and perspectives

- 2.2. International norms
- 2.3. Comparative overview of access to adjudicatory process in the U.K. and Australia

### **3. Adjudicatory Process**

- 3.1. Industrial adjudication as a modality of harmonising interests of capital and labour
- 3.2. Impact on employer's prerogatives and employee's rights
- 3.3. Silence of the statute on criteria for adjudication
- 3.4. Equity and justice as guiding principle
- 3.5. Industrial conflicts and the vistas of decisional process: a comparative probe
- 3.6. Post-natal control by government over adjudication

### **4. Judicial Review of the Adjudicatory Process**

- 4.1. Finality of decision making in adjudicatory process: a myth
- 4.2. Jurisprudence of industrial adjudication: formulations through constitutional remedies of writs and appeal
  - 4.2.1. Jurisdiction of the adjudicatory authority in respect of dismissal of workmen
  - 4.2.2. Juridical formulation of the concept of industry
  - 4.2.3. Retrenchment the widening dimensions through decisional law.

### **Select Bibliography**

Malhotra, *The Law of Industrial Disputes*, Vol. 1, (1988).

ILL, *Labour Law and Labour Relations*, Parts 11, IV, VI, VII, IX, and XI.

Rideout, *Principles of labour Law* (1983), Ch. 4, 5 & 6.

Russel A. Smith, *et al. Collective Bargaining and Labour Arbitration*, (1970) Part-II.

Robert A. Gorman, *Basic Text on Labour Law*, Ch. 23, 24 and 25 (1976).

Relevant portions of the *Report of the National Commission on labour*.

I.P. Massey, "A legal Conundrum in Labour Law", 14 JILI 386 (1972).

S.C. Srivastava, "Voluntary Labour Arbitration: Law and Policy", 23, JILI 349, (1981).

Arjun P. Aggarwal "Conciliation and Arbitration of Labour disputes in Australia" *J.I.L.I* 30 (1966).

D.C. Jain, "Meaning of Industry: Wilderness of Conjectural Justice" (1986) 3. S.C.C. Journal 1.

T.N. Singh, "Futuristic Industrial Jurisprudence a Poser", (1986) 3 S.C.C. Journal 15.

Chaturvedi.R.G., *Law and Procedure of Departmental Enquiries and Disciplinary Actions* (1997)

**D 026 LAW RELATING TO CIVIL SERVANTS*****Objectives of the course***

Civil servants constitute a separate species of the labour force in India and are given rights as well as liabilities under the Constitution. Inevitably, the constitutional dimensions of these rights and obligations are to be studied in this course. The laws and regulations relating to their recruitment and promotion, conditions of service and the dispute settlement mechanisms form an important component of the study. The problems that civil servants are facing in service are to be highlighted and critically assessed. Examination of special category services such as judicial services, the Supreme Court High Court personnel and All India Services should also form part of the course.

The following syllabus prepared with this perspective will be spread over the period of one semester.

***Syllabus*****1. Civil Servants: Constitutional Dimensions**

- 1.1. Civil servants and the fundamental rights - Historical and comparative perspectives
- 1.2. Equality and protective discrimination: principles and practices
- 1.3. Service Regulations - the constitutional bases - formulation of service rules - doctrine of pleasure.
- 1.4. Limitations on doctrine of pleasure
  - 1.4.1. Action only be an authority not subordinate to the appointing authority
  - 1.4.2. Opportunity of being heard and its exceptions

**2. Recruitment and Promotion**

- 2.1. Central and state agencies for recruitment
- 2.2. Methods, qualification

**3. Conditions of Service**

- 3.1. Pay, dearness allowance and bonus: machinery for fixation and revision, Pay Commission
- 3.2. Kinds of leave and conditions of eligibility

- 3.3. Social security: provident fund, superannuation and retiral benefits, Medicare, maternity benefits, employment of children of those dying in harness, compulsory insurance
- 3.4. Civil and criminal immunities for action in good faith
- 3.5. Comparative evaluation with private sector
- 3.6. Comparative evaluation between the state government employees and the central government employees.
- 3.7. Consultation with Public Service Commission

#### **4. Civil Service: Amalgam of Principles, Compromises and Conflicts**

- 4.1. Neutrality - commitment dilemma, permanency, expertise and institutional decision making
- 4.2. Relaxation of age and qualification in recruitment, spoils system, seniority-cum merit recruitment and promotion.
- 4.3. Frequent transfers, education, of children, housing and accommodation
- 4.4. Civil service and politics, politicisation of government servants organisation and inter-union rivalry

#### **5. Special Categories of Services**

- 5.1. Judicial services: subordinate judiciary - judicial officers and servants: appointment and conditions of service
- 5.2. Officers and servants of the Supreme Court and the High Courts: recruitment, promotion, conditions of service and disciplinary action
- 5.3. All India services. objects, regulation of recruitment and conditions of service, disciplinary proceedings

#### **6. Settlement of Disputes over Service Matters**

- 6.1. Departmental remedies: representation, review, revision and appeal : role of service organisations
- 6.2. Remedy before the Administrative Tribunal: jurisdiction, scope and procedure - merits and demerits - exclusion of jurisdiction of courts
- 6.3. Judicial review of service matters -jurisdiction, of the Supreme Court and High Courts
- 6.4. Comparative position in England, United States and France.



**Select bibliography**

Students are to study the state laws and rules relating to service matters, make empirical investigations and write a paper on a significant problem.

ILLI (by Justice M. Rama Jois), *Services Under the State* (1987)

N. Narayanan Nair, *The Civil Servant under the Law and the Constitution* (1973)

K. K. Goyal, *Administrative Tribunals Act* (1985)

Seervai, *Constitutional Law of India*

Arjun P. Aggarwal "Freedom of Association in Public Employment", 14 JILLI (1972)

C.K. Kochukoshy, "All India Services-Their Role and Future", 1972 *I.J.P.A.* 67

Douglas Vass, "The Public Service in modern Society", 1983 *I.J.P.A.* 970

Z.M.S. Siddiqi, "Sanctions for the breach of contracts of service," 25 *J.1.L.I.* 359 (1983)

O.P. Motilal, "Compulsory Retirement", 1975 *I.J.P.A.* 247

D.S. Chopra, "Doctrine of Pleasure-its scope implication and limitations", 1975 *I.J.P.A.* 92

G. C. V. Subba Rao, "The O.N.G.C. Case and New Horizons in Public Services Law", 1975 *S.C.J.* 29

## **D 027 AGRICULTURAL LABOUR**

### ***Objectives of the course***

Agricultural labourers are the weaker sections of the labour force. They are neither organized nor are they enlightened and aware of their rights. This is true of agricultural labour in different regions. Their problems are different from those of the enlightened sections of labour. The traditional hurdles and ties standing in the way towards organisation of agricultural labour, the extent of application of the concept of collective bargaining in the field and the nature of welfare measures and dispute settlement systems available are to be examined in this paper. Naturally the laws and the practices where the state initiative has gone ahead are useful study enabling the students to suggest law reforms.

The following syllabus prepared with this perspective will be spread over a period of one semester.

### ***Syllabus***

#### **1. Agricultural Labour Relations**

- 1.1. Agricultural labourer - the concept
- 1.2. Early stages - the traditional ties between the landlord and the workers
  - 1.2.1. Non-exploitative fair relation with the feudal hegemony - share in products as wages, wages in kind, benefits in addition to wages, participation in festive occasion grievance redressal at landlord's residence
- 1.3. Exploitation of labour by the landlord
  - 1.3.1. Longer hours of work and lower wages: statutory regulation
  - 1.3.2. Bonded labour
  - 1.3.3. Indebtedness
- 1.4. Tribal labour in forest settlements
- 1.5. Migrant agricultural labour

#### **2. Trade Unionism and Collective Bargaining among Agricultural Labour**

- 2.1. Unorganised nature
- 2.2. Seasonal character

- 2.3. Political movements
- 2.4. State, regional and macro-regional disparities in collective bargaining, organisation and remuneration

### **3. Industrial "Hour Norms" in the Agricultural Labour Area**

- 3.1. Problems: multi-employer - employment situation
- 3.2. Workmen's compensation
- 3.3. Minimum wages

### **4. Labour Welfare**

- 4.1. Need for state initiative and support
- 4.2. Assessment of existing measures: statutory and non-statutory
- 4.3. Agrarian reform as agricultural labour protection measure - land to the tiller doctrine
- 4.4. Environmental impact of distribution of forest land among agricultural labourers
- 4.5. Futuristic perspectives

### **5. Dispute Settlement Mechanism**

- 5.1. Practices: settlements
- 5.2. Statutory measures: conciliation, adjudication
- 5.3. Comparative study of state practices and laws

### ***Select Bibliography***

V.V. Giri, *Labour Problems in Indian Industry* (1972)

R.R. Singh, *Labour Economics* (1971)

ILO, *Conventions and Recommendations*.

*Reports of National Commissions on Labour* 1969 (relevant portions)

State legislation and other welfare schemes relating to agricultural labour.

Abdul Aziz, "Unionizing Agricultural Labourers in India . A Strategy", 13 *Indian Journal of industrial Relations* 307 (1977)

A.B. Maily, "Forced Labour in India", 15 *Indian Journal of Industrial Relations* 77 (1979)

L.C. Sharma, "Forestry Sector Generate More Employment", 15 *Indian Journal of Industrial Relations* 577 (1979)

Kalpana Bardhan, "Rural employment Wages and Labour Market in India: A Survey of. Research 12 *Economic and Political Weekly* 1 June 25, 1977, 11 July 2, 1977 and 111 July 9, (1977)

Government of India, *Agricultural Labour Enquiry* (1954).

Government of India, *Report on the Second Agricultural Labour Enquiry* (1958).

Government of India, *Report on III Agricultural Labour Enquiry*

Bardhan & Rudra "Types of Labour Attachment in Agriculture", 15 *Economic and Political Weekly* August 30, 1980

National Institute of Rural Development, *Occasional Monograph 1-Agricultural Labour Unions* (1978).

*Report of the National Commission on Rural Labour* (1991) New Delhi, Govt. of India, Ministry of labour; See especially Volume 11, Part 11 for the Study Group Report.

## **D 028 Wages**

### ***Objectives of the course***

In this course constitutional ideals for decent wages and the judicial interpretations of these ideals are significant areas of study. More often than not the workers' demand for more wages leads to acute controversy. How have the statutory and decisional laws kept up the balance in the interest of industrial peace? Necessarily, the different facets of wages, the rationale of wage differentials, the impact of wage increase on the socio-economic set up and the national wage policy perspectives constitute important components of the study. All these problems are to be assessed in the light of the international norms laid down by the ILO.

The following syllabus prepared with this perspective will be spread over a period of one semester.

### ***Syllabus***

#### **1. Constitutional Perspectives on Wages**

- 1.1. Denial of minimum wage as forced labour
- 1.2. Constitutionalisation of legal rights: elevation of legal rights to fundamental rights
- 1.3. The constitutional ideals
  - 1.3.1. Right to work
  - 1.3.2. Right to living wage
  - 1.3.3. Right to equal pay for equal work
  - 1.3.4. Workers participation in management: impact on wage determination

#### **2. Theories and Facets of Wages**

- 2.1. Theories of wages
- 2.2. Wages, bonus and dearness allowance
  - 2.2.1. Basic wage
  - 2.2.2. Bonus as deferred wage or share of profits - eligibility
- 2.3. Allowances and concessions

- 2.3.1. House rent allowance
- 2.3.2. City compensatory allowance
- 2.3.3. Educational allowance
- 2.3.4. Conveyance allowance
- 2.3.5. Cash incentives: percentage on turn-over
- 2.3.6. Medical allowance
- 2.3.7. Leave travel concessions
- 2.3.8. Free and subsidized food and products
- 2.3.9. Leave encashment
- 2.3.10. Overtime allowances
- 2.3.11. Low wages and high perks as a camouflaging stratagem of defeating ceiling on wages

### **3. Wage Differentials: Rational Policy or Unjust Practice?**

- 3.1. Equality, honoured or violated ?
- 3.2. Diminishing the differential: disincentive to initiative and productivity or elimination of irrational disparity in remuneration?
- 3.3. Inter-industry, intra-industry and regional factors
- 3.4. Private sector - public sector difference in wages - government servants
- 3.5. Capacity of industry and wage fixation

### **4. Wages, Price and Tax**

- 4.1. Increase of wages - impact on price
- 4.2. Increase in price - impact on wages
- 4.3. Tax - impact on price and wages
  - 4.3.1. Taxation on goods and increase of prices
  - 4.3.2. Taxation on wage income - a cut on real wages
- 4.4. Wages and the consumer

## 5. National Wage Policy: Problem and Perspectives

- 5.1. National wage policy
- 5.2. Need for integrated approach: income, price and wage
- 5.3. Problems of mixed economy
  - 5.3.1. Capital intensive sector
  - 5.3.2. Labour intensive sector
- 5.4. Wages in Mult-national corporations: impact of globalisation

## 6. International Standardisation

- 6.1. Role of ILO: conventions and recommendations relating to wages

### **Select bibliography**

O.P. Malhotra, *Law of industrial Disputes* (1999)

R.R. Singh, *Labour Economics* Chs. 6, 7, 8 and 9 (1971)

G.L- Kothari, *Wages, Dearness Allowances and Bonus* (1968)

Y.B. Singh, *Industrial Labour in India* Part I, (1960)

V.V. Giri, *Labour Problem in Indian Industry* Ch. 6 (1972)

*Report of the National Commission on Labour* 1969 (Relevant Portions)

International Labour Office, *Wages* (1968)

International Labour Office, *Wage Fixing* (1981)

International Labour Office, *Minimum Wage Fixing* (1981)

Suresh C. Srivastava, "Payment or Dearness Allowance to Industrial Workers in India" 15 JI.LI. 444 (1973)

Suresh C. Srivastava, "Machinery for Fixation of Minimum Wage of Sweated Labour in India - Problems and Prospects" 23 J.I.L.I. 495 (1981)

R.D. Agarwal, *Dynamics of Labour Relations in India* (1972)

Sahab Dayal. "Wage, Income and Industrial Relations in Modern India: An Evaluation of selected Empirical Implications". 15 Indian Journal of Industrial Relations 295 (1977)

Madhuri G. Seth, "Bonus in Equity Perspective", 15 *Indian Journal of Industrial Relations* 119 (1979)

Deepak Lal, "Theories of Industrial Wage Structures: A Review" 15 Indian Journal of Industrial Relations 167 (1979)

C. Mani Sastry, "Wage Structure and Regional Labour Market", 21 *Indian Journal of Industrial Relations* 344 (1985)

Suresh C. Srivastava, "Payment of Dearness Allowance to Industrial Workers in India: The Judicial Approach", 15 J.I.L.I 444 (1973).

R.L. Chawla, "Wage Policy and Industrial Relations. A Brazilian Case Study", 17 *Indian Journal of Industrial Relations* 27 (1981)



**D 029 SOCIAL SECURITY LAW*****Objectives of the course***

Social security is a necessary phenomenon of a welfare state. The ideal of social security contained in the constitution, the concept embodying the ideals in the various statutes and the plethora of administrative measures of the state are indicative of the recognition of social security as an important objective to be achieved in our democratic process. This course shall examine the various dimensions of labour security measures and explore the possibility whether or not labour security be part of the comprehensive and integrated social security.

The following syllabus prepared with this perspective will be spread over a period of one semester.

***Syllabus*****1. Social Security**

- 1.1. Meaning
- 1.2. Distinction with labour welfare
- 1.3. Modality: social prescription, social assistance and social insurance
- 1.4. Labour social security as part of the general social security in the welfare state

**2. Origin and Development**

- 2.1. Western countries - charitable institutions - professional guilds - philanthropic organisations - workmen's compensation law in England
- 2.2. Eastern societies - India: joint family system, statutory schemes
- 2.3. International norms on social security for labour : the ILO measures

**3. Constitutional Perspectives**

- 3.1. Fundamental Rights : realization of the rights through meaningful social security measures: right to life, the wider dimensions
- 3.2. Right to adequate means of livelihood, free legal aid, public assistance in cases of unemployment, old age, sickness and disablement, maternity relief.

#### **4. From Compensation to Insurance**

- 4.1. Judicial interpretation of the expression "arising out of and in the course of employment"
- 4.2. Employees' state insurance benefits: an improvement over workmen's compensation

#### **5. Social Security: Law and Practices, the Comparative Perspectives**

- 5.1. The United Kingdom
- 5.2. The United States

#### **6. Towards an Ideal Social Security Scheme: the Futuristic**

- 6.1. Comprehensive and integrated social security: an utopian concept or a pragmatic approach?
  - 6.1.1. Funding
  - 6.1.2. Benefits and beneficiaries
- 6.2. Role of trade unions
  - 6.2.1. Social security clauses in collective agreements
  - 6.2.2. Trade union schemes with its own fund

#### **Select bibliography**

R.N.Choudhry, *Commentary on the Workmen's Compensation Act 1923* (2000), Orient

S.C. Srivastava, *Social Security and Labour Laws* (1985).

R.W. Rideout *Principles of Labour Law* (1988), Chs. 12,13.

H.K. Saharay, *Industrial and labour Laws of India* (1987) Chs. 7 and 8.

Munkman, *Employers' Liability* (1985), Chs. 1, 2, 3, 22 and 23.

Harry Calvert, *Social Security Laws* (1978)

*Reports of the National Commission on Labour 1969* (relevant portions)

Neeru Sehgal, "Employment of Women and Reproductive Hazards in

Workplace", 29 J.ILI 201 (1987)

Prakash Sinha, "Quality of Working Life and Quality of Life", (1982) *Indian Journal of Industrial Relations*, p. 373.

Mallik Jyotsna Nath, "Workmen's compensation Act and some Problems of Procedure", 3 *J.I.L.I.* 131 (1961)

V.R. Bhattacharya, *Some Aspects of Social Security Measures in India* (1970).

**GROUP- E: EANVIRONMENT AND LEGAL ORDER*****E 030 ENVIRONMENT AND DEVELOPMENT: LAW AND POLICY******Objectives of the course***

The concept of environment lay embedded in ancient ethos. Throughout the centuries there were invisible processes working for the maintenance and improvement of environment. Towards the close of the last millennium one finds widening dimensions of environmental protection strategies. There gained ground the environmental consciousness. How do these developments stand reflected in formulation of policies and in following constitutional values in India? This is the thrust of the paper.

The following syllabus prepared with this perspectives will comprise about 42 units of one hour duration to be spread over a period of one semester.

***Syllabus*****1. The Idea of Environment**

- 1.1. Ancient and medieval writings
- 1.2. Traditions
- 1.3. Natural and biological sciences: perspectives
- 1.4. Modern concept: Conflicting dimension

**2. Development**

- 2.1. Theories of development
- 2..2. Right to development
- 2.3. Sustainable development - national and international perspectives
- 2.4. Developing economies

**3. Policy and Law**

- 3.1. From Stockholm to Rio and after
- 3.2. Post - Independence India

- 3.3. Role of government
  - 3.3.1. Five Year Plans
  - 3.3.2. Forest Policy
  - 3.3.3. Conservation strategy
  - 3.3.4. Water policy

#### **4. Population, Environment and Development**

- 4.1. Population explosion and environmental impact
- 4.2. Population and development
- 4.3. Population and sustainable development

#### **5. Constitutional Perspectives**

- 5.1. Fundamental Rights
  - 5.1.1. Right to environment
  - 5.1.2. Enforcement of the right
  - 5.1.3. Directive principles and fundamental duties
  - 5.1.4. Legislative power
- 5.2. Environment : Emerging concepts and challenges
  - 5.2.1. Polluter pay principle : absolute liability of hazardous industry
  - 5.2.2. Precautionary principle
  - 5.2.3. Public trust doctrine

#### **Select Bibliography**

C.M. Abraham, *Environmental Jurisprudence in India* (1999), Kluwer

Madhav Gadgil and Ramachandra Guha, *This Fissured Island: An Ecological History of India* (1996), Oxford.

R.B. Singh & Suresh Misra, *Environmental Law in India* (1996), Concept Publishing Co., New Delhi.

Kailash Thakur, *Environmental Protection: Law and Policy in India* (1997), Deep & Deep Publications, New Delhi.

Richard L. Riversz, et. al. (eds.), *Environmental Law, the Economy and Sustainable Development* (2000), Cambridge.

Christopher D. Stone, *Should Trees Have Standing and other Essays on Law, Morals and the Environment* (1996), Oceana

Stuart Bell and Donald McGillivray, *Environmental Law* (2000), Blackstone Press.

Charles A.R. Webster, *Environmental Health Law* (1981)

Leelakrishnan, P et. al. (eds.) *Law and Environment* (1990), Eastern

Leelakrishnan, P, *The Environmental Law in India* (1999), Butterworths-India

Department of Science and Technology, Government of India, *Report of the Committee for Recommending Legislative Measures and Administrative Machinery for Ensuring Environmental Protection* (1980) (Tiwari Committee Report).

Thomas J. Schoenbaum, *Environmental Policy Law* (1992), Foundation Press, Inc. Westbury, New York.

Darryl D'Monte, *Temples or Tombs Industry versus Environment: Three Controversies* (1985), Centre for Science and Environment, New Delhi

Indian Journal of Public Administration, Special Number on Environment and Administration, July-September 1988, Vol. XXXV, No.3, pp.353-801

Khosho, *Environmental Concerns and Strategies* (1988), Ashish, Delhi

Centre for Science and Environment, *The State of India's Environment 1982, The State of India's Environment 1984-85 and The State of Indian Environment 1999-2000*.

World Commission on Environment and Development, *Our Common Future* (1987), Oxford.

Garrett Hardin, *The Ostrich Factor: Our Population Myopia* (1998), Oxford

**E 031 Resource Management and the Law****Objectives of the course**

Sustainable use of resources, natural and man-made, is the desideratum in an environmentally conscious period of human development. Wise use of water, land, forest and other common property resources, such as wet lands, lakes, roads and parks become an important task in this respect. Protection of various energy resources is equally significant element in countering wastage, indiscriminate use and unwise choices.

The following syllabus prepared with this perspective is to be spread over one semester with 42 units of one hour duration

**Syllabus****1. Water**

- 1.1. Salinity
- 1.2. Bund and spill ways
- 1.3. Aquaculture and fishing : regulation
- 1.4. Irrigation
- 1.5. Ground water management
- 1.6. Interstate water management and disputes

**2. Land**

- 2.1. Controls on land development
- 2.2. Eco-friendly land planning: conservation, utilisation and conversion.
- 2.3. Mining and quarrying

**3. Concepts of Common Property and State Property**

- 3.1. Forest
- 3.2. Wildlife

- 3.3. Common facilities and the right to use: roads, parks, pathways, lakes, rivers
- 3.4. Natural heritage - Tribal habitat
- 3.5. Historical monuments
- 3.6. Wet lands: Wise use concept

#### **4. Energy**

- 4.1. Sources
- 4.2. Energy related environmental problems: tapping, transmission and utilization, indiscriminate use
- 4.3. Utilization of conventional energy: hydro-electric, thermal and nuclear
- 4.4. Non-conventional energy: Solar, wind, tidal and biogas

#### **Select bibliography**

Kailash Thakur, *Environmental Protection: Law and Policy in India* (1997), Deep & Deep publications, New Delhi

WCED, *Our Forest, Our Future* (1999), Cambridge

Abraham C.M. *Environmental Jurisprudence in India* (1999), Cluwer.

Diwedi, *India's Environmental Policies, Programmes and Stewardship* (1999), Mc.Millan.

Enid M.Barron, et.al. (eds.), *Royal Commission on Environmental Pollution, London, U.K.*(1998), Kluwer.

David B Wilkins, *Animal Welfare in Europe* (1997), Kluwer

Mark Austen and Tamara Richards, *Basic Legal Documents on International Animal Welfare and Wild Life Conservation* (2000), Kluwer.

Jack Grosse, *Protection and Management of Our Natural Resources, Wild Life and Habitat* (1997), Oceana.



Enid.M.Barson and Ilga Nielson (eds.) *Agriculture and Sustainable Use in Europe* (1998), Kluwer.

Trever Hella Well, *Blackston's Guide to Contaminated Land* (2000), Blackstone Press.

Leelakrishnan, P et. al. (eds.), *Law and Environment* (1990)

Leelakrishnan, P, *The Environmental Law in India* (1999), Butterworths - India

Frodorick R.Anderson, et.al. *Environmental Improvement through Economic Incentives* (1977)

Indian Journal of Public Administration, Special Number on Environment and Administration, July-September 1988, Vol. XXXV, No.3

David Hughes, *Environmental Law*, (1999) Butterworths, London

A.R.Bam and P.N.Gantam, *Natural Heritage of India* (1989), R.K. Publishers, Delhi.

Standing Committee on Environmental Law American Bar Association, Common Boundary/ Common Problems: The Environmental Consequences of Energy Production (1982).

S.K.Jain and A.R.K.Sastry, *Threatened Plants of India: A State of the Art Report* (1980)

Armin Rozencranz, et.al. (eds.), *Environmental Policy and Law in India* (1988), Butterworths, India.

**E 032 PREVENTION AND CONTROL OF POLLUTION*****Objectives of the course***

Pollution hazards bring the worst harm to the environment. Legal measures are attempted to prevent or control various kinds of pollution and their aftermath. Can land pollution hazards be presented or controlled effectively by criminal sanctions especially in a developing country like India? What other legal strategies can be adopted at this level? To what extent can corporate civil liability be extended for remedying pollution maladies particularly mass disasters. One has to be a critic of the existing laws and to look forward to desirable mechanism of control over pollution hazards. This paper aims at shedding light on these areas.

***Syllabus*****1. Pollution**

- 1.1. Meaning
- 1.2. Kinds of pollution and their impact

**2. Pollution of Water**

- 2.1. Definition
- 2.2. Ground water pollution
- 2.3. Sources
- 2.4. Critique of existing laws
  - 2.4.1. Machinery
  - 2.4.2. Powers
  - 2.4.3. Function
  - 2.4.4. Offences and penalties

**3. Pollution of Air**

- 3.1. Pollutants and effects
- 3.2. Modalities of control

- 3.3. Conflicts of jurisdiction of different control
- 3.4. Agencies
- 3.5. Critique of the existing legal frame work

#### **4. Noise Pollution**

- 4.1. Sources and effects
- 4.2. Different legal controls
- 4.3. Need for specific law

#### **5. Disposal of Waste**

- 5.1. Kinds of wastes
- 5.2. Disposal agencies : local bodies and other agencies
- 5.3. Disposal and recycling of wastes

#### **6. Sanctions against Pollution**

- 6.1. Efficacy of criminal and civil sanctions
- 6.2. Corporate liability, civil and criminal
  - 6.2.1. Should penalties be prohibitive?
  - 6.2.2. Civil liability, compensatory and penal
  - 6.2.3. Administrative compensation system
- 6.3. Incentives to pollution control

#### **Select bibliography**

Kailash Thakur, *Environmental Protection Law and Policy in India* (1997), Deep & Deep publications, New Delhi

Enid.M.Barson and Ilga Nielson (eds.), *Agriculture and Sustainable Use in Europe* (1998), Kluwer.

John F.Mc.Eldownery and Sharron Mc.Eldownery, *Environmental Law and Regulation* (2000), Blackstone Press.

Leelakrishnan, P et. al. (eds.), *Law and Environment* (1990)

Leelakrishnan, P. *The Environmental Law in India* (1999), Butterworths

Frodorick R.Anderson, et.al. *Environmental Improvement Through Economic Incentives* (1977)

David Hughes, *Environmental Law* (1999), Butterworths, London

Daniel R. Mandekar, *Environmental and Land Controls Registration* (1976), Bobbs-Merril, New York

Indian Law Institute, *Mass Disasters and Multinational Liability: The Bhopal Case* (1986),

*Inconvenient Forum and Convenient Catastrophe: The Bhopal Case* (1986).

Armin Rozenccranz, et.al. (eds.) *Environmental Policy and Law in India* (2000), Butterworths India.

**E 033 ENVIRONMENT AND INTERNATIONAL LEGAL ORDER*****Objectives of the course***

Through the centuries of their growth, societies had done their best to keep their neighbourhood clean and health. Industrialisation brought in its wake unprecedented and unpredicted environmental hazards and upset the old ethos and equilibrium. The environmental consciousness is an offshoot of this saga of industrial growth. It is said that the world environmental consciousness had made a radical change in the character of international law from a moral code of ethics among nations to an almost positive law imposing on the states to observe environmental norms. Striking a significant note at the close of the last millennium, areas of international concern on environment are legion. Modes of reconciling the conflicts are also varied. The concept of sustainable development is a significant tool both at the international level and at the domestic system for reconciliation of environmental values and developmental needs.

This paper prepared with the above neutered perspectives comprises about 43 units of one-hour duration to be spread over semester.

***Syllabus***

- 1. International Concern for Environment Protection**
  - 1.1. World environment movement
  - 2.2. Natural and cultural heritage
  - 3.3. Role of international and regional organizations
- 2. International Obligations towards Sustainable Development**
  - 2.1. International financing policy
  - 2.2. World environment fund
  - 2.3. Global Environmental Facility (GEF)
    - 2.3.1. International co-operation
    - 2.3.2. Poverty alleviation

### **3. Marine Environment**

- 3.1. Marine resources: conservation and exploitation
- 3.2. Scientific research and exploration
- 3.3. Antarctic environment
- 3.4. International Seabed Authority
- 3.5. Pollution from ships
- 3.6. Dumping of oil and other wastes into the sea

### **4. Trans-boundry Pollution Hazards**

- 4.1. Oil pollution
- 4.2. Nuclear fall outs and accidents
- 4.3. Acid rain
- 4.4. Chemical pollution
- 4.5. Green house effect
- 4.6. Depletion of ozone layer
- 4.7. Space pollution

### **5. Control of Multinational Corporations and Containment of Environmental Hazards**

- 5.1. Problems of liability and control mechanisms
- 5.2. Disaster management at international level
- 5.3. Monopoly of biotechnology by MNCs

### **6. Disposal and Dumping of Hazardous Wastes: Transnational Problem and Control**

#### ***Select bibliography***

Priya Kanjan Trivedi, *International Environmental Laws* (1996), A.P.H. Publishing Corporation, New Delhi.

Sir Elworthy and Jane Holder, *Environmental Protection: Text and Materials* (1997), Butterworths

Nathali L.T.J. Horbach, *Contemporary Developments in Nuclear Energy Law* (1999), Kluwer.

Henrick Ringbom (ed.), *Competing Norms in the Law of Marine Environmental Protection* (1997), Kluwer.

Claus Bosselmann and Benjamin J. Richardson, *Environmental Justice and Market Mechanism* (1999), Kluwer.

Jean-Pierre Beurier, *New Tehnologies and Law of Marine Environment* (2000), Kluwer.

Richard L.Reversz et.al. (eds.) *Environmental Law, the Economy and Sustainable Development* (2000), Cambridge.

Dovor Vidas, *Protecting the Polar Marine Environment* (2000), Cambridge.

Aynsley Kellor, *International Toxic Risk Management* (1999), Cambridge.

Zhiguo Gao, *Environmental Regulation of Oil and Gas* (1998), Kluwer.

Indian Law Institute, *Legal Control of Environmental Pollution* (1980)

Varshney, C.K. (ed.), *Water Pollution and Management* (1983), Wiley Esatern, New Delhi

World Commission on Environment and development, *Our Common Future* (1987), Oxford.

British Institute of International and Comparative Law, *Selected Documents on International Environmental Law* (1975), London.

Standing Committee on Environmental Law American Bar Association, *Common Boundary/ Common Problems: The Environmental Consequences of Energy Production* (1982).

J.M.Spector, "Elephants, Donkeys and other Creatures? Presidential Election Cycles and International Law of the Global Commons" 15 AM.U. INT'L L.Rev.5, pp 976-1038 (1999)

**E 034 BIOLOGICAL DIVERSITY AND LEGAL ORDER*****Objectives of the course***

Biological diversity includes all life forms on the earth and signifies a life supporting order, essential for the normal functioning of eco-systems and the Biosphere as a whole. Dependence of human life on biological diversity is thus no doubt essential. Destruction of bio-diversity, especially of the developing countries is a disturbing phenomenon and presents a matter of grave concern. The growth of biotechnology and genetic engineering triggers off numerous issues of ethical and legal significance in relation to experimentation on animals and plants. Apart from being considered as gifts of nature, animals and plants becomes a target of commercial exploitation. Sustainable development envisages contrary position and lays emphasis on the duty to protect the diverse flora and fauna not only for present generation but also for the succeeding generations to come. With the above perspectives the course focuses on the legal mechanisms of preserving bio-diversity in a sustainable manner.

This paper comprises about 42 units one of one hour duration to be spread over a semester.

***Syllabus*****1. Bio-diversity**

- 1.1. Meaning
- 1.2. Need for protection of bio-diversity
- 1.3. Dependence of human life on the existence in flora and fauna
- 1.4. Significance of wild life
- 1.5. Medicinal plants
- 1.6. Plant and micro-organism

**2. Bio-diversity and Legal Regulation**

- 2.1. Utilization of flora and fauna for bio-medical purposes
- 2.2. Experimentation on animals: Legal and ethical issues
- 2.3. Genetic mutation of seeds and micro-organisms



- 2.4. Genetic engineering
- 2.5. Legal mechanisms of control
  - 2.5.1. Recognition of regional and local agencies
- 3. Development Projects and Destruction of Bio-diversity : Concept of Sustainable Development**
- 4. Problems in Legal Regulation of Medicinal Plans**
  - 4.1. Cosmetic plants
  - 4.2. Animal products
  - 4.3. Utilization of flora and fauna for bio-medical purposes by Multi-national corporations: Problems of control
  - 4.4. Regulation of trade in wild-life products
- 5. Legal framework for Development and Protection of Sanctuaries**
  - 5.1. Parks
  - 5.2. Zoos
  - 5.3. Biosphere resources
  - 5.4. Protection of genetic resources for agriculture

### **Select bibliography**

Arjun Prasad Nagore, *Bibliological Diversity and International Environmental Law* (1996) A.P.H. Publishing Corporation, New Delhi.

Project Large, *Plant Variety Protection and Plant Biotechnology - Options for India* (1999), Allied.

M.S. Swaminathan, *Genetic Conservation: Microbes to Man, Presidential Address at XV International Congress of Genetics*, New Delhi, India, December 12-21, 1983

*Wild Genetic Resources, Earthscan Press Briefing Document No.33*, Earthscan, London (1982).

K.L.Mehta and R.L. Arora, *Plant Genetic Resources of India; their Diversity and Conservation* (1982), National Bureau of Plant Genetic Resources, New Delhi.

P.N. Bhat *et.al.*, *Animal Genetic Resources in India* (1981)

P.N. Bhat, "Conservation of Animal Genetic Resources in India, " *Animal Genetic Resources, Conservation and Management* FAO, Rome, (1981).

**E 035 ENVIRONMENTAL LEGISLATION*****Objectives of the course***

Concepts of environmental protection lay scattered in isolated provisions of general legislation in India before world consciousness was aroused by the Stockholm conference in 1972. In the post-Stockholm period there were many legislative activities in such areas like control of pollution and forest conservation. This legislative activism culminated in the enactment of Environment (Protection) Act 1986 with a plethora of delegated legislation and delegation of powers. The central government has become the guardian of environmental protection and formulated rules and regulations on coastal zones, noise pollution and preparedness on environmental disasters. There are attempts in making laws for implementation of norms laid down in international conferences.

This paper spreads over the above-mentioned objectives and will comprise of 42 units of one-hour duration.

***Syllabus*****1. General Laws on Environmental Concern**

- 1.1. Code of Criminal Procedure : Public nuisance
- 1.2. Provisions in the Indian Penal code
- 1.3. Local bodies law : an overview

**2. Environment (Protection) Act,1986**

- 2.1. 'Necessary and proper clause' : concentration of power on the Central Government
- 2.2. Delegated legislation: power to make rules, regulation and to issue directions
- 2.3. Delegation of powers

**3. Coastal Zone Management**

- 3.1. Sea erosion
- 3.2. CRZ Notification
  - 3.2.1. Prohibitions and exemptions

- 3.2.2. Permissible activities
- 3.3. Classification of zones
- 3.4. Regulation of sea resorts
  - 3.4.1. Eco-tourism
- 3.5. Coastal zone management plans
- 3.6. Aquaculture

#### **4. Laws on Hazardous Substance**

#### **5. Preparedness on Environmental Disasters**

#### **6. Emerging Legal Controls**

- 6.1. Eco-mark
- 6.2. Environmental audit
- 6.3. Environment Impact Assessment
- 6.4. Public participation in environmental decision making
- 6.5. Environment information

#### ***Select bibliography***

Leelakrishnan, P *et. al.* (eds.), *Law and Environment* (1990), Eastern, Lucknow

Leelakrishnan, P, *The Environmental Law in India* (1999), Butterworths, India.

Department of Science and Technology, Government of India, *Report of the Committee for Recommending Legislative Measures and Administrative Machinery for Ensuring Environmental Protection* (1980) (Tiwari Committee Report).

Indian Law Institute, *Environment Protection Act: An Agenda for Implementation* (1987)

*Indian Journal of Public Administration*, Special Number on Environment and Administration, July-September 1988, Vol. XXXV, No.3

Findley, R.W. and Farber, D.A., *Environmental Law*

David Hughes, *Environmental Law* (1999), Butterworths, London

Armin Rozencranz, et.al. (eds.), *Environmental Policy and Law in India* (2000), Oxford.

**GROUP-F JURISPRUDENCE****F 036 COMPARATIVE JUDICIAL PROCESS****Objectives of the course**

The objective of this course is to study the nature of judicial process as an instrument of ordering the society in India within the background of evolution of judicial role and judicial process in other societies. This course is intended to highlight the role of court as policy maker, participant in power and an instrument of social change. The emergence of the Indian Supreme Court as the most powerful judicial tribunal of the democratic world makes it necessary to study amongst other things the social background and orientation of the judges, the techniques employed by it and the constituencies it serves.

The following syllabus prepared with this objective will be spread over a period of one semester.

**Syllabus****1. Types of Judicial Processes**

- 1.1. Nature of judicial process in pre-industrial society
  - 1.1.1. Self -help
  - 1.1.2. Kin-based redress
  - 1.1.3. Mediation
  - 1.1.4. Elder's Councils: Panchayats
  - 1.1.5. Paramount chieftainships
- 1.2. Judicial process in the western legal traditions prior to industrialization
  - 1.2.1. Judicial process in canon law
  - 1.2.2. Judicial process in feudal customary law
  - 1.2.3. Common law adjudication: Early history
  - 1.2.4. Adjudication and law merchant

- 1.2.5. Urban law and dispute handling
- 1.2.6. Growth of royal and imperial law
- 1.3. Judicial process and colonization
  - 1.3.1. Common law judicial process in America
  - 1.3.2. Common law judicial process in India
  - 1.3.3. Common law judicial process in Anglophonic and Civil Law adjudication in Francophonic Africa
- 1.4. Adjudication in revolutionary and post-revolutionary situations: An over view of Soviet and Chinese experiences.

## **2. Contemporary Natures of Judicial Process**

- 2.1. The Rule of Law
- 2.2. The doctrine of independence of judiciary as an aspect of Separation of Powers  
Division of Functions
- 2.3. The Notion of the independence of judiciary and of legal professions
  - 2.3.1. Appointment of judges
  - 2.3.2. Transfer of judges

## **3. Institutional Structuring of Courts**

- 3.1. Judicial personnel planning: India and elsewhere.
- 3.2. Investment on maintenance of courts
- 3.3. Comparative pattern of workload
- 3.4. Alternatives to adjudication
- 3.5. Patterns of court management
- 3.7. Current crises of Indian adjudicatory system.

## **4. Staple Controversies Surrounding Judicial Roles**

- 4.1. Notions of "Role, "Role Conflict", "Status and Role"
- 4.2. Notions of judicial review

- 4.3. Democratic "Character" of judicial review
- 4.4. Legalism
- 4.5. Ronald Dworkin's theory of judicial role
- 4.6. Interpretivism
- 4.7. Varieties of judicial and juristic activism
- 4.8. Problem of accountability of justices
- 4.9. Do we or can we, have a universal theory of judicial role?

## 5. The Indian Judicial Process

- 5.1. Indian debates on the role of justices (suppression, commitment, transfer and all that)
- 5.2. The Socio-economic background of the Indian judiciary
- 5.3. The 'politics' of judiciary
- 5.4. The role of appellate Indian judges in development, and renovation, and retardation of constitutional goals.
- 5.4. Impact of public opinion on judicial process
- 5.5. Power of judicial review

### **Select bibliography**

L.M. Singhvi, *Freedom on Trial*, (1991), Vikar, N.Delhi.

Verinder Grover (Ed.) *Political Process and Role of Courts*, (1997) Deep & Deep Publications, N. Delhi.

B.P.Sigh Seghal (Ed.) *Law, Judiciary and Justice* (1993) Deep & Deep, N.Delhi.

Max Gluckman, *Judicial Processes Among the Barotse of northern Rhodesia* (1967).

Paul Bohanan, *Justice and Judgment Among the Tiv* (1957)

E. Adamson Hoebel, *The Law of the Primitive Man* (1968)

Catherine Newman, *Law and Economic Organization: A Comparative Study of Pre-industrial*

*Societies* (1983)

Upendra Baxi, *Towards the Sociology of Indian Law* (1986)

Harold J. Berman, *Law and Revolutions the Formation of the Western Legal Tradition* (1983).

Yash Ghai, *The Political Economy of Law. A Third World Reader* (1986)

Henry J. Abraham, *The Judicial Process* (1995), Universal

Ronald Dworkin, *Taking Rights Seriously* (1996), Universal

Ronald Dworkin, *A Matter of Principle* (1985)

John Hart Ely, *Democracy and Distrust. A Theory of Juridical Review* (1980)

J. Stone, *Precedent and the Law: Dynamics of Common Law Growth* (1985)

Supreme Court of India, *Third International Conferences of Appellate Judges Conference Papers and Proceedings* (1985).

Upendra Baxi, *The Indian Supreme Court and Politics* (1980)

Upendra Baxi, *Courage, Craft and Contention: The Indian Supreme Court in Mid-Eighties* (1986),  
Tripathi, Bombay

Rajeev Dhavan, *The Supreme Court of India: A Study of its Socio-Juristic Techniques* (1977),  
Tripathi, Bombay

Rajeev Dhavan, and Alice Jacob, *Selection and Appointment of Supreme Court Judges : A Case Study* (1978)

Rajeev Dhavan and P. Kalpakam, *The Supreme Court under Strain: The Challenge of Arrears*  
(1979)

Simon Shetret & Jules Descheness (Ed.), *Judicial Independence: A Contemporary Debate*, Martinus  
Highoff Pub., Dercbrecht, (1985)

Martin Shapiro, *Courts: A Comparative and Political Analysis* (1981), University of Chicago

H.R.Khanna, *Judiciary in India and Judicial Process*, (1985), S.C. Sarkar and Sons, Calcutta.

**F 037 MARXIAN AND THEORY OF LAW*****Objectives of the course***

It is amazing, but true, that despite close affinities with the socialist world, no major curricular offering or research specialisation in socialist jurisprudence has emerged in legal education for the last forty years. The objective of this, and the companion courses is to remedy the lack.

India has been, since 1976, proclaimed as a "socialist" democratic republic. Understanding of accomplishment of the socialist character of the Constitution the fundamental duty to develop excellence, individual and collective, and scientific temper also require full advertance to Marxian and legal thought and legal processes and. practices under the actually existing socialist societies.

In this course we focus on the former: the second course on certain institutions of socialist law.

The following syllabus prepared with the above perspective will comprise of 42 units of one-hour duration each spread over a period of one semester.

***Syllabus*****1. Introductory: Stereotypes of Marxian Jurisprudence**

- 1.1. The Law is a tool of the ruling classes
- 1.2. The law being located in superstructure is determined by the base of economic structure
- 1.3. Accordingly, law mirrors but cannot initiate or accomplish social transformation
- 1.4. Accordingly, all adjudication and legislative action is in the short and long term class biases in favour of the ruling classes

**2. Beyond the Stereotypes: Marx's own Views on the Nature of Law and State**

- 2.1. The Young Marx
  - 2.1.1. Marx's critique or Hegel's Philosophy of Right
  - 2.1.2. Marx on customary law: Debates on the Theft of Wood



- 2.1.3. Marx on freedom of press
- 2.1.4. Marx on human rights (on the Jewish Question)

### **3. Beyond Stereotypes**

- 3.1. Marx on the role of law in transition to capitalism
- 3.2. Law and bourgeois economic interests
- 3.3. Law and property relations
- 3.4. Law and class struggle

### **4. Law as Ideology and Ideology in law**

- 4.1. Notions of ideology
- 4.2. Law as ideological apparatus (Althusser)
- 4.3. The form of ideology
- 4.4. The content of ideology
- 4.5. Legal thought and lawyers as articulators of ideology.

### **5. The Relative Autonomy of the Law**

- 5.1. Juristic thought of E.B. Pashukhanis
- 5.2. Approaches of Antonio Gramsci: Hegemony/Counter Hegemony
- 5.3. Relative autonomy of the law: Nicos Poulantzaz, E.P. Thompson
- 5.4. Relative Autonomy of Adjudication as a Distinct Realm of the Law

### **6. New Perspectives Arising out of Marxian Approaches**

- 6.1. Marx on Justice: Critique of natural law
- 6.2. Adjudication as a site of contradiction between fractions of capital
- 6.3. Progressive legislation serving interest of subordinated classes
- 6.4. Understanding Social Action Litigation

**Select bibliography**

Upendra Baxi, *Marx, Law and Justice: Some Indian, Perspectives* (1992)

Progress Publishers, Moscow, *Theory of State and Law* (1987)

Maureen Gain & Alan Hunt, *Marx and Engles on Law* (1979)

Y. Chirkin; Yu Yudin and O. Znidkov, *Fundamentals of Socialist Theory of the State and Law* (1987)

Hugh Collins, *Marxism and Law* (1982)

Bob Fine, *Democracy and the Rule of Law: Liberal Ideals and Marxist Critiques* (1984)

Yash Ghai, et. al. *The Political Economy of Law. A Third World Reader* (1987)

Lloyd and Freeman, *Lloyd's Introduction to Jurisprudence* (1994), Sweet and Maxwell

E.P. Thompson, *Whigs and Hunters; The Origin of the Black Act*, (1977).

**F 038 SOCIALIST JURISPRUDENCE*****Objectives of the course***

The colonial powers not only dominated politically and exploited economically the third world countries but also implanted more permanently their legal culture and embossed the elements of their legal systems. This resulted in the jurisprudential indoctrination and incursions into the legal process and legal education by Anglo-American legal thought. Their antagonism to socialist countries influenced the nationalist thought also and rendered socialist thought an anathema. Thus intellectuals after independence moved from British influence, to American influence. The lawyers, judges and law students are in darkness about the other side of the world of jurisprudential moon. Hence, it is imperative that the students are to be exposed to socialist jurisprudence. In this course attempt is to be made to create awareness of the significance, scope and relevance of the socialist legal thinking, which changed the social system of the half of the world. The terms peculiar to this literature are explained; a clear perception of the political, philosophical and economic fundamental concepts and doctrines and ideological foundations provided experiences especially in the advanced socialist Soviet Union; and these should be studied critically in the light of the theories of role of law and withering away of state.

The following syllabus prepared with this perspective will comprise of 42 units of one hour duration each spread over a period of one semester.

***Syllabus*****1. Introductory**

- 1.1. The Evolution of the notion of socialist legality
- 1.2. The retreat of law: Stalinist "Jurisprudence"
- 1.3. The retreat of law: Cultural revolution in China
- 1.4. The resurgence of socialist legality
  - 1.4.1. The 1977 Soviet Constitution

1.4.2. Glasnost and Perestroika: The Soviet jurisprudence of the mid-1980s.

1.4.3. Restoration of law in post Mao-China

## **2. Legal Institutions Ownership**

2.1. Theoretical point of departure in socialist law

2.2. Socialist nationalization

2.3. Social ownership and commodity production

2.4. Socialist "private- property"

2.5. Socialist "co-operatives"

## **3. Legal Institutions Contract**

3.1. The nature of contractual obligation in socialist jurisprudence

3.2. Plan and contract

3.3. Breach of contract

3.4. Settlement of disputes

## **4. Legal institutions: Civil Liability**

4.1. Differentiation of liability: Moral, political, legal

4.2. Socialist conceptions of fault/strict liability

4.3. State liability

## **5. Legal Institutions: Criminal Liability**

5.1. The differentiation of harms and acts in socialist jurisprudence

5.2. The rights of the accused in socialist jurisprudence

5.3. Special problems posed by abstention from criminal procedure

5.4. Socialist theories of punishment and sentencing

## **6. Legal Institutions: Courts and Tribunals**

6.1. Ideological bases of structuration of judicial powers in socialist societies (pedagogic paternalist functions)

- 6.2. Public participation in administration of justice
- 6.3. Settlement of economic disputes
- 6.4. Organizational frames for settlement of labour disputes
- 6.5. Administrative penal jurisdiction in European socialist societies
- 6.6. Social courts
- 6.7. Procuracy in Soviet Union
- 6.8. Military jurisdiction

## **7. Convergence between Socialist and Bourgeois Jurisprudence**

- 7.1. Convergence in Civil Law
- 7.2. Convergence in receptional imposition of law
- 7.3. Convergence in the field of human right promotion and protection

### ***Select bibliography***

(Also See Materials in F 046)

U. Baxi, *Marx, Law and Justice: Some Indian Perspectives* (1992).

O. Bihari, *Constitutional Models of Socialist Organization* (1979)

G.Y. Eorsi, *Comparative Civil (Private) Law* (1979)

Kalman Kulesar, *People's Assessors in the Courts: A Study on the Sociology of Law* (1982)

E. Lontai, *The Research Contracts* (1977)

A. Raz, *Courts and Tribunals: A Comparative Study* (1980)

Also Consult the leading comparative law journals: e.g. *American Journal of Comparative Law*, *The International and Comparative Law Quarterly* for contemporary development.

**F 039 THEORIES OF JUSTICE*****Objectives of the course***

The legal enterprise is the pursuit of justice for individuals, groups and the nation. Legal education, therefore, should be one which makes a person capable of undertaking and pursuing such an enterprise. The deeper sensibility and feeling for justice or repulsion against injustice, cannot come unless one clearly comprehends and internalizes the values, principles and perspectives of justice. Justice, however, is not a simple phenomenon. Its dimensions are complex, and they evolve through various ramifications in society. There are also alternative ways of attaining justice. These complexities can be better understood only by making a systematic study of various aspects of justice. The course outlined here attempts to provide not only the theoretical background necessary for the understanding of law, but through various case studies also strives to deepen the students' sensibility.

The following syllabus prepared with this perspective will be spread over a period of one semester.

***Syllabus*****1. The Concepts of Justice.**

- 1.1. The nature and varieties of justice.
  - 1.1.1. Chhatrapathi Singh
  - 1.1.2. Karl Mark
  - 1.1.3. John Austin
  - 1.1.4. Hans Kelson
  - 1.1.5. C.K.Allen
  - 1.1.6. Karl Renner
- 1.2. The meaning of justice
- 1.3. Justice as social norms

- 1.4. Justice as absolute moral principles
- 1.5. Justice as appropriative
- 1.6. Justice as obligatory
- 1.7. The objectivity of Justice

## 2. The Basis of Justice

- 2.1. The Liberal contractual tradition
- 2.2. The liberal utilitarian tradition
- 2.3. The liberal moral tradition
- 2.4. The socialist tradition

## 3. The Relation between Law and Justice

This section of the course should acquaint the students with the following problematics:

The dependence of the realization of justice on law

Can law be independent of justice?

The conformity of law to justice

The dependence of justice on social action and not law

The criteria of law (just law)

- 3.1. Equivalence Theories: Justice is nothing other than the positive law of the stronger classes.
- 3.2. Dependency theories. For its realization justice depends on law justice, however, is not the same as law
- 3.3. The Independence of justice theories

### **Select bibliography**

M.D.A. Freeman (ed.), *Lloyd's Introduction to Jurisprudence* (1994), Sweet & Maxwell.

Bodenheimer, *Jurisprudence: The Philosophy & Method of Law* (1997) Universal, N.Delhi.

Freedman, *Legal Theory* (1960) Stevens and Sons, London.

John Rawls, *A Theory of Justice* (2000) Universal, Delhi.

C.K. Allen, *Law in the Making*, (1961)

St. Thomas, Aquinas, *Summa Theologica*, (1963)

Aristotle, *The Nicomachean Ethics*, (1966) Wordsworth Classics

W.C. Greene, (ed.), *St. Augustine, The City of God* (1960).

P.A. Freund, "Social Justice, and. The Law", in Brandt, *Social Justice*, 93-117 (1962)

E.N. Garlan, *Legal Realism and Justice*, (1941)

H. Grotius, *De Jure Belli et Pacis* (1925)

G.L Gurvitch, "Justice", in *Encyclopædia of the Social Sciences*, 509-514; Vol. 4.

I.Kant, "The Science of Right", in *Great Books of the Western World* Vol. 42 (1952)

H. Kelsen, *What is Justice?* (1957)

G.W. Leibniz, "On the Notions of Right and Justice", in L.E. Loemker (ed.), *Philosophical Papers and Letters*, (1956)

J. Maritan, *The Rights of Man and Natural Law*, (1943)

R.P. Mckeon, "The Meanings of Justice and the Relations among Traditions of Thought", 41 *Revue Internationale de Philosophie*, 253-267 (1957)

F. Olafson, (ed.), *Justice and Social Policy*, (1961)

C. Perelman, *The Idea of Justice and the Problem of Argument* (Translated by J. Petric, 1963)

C. Perelman, "Justice and Justification", 10 *Natural Law Forum*, 1-20 (1965)

J. Piaget, *The Moral Judgment of the Child*, (1932).

H. Potter, *The Quest for Justice*, (1951)

J. Rawls "The Sense of Justice" 72 *The Philosophical Review*, 281-305 (1963)

N. Rescher, *Distributive Justice* (1966)



G.H. Von Wright, *The Varieties of Goodness*, (1963)

Brian Barry, *The Liberal Theory of Justice: A Critical Examination of the Principal Doctrine in a Theory of Justice by John Rawls*, (1973)

Jonethan Harrison, *Themes in Theory of Justice*, (1983)

Rosolaind BrookeLaw, *Justice and Social Policy*, (1979)

Morris Ginsberg, *On Justice in Society*, (1965)

Edgar Bodenheimer, *Treatise on Justice*. (1967)

Torstein, Eckhoff, *Justice Its Determinants in Social Interaction* (1974), Rotterdam University Press.

Henry Stuart *Private Justice*, (1983)

Joel Feinbeing, *Rights, Justice and the Bounds of Liberty*, (1980).

Burton M. leiser, *Liberty, Justice and Morals*, (1979)

R.G. Chaturvedi, *Natural and Social Justice*, (1975)

Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1789).

Edmund Bergler and Noost Meerloo, *Justice and Injustice*, (1963)

Edmond Cahn, *The Sense of Injustice*, (1949)

Edmond Cahn, *The Moral Decision* (1956)

John Cohen, *Chance, Skill and luck* (1960)

H.LA. Hart "Are there any Natural Rights", 56 *The Philosophical Review*, (1955)

Hans Reiss (ed.), *Kant's Political Writings*, (1970).

**F 040 LAW AND SOCIETY*****Objectives of the course***

This course focuses on law as a sub-system of legal system. This would necessarily require a study of institutional dimensions of law as against the normative dimensions of law which have been virtually the exclusive concern of law teaching in the country. It assumes that social science provides a framework for the evolution and development of law and that sociological inputs are necessary to keep law in adjustment with other aspects of social order. It is not possible to make a meaningful study without an understanding of the sociology of law. The emphasis would, however, be on the study of functions of law in the society, specially the study of law as an instrument of social control. The contemporary problems of the Indian society should be used to illustrate the role of law in dealing with the problems. The select bibliography suggests a whole variety of materials which can be used for this purpose.

The following syllabus prepared with this perspective will comprise of about 42 units of one-hour duration each spread over a period of one semester.

***Syllabus*****1. Introductory**

- 1.1. The idea of social sciences
- 1.2. Law as a social science
- 1.3. Sociology of law as a relatively autonomous discipline
- 1.4. Place of law in the history of development of social science theory: Durkheim, Weber, Marx.
- 1.5. The Idea of legal system
  - 1.5.1. Normative
  - 1.5.2. Behavioural
  - 1.5.3. Institutional

- 1.5.4. Cultural
- 1.6. The idea of social system: The problems of societal integration
  - 1.6.1. Consensus approach
  - 1.6.2. Conflict approach

## **2. Functions of Law**

- 2.1. Conception of "functions" : (Latent and manifest)
- 2.2. The law maintains legitimate monopoly of force in society.
- 2.3. The law articulates authoritatively the directions of social transformation by postulating ideals and values towards which public power should be amended.
- 2.4. The law provides resources for orderly and pacific handling of disputes and conflicts.
- 2.5. The law plays important role in resource allocation in society
- 2.6. The law allocates authority and power rendering accountable
- 2.7. The, law is an important instrumentality of social control

## **3. The impact of Society on Law**

- 3.1. The law as volksgiest (Savigny)
- 3.2. The impact of public opinion on the making, unmaking, and implementation of laws.
- 3.3. Pluralism: Control by elite, class domination and the law.
- 3.4. Pressure groups, lobbying and legal policies
- 3.5. Lobbying for the poor

## **4. Law as Instrument of Social Control - Impact of Law in Society**

- 4.1. Notions of social control
- 4.2. Religion, education and law as key instrumentalities of social control.
- 4.3. Distinctive features of law as a means of social control.
  - 4.3.1. Imposition of obligation to obey the law
  - 4.3.2. Incentives to compliance: Bentham's conception of relevance of the law to social expectations.

- 4.3.3. Varieties of sanctions
- 4.3.4. Legal administration as an aspect of social control
- 4.3.5. Control over competing/rival ideologies and belief systems
- 4.3.6. Limits of effective legal action

## 5. Law, Culture, History

- 5.1. Notions of culture, (material and non-material)
- 5.2. Ogburn's hypothesis of cultural lag of law.
- 5.3. Evolutionary theories of law
  - 5.3.1. Durkheim progression from repressive to restitutive sanctions
  - 5.3.2. Sir Henry Maine: stages of growth of law
  - 5.3.3. Et. Adamson Hoebel's the law of the primitive man.
- 5.4. Materialism and legal institutions: A Marxist view of legal development.

## 6. Non-State Legal Systems (NSLS)

- 6.1. Conceptions of NSLS
- 6.2. Types of NSLS
- 6.3. Interaction between NSLS and SLS.

### **Select bibliography**

The following general works should be consulted for helpful materials.

U. Baxi, *Towards Sociology of the Indian Law*, (1987)

J. Bentham, *Theory of Legislation*, (1985)

Yash Ghai et al., *The Political Economy of the Law: A Third World Reader*, (1987)

Lawrence M. Friedman & Stewart Macoulay (eds.), *Law, and Behavioural Sciences*, (1977)

Charles E. Reasons & Robert M. Rich, *The Sociology of Law. A Conflict Perspective*, (1978)

Julius Stone, *Social Dimensions of Law and Justice* (1999) Universal.

Upendra Baxi, "Durkheim and Legal Evolution: Some Problems of Disproof", 8 *Law & Society Review*, 645 (1974)

Katherine S. Newman, *Law and Economic Organization: A Comparative Study of Preindustrial Societies* (1983)

B.M. Shukla, *Law and Social Justice* (1998) Rawat Pub., Nagpur

Max Webber on *Law in Economy and Society*, E. Shils & M. Rheinstein (Tr.) Cambridge (Pub.)

W. Friedman, *Law in a Changing Society* (1996), Universal

Leopold Possil, *Anthropology of Law: A Comparative Theory Ch. 5* (1971)

Richara S. Schwartz, "Legal Evolution and Societal Complexity: A Reply to Professor Baxi" in 8 *Law and Society Review* 53 (1974)

Markanday Katju, *Law in the Scientific Era* (2000), Universal

Upendra Baxi, *The Crisis of the Indian Legal System* (1982) Vikas, New Delhi.

Upendra Baxi, *Towards a Sociology of Indian Law*. (1986)

**F 041 CONCEPTS OF RIGHTS*****Objectives of the course***

In this century the concept of rights has become one of the central legal concepts. Both the specialist and the liberal legal discourse employs this concept not only to safeguard the individuals from the tyranny of the state and market exploitation, but also to develop a the of state in which groups, institutions and agencies are accountable to each other. All development of the literature around the concept of right now provides sufficient justification for designing a separate course, within jurisprudence, for legal education. The comprehension of the concept of rights is not merely a matter of theoretical interest, it equips a law person to identify injustices and fight them with a requisite legal armoury. This course has been designed to provide the students the theoretical background that is necessary for the pursuit of justice.

The following syllabus prepared with this perspective will be spread over a period of one semester.

***Syllabus*****1. Classification and Categorization of Rights**

- 1.1. Constitutional Rights
- 1.2. Rights protected by the IPC, Cr. P.C.
- 1.3. New rights generated in case law.
- 1.4. Types of rights: positive, negative, natural, legal, absolute in rem, in personam
- 1.5. Correlation of rights with duties.

**2. History of Legal Discourse on Rights**

- 2.1. French Revolution and the Rights of man: Locke, Thomas Paine, Rousseau, Kant
- 2.2. The British Bill of Rights.
- 2.3. The emergence of the American Bill of Rights.
- 2.4. The Karachi Resolution and the First Indian Bill of Rights

- 2.5. Declaration of Human Rights: The Soviet and Arab opposition.
- 2.4. The Constitutional debates in India: 'due process', rights of minorities, rights to property.

### **3. Nature of Rights**

- 3.1. What are Rights? Discuss:
  - 3.1.1. Rights as Trumps. (Ronald Dworkin)
  - 3.1.2. Rights as Utility: David Lyons.
  - 3.1.3. Rights as entitlement (Robert Nozick)
  - 3.1.4. Rights as values. (Allen Buchanan)
- 3.2. Are there any Natural Rights?
- 3.3. Are there any Absolute Rights?

### **4. Structure of Rights**

- 4.1. Correlation of Rights with other legal concepts-the Hohfeldian concept.
- 4.2. Generation of Rights: The internal logic of the number of rights.

### **5. The Basis of Rights**

- 5.1. Why do people have rights?
- 5.2. Grounds for claiming rights?
  - (a) Explanations emerging from theory of Self.
- 5.3. Explanations emerging form theories of society.
- 5.4. Explanations emerging from theories of morality.

### **Select bibliography**

Upendra Baxi, *The Crisis of the Indian Legal System* (1985), Vikas Publishing House, New Delhi.

S. Benn and R.L. Peters, *Social Principles and the Democratic State* ch. 4,(1959). R. Brandt, *Ethical Theory* ch. 17, (1959).

J. Feinberg, *Social Philosophy* (1973), chs. 4-6, (1973).

- E. Kamenka and A.E.S. Tay, (eds.), *Human Rights* (1978).
- R. Martin and J.W. Nickel, Recent Work on the Concept of Rights, *17 American Phil. Quar.*, (1980).
- J.R. Pennock and J.W. Chapman, (eds.), *Human Rights: NOMOS XXIII* (New York University Press, (1981)
- D.D. Raphael, (ed.), *Political Theory and the Rights of man* (1967).
- R. Tuck, *Natural Rights Theories: Their Origin and Development* (1979).
- T. Hobbes, *Leviathan* chs. 13-14, 21 and 29.
- J. Locke, *Two Treatises of Government*, 11, chs. 2,5,11 and 18 (1689).
- J.J. Rousseau, *The Social Contract Books. 1 and 11* (1762).
- E. Burke, *Reflections on the Revolution in France* (1790).
- T. Paine, *The Rights of Man* (1791).
- K. Marx, 'On the Jewish Question' in any collection of Marx's early writings (1843).
- J.S. Mill, *On Liberty*.
- T.H. Green, *The Principles of Political Obligation Lectures H-1* (1882).
- D.C. Ritchie, *Natural Rights* (1894).
- J. Feinberg, 'Duties, Rights and Claims, 3 *American Philosophical Quarterly* 137 (1966).
- H.L.A. Hart, 'The Ascription of Responsibility and Rights', 49 *Proceedings of Aristotelian Society* 171 (1948-49).
- Bentham on Legal Rights, in *Oxford Essays in Jurisprudence, Second Series*, (1973).
- W.N. Hohfeld, *Fundamental Legal Conceptions* (1923).
- D. Lyons, 'Rights, Claimants and Beneficiaries 6 *American Philosophical Quarterly* 173 (1969)
- N. McCormics, 'Rights in Legislation, in P.M. S Hacker and Raj (eds.) *Law, Morality and Society Essays in Honour of H.L.A. Hart*, P.M.S. Hacker and J. Raj (1977)
- H.J McCloskey, Rights 15 *Phil. Quar.* 54, 55 (1965)



Rights - Some Conceptual Issues', 54 *Australian Journ. of Phil*, 99 (1976).

G. Marshall, 'Rights, Options and Entitlements', in A.W. Simpson (ed), *Oxford Essays in Jurisprudence* Second Series (1973), Oxford.

D. Miller, *Social Justice* ch. 2, (1976).

R. Perry, 'A Paradigm of Philosophy: Hohfeld on Legal Right', 14 *American Phil. Quarterly*, 41 (1977)

A. Sen, 'Rights and Agency', *Philosophy and Public Affairs*, (1981).

Chhatrapati Singh, "Right to Life" in 28 *Journal of the Indian Law Institute*, (1986).

Chhatrapati Singh, "The inadequacy of Hohfeld's Scheme" in 27 *Journal of Indian Law Institute* (1985).

J. Waldron, 'A Right to do Wrong', 92 *Ethics* 21 (1981)

M. Cranston, *What are Human Rights?* (1973).

R.M. Dworkin, *Taking Rights Seriously* (1996), Universal, New Delhi.

J. Finnis, *Natural Law And Natural Rights* (1980), Clarendon Press

C. Fried, *Right and Wrong* (1978), Harvard University Press

C. Fledrich, 'Rights, Liberties and Freedoms - A Reappraisal', 57 *American Pol. Sci. Rev.* 841 (1963)

H.J., McCloskey, 'Human Needs, Rights and Political Values' 134 *American Philosophical Quarterly* (1976)

R. Wasserstorm, 'Rights, Human Rights and Racial Discrimination', 628 (1964) 61 *Journal of Philosophy*.

T. Campbell *The Left and Rights*, (1983).

H. Marcuse, 'Repressive Tolerance', in R.P. Wolff, B. Moore, and H. Marcuse, *A Critique of Pure Tolerance* (1971).

J. Raz, 'Professor Dworkin's Theory of Rights', 26 *Polit. Studies*, 123 (1978).

C. Taylor, 'Atomism' in A. Kontos (ed.), *Powers, Possessions and Freedom: Essays in Honour of*

C.M. Macpherson, (1979).

R. Young, 'Dispensing with Moral Rights', 6 *Political Theory*, 63 (1978).

J. Feinberg, 'Voluntary Euthanasia and the Inalienable Right to Life', 7 *Phil. And Public Affairs*, 92 (1978).

J. Finnis, 'The Rights and the Wrongs of Abortion: A Reply to Judith Thomson', 2 *Phil. and Public Affairs*, 117 (1973).

A. Gewirth, 'Human Rights and The Prevention of Cancer', *American Phil Quar.*, 17 (1980), 117.

H.J. McCloskey, 'The Right to Life', 15 *Philosophical Quarterly* 115 (1965).

J.J. Thompson, 'A Defense of Abortion', *Phil and Public Affairs*, 47(1971).

A. Gewirth, 'Civil Liberties as Effective Powers', in *Human Rights: Essays on Justification and Applications* (1983).

M. Sapiro, *Freedom of Speech: The Supreme Court and Judicial Review* (1966).

R.M. Dworkin, 'Principle, Policy, Procedure', in *Crime, Proof and punishment: Essays in Memory of Sir Rupert Cross* (1981).

L.C. Beeker, *Property Rights: Philosophic Foundations* (1977).

R. Nozick, *Anarchy, State and Utopia* ch.7. (1974).

Chhatrapati Singh, *Common Property and Common Poverty*, (1986).

U. Baxi, "Taking Suffering Seriously", in 8-9 *Delhi Law Review* 91 (1979-80).

M.N. Gewirth, 'Starvation and Human Rights', in *Human Rights: Essays on Justification and Applications*, (1983).

F.I. Michelman, 'Constitutional Welfare Rights and A Theory of Justice', in N. Aronson (ed.) *Reading Rawls. Critical Studies of A Theory of Justice*, (1975).

J. Feinberg, 'The Rights of Animals and Unborn Generations' W.T. Blackstone (ed.) *Philosophy and Environmental Crisis*, (1974).

R. Prey, *Interests and Rights: The Case Against Animals*, (1980).

**GROUP -G CONSTITUTION AND LEGAL ORDER****G 042 MASS MEDIA LAW*****Objectives of the course***

Mass media such as press, radio and television, films, play a vital role in socialisation, culturalisation and modernisation of a society. The visual media are bound to have a much greater impact on human mind. But while these media have such a potential value as mass educators, they are also susceptible to destructive and harmful uses for promoting criminal anti-social and selfish escapist tendencies. While their positive potential as mass educators has to be harnessed for developmental purposes, their negative, harmful potential has to be curbed in public interest. Law plays a dual role vis-a-vis such media. On the one hand, it protects the creative freedom involved in them, on the other, it has to regulate them so as to avoid their possible abuse. This paper will deal with such interaction between law and mass media.

The following syllabus prepared with this perspective will be spread over a period of one semester.

***Syllabus*****1. Mass media - Types of - Press Films, Radio Television**

- 1.1. Ownership patterns - Press - Private - Public
- 2.2. Ownership patterns - Films - Private
- 3.3. Ownership patterns - Radio & Television, Public
- 4.4. Difference between visual and non- Visual Media- impact on Peoples minds.

**2. Press - Freedom of Speech and Expression - Article 19 (1) (a)**

- 2.1. Includes Freedom of the Press.
- 2.2. Laws of defamation, obscenity, blasphemy and sedition.
- 2.3. The relating to employees wages and service conditions,
- 2.4. Price and Page Schedule Regulation

- 2.5. Newsprint Control Order
- 2.7. Advertisement - is it included within freedom of speech and expression?
- 2.8. Press and the Monopolies and Restrictive Trade Practices Act.

### **3. Films - How far included in freedom in of speech and expression?**

- 3.1. Censorship of films - constitutionality
- 3.2. The Abbas Case.
- 3.3. Difference between films and Press - why pre-censorship valid for films but not for the press?
- 3.4. Censorship under the Cinematograph Act.

### **4. Radio and Television - Government monopoly.**

- 4.1. Why Government department ?
- 4.3. Should there be an autonomous corporation?
- 4.4. Effect of television on people.
- 4.5. Report of the Chanda Committee.
- 4.6. Government policy.
  - 4.6.1. Commercial advertisement.
  - 4.6.2. Internal Scrutiny of serials, etc.
- 4.7. Judicial Review of Doordarshan decisions: Freedom to telecast.

### **5. Constitutional Restrictions**

- 5.1. Radio and television subject to law of defamation and obscenity.
- 5.2. Power to legislate - Article 246 read with the Seventh Schedule.
- 5.4. Power to impose tax - licensing and licence fee.

### ***Select bibliography***

M.P. Jain, *Constitutional Law of India* (1994) Wadhwa.

H.M. Seervai, *Constitutional Law of India* Vol.I (1991) Tripathi, Bombay.

John B. Howard, "The Social Accountability of Public Enterprises" in *Law and Community Controls in New Development Strategies* (International Center for law in Development 1980).

Bruce Michael Boyd, "Film Censorship in India: A Reasonable Restriction on Freedom of Speech and Expression ". 14 *J.I.L.I.* 501 (1 972).

Rajeev Dhavan "On the Law of the Press in India" 26 *J.I.L.I.* 288 (1984).

Rajeev Dhavan, "Legitimizing Government Rhetoric: Reflections on Some Aspects of the Second Press Commission" 26 *J.I.L.I.* 391 (1984).

Soli Sorabjee, *Law of Press Censorship in India* (1976).

Justice E.S. Venkaramiah, *Freedom of Press: Some Recent Trends* (1984).

D D. Basu, *The Law of Press of India* (1980).

Students should consult relevant volumes of the Annual Survey of Indian Law published by the Indian Law Institute. (Constitutional Law 1 & 11, Administrative Law and Public Interest litigation).

**G 043 PUBLIC UTILITIES LAW*****Objectives of the course***

Public utilities are government monopolies, which are services rather than commercial enterprises. The law of public utilities is contained in the statutes of incorporation and judicial decisions given by courts while resolving disputes between the utilities and their consumers or employees or traders or others entering into business relations with them. In this paper a student will study (a) government policy in regard to such utilities in general and to each utility in particular, (b) the growth and evolution of the public utilities; (c) patterns of the laws of incorporation and (d) powers, functions and liabilities of the public utilities vis-a-vis their employees, consumers and others.

The following syllabus prepared with this perspective will be spread over a period of one semester.

***Syllabus*****1. Public Utilities**

- 1.1. Railways, Electricity, Gas, Road Transport, telephone, post and telegraph service, Police, Fire Brigade, Banking service, etc.
- 1.2. Growth and evolution of public utilities and their legislation

**2. Public Utilities - Why Government Monopoly?**

- 2.1. Government and Parliamentary Control
- 2.2. Constitutional division of power to legislate.

**3. Utilities Legislation - Patterns of -**

- 3.1. Administrative Authorities - Structure of the Administrative Authorities
- 3.2. Subordinate legislation

**4. Public Utilities and Fair Rearing**

- 3.3. Quasi-Judicial Decision - Administrative Discretion.

**5. Public Utilities and Consumer Protection**

- 5.1. Exclusion from M.R.T.P. Act
- 5.1. Rights of consumers protected by the Consumer Protection Act

5.2. Rights Arising from law of Contract and law of Torts.

## **6. Public Utilities And their Employees.**

6.1. Application of Articles 16 and 311?

6.1. Application of Industrial law- right to strike.

## **7. Public Utilities and Fundamental Rights**

7.1. The right to equality: the airhostess case.

7.2. Are Public utilities "State" for the purpose of article 12 of the Constitution?

7.3. Extension of the concept of State

## **8. Liabilities and special privileges of public utilities**

8.1. In contract

8.2. In tort

8.3. In criminal law

### **Select bibliography**

P.M. Bakshi, *Television and the Law*, (1986)

Vasant Kelkar, "Business of Postal Service" 33 *I.J.P.A.* pp. 133-141 (1987)

G. Ramesh, "Characteristic of Large Service Organisation in a Developing Country Like India" 32 *I.J.P.A.* 77 (1986)

Nalini Paranjpe, "Planning for Welfare in the Indian Railways" 31 *I.J.P.A.* 171-180 (1985)

Arvind K. Sharrna "Semi-Autonomous Enterprise: Conceptual Portrait - Further Evidence on the Theory of Autonomy" 33 *I.J.P.A.* p. 99-113.

S.P. Sathe, *Administrative Law* (1998)

Jain & Jain, *Principles of Administrative Law*, (1986)

Jagdish UI, *Handbook of electricity Laws*, (1978)

Bhaumik, *The Indian Railways Act*, (1981)

Law Commission of India, *38th Report : Indian Post Office Act, 1898*, (1968)

Students should consult relevant volumes of Annual Survey of Indian Law published by the Indian Law Institute (Constitutional Law 1 & 11, Administrative Law, Consumers Protection Law and Labour law).

## **G 044 UNION-STATE FINANCIAL RELATIONS**

### ***Objectives of the course***

The Indian Constitution adopts federal government for various reasons. Power is divided between the Union and the States in such a way that matters of national importance are entrusted to the Centre and matters of local importance are left to the States. The Constitution departs from the model of classical federalism in many ways. This departure was made to suit the peculiar Indian circumstances. However, the constitutional provisions were in practice further distorted so as to make the states totally subservient to the Centre. Distribution of fiscal power is the nerve centre of the federal system. In this paper a student will be made conscious of various aspects of federal principle, and their working in the Indian context with a view to ultimately assessing the Indian experience critically. He must clearly understand various emerging forces such as regionalism, sub-national loyalties and nationalism. He should be able to see the working of the constitutional process as a vital element of the political economy.

The following syllabus prepared with this perspective will be spread over a period of one semester.

### ***Syllabus***

#### **1. Federalism - Essentials**

- 1.1. Models of Federal Government - U.S.A., Australia, Canada
- 1.2. Difference, Between Federation and confederation
- 1.3. Evolution of federal government in India

#### **2. Distribution of Legislative Power/Administrative Power**

- 2.1. Indian Constitution
- 2.2. Centre-State relations
- 2.3. Factors responsible for subordination of States
- 2.5. Administrative relations

#### **3. Distribution of Fiscal Power**

- 3.1. Scheme of Allocation of taxing power
- 3.2. Extent of Union power of taxation
- 3.3. Residuary power - inclusion of fiscal power



**4. Restrictions of Fiscal Power**

- 4.1. Fundamental Rights
- 4.2. Inter-Government tax immunities
- 4.3. Difference between tax and fee

**5. Distribution of Tax Revenues**

- 5.1. Tax-Sharing under the Constitution
- 5.2. Finance Commission - Specific purpose grants (Article 282)

**6. Borrowing Power of the State**

- 6.1. Borrowing by the Government of India
- 6.2. Borrowing by the States

**7. Inter-State Trade and Commerce**

- 7.1. Freedom of Inter-State trade and commerce
- 7.2. Restrictions on legislative power of the Union and States with regard to trade and commerce

**8. Planning and Financial Relations**

- 8.1. Planning Commission
- 8.2. National Development Council
- 8.3. Plan grants

**9. Co-operative Federalism**

- 9.1. Full faith and credit
- 9.2. Inter-State Council
- 9.3. Zonal Councils
- 9.4. Inter-State disputes

**10. Federal Government in India**

- 10.1. Model of Jammu and Kashmir
- 10.2. Sarkaria Commission Report
- 10.3. What Reforms are Necessary?

**Select bibliography**

H.M. Seervai, *Constitutional Law of India* (1991), Tripathi, Bombay.

Sudha Bhatnagar, *Union-State Financial Relations and Finance Commissions*, (1979)

*Ashok Chandra, Federalism in India*, (1965)

V.D. Sebastian, *Indian Federalism: The Legislative Conflicts* Chs. 6-7 and 8 (1980).

Chandrapal, *Centre-State Relations and Cooperative Federalism*, Chs. 5 and 8 (1983)

G.C.V. Subba Rao, *Legislative Powers in Indian Constitution Law*, Chs. 37, 38, 39 (1982)

Richard M. Pious, *The American Presidency*, 293-331, Ch. 9 (1979)

Daniel J. Elazar, *American Federalism*, Chs. 3 and 4 (1984)

K.P. Krishna Shetty, *The Law of Union-State Relations and the Indian Federalism* Ch.9 (1981)

*Report of the Eighth Finance Commission.*

Administrative Reforms Commission on Centre-State Relationship Ch. 3 (1969)

*Constituent Assembly Debates* Vol. 9, 203, 240 and 302-349; Vol. 10, 325-342.

*Administrative Reforms Commission, Report of the Study Team on Central-State Relationship* (1967) Vol. 1, Sections and 11, pp. IS- 168

L.M. Singhvi (ed.), *Union-State Relations in India* 124-154 (1969)

Government of Tamilnadu, *Report of the Centre-State Relations Inquiry Committee* Ch.5 (1971)

D.T. Lakadwala, *Union-State Financial Relations* (1967)

M.P. Jain, *Indian constitutional Law* (1994), Wadhwa.

K. Subba Rao, *The Indian Federation* (1969)

K.C. Wheare, *Federal Governement* (1963)

Students should consult relevant volumes of the Annual Survey of Indian Law published by the Indian Law Institute (Constitutional Law II)

**G 045 CONSTITUTIONALISM: PLURALISM AND FEDERALISM*****Objectives of the course***

Constitutionalism essentially means a limited government. Where government functions according to certain principles, it is said to be abiding by constitutionalism. Must it be a democracy or can it be an autocracy also. In ancient India, the king was supposed to act according to dharma. He was not absolute in the sense in which John Austin defined sovereignty. Constitutionalism may therefore be determined by a written constitution or by religion or tradition or by mere practice or convention as in England. In a plural society, where different religious as well as linguistic groups have to live together, various rules of accommodation and mutual recognition are incorporated in the Constitution. Usually these are contained in the bills of rights which contain guarantees of individual liberty and equality against majoritarian rule. Constitutionalism does not merely imply majoritarian rule, it has to be a consensual rule. However, where there is not only such vertical pluralism but also horizontal pluralism reflected by subnations/regional loyalties, power is not only required to be restrained but it has to be shared. This calls for a federal government. The purpose of this paper is to provide exposure to the students to various models of pluralism and forms of constitutional governments and federal structures.

The following syllabus prepared with this perspective will be spread over a period of one semester.

***Syllabus*****1. Constitutionalism**

- 1.1. Authoritarianism - Dictatorship
- 1.2. Democracy - Communism.
- 1.3. Limited Government - concept - Limitations on government power.
- 1.4. What is a Constitution?
- 1.5. Development of a democratic government in England - Historical evolution of constitutional government.
- 1.6. Conventions of constitutionalism - law and conventions

- 1.7. Written Constitutions: U.S.A. Canada Australia Sweden South Africa and India.
- 1.8. Separation of powers: Montesquieu
- 1.9. Rule of Law: Concept and new horizons
- 1.10. Marxist concept of constitutionalism
- 1.11. Dictatorship of the proletariat.
- 1.12. Communist State from Stalin to Gorbachov.
- 1.13. Fundamental Rights: Human rights
- 1.14. Judicial Review: European Court of Human Rights
- 1.15. Human Rights: International conventions
- 1.16. Limits & doctrine of domestic jurisdiction in international law.

## **2. Federalism**

- 2.1. What is a federal government?
- 2.2. Difference, between confederation and federation
- 2.3. Conditions requisite for federalism.
- 2.4. Patterns of federal government - U.S.A., Australia, Canada, India.
- 2.5. Judicial review - for federal umpiring
- 2.6. New trends in federalism: Co-operative federalism
- 2.7. India - Central Control v. State Autonomy
- 2.8. Political factors influencing federalism
- 2.9. Plural aspects of Indian Federalism : Jammu & Kashmir, Punjab, Assam.
- 2.10. Dynamic of federalism.

## **3. Pluralism**

- 3.1. What is a pluralistic society?
- 3.2. Ethnic, linguistic, cultural, political pluralism
- 3.3. Individual rights - right to dissent

- 3.3.1. Freedom of speech and expression
- 3.3.2. Freedom of the press
- 3.3.3. Freedom of association
- 3.4. Rights to separateness
  - 3.4.1. Freedom of religion
  - 3.4.2. Rights of the religious and linguistic minorities
  - 3.4.3. Compensatory discrimination for backward classes
  - 3.4.4. Women - rights to equality and right to special protection
  - 3.4.5. Scheduled Tribes, Distinct Identity - protection against exploitation - NSIS - Exclusion from Hindu Law.

#### **4. Uniform Civil Code**

Non-State law (NSLS) and State Law Systems - Problem of a Uniform Code v personal laws- vertical federalism

#### **5. Equality in Plural Society.**

- 5.1. Right to equality and reasonable classification
- 5.2. Prohibition of discrimination on ground of religion, caste, sex, language.
- 5.3. Abolition of untouchability
- 5.4. Secularism - constitutional principles
- 5.5. Tribal Groups and Equality

#### **6. Pluralism and International Concerns**

- 6.1. International Declaration of Human Rights
- 6.2. Conventions against genocide
- 6.3. Protection of religious, ethnic and linguistic minorities
- 6.4. State Intervention for protection of human rights
- 6.5. Right of self-determination

**Select bibliography**

Upendra Baxi, "Law, Democracy and Human Rights"- 5 Lokayan Bulletin 4 (1987)

V.M. Dandekar "Unitary Elements in a Federal Constitution" 22 E.P.W. 1865 (1988)

Rajeev Dhavan, "The Press and the Constitutional Guarantee of Free Speech and Expression" 28 J.I.L.I. 299 (1986)

M.A. Fazal "Drafting A British Bill of Rights" 27 J.I.L.I. 423 (1985)

M.P. Jain *Indian Constitutional Law* (1994), Wadhwa.

Jagat Narain "Judicial Law Making and the Place of the Directive Principles in the Indian Constitution," J.I.L.I. 198 (1985).

Rhett Ludwikowski, "Judicial Review in the socialist Legal Systems: Current Development" 37 I.C.L.D. 89-108 (1988)

S.P. Sathe, *Fundamental Rights and Amendment of the Indian Constitution*, (1968)

H.M. Seervai, *Constitutional Law of India* (1993), Tripathi, Bomaby.

Students should consult relevant volumes of the Annual Survey of Indian Law published by the Indian Law Institute.

**G 046 HUMAN RIGHTS*****Objectives of the course***

Human rights were conceived rather narrowly as mere freedom from arbitrary government in the past. It was realised later and much more so during last fifty years since the end of the Second World War that the threats to liberty, equality and justice did not emanate from the state alone. Many nations of Asia and Africa came to nationhood during this period. These nations had to bring about their development and they needed capital. Foreign aid and foreign investments were invited but these could very well lead to their second subjugation. Poverty, ignorance, exploitation had to be fought at the global level. Development had to come without the sacrifice of human values. A greater awareness of human rights, not only as negative restrictions on the state but as positive obligations for creating an environment in which man could live with dignity was necessary.

The focus of a course on human rights must be on the national problems with an international or global perspective. The world community's concerns about human rights have been expressed through various conventions. On the national levels, they are contained in constitutional provisions such as directive principles of state policy, fundamental rights, fundamental duties and judicial, legislative as well as administrative strategies of reconstruction. Human rights acquire much more comprehensive and wider meaning. It requires us to take up cudgels against poverty discriminations based on caste, colour or sex, make provisions for drinking water, population control, conservation and preservation of natural resources, ecological balance, protection of consumers against ruthless and profit seeking, traders or manufacturers, provisions against hazardous industries and so on and so forth. Human rights is an important parameter for a just society and future lawyers must be able to assess any programme of social transformation with reference to them.

The following syllabus prepared with this perspective will be spread over a period of one semester.

***Syllabus*****1. Panoramic View of Human Rights**

- 1.1. Human Rights in Non-western Thought
- 1.2. Awareness of Human rights during the nationalist movement

- 1.3. Universal Declaration of Human Rights, Constituent Assembly and Part III, drafting process.
- 1.4. Subsequent developments in International Law and the Position in India (e.g. Convention of Social discrimination, torture, gender discrimination, environment and the two human rights covenants.)

## **2. Fundamental Rights Jurisprudence as Incorporating Directive Principles**

- 2.1. The dichotomy of Fundamental Rights (F.R.) and Directive Principles (D.P.)
- 2.2. The interaction between F.R. and D.P.
- 2.3. Resultant expansion of basic needs oriented human rights in India

## **3. Right not be Subject to Torture, Inhuman or Cruel Treatment**

- 3.1. Conceptions of torture, third-degree methods
- 3.2. "Justifications" for it
- 3.3. Outlawry of torture at international and constitutional law level
- 3.4. Incidence of torture in India
- 3.5. Judicial attitudes
- 3.6. Law Reform - proposed and pending

## **4. Minority Rights**

- 4.1. Conception of minorities
- 4.2. Scope of protection
- 4.3. The position of minority "Woman" and their basic rights
- 4.4. Communal Riots as Involving violation of Rights.

## **5. Rights to development of Individuals and Nations**

- 5.1. The UN Declaration on Right to Development, 1987
- 5.2. The need for constitutional and legal changes in India from human rights standpoint.

## **6. People's Participation in Protection and Promotion of Human Rights**

- 6.1. Role of International NGOS
- 6.2.1. Amnesty International



6.2.2. Minority Rights Groups

6.2.3. International Bars Association, Law Asia

6.3. Contribution of these groups to protection and promotion of human rights in India.

## **7. Development Agencies and Human Rights**

7.1. Major international funding agencies and their operations in India

7.2. World Bank lending and resultant violation/promotion of human rights

7.3. Should development assistance be tied to observance of human rights (as embodied in various UN declarations)

## **8. Comparative Sources of Learning**

8.1. EEC Jurisprudence

8.2. The Green Movement in Germany

8.3. The International Peace Movement

8.4. Models of Protection of the rights of indigenous peoples: New Zealand (Maoris)  
Australia, Aborigines and Canada (Indians)

## **9. Freedoms**

9.1. Free Press - Its role in protecting human rights

9.2. Right of association

9.3. Right to due process of law

9.4. Access and Distributive Justice

## **10. Independence of the Judiciary**

10.1. Role of the Legal Profession

10.2. Judicial appointments - tenure of judges

10.3. Qualifications of judges

10.4. Separation of judiciary from executive

## **11. European Convention of Human Rights**

11.1. European Commission/Court of Human Rights

11.2. Amnesty International

- 11.3. PUCL, PUDR, Citizens for Democracy
- 11.4. Minorities Commission
- 11.5. Human Rights Commission
- 11.6. Remedies Against Violation of Human Rights

### **Select bibliography**

M.J. Akbar, *Riots After Riots* (1988)

U.Baxi (ed.), *The Right to be Human* (1986)

U.Baxi, *The Crisis of the Indian Legal System* (1982), Vikas Publishing House, New Delhi.

F.Kazmi, *Human Rights* (1987)

L.Levin, *Human Rights* (1982)

Madhavtirtha, *Human Rights* (1953)

W.P. Gromley, *Human Rights and Environment* (1976)

H. Beddard, *Human Rights and Europe* (1980)

Nagendra Singh, *Human Rights and International Co-operation* (1969)

S.C. Kashyap, *Human Rights and Parliament* (1978)

S.C. Khare, *Human Rights and United Nations* (1977)

Moskowitz, *Human Rights and World Order* (1958)

J.A. Andrews, *Human Rights in International Law* (1986)

I. Menon (ed.), *Human Rights in International Law* (1985)

A.B. Robertson (ed), *Human Rights in National and International Law* (1970)

Upendra Baxi, "Human Rights, Accountability and Development" *Indian Journal of international law* 279 (1978)

**G 047 NATIONAL SECURITY, PUBLIC ORDER, AND RULE OF LAW*****Objectives of the course***

In every written constitution, provision is required to be made to equip the state to face grave threats to its existence arising from extra-ordinary circumstances created by war or external aggression or armed rebellion. Although "amidst the clash of arms, the laws are not silent" they do not speak the same language in war as in peace. Extra-ordinary circumstances warrant the invocation of extra-ordinary laws and such laws are known as emergency laws. They put greater fetters on individual liberty and also eclipse certain aspects of the due process. But in such circumstances, the democratic forces must assert that for survival of the State, the least possible liberty should be available. The students should be familiarized with different aspects of such emergency powers and scrutinizing intellectual attitude towards such powers.

The following syllabus prepared with this perspective will comprise 42 units of one hour duration each to be covered over a period of one semester.

***Syllabus*****1. National Security, Public Orders and Rule of Law**

- 1.1. Emergency Detention in England - Civil Liberties
  - 1.1.1. Subjective satisfaction or objective assessment?
- 1.2. Pre-Independence law.

**2. Preventive Detention and Indian Constitution**

- 2.1. Article 22 of the Constitution
- 2.2. Preventive Detention and Safeguards
- 2.3. Declaration of Emergencies
- 2.4. 1962, 1965 and 1970 Emergencies
- 2.5. 1975 Emergency

**3. Exceptional Legislation**

- 3.1. COFEPOSA and other legislation to curb economic offenders

- 3.2. TADA: "the draconian law"-comments of NHRC
- 3.3. Special courts and tribunals
- 3.4. Due process and special legislation

#### **4. Civil Liberties and Emergency**

- 4.1. Article 19
- 4.2. Meaning of "Security of State"
- 4.3. Meaning of "Public Order"
- 4.4. Suspension of Article 19 rights on declaration of emergency
- 4.5. President's Right to suspend right to move any court
- 4.6. Article 21 - special importance - its non-suspendability
- 4.7. Suspendability -44th amendment

#### **5. Access to Courts and Emergency**

- 5.1. Article 359: ups and downs of judicial review
- 5.2. Constitution (Forty-fourth), Amendment Act, 1978.
- 5.3. Constitution (Fifty-ninth) Amendment Act,. 1988.

#### **6. Martial Law**

- 6.1. Provisions in English Law
- 6.2. Provisions in the Constitution

#### ***Select bibliography***

G.O. Koppell "The Emergency, The Courts and Indian Democracy" 8 J.I.L.I. 287 (1966)

H.M. Seervai, *The Emergency, Future Safeguards and the habeas Corpus: A Criticism* (1978)

International Commission of Jurists, *Status of Emergency and Human Rights* (1984)

N.C. Chatterji and Parameshwar Rao, *Emergency and the Law* (1966).

**GROUP- H: FEMINIST CRITIQUE OF LEGAL ORDER****H 048 FEMINIST THEORIZING AND LEGAL ORDER****Objectives of the course**

In the course, we explore the principal variants of "feminist" theories insofar as they bear on understandings and critique of state and law. The ways in which not merely the instrumentalities and institutions but juristic theory and thought have been inherently "patriarchal" will need to be expounded in this course. What does the feminist critique of state and law and theory of it - indicate by way of alternatives.

The following syllabus prepared with this perspective will be spread over a period of one semester.

**Syllabus****1. Introductory**

- 1.1. Distinction between "sex" (nature) and "gender" (culture)
- 1.2. The notion of patriarchy
  - 1.2.1. Patriarchy as referring male-dominance ("biologistic" conception of patriarchy)
  - 1.2.2. Patriarchy as denoting historical/social dimension of women's exploitation (historical sociological conception).
- 1.3. Notion of Discrimination, paternalism
- 1.4. Notions of Division of Labour
- 1.5. Androgyny (transcendence from traditional masculine/feminine stereotypes concerning 'human' nature)

**2. Liberal Feminism**

- 2.1. As a doctrine that the same "liberal" principles which apply to men should apply to women e.g. rights, suffrage, equality.
- 2.2. Fight against the ideology which regards women as inferior to men, an ideology which justifies sex-based discrimination

- 2.2.1. The idea women are not capable of being rational agents - from Aristotle, Middle Age thinkers to Hume, Rousseau, Kant and Hegel, Freud and Marx in Western thought.
- 2.2.2. Analogues in classical (philosophic) traditions which considered women incapable of "salvation" (Mulki) e.g. Jain, Buddhist, Hindu, Islamic thought.
- 2.2.2. The ideology of National Law justifying women's subordination on grounds of nature (biology) and assignation of "private" sphere to women and "public" sphere to men.
- 2.2.3. The ideology of division of labour which not merely politically disenfranchised women but confined them strictly to hearth and home; thus signifying that they create only values but no exchange values.
- 2.2.4. The male dominant ideology which treated women as appendage to men, denied her legal personality and rights to property.
- 2.3. The legal/political strategies of liberal feminists
  - 2.3.1. Focus on opposition to sex-based discriminatory laws
    - 2.3.1.1. Suffragette struggles
    - 2.3.1.2. Equality in wages
    - 2.3.1.3. Equality in work-place
    - 2.3.1.4. Equality in access to public services
    - 2.3.1.5. Resources e.g. credit
    - 2.3.1.6. Equality in matrimonial remedies - equality in inheritance and property rights
  - 2.3.2. Active uses of law to expose other forms of sex-based discrimination
    - 2.3.2.1. Struggle against "protective" legislation
    - 2.3.2.2. Struggle against customary law based discrimination
    - 2.3.2.3. Struggle against impoverishment of women struggle for equality in public participation
    - 2.3.2.4. Struggle to constrain the state to eliminate sex-based administration and adjudication
    - 2.3.2.5. Struggle for "preferential discrimination"

### **3. Traditional Marxist Feminist Approaches**

- 3.1. Engels' theses on the origin of family, property and state

- 3.2. Causal linkage between women's oppression class society
- 3.3. How women's oppression assists capitalism
  - 3.3.1. It relieves capital of "costs" of reproduction of labour power, since women perform tasks like children rearing, cooking, care of aged and sick without wages.
  - 3.3.2. Work at home by women frees male workers to work for longer hours and enables capitalist to generate surplus value.
  - 3.3.3. Women emerge as consumption specialists to be exploited by capitalist growth
  - 3.3.4. Women also provide a surplus labour market which is exploited for low wages.
- 3.4. Traditional Marxist strategies for overcoming women's oppression
  - 4.2.1. A general transformation of mode of production from capitalism to socialism will end most problems of women's oppression.
  - 3.4.2. Specific steps: Unionization and organization of all working women
  - 3.4.4. Equality in employment at work-site
  - 3.4.5. Militant enforcement of laws directed against cultural oppression of women

#### **4. Radical Feminism**

- 4.4.1. Patriarchy is perceived as a total male control of female bodies
  - 4.4.1.1. Forced motherhood
  - 4.4.1.2. Sex-based murders : dowry, Sati
- 4.4.2. Critique of state and law as being based on legitimising and reinforcing patriarchal domination
- 4.4.3. Strategies of transformation
  - 4.4.3.1. Repudiation of Marriage (e.g. Brahmakumaris, other worldly feminism, lesbianism)
  - 4.4.3.2. Women's enterprises serving their needs without hierarchy and domination
  - 4.4.3.3. Direct action against symbols of patriarchy (e.g. burning of pornographic bookstores, destruction of blue films)
  - 4.4.3.4. Attack on the "public" and "private" law distinction

## 5. Socialist Feminism

- 5.1. Marxist conception of "labour" does not include procreative labours hence class struggle does not usually include an agenda of women's emancipation from patriarchy.
- 5.2. There are difficulties in Marxian theory in conceptualising women as a "class"
- 5.3. The struggle to control productive resources of a society have always included a struggle to control the reproductive capacity of women.
- 5.4. Organisation of procreation forms, therefore, a part of the economic foundation of society.
- 5.5. Therefore, the public/private distinction overlooks the mutual interdependence of sexuality, politics and economy.
- 5.6. Strategies for transformation
  - 5.6.1. How internationalised repression of women should be eliminated
  - 5.6.2. State and law should recognise the full value of procreational and household labour.
  - 5.6.3. Struggle against de-professionalisation and proleterinization of women's work
  - 5.6.4. Forging political unity among oppressed groups
  - 5.6.5. Demand for participatory democracy.
  - 5.6.6. Demand for nuclear families, with equalisation of domestic labour between men and women (democratisation of procreation)

## 6. Legal Theory and Practice in the Light of Feminist Critiques

- 6.1. Critique of natural law ideologies
- 6.2. Critique of Legal Positivism: especially in terms of patriarchal conceptions of rule of law (as lawyers law, equality before law).
- 6.3. Critiques of affirmative or preferential discrimination programmes
- 6.4. Evaluation of family, property and criminal law as instrumentalities of oppression
- 6.5. Law reform and patriarchy



**Select bibliography**

Alison M. Jaggar, *Feminist Thought and Human Nature* (1983), Harvester Press Sussex.

Maria Mies, *Patriarchy and Accumulation on a World Scale: Women in the International Division of Labour* (1986), Zed Books, London.

Lawrence A. Babbm *Redemptive Encounters: Three Modern Styles in the Hindu Tradition* 93-158, (1987).

K.N. Venkatarayappa, *Feminine Roles* (1980).

Susan Atkins & Brend Hogett, *Women and the Law* (1984)

Julia Brophy & Carol Smart (ed.), *Women in Law: Explorations in Law, Family and Sexuality* (1985)

Susan Edwards (ed.), *Gender, Sex and Law* (1985)

Michael D.A. Freeman (ed.), *The State, the Law and the Family* (1984)

Katherine O' Donovan, *Sexual Divisions in Law* (1985)

E.Diane Pask, Kathleen E.Mahency and Catherene A. Brown (ed.), *Women, the Law and Economy* (1985)

Carol Smart, *The Ties that Bind: Law, Marriage and the Reproduction of Patriarchal Relations* (1984)

Catherine A. Mackinon, *Feminism Unmodified: Discourse on Life and Law* (1987)

Catherine A. Mackinon, *Toward a Feminist Theory of the State* (1989)

(These readings should be contextualized by reference to: Manushi Special Numbers of EPW on Women's studies and publications of Kali).

## **H 049 NATIONALIST STRUGGLE AND GENDER EQUALITY**

### ***Objectives of the course***

Smriti writers - all men - contributed greatly to the decline in the status of women by their views and ideals. The British policy of non intervention in the personal laws enhanced this decline by freezing the laws which were unable to absorb any new changes.

The role of the reform movement was to improve the position of the women through legislation and also by education but equality of sexes was not the objective. First major attack was on Sati - the burning of widows on the funeral pyre of their husbands. Dilemma was faced by both the reformers and the British who wanted to stop this barbaric practice. Legislation like banning child marriage permitting widow remarriage and propagating education for women were all in the patriarchal structure of preserving the family. Child marriage meant child widows who not having any economic rights were often forced into prostitution, thereby posing a threat to the family structure.

What factors weighed with the nationalist leaders who had always advocated economic independence of woman? Why was uniform civil code put in the directive principle when the inferior position of the woman was a common factor in all personal laws? Why continuance of religious based family in a country pledged to secularism? Why equal pay for equal work for men and women pushed as a directive principle continuing the economic dominance of the men? Why did it take over 25 years for them to have legislation giving equal pay for both men and women the same work?

This course excursus into the status of woman and to assess factors contributed to their remaining as declining sex even after the country had become free and had its own constitution proclaiming a state where there was equality for all and equal opportunities and no discrimination on grounds of sex.

The following syllabus prepared with this perspective will comprise of 42 units of one-hour duration each to be covered over a period of one semester

## **Syllabus**

### **1. Position of Women in Early Societies**

- 1.1. Position of Women in early societies - matriarchal societies
- 1.2. Advent of private property and change in the position of women
- 1.3. Position of women under shastric laws and bias against women
- 1.4. The role of interpretation and custom on shastric law

### **2. Position of Woman after the Advent of Company Administration**

- 2.1. Policy of non-interference with the personal laws of Hindus and Muslims and its effect on custom.
- 2.2. Results of the freezing of the law
- 2.3. Criticism of sati or burning of widows on the funeral pyre of the husband -the British Parliament and the dilemma between curbing barbaric practices and non-interference with religion.
- 2.4. The concern of Indian social reformers like Raja Ram Mohan Roy on the plight of women
- 2.5. Position of sati in Bengal
- 2.6. The contribution of Mritunjay Vidyalkar in dilemmas of the British rules and Indian social reformers about steps to stop Sati.
- 2.7. Contextual setting of the Regulation against Sati

### **3. Social Legislation to Ameliorate the Position Subsequent to Regulation Against Sati**

- 3.1. Legislation against female infanticide
- 3.2. Age of consent for intercourse with a girl.
- 3.3. The Hindu Widow Remarriage Act, 1856
- 3.4. Emphasis on education of women by Indian Social reformers as a means to elevate the status of women.
- 3.5. Education, widow remarriage and other reforms within the patriarchal structure - their weaknesses.

### **4. Position of Muslim Women**

- 4.1. The superior legal position of Muslim women as compared to Hindu Women

- 4.2. Sayyid Ahmed's views on reform
- 4.3. Conflicting views on reforms by rationalists and revivalists

## **5. Developments Subsequent to 1887**

- 5.1. End to social reforms at the initiative of the British Administration
- 5.2. Special Marriage Act, 1872.
- 5.3. Married Women's Property Act, 1874
- 5.4. Montague Chelmsford Reform and role of Indians in reform
- 5.5. Child Marriage Restraint Act, 1929
- 5.6. The Hindu Law of Inheritance Removal of Distabilities Act, 1928 and The Hindu Law of Inheritance (Amendment) Act, 1929, The Hindu Women's Rights to Property Act, 1938.
- 5.7. Muslim Personal Law (Shariat) Application Act, 1937
- 5.8. Dissolution of Muslim Marriages Act, 1939

## **6. Reform of Other Personal Laws**

- 6.1. Married Women's Property Act, 1974 and its applicability to Parsi & Christian married women
- 6.2. Indian Succession Act, 1925 and its application to the Parsis and the Christians
- 6.3. Parsi Marriage and Divorce Act, 1936.

## **7. Non-Implementation of Many of the Social Legislation**

- 7.1. In 1911 discussion on female infanticide and 'the best methods of putting down this inhuman practices
- 7.2. Child Marriage Restraint Act, 1929 and its ineffective implementation
- 7.3. Few remarriages of widows
- 7.4. British reluctance to introduce further reforms apprehending opposition from orthodox Hindus and Muslims.

## **8. Womens' Participation in the Nationalist Movement Before Gandhiji**

- 8.1. Partition of Bengal - Participation of women in the movement against
- 8.2. Advocacy of violent methods by a group to resist partition (known as the terrorist group) women members.

- 8.3. After attainment of goal by defeating the move of the British the majority of the women went back to their homes no further effort made by Indian leaders to involve women in the fight for Swaraj.

## **9. Gandhiji and Involvement of the Women in the Non-violent Movement**

- 9.1. Gandhiji's abjuration of the violent methods adopted by the terrorists and attempts to wean away women from violent methods.
- 9.2. Gandhiji's attention on the plight of the women domestic slaves and on discrimination in the payment of wages
- 9.3. Emphasis on ownership of property by men-advocacy of equal property rights for women
- 9.4. Jawaharlal Nehru's emphasis on economic freedom for women and elimination of feudal institutions like Hindu joint family
- 9.5. Resolution of Karchi Congress on equality of status and equality of opportunities for women.
- 9.6. Appointment of National Planning Committee with sub-committee on women's role in planned economy.
- 9.7.1. Recommendation for civic rights inclusive of adult suffrage and the right of women to hold public offices identical standard of morality for both men and women.
- 9.7.2. Recommendation relating to economic rights
- 9.7.3. Recommendation relating to night shifts
- 9.7.4. Recommendation relating to the duty of state to ensure all women wage earners absolute control over their own earnings
- 9.7.5. Women to have indefeasible share in the husband's property
- 9.7.6. Recognition of the need that women should have an absolute control over some part of the family income.

## **10. Legislation Prior to Hindu Code**

- 10.1. Pressure from Indian social reformers on the legislators reforming Hindu law further, brought Hindu Marriage Disabilities Removal Act, 1946 permitting sagotra marriages; Validating Act of 1949 recognising inter caste marriages.
- 10.2. The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.

- 10.3. Committee appointed under B.N. Rau to codify Hindu law and produce a logical and coherent code of Hindu Law.

## **11. Independence and the Constitutional Guarantee of Equality**

- 11.1. Karachi Congress Resolution recognising the right of equality of sexes and equal opportunity incorporated in the Constitution
- 11.2. Equal pay advocated many years earlier by Gandhiji and recommended by sub committee of National Planning Committee of the Congress but only as a directive principle
- 11.3. Major recommendations of the sub-committee about women workers put in the directive principles for implementation in the future.
- 11.4. Special provision for women put in the Fundamental Rights so that special steps could be taken to improve the position of women and bring them on a par with men.

## **12. Hindu Code**

- 12.1. Monogamous marriage with equal rights of divorce
- 12.2. Right of daughters to share equally with sons in separate property of father recognised and limited right of ownership abolished.
- 12.3. Strong hold of patriarchal values clear in retention of joint family and coparcener.
- 12.4. Father's right of custody retained placing mother after him.
- 12.5. Sub-committee's recommendation of matrimonial property and restriction on power to will away entire property not included.
- 12.6. Patriarchal structure of family retained resulting in continuing unequal status of women.

### ***Select bibliography***

E.M.S. Namboodiripad, *History of Indian Freedom Struggle* (1980)

J.Nehru, *Autobiography* (1936-80)

M.Nehru, *Discovery of India* (1956)

Lata Mani "Production of Official Discourse on Sati in Nineteenth Century Bengal", *21 E.P.W.* 32 (1986)

Ajit Ray, *Widows are not for Burning* (1985)

Ranjit Sinha, "Chandra's death" 5 *Subaltern of Independence - Gender, Caste and Class in India* (1986)

Indira Munshi Saldhana, "Tribal women in World Revolt 1945-47, Class and Gender in the Left Perspective" 21 *E.P.W.* WS 41, (1986)

Amrit Srinivasan, "Women and Reform of Indian Tradition", *Gandhian Alternative to Liberals* 22 *E.P.W.* 2225 (1987)

Pepper Casters, *Women in tabhaga Uprising Poor Women and Revolutionary Leadership 1946-47* (1987)

R. Dunayevsjaya, *Women's Liberation and the Dialectics of Revolution* (1985)

A.S. Altekar, *Position of Women in Hindu Civilization from Prehistoric Times to the Present Day* (1962)

B.A. Gupta, *Position of Women among Hindu, Moslems, Buddhists and Jains* (1901)

Renuka Ray, *My Reminiscences and Social Development During Gandhian Era* (1982)

Madhu Kishwar and Ruth Vanita, *In Search of Answers* (1984)

Madhu Kishwar, *Gandhi on Women* (1986)

Manmohan Kaur, *Women in India's Freedom Struggle* (1985)

Gail Minault, *Voices of Silence - Introduction* (1986)

Romila Thapar "Looking back in History"; Lakshmi Menon "Women and the National Movement"; Andre Beteille "Position of Women in Indian Society" in Devaki Jain (ed.) *Indian Women* (1975)

Bharati Roy, *Swadeshi Movement and Women's Development Studies Navjivan Trust*

Angeles Almenas Lipowsky, *The Position of Indian Women in the Light of Legal Reform* (1975).

S.N. Jafri, "Women in India", 34 *Asia Review* 91 (1938)

Sumit Sarkar, *Modern India 1885-1947*(1983)

## **H 050 PATRIARCHAL ELEMENTS IN INDIAN LAW**

### ***Objectives of the course***

Long before India became free, the movement for improving the status of women had begun under the leadership of Gandhiji. He attempted to educate the people that he did not want that there should be legal equality between men and women. He also pointed out that man's domination over women was continuing because of their ownership of property which was denied to the women. Jawaharlal Nehru deplored the subordination of women and attributed this factor to have contributed to the 'fall of India from her high status'. He believed the economic bondage of woman had to be removed without which there could never be any real equality of status.

It is true that under the leadership of both Gandhiji and Nehru the Congress as far back as 1931 adopted the Fundamental Rights Resolution which reiterated that there should be equality between the sexes and equal opportunity for all. Was not the hold of patriarchal values so strong while framing the Constitution on equality of sexes? Were not there abstract principles when translating into reality like equal pay for equal work for men and women put into the directive principles? Right against exploitation has no mention of women and even inclusion of devadasis and prostitution were not included after discussions in the Constituent Assembly. Personal laws based uniformly on inequality of the sexes were continued and like equal pay for men and women was accepted only as an abstract principle.

The very members who passed the Preamble of the Constitution and the Fundamental Rights fought tooth and nail over every clause in the Hindu Code. Finally, the stronghold of patriarchy won and joint Hindu family, condemned many years earlier by Jawaharlal Nehru as a feudal constitution, was retained.

The cause till study how the there 3 branches legislative - executive - judicial have reacted and are reacting today.

The following syllabus prepared with this perspective will comprise of about 42 units of one-hour duration each spread over a period of one semester.



## **Syllabus**

### **1. Introductory**

- 1.1. Patriarchy linked to belief or ideology that men are superior to men-women are and should be controlled by men- women are part of men's property.
- 1.2. Right of feminists against Patriarchy
- 1.3. Feminism is awareness of women's oppression and exploitation in society at work within family. Conscious action by men and women to change situation.
- 1.4. Changing nature of feminist struggle challenges the very notion of femininity and masculinity as mutually exclusive biologically determined categories.

### **2. Patriarchy and Jurisprudence**

- 2.1. Patriarchal Asp" of Natural Law Traditions
- 2.2. Theistic/Divine/Revealed Natural Law. Patriarchy in classical Hindu, Christian, Shariat traditions.
- 2.3. Secular Natural Law based on human reasons. patriarchy and "Natural Rights" traditions.
- 2.4. Patriarchy and legal paternalism.
- 2.5. Patriarchy in "Utilitarian Jurisprudence".
- 2.6. Legalism. : Equality before the law and patriarchy
- 2.7. Denial of legal personality.

### **3. Patriarchy and Colonial Law.**

- 3.1. Hands off: Personal Law in India.
- 3.2. Continuation of separate discriminatory personal laws even after Independence.
- 3.3. Gender based rules doctrines in laws of evidence (e.g. Shariat law on evidence of women)
- 3.4. Gender based specification of offences - adultery - rape.
- 3.5. Gender based notions of property (e.g. unit for purposes of land reform male headed family: discrimination between adult son and daughter).

3.6. Gender based notions of matrimonial law - divorce, maintenance, guardianship.

#### **4. The Patriarchal Character of Public/Private Law Dichotomy.**

4.1. The nature and scope of the Distinction.

4.2. How "Private" law was a device to perpetuate patriarchy.

4.2.1. How it does not extend to routinized domestic violence.

4.2.2. No Marital 'rape'.

4.2.3. How "Dowry" till recently considered to be a matter of party autonomy.

4.2.4. Female infanticide and its new forms today.

4.2.5. Religion-based exploitation (e.g. devadasi system).

4.2.6. Nation of domicile of the wife following that of her husband in Private International Law.

#### **5. Patriarchal Character of Criminal Law.**

5.1. Ways in which the prosecutrix in "rape" cases becomes virtually the accused.

5.2. Notions of adultery.

5.3. Problems of proof in bigamous marriage.

5.4. Legislation on Sati.

5.5. The law relating to prostitution and immoral traffic.

5.6. How patriarchal was the Dowry Act (and still is in J & K Dowry Restraint Act, 1969).

#### **6. Constitution and Constitution making and Patriarchy.**

6.1. Constitution contains no special rubric "women".

6.2. Family planning under population not under women welfare or social welfare.

6.3. Fundamental Right Against Exploitation - non inclusion of exploitation of women - domestic labour no recognition or value given.

6.4. Constituent Assembly rejects inclusion in the draft of Article 23, 'dedicated in the name of religion to be devadasi' or addition of prostitution after traffic in human beings.

- 6.5. Equal pay for equal work for men and women in Directive Principles.
- 6.6. Six women specific articles in the whole Constitution (both fundamental rights and directive principles and one fundamental duty).

## **7. Legislative Process and Patriarchy.**

- 7.1. Hindu Code Bill and retention of Joint Hindu family - continued discrimination against women.
- 7.2. Exclusion of divorced Muslim women from s. 125 Criminal Procedure Code (giving maintenance to destitute women) under Muslim Women (Protection of rights on divorce) Act, 1987.
- 7.3. Dowry Prohibition Act and Amendments.
- 7.4. Sati

## **8. Judiciary and Patriarchy**

- 8.1. Upholding the offence of adultery as being special provision for women.
- 8.2. Attitude to wife's rights to work.
- 8.3. Retention of restitution of conjugal rights as a matrimonial remedy.
- 8.4. Matrimonial home - whose decision?
- 8.5. What constitutes cruelty?

## **9. Government, Public Undertaking and Patriarchal Values.**

- 9.1. Government rules - administrative service and foreign service regarding married women-discriminatory treatment.
- 9.2. Indian Air Lines and Air India Service rules governing air hostesses.
- 9.3. Orissa Government disqualifying married women from post of district judge.

## **10. Patriarchal Character of Legal Administration.**

- 10.1. Conception of legal administration.
- 10.2. Law Enforcement process and women.
  - 10.2.1. Policing and women.

- 10.2.2. Custodial rape.
- 10.2.3. Women dacoits and policing.
- 10.3. Correctional system and women.
  - 10.3.1. Custodial institutions.
  - 10.3.2. Problems of women prisoners.
- 10.4. Patriarchal character of judicial administration.

### **Select bibliography**

Bina Agarwal (ed.), *Structures of patriarchy* (1988).

Kamia Bhasin and Nighat Said Khan, *Some Questions of Feminism and its Relevance in South Asia* (1986).

Madhu Kishwar and Ruth Vanita, *In Search of Answers Chap. 1* (Women's Lives), chap.3 (Violence against Women). (1986).

R. Aininova, *The October Revolution and Women's Liberation Movement* (1977). Constituent Assembly Debates Vol. 7(3.12.48).

Kumari Jayawardene, *Feminism and Rationalism in the Third World* (1986).

Claire Duchon, *Feminism in France* (1986).

Varda Bunslyn, "Masculine Dominance and the State" 46 in *Socialist Register* (1983).

P. Andiappan, "Public Policy and Sex Discrimination in Employment in India" - 14 IJIR. 395 (1978-79).

Kay Macpherson, "International Aspects of Feminism" in *Status on Women News* Vol. 6 NO. 302 (1980).

Govind Kelkar, *Women in Post-Liberation Societies: A Comparative Analysis of Indian & Chinese Experiences*.

Rhoda Reddock, "Women's Liberation & National Liberation" in Maria Mies & Rhoda Reddock(eds.), *National Liberation & Women's Liberation* (1982).

## **H 051 GENDER JUSTICE STANDARDS AT INTERNATIONAL LAW**

### ***Objectives of the course***

This course focuses on international movement to combat gender discrimination. In analysing the relevant international development, attention must be paid to the Indian law and administration. The human rights movement must also be appraised from the standpoint of patriarchy.

### ***Syllabus***

- 1. The League of Nations and women's equality.**
- 2. Women's issue in the formulation of the U. N. Charter.**
- 3. The U.N. Sub-Commission on Status of women since 1946 and the Role of the NGOs.**
- 4. The International Labour Organization and Rights of Women "hour.**
  - 4.1. Equal pay for equal work.
  - 4.2. Women and part-time work.
  - 4.3. Protective for women.
  - 4.4. Maternity protection.
  - 4.5. Advisory Opinion of P.C.I.J. on Regulation of Night Work for women (PCI), November 1932.
- 5. Political Rights of Women:**
  - 5.1. Article of Universal Declaration of Human Rights.
  - 5.2. The 1952 Convention on Political Rights of Women.
  - 5.3. The 1979 Convention on the Abolition of all Forms of Discrimination Against Women.
- 6. Sexual Exploitation of Women.**
  - 6.1. The International Agreement for the Suppression of White Slave Traffic, 1910, and 1921 League of Nations Activity.
  - 6.2. The Programme of Action by the United Nations.

6.2.1. Convention on Traffic in Women and Children, 1949.

6.2.2. Recommendation for World Tourism Organization (WTO) on Sex Oriented Tourism.

**7. Nationality of Married Women.**

Convention on the subject dated January 29, 1957.

**8. Women's Year and International Women's Decade.**

Review of U.N.'s Work in the Period 1975-1988.

***Select bibliography***

S.K. Kuba's work *status of Women in International Law*.

Other relevant literature is to be found in LL.M. course H048, H049 and 052. Here See the prospective Plan on Women.. Govt. of India, 1988 and compare it with standards emergent at contemporary international law.

## **H 052 LABOUR, GENDER AND THE LAW**

### ***Objectives of the course***

Labour law studies in India are heavily adjudication oriented. They are also patriarchal in character. But gender-based discrimination in organized and unorganised sector is rampant. It starts with the fact that women's role in national productivity is obscured: domestic work and child-rearing are not considered productive labour! All these habits of thought and ways of behaviour are not just morally obnoxious but also constitutionally unconscionable.

This course focuses on such approaches to women's work and will be spread over a period of one semester.

### ***Syllabus***

#### **1. Women Labour: Introductory.**

- 1.1. Sex ratio in employment in modern sectors.
- 1.2. Female labour in unorganized subsistence sector.
- 1.3. Self-employed women.
- 1.4. "Housewification" process: Quantification of domestic and family work and services.

#### **2. Paternalistic Legislation and Employment of women.**

- 2.1. Hours of work legislation and exclusion of women from the labour force.
- 2.2. Hazardous operations and women labour exclusion.
- 2.3. Home-based production and exploitation of women's labour, with special reference to Beedi and Cigar Workers' Act.

#### **3. Case Studies of Female Agricultural Labour.**

- 3.1. Maria Mies study of Andhra Pradesh.
- 3.2. Manish Gupta and Anita Barkar study of women's work, fatality and access to health Care in Pune District.
- 3.3. M. Mies' study of the lace makers of Nagpur.

#### **4. Legal and Jurisprudential Questions Arising from the Case Studies.**

- 4.1. The anti-women model of development and planning - Consonance with constitutional obligations with the state.
- 4.2. The enforcement of equalitarian laws.
- 4.3. Associational rights of working women, legal repression and fundamental rights.
- 4.4. Law reform and social action for amelioration of the situation.

#### **5. Self -Employed Women.**

- 5.1. Conceptions of self-employment.
- 5.2. SEWA: A success story?
- 5.3. Position of self-employed women at laws.
- 5.4. Need for law reform.

#### **Select bibliography**

U. Baxi, *Law and Poverty: Critical Essays* (1988).

Government of India, *National Commission on Self - Employed Women* (1988).

Government of India, *Towards Equality : Report of the Committee on the Status of Women* (1975)  
Ministry of Social welfare.

Manisha Gupta & Anita Borkar, *Women's Work Fertility and Access to Health Care* (1988) , the  
Foundation for Research in Community Health, Bombay.

A. Mitra, L. Pathok, S. Mukedi, *The Status of Women: Shift in Occupational Participation* (1980).

Maria Mies, *The Lace-makers of Narsapur: Indian Housewives Prepare for the World Market*,  
(1982).

Maria Mies, *Indian Women in Subsistence and Agricultural Labour* (1987).



## **H 053 POPULATION PLANNING AND GENDER JUSTICE**

### ***Objectives of the course***

The study of linkages between population and law is sadly neglected field. There is need to, prepare ground for serious juristic thought on what may be called population law, defined by India's veteran demographer S. Chandrasekhar as:

That body of law which relates directly or indirectly to the three basic demographic variables of fertility, mortality and migration, which in turn effect the more general problems of the size, growth and distribution of the population.

This course also seeks to contextualize population planning within the perspective of gender justice. Just population planning may not be severed from the crucial issue of women's rights over their own bodies. And family welfare programmes cannot be just if they are executed in the context of patriarchal ideology which insists on victimizing women.

### ***Syllabus***

#### **1. Introductory.**

- 1.1. About demography as a social science.
- 1.2. Demography and human and cultural geography.
- 1.3. Poverty and population.
- 1.4. Population policy perspectives.
- 1.5. Constitutional Aspects of Population Policy.

#### **2. Law as a Factor -Affecting Fertility.**

- 2.1. Notions of fertility.
- 2.2. Raising the minimum age of marriage through the law: Problems and prospects.
- 2.3. Population planning and equal inheritance rights for women, as factor affecting fertility.

- 2.4. Adverse sex ratio and legal order.
  - 2.4.1. Infant mortality rate of girls.
  - 2.4.2. Nutritional sex discrimination.
  - 2.4.3. Amniocentesis.
  - 2.4.4. "Social sterilization" of widows.
  - 2.4.5. Polygamous marriages.
  - 2.4.6. Uniform Civil Code and population planning.

### **3. Sterilization.**

- 3.1. The relating to manufacture, advertisement and sale of contraceptives.
- 3.2. Vasectomy v. tubectomy. Discrimination against women in family welfare programmes.
- 3.3. Incentives and disincentives for family planning.
- 3.4. Abortion law and services.
- 3.5. Coercive/compulsory family planning measures: The 1975-1976 emergency excesses.
- 3.6. Injectable contraceptives, women's health and wellbeing, and judicial response.
- 3.7. Human Rights Issue and Sterilization of the Unfit.

### **4. Laws on Economic Factors Affecting the Family.**

- 4.1. The incidence of income tax and family planning.
- 4.2. Maternity benefits.
  - 4.2.1. Factories Act.
  - 4.2.2. Maternity Benefits Act, 1961.
  - 4.2.3. Workmen's Compensation Act, 1923.
  - 4.2.4. The Minimum Wages Act, 1948.
- 4.3. Child labour regulation and population planning

## **5. Migration, Law, Population Planning.**

- 5.1. Fundamental Right for movement.
- 5.2. Migration, growth of informal sector and quality of life: Problems for the Indian population.
  - 5.2.1. The Bombay pavement dwellers.
  - 5.2.2. The Hawkers cases.
  - 5.2.3. The Sons of Soil Movement.

### ***Select bibliography***

Ashoka Mitra, *The India's Population: Aspects of Quality Control*, (1978).

S. Chandrasekhar, *Population and Law in India*, (1976).

Govt. of India, *Towards Equality Report of the National Committee on the Status of Women* (1975).

Govt. of India, *The Shah Commission Report on Emergency Excesses* (1978). Relevant Articles from *The Economic and Political Weekly*.

**GROUP- I - SCIENCE, TECHNOLOGY AND LAW****I 054 LAW, SCIENCE AND TECHNOLOGY****Objectives of the course**

This is an introductory course on which other courses in this group of optionals will build. Understanding of the interface, between law, science and technology should require no elaborate justification. So far, law curricula and research have remained inadvertent to the reciprocal impacts between science/ technology and legal order and thought.

Science and technology are forces which have always shaped the nature of the legal order; in turn, the latter has also had a share of impact on the former. A general reflection on the nature of evolution of principles of tort liability, and the law relating to patents and trademarks, for example, should indicate, even to a traditional juristic mind the significance of mutual impact. But in the last decades of twentieth century, the perils posed by hazardous technology, unconventional armament and biotechnology, for example, to human survival and dignity should alert us to the need for a very close study of reciprocal interaction between science, technology and legal order.

The following syllabus prepared with this perspective will be spread over a period of the semester.

**Syllabus****1. Introductory : Science.**

- 1.1. Conceptions of "Science" Science as natural philosophy and modern science.
- 1.2. Scientific thought in ancient and medieval India.
- 1.3. Modern Science: This scientific revolution (Copernicus, Galileo, Descartes, Newton, Lavoisier, Darwin, Einstein).
- 1.4. The role of legal order in institutionalisation of conceptions of sciences and repression of "Alternate" Sciences.

**2. Introductory: Technology.**

- 2.1. Notions of technology.

- 2.3. Legal order and technological innovation general considerations.
- 2.4. The emergence of western technology (1500-1750)
  - 2.3.1. The renaissance.
  - 2.3.2. The steam engine.
  - 2.3.3. Metallurgy and mining.
  - 2.3.4. New commodities.
  - 2.3.5. Agriculture.
  - 2.3.6. Transport and communications.
  - 2.3.7. Chemistry.
- 2.4. The industrial revolution.
  - 2.4.1. Power technology.
  - 2.4.2. Development of industries (Metallurgy), Mechanical Engineering Textiles, Chemicals, Agriculture, Civil Engineering, Transport and Communication, Military Technology).

### **3. Colonization, Science and Technology.**

- 3.1. Industrial revolution and colonization.
- 3.2. Creation of the political economy of backwardness through colonizing powers and processes.
- 3.3. Displacement of indigenous science and technology during colonization.
- 3.4. Colonial legal order and its role in 3.1 to 3.3.

### **4. Technology in the Twentieth Century.**

- 4.1. The second industrial revolution: Computers.
- 4.2. The Nuclear technology for peace and war.
- 4.3. Biotechnology.
- 4.4. Space technology.
- 4.4. Role of national & international orders relative to these.

## **5. The Emergence of Technological Society and State.**

- 5.1. Technology and practice of politics.
- 5.2. Law as social technology.
- 5.3. Notions of technological society.
- 5.4. "Scientism" and notions of scientific temper.

### ***Select bibliography***

Markandey Katju, *Law in the Scientific Era* (2000), Universal, New Delhi.

Helen Reece (ed.), *"Law and Science" in Current Legal Issues* (1998) Oxford

Philip Grubb, *Patents for Chemicals, Pharmaceuticals and Biotechnology* (1999) Oxford

John Zinian et.al.(ed.) *World of Science and the Rule of Law* (1986), Oxford

Ann Johnston et.al. (ed.) *New Technologies and Development* (1986) UNESCO.

Maie-Wan Ho, *Genetic Engineering: Dreams or Nightmare? The Brave New World of Bad Science and Big Business* (1997) RESTE, New Delhi.

Cees J. Hamelink, *The Ethics of Cyberspace* (2001), Sage.

**I 055 LAW, SCIENCE AND MEDICINE*****Objectives of the course***

This course seeks to explore the role that law and state play in controlling science law medicine. Self-regulation (or private control) is also aspect of the course. The pervasive role of modern medicine, and of the pharmaceutical industry, is writ large on the Indian developments on public health, law, policy and administration. Indeed, a large number of areas are not at all regulated by Indian legal order. It is hoped that this course will stimulate and reform in this vital area.

***Syllabus*****1. Profession and Professionals Self Regulation**

- 1.1. Notion of a 'profession'
- 1.2. The varieties of medical professions in India
- 1.3. The pharmaceutical industry in India. A profile
- 1.4. Para-professionals
- 1.5. Self Regulation through codes of conduct and disciplinary proceedings
- 1.6. Self Regulation through education
- 1.7. Self-Regulation through institutional discipline: Hospital regulation

**2. The Regulation and Organization of Medical Education and Profession in India**

- 2.1. Medical education: Dilemmas of federalism and judicial review
- 2.2. Medical education, rural health and family planning
- 2.3. Organization of medical research under governmental auspices
- 2.4. Bhopal catastrophe and ICMR 2.5 "Health for All" by 2000 A.D.
- 2.5. Article 21 of the Constitution and the foregoing aspects

**3. The Regulation of Pharmaceutical Industry**

- 3.1. Select problems under the Drugs Act

- 3.2. The Hathi Committee Report and aftermath on essential drugs
- 3.3. Regulation of research and development
- 3.4. Public sector in pharmaceuticals
- 3.5. MRTP Aspects
- 3.6. Advertising and consumer protection
- 3.7. Regulation of drug-testing procedures in India
- 3.8. Multinational drug industry in India: Patent law aspects and dumping of unsafe drugs

#### **4. Experimentation and Regulation**

- 4.1. The Doctrine of "Informed Consent"
- 4.2. Experimental Abuses
- 4.3. Experimentation on Foetuses and Children
- 4.5. Experimentation on People in Custody, including psychiatric Custody
- 4.6. Proper Role for Experimentation on Animals

#### **5. The Physician-Patient Relationship**

- 5.1. Confidentiality and Privilege
- 5.2. Patient's right of full disclosure of course of therapy including side effects of drugs
- 5.3. Medical malpractice
- 5.4. Health insurance
- 5.5. The law relating to medico-legal cases with special reference to (i) road accidents, (ii) sexual assaults and (iii) mass disasters (e.g. Bhopal)

#### ***Select bibliography***

The materials for the course will have to be designed by a thorough study of legislative texts as well as reported judicial discussion in each area. In addition, WHO materials should also be consulted.



Charles Modwal, *Injury? An Enquiry into the Marketing and Advertising of British Food and Drug Products in India and Malaysia* (1981).

Lokojan Bulletin, *Special Issue. Bhopal -An Interim Appraisal* (Jan-April, 1988)

Centre for Science and Environment, *The State of India's Environment. The Second Citizen's Report* (1985)

*Socialist Health Review* (published from Bombay).

Dkina Melrose, *Bitter Pills: Medicines and The Third World Poor* (1982), *Proceedings of the World Congress on Law and Medicine* held at Delhi (1984)

Pragya Kumar, *Medical Education in India* (1987).

Government of India, *Report of Working Group on Health for All by 2000 A.D.*

## **I 056 THE ELECTRONICS REVOLUTION AND LEGAL ORDER**

### ***Objectives of the course***

This course focuses on computer revolution and its impact on legal order. Lord Coke's famous observation that the law has its "artificial reason" is now, perhaps, totally superseded by the artificial intelligence of advanced computer system. Modern technology is inconceivable without use of computer systems; this is clearly so in relation to the frontier technologies, e.g. nuclear technology, biotechnology, space technology, military technology.

The advent of computer systems brings fresh challenges to orderly growth of legal systems in the future. At the same time, they render some of the existing legal conceptions obsolete, or at least problematic; they also provide a new terrain for violation of human rights.

The following syllabus prepared with this perspective will be spread over a period of one semester.

### ***Syllabus***

#### **1. Introductory**

- 1.1. Notion of artificial intelligence,
- 1.2. Growth of computer science and technology
- 1.3. "Hardware" and "Software"
- 1.4. Organization of R & D and of international market for computer systems
- 1.5. The overall Indian position.

#### **2. Artificial Intelligence and Human Resources**

- 2.1. Can computers think?
- 2.2. Appropriation of human functions by a machine actuality, potentiality, "appropriateness".

#### **3. The Law: Intellectual Property**

- 3.1. Law relating to protection of computer software

- 3.2. Law relating to patenting of hardware
- 3.3. Regulation of transfer of computer technology (Unfair Means, Restrictive Trade Practices)

#### **4. Potential for Invasion of Privacy**

- 4.1. Central data banks and privacy rights
- 4.2. Consumer Credit, privacy rights and computer systems

#### **5. Computer Systems and Liability Issues**

- 5.1. Computer fraud
- 5.2. Computer non-feasance and liability for damages

#### **6. Computer Systems and Renovation of Legal Order**

- 6.1. Legal information retrieval systems
- 6.2. Computerized retrieval of judicial decision
- 6.3. Jurimetrics and computer analysis
- 6.2. Computer analysis and computerization
- 6.3. Criminological analysis and computerization
- 6.4. Patent information systems
- 6.5. Management of courts
- 6.6. Role of computer analysis

#### **Select bibliography**

Cees J. Hamelink, *The Ethics of Cyberspace* (2001), Sage

Markandey Katju, *Law in the Scientific Era* (2000), Universal, New Delhi.

John Zinian et.al.(ed.) *World of Science and the Rule of Law* (1986), Oxford

Ann Johnston et.al. (ed.) *New Technologies and Development* (1986) UNESCO.

Maie-Wan Ho, *Genetic Engineering: Dreams or Nightmare? The Brave New World of Bad Science and Big Business* (1997) RESTE, New Delhi.

## ***I 057 NUCLEAR TECHNOLOGY: DILEMMAS OF LEGAL CONTROLS***

### ***Objectives of the course***

The course focuses, principally, on civilian/peaceful uses of nuclear technology. It is, of course difficult to disengage military uses of nuclear technology from any serious study of it. The course must be offered, in the terms of pedagogy, in such a way that the class acquires a minimum scientific literacy, without which legal regulation, control and public participation for accountability is beyond reach.

### ***Syllabus***

#### **1. Introduction**

- 1.1. Nuclear Fission/Fusion
- 1.2. Radioactivity
- 1.3. Fission product and half-life measure
- 1.4. "Thermal" and "Fast" reactors
- 1.5. Heavy-water reactors
- 1.6. Nuclear fuel

#### **2. Development in Civilian Uses of Nuclear Energy**

- 2.1. "Atoms For Peace" and International Atomic Energy Commission (IAEA)
- 2.2. The European Atomic Energy Community (EUROTAM)
- 2.3. Development of nuclear industry at a global level

#### **3. India's Atomic Energy Programme**

- 3.1. India's overall energy needs and planning
- 3.2. India's Nuclear Energy Programme
- 3.3. The Atomic Energy Commission Act
- 3.4. Technology transfer and India's nuclear programme

#### **4. Hazard Aspects of Nuclear Power**

- 4.1. Plant Location: Problems of sites

- 4.2. Uranium mining associated hazards
- 4.3. Accidents Potential : e.g. fuel failure, re-circulation pump failures, control valve leaks, failure of shut-down device, metal failure, of electronic monitoring and control systems.
- 4.4. Containment facilities
- 4.5. Occupational hazards for workers at research institutes and nuclear plants
- 4.6. The Regime of legal liability including:
  - 4.6.1. Right to information as to levels of radioactivity
  - 4.6.2. Right to compensation
  - 4.6.3. Right to meaningful "rehabilitation"

## **5. Other Associated Hazards and Other Management**

- 5.1. The nature and magnitude of nuclear wastes
  - 5.1.1. Reprocessing
  - 5.1.2. Entombment
  - 5.1.3. Low level wastes and High Level Wastes
  - 5.1.4. Reprocessing of wastes
  - 5.1.5. Vitrification
  - 5.1.6. "Dumping"

## **6. Legal Aspects**

- 6.1. Secrecy
- 6.2. Minimum public participation
- 6.3. Right to information
- 6.4. Regimes of liability for mass disasters and personal injuries
- 6.5. Environmental: Law regulation of the hazardous aspects of nuclear energy production.

### ***Select bibliography***

In addition to official documents (e.g., Report of the DAE and Regulative Texts, consult, Centre for Science and Environment, The State of India's environment : 1984-1985 : The Second Citizen's Report (1985) Also see relevant articles in Economic and Political Weekly; and the recent Supreme Court decision on the EEC radioactive butter case.

## **I 058 BIOTECHNOLOGY AND LEGAL REGULATION**

### **Objectives of the course**

Biotechnology-a frontier technology - has already transformed the world; and has the potential for radically altering it in the next half century. Arising primarily out of decoding of DNA/RNA, biotechnology (through recombinant - DNA research) has already created new norms of plant and animal life, profoundly attaching agriculture and livestock. Experiments in modification of man are also under way.

These new developments hold promise as well as perils for human survival and human rights. They also pose unique challenges to the law as social technology. It is essential for would-be-lawpersons in India to have a basic grasp of this frontier technology, which is rapidly evolving in India as well.

Prepared with the above perspectives the following syllabus comprises of about 42 units to be spread over a period of one semester.

### **Syllabus**

#### **1. Introductory**

- 1.1. Decoding the Structure of the DNA/RNA
- 1.2. The Technology of Splicing
- 1.3. Cloning
- 1.4. Cell-Fusion
- 1.5. Genetic Engineering

#### **2. The Case For and Against Genetic Engineering**

- 2.1. The problem of biohazards in recombinant DNA Research
- 2.2. Men should not play God and create new forms of life unknown to nature
- 2.3. Social responsibility of scientists
- 2.4. Multi-national and imperialist appropriation and use of biotechnology
- 2.5. Failures of self-regulation and vicissitudes of legal regulation

- 2.6. The right of scientific research as an aspect of basic human rights
- 2.7. There is no cost-free innovations and invention
- 2.6. Biohazards can be contained
- 2.7. Non-exploitative Biotechnology is both conceivable and likely
- 2.8. Legal incentives such as patenting or new life-forms is a necessary, though not sufficient, condition for advances in frontier technologies

### **3. Biotechnology Agro-business and Biological Diversity**

- 3.1. Plant Genetic Resources in Nature: Abundance of biological diversity
- 3.2. The Genetic mutation of Seed: Seed industry at global level: Indian Seeds Act, 1966
- 3.3. The Impact of Biotechnology on Biological Diversity: Erosion of plant genetic resources
- 3.4. Patenting of new plant varieties
- 3.5. The green revolution and biotechnology
  - 3.5.1. Growth of fertilizer and pesticide industry
  - 3.5.2. Impact or fertilizer and pesticides on agricultural workers
  - 3.5.3. Bhopal green revolution and biotechnology
  - 3.5.4. Agro-business and reckless commercial exploitation of biotechnology

### **4. Biotechnology and Human Health**

- 4.1. Genetic Markers: Diagnostic biotechnology
- 4.2. Conquest of disease
- 4.3. Genetic screening: Prevention of genetic disease and mental retardation
- 4.4. Genetic screening: Uses and abuses of amniocentesis
- 4.5. Cloning of human beings
- 4.6. Obsolescence and resilience of law

## **5. Legal Regulation of Biotechnology**

- 5.1.1. Regulation of government sponsored research
- 5.1.2. Regulation of Private R & D
- 5.1.3. Regulation of deliberate release of genetically mutated micro-organisms
- 5.1.4. Regulation of accidental release of genetically mutated micro-organisms
- 5.1.5. Comparative perspectives
  - 5.1.5.1. U.S.A.
  - 5.1.5.2. E.E.C
  - 5.1.5.3. U.K.
  - 5.1.5.4. INDIA
- 5.1.6. Progress of biotechnology and legal regulation in India

### ***Select bibliography***

U.Baxi, *Biotechnology and Legal Order: Dilemmas of the Future of Law and Human Nature* (1993).

D. Bull, *A Growing Problem : Pesticide and the Third World Poor* (1982)

J. Doyle, *Altered Harvest, Agriculture, Genetics and Fate of The World's Food Supply* (1986)

Z. Harsanyi & R. Hutton, *Genetic Prophecy: Beyond the Double Helix* (1987)

United Nations, *Our Common Future : The World Commission on Environment and Development* (1987)

Symposium on Biotechnology and Law, 11 Rutgers Computer and Technology Law Journal (1985)



## **I 059 EPIDEMIOLOGICAL AND PUBLIC HEALTH ASPECTS OF SCIENCE AND TECHNOLOGY**

### ***Objectives of the course***

Health is a basic human right. This has been so recognized in the Declaration made by the International Conference on Primary Health Care at Alma-Ata (USSR) in 1978, to which India is a signatory. Expressing the need for urgent action by all governments to protect and promote the health of all the people of the world, health is declared as "fundamental Human Rights". Here "health" means not merely the absence of disease or infirmity, but "a state of complete physical, mental and social well-being".

The signification of projecting health as a fundamental human right is that it becomes the basic responsibility of the state to protect and promote the health of the population under its jurisdiction. According to Alma-Ata Declaration, such an obligation can be fulfilled only by the provisions of adequate health and social measures are based on practical, scientifically sound and socially acceptable methods and technology made universally accessible to individuals and families in the community through their participation. The question is how to optimise the social uses of medical knowledge and technology, consistently with our own historical, cultural, moral, religious philosophical perspectives and value-systems.

Looking at the demographic and health picture of the country, we find that a lot still remains to be done on the health count. The high rate of population growth continues to have an adverse effect on the health of our people and quality of their lives. The extent and severity of malnutrition continues to be exceptionally high. Communicable and non-communicable diseases have still to be brought under effective control and eradicated. Many eradicable diseases continue to have a fairly high incidence in the country. A substantial share of diarrhoeal diseases and other preventive and infectious diseases, especially amongst infants and children, are caused by lack of safe drinking water, poor environmental sanitation, poverty and ignorance.

For realizing the objects of public health and that too within a stipulated period medical science and technology is an indispensable ally.

Moreover, for its sustenance there is a large variety of inputs flow into 'public health'. These inputs relate to such sectors as may include drugs and pharmaceuticals, rural development, education

and social welfare, housing, potable water, sanitation, etc. With all these inputs, 'public health' becomes, perhaps, one of the largest and most complex enterprises. For its integrated and efficient functioning, the public health delivery systems do need the crucial support of law to minimise social injustices and maximise social benefits.

The following syllabus prepared with this perspective will be spread over a period of one semester.

## **Syllabus**

- 1. Introductory : Why this Course?**
- 2. Generation of Human resources through the exploitation of medical science and technology**
  - 2.1. Biomedical concept - health as absence of disease
  - 2.2. Ecological concept - health as a state of balance between man and environment
  - 2.3. Bio-social and bio-cultural concept - health includes the consideration of social, cultural and psychological factors
- 3. Health as Basic human Right**
- 4. Impediments to Public Health**
  - 4.1. Undue emphasis on curative medicine as the basis of primary health care (as a result of uncritical acceptance of the western model of medical health care)
  - 4.2. Concentration of health care services in urban areas
  - 4.3. Meagre resource allocations to cover the hitherto uncovered rural population
  - 4.4. Neglect of preventive, promotive and rehabilitative aspects of health care
- 5. Population Stabilization : a Crucial Aspect of Public Health**
  - 5.1. Correlation between population stability and primary health care
  - 5.2. Modes of enforcing small-family norms
- 6. Public Health: A Key to National Socio-Economic Development**
  - 6.1. Health for all: Alma-Ata Declaration
  - 6.2. Sectors serving as inputs to public health
    - 6.2.1. Drugs and pharmaceuticals
    - 6.2.2. Agriculture and food production

- 6.2.3. Rural development
- 6.2.4. Education and social welfare
- 6.2.5. Housing
- 6.2.6. Potable water
- 6.2.7. Sanitation
- 6.2.8. Prevention of food adulteration
- 6.2.9. Immunization
- 6.2.10. Conservation of environment

## 7. Some Ponderable Issues

- 7.1. Is it just to provide unlimited health care to self-inflicted diseases such as oral cancer due to tobacco chewing?
- 7.2. The right to life of the foetus versus the right of the woman to have control over her body and to refuse to carry to term a pregnancy she does not want.

Another related issue, at what stage the dignity of human person is said to be conferred on an embryo?

**(Note:** To some, abortion is equivalent to killing a person and, therefore, it is not acceptable at any cost. Others argue that status of person does not begin until after birth; unfertilised spermatozoa and eggs are living cells comparable to other body cells, and no one claims their rights to life. Will then a fertilized ovum have a right to life immediately after fertilization)

- 7.3. Universal primary health care versus specialized medical care

### **Select bibliography**

Report of Working Group on Health for All by 2000A.D. (1981)

M.J. Roberts, "The Logical and Philosophical Problems of Allocation of Scarce Health Care Resources", in *Health Policy Towards the 21st Century* 47-72 (1984)

V. Ramalingaswami, "Medicine, Health and Human Development", The Ninth Jawaharlal Nehru Lecture, New Delhi, Nov. 1975.

D.D. Kulpati, "The Basic Concepts of Health", in *Dilemmas in Health Policy*, at C-9, C-13 (1986)

Pragya Kumar & Virendra Kumar, "Health as A Fundamental Human Right", in *Dilemmas in Health Policy*, at C-1 C-8 (1986).

**GROUP J: HUMAN RIGHTS LAW****J 061 CONCEPT AND DEVELOPMENT OF HUMAN RIGHTS*****Objectives of the course***

Protection of Human Rights(HR) became an important issue after the second world war and after the acceptance of Universal Declaration of Human Rights. The growth of HR Law and jurisprudence thereafter was spontaneous and continuous. The changes in the global scenario bring new concept of HR protection against violation . In one sense, HR can be said as the rights which the nature has endowed with human beings. However, they are not mere privileges given to the subjects by the ruler but are liberties permitted to the 'citizens' in a democracy. Manifestly a law that violates human rights is no law at all. Probably this perspective may give an impression that human rights are not different from natural rights envisaged by the natural law school.

Although Indian polity waited for more than one score and five years for adoption of Fundamental Duties in the Constitution, it is beyond doubt that every human being has responsibilities and obligation not only towards the other fellow beings, but also towards the society at large. Only when a society is aware of this right-duty relationship can there be any meaning to human rights.

This course is intended to highlight the concept of human rights, their evolution and their importance in our society now particularly in the era of privatisation, globalisation and liberalisation.

Prepared with the above perspective, the following syllabus comprises of about 42 units to be spread over a period of one semester.

***Syllabus*****1. Human Rights: Concept.**

- 1.1. Human rights in Indian tradition: ancient, medieval and modern
- 1.2. Human rights in western tradition
- 1.3. Development of natural rights.
- 1.4. Human rights in international law and national law

- 2. Classification of Human Rights - First, Second and Third Generations: Historical Development**
- 3. Human Rights: Politics and Society**
  - 3.1. Colonisation, imperialism and human rights
  - 3.2. Power, practices, accountability and transparency
  - 3.3. Liberalization, privatization and globalization
  - 3.4. Human duties: responsibilities and obligations
- 4. Human Rights and Judicial Process**
  - 4.1. Judicial activism
- 5. Human Rights Protection Agencies**

### ***Select bibliography***

Angela Hegarty, Siobhan Leonard, *Human Rights an Agenda for the 21st Century* (1999)

Lalit Parmer, *Human Rights*, (1998).

Rama Jois, *Human Rights: Bharatiya Values*, (1998).

David P. Forsythe, *Human Rights in International Relations*.

Lon L. Fuller, *The Morality of Law*

John Finnis, *Natural Law and Natural Rights*, (1980).

Julius Stone, *Human Law and Human Justice*, (2000), Universal, New Delhi.

M.G.Chitkara, *Human Rights: Commitment and Betrayal*, (1996).

V.D. Kulshreshtra, *Landmarks in the Indian Legal and Constitutional History*, (1995)

Robert Lewngat, *The Classical Law of India* (1998), Oxford.

## **J 062 Human Rights and International Order**

### **Objectives of the course**

Human rights have universal application. They gathered importance when the United Nations adopted the 4 Universal Declaration of Human Rights in 1948. The role of international organisations in promoting awareness of human rights is very significant. The international conventions, though not binding, have persuasive force since the violations will be decried by the international community. International Non-Governmental Organisations watch and monitor human rights violations in every country. However, in the absence of national legislation, the enforcement of the rights will be difficult.

With the above perspectives in view this course will comprise of 42 units of one hour duration to be spread out during one semester.

### **Syllabus**

#### **1. Development of the Concept of Human Rights Under International Law**

- 1.1. Role of International Organization and Human Rights
- 1.2. Universal Declaration of Human Rights (1948)
- 1.3. Covenant on Political and Civil Rights (1966)
- 1.4. Covenant on Economic, Social and Cultural Rights (1966)
- 1.5. I L O and other Conventions and Protocols dealing with human rights

#### **2. Role of Regional Organizations**

- 2.1. European Convention on Human Rights
  - 2.1.1. European Commission on Human Rights/Court of Human Rights.
- 2.2. American Convention on Human Rights
- 2.3. African Convention on Human Rights
- 2.4. Other regional Conventions.

#### **3. Protection agencies and mechanisms**

- 3.1. International Commission of Human Rights

- 3.1.1. Amnesty International
- 3.1.2. Non-Governmental Organizations (NGOs)
- 3.2. U.N. Division of Human Rights
- 3.3. International Labour Organization
- 3.4. UNESCO
- 3.5. UNICEF
- 3.6. Voluntary organizations
- 3.7. National and State Human Rights Commissions

#### **4. International enforcement of Human Rights**

- 4.1. Role of ICJ and regional institutions

#### ***Select bibliography***

Benedetto Conforti and Francesco Francioni, *Enforcing International Human Rights in Domestic Courts*, (1997).

Francisco Forrest Martin, *International Human Rights Law and Practice*, (1997).

Luck Clements, *European Human Rights Taking a Case under the Convention*, (1994).

Evelyn A. Ankumah, *The African Commission on Human Rights and People's Rights*, (1996).

R.K.Sinha, *Human Rights of the World*,(1997).

Philip Alston, *The United Nations and Human Rights A Critical Appraisal*, (1992).

R.S.Sharma and R.K.Sinha, *Perspectives in Human Rights Development*, (1997).

*The Human Rights Watch Global Report on Women's Human Rights*, (2000), Oxford.

B.P.Singh Seghal, *Human Rights in India*, (1996).

Chandan Bala, *International Court of Justice: Its Functioning and Settlement of International Disputes*, (1997).

**J 063 PROTECTION AND ENFORCEMENT OF HUMAN RIGHTS IN INDIA*****Objectives of the course***

A reading of fundamental rights and duties in the Constitution of India reveals that they constitute the human rights charter in India. The judiciary, the major protective and enforcement machinery, is very active in protecting human rights. Judicial activism in this field has added new dimensions to human rights jurisprudence. There are a number of cases where courts apply the provisions of the international conventions to fill the gaps in legislation. The apex court has also ventured to apply international convention even where there was no legislation in the area. Thus the judiciary has been directly implementing international conventions at the national level. This course aims at familiarising students with the judicial activism in protecting human rights and enables them to evaluate the adequacy of the methods of enforcement.

The course comprises of about 42 units of one-hour duration spread over a period of one semester.

***Syllabus***

- 1. History and Development of Human Rights in Indian Constitution**
  - 1.1. Constitutional Philosophy - Preamble
  - 1.2. Fundamental Rights
  - 1.3. Directive Principles of State Policy
  - 1.4. Fundamental Duties
- 2. Judicial Activism and Development of Human Rights Jurisprudence**
- 3. Enforcement of Human Rights**
  - 3.1. Formal enforcement mechanisms
    - 3.1.1. Role of Supreme Court
    - 3.1.2. Role of High Courts
    - 3.1.3. Role of Civil and Criminal Courts



3.1.4. Statutory Tribunals

3.1.5. Special Courts

#### **4. Role of India in implementing international norms and standards**

##### ***Select bibliography***

D.D.Basu, *Human Rights in Indian Constitutional Law*, (1994).

Vijay Chitnis,(et.al.). *Human Rights and the Law: National and Global Perspectives*, (1997).

B.P.Singh Seghal, *Law, Judiciary and Justice in India*, (1993).

James Vadakkumchery, *Human Rights and the Politics in India*, (1996).

D.R.Saxena, *Tribals and the Law*, (1997).

Poornima Advani, *Indian Judiciary : A Tribute*, (1997).

Justice Venkataramiah, *Human Rights in the Changing World*, (1998).

Paramjit S.Jaiswal and Neshtha Jaiswal, *Human Rights and the Law*, (1996).

## **J 064 HUMAN RIGHTS OF DISADVANTAGED GROUPS: PROBLEMS AND ISSUES IN THE PROTECTION AND ENFORCEMENT**

### ***Objectives of the course***

Human rights are the rights of all human beings. Violation of these rights is human rights violations. Due to frequent violations to particular groups in disadvantageous positions, new categories of human rights have emerged. These groups are of people such as women, children, prisoners and dalits. Violation of human rights of these groups is of great concern of every nation today. The officials of the state like the police force commit such violations. This is only an illustration. There are several other categories of violations.

This course with the above mentioned perspective comprises of about 42 units of one hour duration to be spread out during one semester.

### ***Syllabus***

- 1. Concept of Disadvantaged Groups**
- 2. Emerging Human Rights Jurisprudence and the Role of the Judiciary**
  - 2.1. Rights of women
  - 2.2. Rights of the child
  - 2.3. Rights of prisoners
  - 2.4. Rights of dalits
  - 2.5. The tribal and other indigenous people
  - 2.6. The mentally ill
  - 2.7. The stateless persons
  - 2.8. The unorganised labour
  - 2.9. 'Aids' victims
  - 2.10. Rights of minorities

### **3. Enforcement of Human Rights**

3.1. Protection Laws of the Disadvantaged Groups: Problems and Issues

### **4. Future Perspectives of the Human Rights of the Disadvantaged**

#### ***Select bibliography***

G.S Bhargava and R.M.Pal, *Human Rights of Dalit Societal Violation*, (1999).

Geraldine Van Bueren, *The International Law on the Rights of the Child*, (1998).

Prabhat Chandra Tripathi, *Crime Against Working Women*, (1998).

Paras Diwan and Piyush Diwan, *Women and Legal Protection*

Philip Alston (et.al.), *Children, Rights and the Law*.

Kelly D. Askin, Dorean M. Koenig, *Women and International Human Rights Law*, (1999).

N.K.Chadrabarti, *Juvenile Justice in the Administration of Criminal Justice*, (1999).

Rebecca Wallace, *International Human Rights, Text and Materials*, (1997).

Janaki Nair, *Women and Law in Colonial India*, (1996).

Simon Creighton, Vicky King, *Prisons and the Law*, (1996).

**J 065 INTERNATIONAL HUMANITARIAN LAW AND REFUGEE LAW*****Objectives of the course***

The two world wars had had enough of lessons to teach. But the present scenario shows that the nations have not learnt any lesson : wars continue to be there. The International Humanitarian Law aims at humanising war though war itself is inhuman. Human rights do have value only in peace time. War is the negation of all human rights. Though the United Nations Charter does not permit war, it has shown the wisdom to regulate the war if one occurs.

War is one of the factors which creates the problem of refugees. There have been some endeavours on the part of the international community to protect the interests of refugees. But due to political interference, the formulation of the definition of the term 'refugee' in the 'Convention relating to the status of refugees' has been such that it helps the developed countries to shirk the responsibility towards the refugees leaving the burden to the developing countries.

This course intends to equip the students with the awareness of the various problems of refugees and to inspire them to critically evaluate the international conventions and national legislation.

This paper comprises of about 42 units of one hour duration spread over a period of one semester.

***Syllabus*****1. Humanization of Warfare.**

- 1.1. Amelioration of the wounded and sick
  - 1.1.1. Armed forces in the field
  - 1.1.2. Armed forces at sea
    - 1.1.2.1. The shipwrecked
- 1.2. Protection and facilities
  - 1.2.1. Prisoners of war
  - 1.2.2. Civilians in times of War
  - 1.2.3. Cultural properties

**2. Control of weapons**

- 2.1. Conventional
- 2.2. Chemical
- 2.3. Biological
- 2.4. Nuclear

**3. Humanitarian law: Implementation**

- 3.1. Red Cross - role
- 3.2. National legislation

**4. The Concept of refugees**

- 4.1. Definition of refugees and displaced persons - their problems
- 4.2. The UN Relief and Rehabilitation Administration and other International Refugee organizations : international protection.
- 4.3. Protection under national laws

**5. Strategies to combat refugee problem**

- 5.1. Repatriation, resettlement local integration and rehabilitation.
- 5.2. UNHCR - role
- 5.3. UNHCR and India

***Select bibliography***

B.S.Chimni, *International Refugee Law*, (2000).

Jean Yves Calier, *Who is a Refugee A Comparative Case Law Study*, (1997)

Kelly Dawn Askin, *War Crimes Against Women*, (1997).

M.K.Balachandran, Rose Varghese, *Introduction to International Humanitarian Law*, (1997).

Guy S. Goodwin-Gill, *The Refugee in International Law*, (1996).

Veral Gowlland- Debbas, *The Problem of Refugees in the Light of Contemporary International Law Issues*, (1996).

*Anti-personnel Landmines Friend or Foe?*, International Committee of Red Cross, (1996).

*Resettlement Handbook*, The United Nations High Commissioner for Refugees.

James C. Hathaway, Hohn A. Dent, *Refugee Rights: Report on a Comparative Survey*, (1995)

**J 066 SCIENCE, TECHNOLOGY AND HUMAN RIGHTS*****Objectives of the course***

We live in an era of scientific development. The alarming rate of development in biotechnology calls for drastic change in the law. Many concepts and terms have to be re-defined. The development in information technology poses serious problems and challenges. The rapid changes made by science and technology will have to be reflected in law to make it meaningful and realistic in the modern era. This course is intended to make students conscious of various legal problems arising due to developments in such areas as biotechnology and information technology and to identify the changes needed in the law.

***Syllabus***

- 1. Interrelationship of Science, Technology and Human Rights**
- 2. Implication of Development of Science and Technology on Human Rights**
  - 2.1. Right to environment in the development of science and technology
  - 2.2. Right to development in the advancement of science and technology
  - 2.3. Right to human health and impact of developments in medical sciences
- 3. Medicine and the Law**
  - 3.1. Organ transplantation
  - 3.2. Experimentation on human beings
  - 3.3. Euthanasia (mercy killing)
  - 3.4. Gene therapy
- 4. Issue of Human Rights Ethics in Scientific and Technological Development**
  - 4.1. Sex determination test
  - 4.2. Induced abortion
  - 4.3. Reproductive technology
  - 4.4. Cloning
  - 4.5. In vitro fertilization

- 4.6. Artificial insemination
- 4.7. Surrogate motherhood

## **5. Development in Information Technology and Human Rights**

## **6. Impact of Scientific and Technological Progress on Human Rights: Normative Response of the International Community**

- 6.1. Right to life
- 6.2. Right to privacy
- 6.3. Right to physical integrity
- 6.4. Right to information
- 6.5. Right to benefit from scientific and technological progress
- 6.6. Right to adequate standard of living

### ***Select bibliography***

Diane Rowland, Elizabeth Macdonald, *Information Technology Law*, (1997).

Suresh T. Viswanathan, *The Indian Cyber Law*, (2000).

*The International Dimensions of Cyberspace Law* (2000), UNESCO Publication.

D.P.Mittal, *Law of Information Technology (Cyber Law)*, (2000).

Michael Chissick, Alistair Kelman, *Electronic Commerce, Law and Practice*, (1999).

Adwin W. Patterson, *Law in a Scientific Age*, (1963)

Steve Jones, Borin Van Leon, *Genetics for Beginners*, (1993).

Weeramantry, C.G., *Human Rights and Scientific and Technology Development*, 1990

Kamenka, E., *Ideas and Ideologies Human Rights* (1978)

Galtung, *Human Rights in Another Key*, (1994)

Akbar, M.J., *Roits After Riots*, (1988)

Baxi, U. (ed.), *Rights to be Human*, (1986)

Kazmi, F., *Human Rights*, (1987)



- Levin L., *Human Rights*, (1982)
- Gromley W.P., *Human Rights and Environment*, (1976)
- Madhavtirtha, *Human Rights*, (1953)
- Beddard H., *Human Rights and Europe*, (1980)
- Swarup J., *Human Rights and Fundamental Freedoms*, (1975)
- Nagendra Singh, *Human Rights and International Cooperation*, (1969)
- Kashyap, S.C., *Human Rights and Parliament*, (1978)
- Khare S.C., *Human Rights and United Nations*, (1977)
- Moskowitz, *Human Rights and World Order*, (1958)
- Drost, *Human Rights as Legal Rights*, (1965)
- Garling M., *Human Rights Handbook*, (1979)
- Andrews J.A., *Human Rights in Criminal Procedure*, (1982)
- Kalaiah A.B., *Human Rights in International Law*, (1986)
- Menon, I. (ed.), *Human Rights in International Law*, (1985)
- Robertson, A.B. (ed.), *Human Rights in National and International Law*, (1970)
- Lauterpacht, E., *International Law and Human Rights*, (1968)
- Robertson, E., *Human Rights in the World*, (1972)
- Sohn, Lonis & Burgenthal, *International Protection of Human Rights*, (1973)
- Baxi, U., "Human Rights, Accountability and Development", *Indian Journal of International Law*, 279, (1978)
- Basu, D.D., *Human Rights in Constitutional Law*, (1994)
- Macfarlane, L.J., *The Theory and Practice of Human Rights*, (1985)
- Krishna Iyer, V.R., *Human Rights - A Judge's Miscellany*, (1995)
- Rama Jois, M., *Human Rights: Bharatiya Values*, (1998)

**GROUP K: ADMINISTRATIVE LAW****K 067 ADMINISTRATIVE PROCESS: NATURE AND SCOPE*****Objectives of the course***

The administrative explosion of the 19th century in the common law world brought in new norms of relationship between the state and its citizens. In due course, the continental strategies of control over administration had their influence. Along with this the civil service and administrative agencies gained more and more importance when the state launched welfare programmes and became the guardian of the rights of individuals. The standards of administrative behaviour are moulded and supported through constitutional values in the lands of constitutional sovereignty. Necessarily, a student of law relating to administration should get a deep knowledge of the operation and changing phenomena of these standards from a comparative angle. This is so especially in the wake of technological revolution and its aftermath on the administration.

The syllabus prepared with the above mentioned objective comprises of 42 units to be spread over a semester.

***Syllabus*****1. Administrative Process**

- 1.1. Nature and meaning
- 1.2. The role of civil service
- 1.3. The role of administrative agencies

**2. Administrative Process: Regulation to De-regulation and Control to Decontrol - Globalization and Liberalization**

- 2.1. Constitutional standards
- 2.2. Comparative aspects

**3. Rule of Law**

- 3.1. Changing dimensions
- 3.2. Regulation of administrative process

**4. Separation of powers: From Rigidity to Flexibility****5. Delegated Legislation: Problems, Process and Control****6. Power and duty**

- 6.1. Doctrine of police power
- 6.2. Doctrine of eminent power
- 6.3. Taxing power
- 6.4. Responsibility and accountability

**7. Administrative Discretion**

- 7.1. Structuring and limiting
- 7.2. Impact of technological development

**Select bibliography**

Friedman, *The State and the Rule of Law in a Mixed Economy*

Dicey, *Introduction to the Law of the Constitution*,

Davis, *Discretionary Justice*

Jain & Jain, *Principles of Administrative Law* (1986) Tripathi

De Smith, *Judicial Review of Administrative Action* (1995)

M.P. Jain, *Cases and Materials on Administrative Law* (1996), Vol.I, Wadha, Nagpur.

**K 068 ADMINISTRATIVE PROCESS AND JUDICIAL CONTROL*****Objectives of the course***

Administrative law is mainly a judge-made law and has secured its present features through a myriad of judicial decisions. The historical evolution of the judicial agencies reviewing administrative procedures, jurisdictional aspects of administrative decision making subjected to review, the grounds on which decisions are challenged, the scope of review of delegated legislation and the limitations on the judicial review of administrative action are to be studied in detail in this course. The procedural fairness is the key to good administrative decision and the various remedies rendered in judicial process clear the way for achieving administrative justice. The ever increasing number of delegated legislation in the form of rules, regulations, circulars and general orders have the characteristics of law, which though framed by administration, impose burden on the rights of citizens. Keeping this specie of administration beyond judicial review is neither in the interests of the general public nor for laying down standards of administrative behaviour.

This course, with the above mentioned perspective in view, comprises of about 42 units to be spread out to a period of one semester.

***Syllabus*****1. Concepts and Agencies**

- 1.1. Common law countries
- 1.2. French system

**2. Judicial Review in India**

- 2.1. Historical development
- 2.2. Powers of the Supreme Court
- 2.3. Powers of the High Court
- 2.4. Role of subordinate judiciary

**3. Jurisdiction**

- 3.1. Finality clauses

3.2. Conclusive evidence clauses

3.3. Law fact distinction

3.4. Exclusionary clause

#### **4. Grounds of Review**

4.1. Doctrine of ultra vires

4.2. Unreviewable discretionary powers: from Liversidge to Padfield

4.3. Discretion and Justifiability

4.4. Violation of fundamental rights

4.5. Extraneous consideration and/or irrelevant grounds

4.6. Delegation

4.7. Acting under dictation

4.8. Malafides and bias

4.9. Lack of rationality and proportionality

4.10. Oppressing decision

4.11. Absence of proportionality

#### **5. Procedural fairness**

5.1. Legitimate Expectation

5.2. Natural justice and duty to act fairly

5.3. Bias and personal interest

5.4. Fair hearing

#### **6. Remedies**

6.1. Writs

6.2. Injunction and declaration

#### **7. Limits of judicial review**

7.1. Locus standi and public interest litigation

7.2. laches

7.3. Res judicata

7.4. alternative remedies

## **8. Judicial Review Delegated Legislation**

### ***Select bibliography***

S.P. sathe, *Administrative Law* (1998), Butterworths, India.

De Smith, *Judicial Review of Administrative Action* (1995), Sweet and Maxwell.

I.P. Massey, *Administrative Law* (1995), Eastern, Lucknow.

Bagawati Prosad Banerjee, *Writ Remedies*, (1999), Wadhwa, Nagpur.

M.P.Jain, *The Evolving Indian Administrative Law* (1983), Tripathi, Bombay

Jain & Jain, *Principles of Administrative Law* (1986), Tripathi

M.P. Jain, *Cases and Materials on Administrative Law* (1996), Vol.I, Wadha, Nagpur.

**K 069 PUBLIC AUTHORITIES : LIABILITY*****Objectives of the course***

Judicial decisions in the common law world have formulated several duties and liabilities on the administrative hierarchy towards the citizens. Is the state in exercise of sovereign functions liable to compensate the affected persons? To what extent is the state in exercise of sovereign functions immune from liability? The state enters into contracts in more ways than one. Should there be standards of conduct laid down on the state when it does so? How can accountability be determined in all these areas? Open government is one of the significant attributes of good government in democracy. In what way these norms can be meticulously followed by the state in meting out administrative justice. There are problems a country like India does confront in her march towards good governance.

This course with the above mentioned perspectives in view comprises about 42 units of one hour duration to be spread out to one semester.

***Syllabus*****1. Tortious Liability**

- 1.1. Sovereign immunity
- 1.2. Commercial and non-commercial function

**2. Contractual liability**

- 2.1. Processual justice : Privilege - right dichotomy
- 2.2. Blacklisting of contractors
- 2.3. Terms in government contract as instruments of social justice

**3. Emerging Liability**

- 3.1. Personal accountability
- 3.2. Compensatory jurisprudence and right to life
- 3.3. Accountability under consumer law

**4. Privilege Against Disclosure**

- 4.1. Right to information
- 4.2. Official secrecy
- 4.3. Executive privilege
- 4.4. Security of state and control on information
- 4.5. Judicial review

**5. Promissory Estoppel**

- 5.1. Legitimate expectation
- 5.2. Constitutional dimensions

***Select bibliography***

Jain & Jain, *Principles of Administrative Law* (1986), Tripathi

De Smith, *Judicial Review of Administrative Action* (1995).

B.Schwartz, *An Introduction to American Administrative Law*.



## **K 070 PUBLIC AUTHORITIES AND POWER HOLDERS: CONTROLS ON MALADMINISTRATION**

### ***Objectives of the course***

The maladministration is a disturbing phenomenon witnessed in a developing democracy like India. People holding public offices and authority are accused of misuse of their office and misappropriation of public funds for private gain. Privatization of public property for their private aggrandisement is an evil to be curbed early. Institutions like Lokpal and Lokayukt, agencies like commissions of enquiry and vigilance commission and legislative committees inquiring into particular problem or general questions are in the process of experimentation in the country with the object of getting out of vicious triangle. These are opinions to strengthen the CBI. The reports of Comptroller and Auditor General are also followed up. This course shall concentrate on all these areas and make an evaluation of the existing machinery in the light of the judicial dicta on certain cases.

The paper comprises of about 42 units of one-hour duration to be spread out to a period of one semester.

### ***Syllabus***

- 1. Ombudsman**
  - 1.1. The concept
  - 1.2. Comparative perspectives
  - 1.3. Evolving Indian models -Lokpal, Lokayukt institutions
- 2. Commission of Inquiry**
- 3. Vigilance Commissions**
- 4. Investigation Agencies : the CBI**
- 5. Inquiries by Legislative Committees**
- 6. Legislative Control**

**7. Financial Control - Comptroller and Auditor General**

**8. Judicial Inquiries**

***Select bibliography***

K.S. Shukla and S.S.Singh, *Lokayukta: a Social Legal Study* (1988), Indian Institute of Public Administration, N.Delhi.

Jain & Jain, *Principles of Administrative Law* (1986) Tripathi

Donald C. Rowat, *The Ombudsman* (1966), George Allan and Unwin Ltd., Toronto

**K 071 LOCAL SELF - GOVERNMENT LAW*****Objectives of the course***

With the introduction of the Constitution seventy third and seventy fourth amendments, India is moving towards the ideal of direct democracy endowing the local bodies with powers of administration in matters of regional and local importance. This change has added new vistas of Indian democracy and it offers an opportunity to translate the Gandhian concept of Gram Swaraj into practice. Necessarily, a person specializing in administrative law has to be equipped with the knowledge on the working of early systems, the present constitutional scheme, the legislative powers of the State transferring responsibility to local bodies and on the increasing regulatory and financial powers of the local bodies. The nature of the democratic functioning of these elected bodies and the scope of administrative control as well of the judicial control over them are challenging areas for students of administrative law to evaluate and help formulation of new and pragmatic working methods.

The course shall comprise about 42 units of one-hour duration to be spread out to a period of one semester.

***Syllabus*****1. Historical Perspectives**

- 1.1. Early period
- 1.2. Gram Swaraj; the Gandhian concept

**2. Constitutional Scheme**

- 2.1. Directive Principles
- 2.2. Structure and powers of local bodies

**3. Legislative Powers**

- 3.1. Direct democracy and grass root planning
- 3.2. Municipalities and corporation
- 3.3. Gram Sabha

**4. Quasi-legislative Powers**

- 4.1. Rule making power of the State Government
- 4.2. Regulations and Bye-laws

**5. Financial Powers**

- 5.1. Levying taxes
- 5.2. Licensing power
- 5.3. Financial resources and powers

**6. Judicial and Quasi-judicial powers of the Local Bodies****7. Election to Local Bodies****8. Conduct of Meetings: Corporation, Municipal Council, Panchayat Committee and Gram Sabha****9. Institutional and Judicial Control*****Select bibliography***

Friedman, *The State and the Rule of Law in a Mixed Economy*

Neville L. Brown and J.F. Garner, *French Administrative Law*

Dicey, *Introduction to the Law of the Constitution*,

Ivor Jennings, *Law and the Constitution*

Schwartz & Wade, *Legal Control of Government*

Davis, *Discretionary Justice*

Jain & Jain, *Principles of Administrative Law* (1986), Tripathi, Bombay

De Smith, *Judicial Review of Administrative Action* (1995)

Indian Law Institute, *Government Regulation of Private*

W. Thornhill (ed.), *The Growth and Reform of English Local Self-government* (1971), Weidenfeld and Nierlson, London

Radhakumud Mookerji, *Local Government in Ancient India* (1985), Daya Publishing Delhi.

M. Venketarangaiya & M. Pattabhiram, *Local Government in India* (1969) Allied, New Delhi.

**K 072 COMPARATIVE ADMINISTRATIVE LAW*****Objective of the course***

Specialists in Administrative Law have to be in the position to assess the developments in Indian administrative law from a comparative angle. That the administrative law jurisprudence in the country owed major its growth from the English and American development is a recognised fact. However, India is still to go for general legislation of the English and U.S. type laying down administrative norms. From a comparative angle, the course focuses on the doctrine of separation of powers, the scope of delegated legislation, the exercise of discretion, the doctrine of fairness struck by judicial process for administrative decision-making and the liabilities of the administration.

This paper shall comprise of about 42 units of one-hour duration to be spread out to a period of one semester.

***Syllabus***

- 1. Evolution and Significance of Administrative Law in Various Systems of Governance - From Ancient to Modern.**
  - 1.1. French system
  - 1.2. England and US
  - 1.3. Other systems
- 2. Doctrine of Separation of Powers**
  - 2.1. Comparative survey - common law and continental systems : English, US, French, German and Indian.
- 3. Delegated Legislation**
  - 3.1. Comparative approaches: widening contours: classification, controls over delegated legislation.
- 4. Administrative Discretion**
  - 4.1. Need for discretionary powers.
  - 4.2. Nature, scope and limits.

**5. Processual Fairness.**

- 5.1. Evolution and significance of natural justice.
  - 5.1.1. England: judicial process: doctrine of fairness and doctrine of legitimate expectation - legislation.
  - 5.1.2. US: due process and judicial decisions - legislation
  - 5.1.3. India: through judicial process - doctrine of fairness : Articles 14,19 and 21 - doctrine of legitimate expectation.
- 5.2. Access to information.

**6. Liability of Administration - England, US and Indian Practices.**

- 6.1. Contractual liability
- 6.2. Tortious liability
- 6.3. Federal Tort Claims Act, 1946
- 6.4. Crown Proceedings Act 1947.
- 6.5. Indian attempts at legislation.

**Select bibliography**

Peter H. Schuck, *Foundations of Administrative Law* (1994), Oxford, New York.

Friedman, *The State and the Rule of Law in a Mixed Economy*

Neville L. Brown and J.F. Garner, *French Administrative Law*

Ivor Jennings, *Law and the Constitution*

Schwartz & Wade, *Legal Control of Government*

Davis, *Discretionary Justice*

De Smith, *Judicial Review of Administrative Action* (1995)

Neil Hawke and Neil Papworth, *Introduction to Administrative Law* (1996), Lawman, New Delhi.

D.D.Basu, *Comparative Administrative Law*, (1998).

## CHAPTER-IV

### LL.B. (Hons.) SYLLABUS

#### **033 Compensatory discrimination**

##### ***Objectives of the course***

The Indian Constitution visualizes total elimination of social equality. This has to be achieved through a two-pronged strategy. The first strategy consists of providing equality in future and prohibiting discrimination on the grounds of religion, caste, race and sex and affirmatively helping the disadvantaged sections of society to come up to a level from which they should be able to compete with other advanced sections on a footing of equality. The second strategy is called “compensatory discrimination”. In India, the disabled sections such as the scheduled castes, scheduled tribes, other backward classes, women and children are the groups which have suffered most due to social prejudice and denial of opportunities of education. Further, the Constitution talks of “socially and educationally backward classes” as well as “weaker sections of society”. The purpose of this paper is to sensitise the students of law to the problems of such disadvantaged sections and create among them a critical attitude towards policies and methods of compensatory discrimination.

The following syllabus prepared with this perspective will comprise about 42 units of one hour duration each to be spread over a period of one semester.

##### ***Syllabus***

- |   |                |
|---|----------------|
| <b>1. Constitutional Perspectives</b>                             | <b>units 6</b> |
| 1.1. Preamble: Directive Principles of state Policy               |                |
| 1.2. Fundamental Rights - Articles 14, 15, 16, 17, 29(2) and 325. |                |
| 1.3. Article 46 - Directive Principles                            |                |
| 1.4. Seats in Legislature   |                |
| <b>2. Ameliorative Provision</b>                                  | <b>units 6</b> |
| 2.1. Protection of Civil Rights Act.                              |                |

- 2.2. Educational facilities; tuition waiver; age relaxation.
- 2.3. Welfare programmes.
- 2.4. Housing preference for S.C./S.T. and economically backward classes dependent women
- 2.5. Fiscal law: special provisions for the benefit of SC/ST and economically backward classes.
- 3. Special Protection for SC/ST and Backward Classes, women, older persons units 8**
  - 3.1. Article 15(4): leading and trend-setting cases
  - 3.2. How much reservation?
  - 3.3. Is reservation a constitutional right?
  - 3.4. Identification of the recipients of compensatory discrimination
  - 3.5. Should compensatory discrimination be on economic criteria?
- 4. Discrimination in Government Service units 6**
  - 4.1. Articles 16(4) and 335.
  - 4.2. 78th and 79th Constitution amendment
- 5. Reservation of Seats in Legislatures units 4**
  - 5.1. Articles 330, 331, 332, 333 and 334
  - 5.2. Reservation for women
- 6. Social Audit of Compensatory Discrimination units 3**
  - 6.1. Prospect and problems
  - 6.2. How has it been implemented?
  - 6.3. How to sub-classify?
  - 6.4. Gradual rescheduling
- 7. Violence against weaker sections units 3**
  - 7.1. How far compensatory discrimination gives rise to violence?
  - 7.2. Awareness of rights on the part of SC/ST: a cause of tension.



**8. Women and the Law****units 6**

- 8.1. Article 14, 15, 16
- 8.2. Why discrimination of the ground of sex not forbidden by Article 29(2).
- 8.3. Meaning of Article 15(3)
- 8.4. Women and affirmative action

***Suggested Readings***

M.P.Singh, V.M.Sukha's *Constitution of India*. (1994)

Basu, *Shorter constitution of India*, (1996), Printice Hall, New Delhi.

Indian Law Institute, *The Minorities and the Law* (ILI 1972).

U.Baxi, "Legislative Reservations for Social Justice" in *From Independence to Statehood: Managing Ethnic Conflict in Five African and Indian States*, 210-224 (1984)

U.Baxi, "Untouchability, Constitution, Law and Plan" in *Law and Poverty: Critical Essays* 165 (1988).

Andre Beteille, *The Backward Classes and the New Social Order* (1981).

Mata Din Madholia, *Supreme Court on Reservation* (1981)

Marc Galanter, *Competing Equalities* (1982)

Marc Galanter, "Chaning Legal Conceptions of Caste" in *Structure and Change in Indian Society* edited by Miton Singer and Bernard S.Kohn (1968)

Marc Galanter, "The Untouchability and the Law", *Economic and Political Weekly*, Vol.IV, p.131 (1970)

Parmanand Singh, "Some Reflections on Indian Experience with Policy of Reservation", 25 J.I.L.I 46 (1983).

B.Sivaramayya, *Inequalities and the Law* (1985) (Eastern Book Company).

The students should consult relevant volumes of the Annual Survey of India Law, published by the Indian Law Institute, (see Constitutional Law I, Women and the Law, etc.).

**034 GENDER JUSTICE*****Objectives of the course***

The need to study gender justice as a special subject is because the constitutional guarantees have not achieved the necessary results. The Constitution guarantees equality of status and opportunity and no discrimination inter alia on ground of sex. These fundamental rights did not preclude having special provisions for women.

The planners and the policy makers therefore treated women only as beneficiaries of welfare measures. The hope was the benefits of development would percolate below to all including women and therefore there was no need for special efforts to bring them into the mainstream.

Reality after all these years showed that the trickle down theory of development had not affected the large majority of women.

Equal opportunity guaranteed under the Constitution had meant for the women that 89.5% of the women workers were engaged in the unorganized sector and who were deprived of all the benefits given to women workers under the various labour laws. No discrimination had meant that only 994 women held senior management/administrative posts as against 15,993 in similar jobs. In all India Services women constituted only 5.8%.

By the 6th plan it had been realized that special efforts needed to be made to integrate the women into the development process. The Plan therefore for the first time had a chapter devoted to women and development.

The course will concentrate on gender perspectives and study how the legal provisions continue the considerable bias and help in the continuance of the patriarchal values, which have been a part of our society.

The following syllabus prepared with this perspective will be spread over a period of one semester.

**Syllabus**

- 1. Women in Pre-Independence India** **units 3**
  - 1.1. Social and legal inequality
  - 1.2. Social Reform movement in India
  - 1.3. Gandhian Movement
  - 1.4. Nehru's views - Joint Family etc.
  - 1.5. Karachi Congress - Fundamental Rights Resolution, Equality of Sexes.
- 2. Women in post-Independence India** **units 2**
  - 2.1. Preamble of the Constitution - Equality provisions in Fundamental Rights and Directive Principles of State Policy.
  - 2.2. Negative Aspects of the Constitution - Exploitation of Sex not mentioned in Article 23.
  - 2.3. Different personal laws - unequal position of women.
  - 2.4. Uniform Civil Code towards gender justice
  - 2.5. Indian tradition and family ideology: growth of feminism
- 3. Sex Inequality in inheritance Rights** **units 10**
  - 3.1. Continuance of Feudal Institution of Joint family - Women's inheritance position
  - 3.2. Right of inheritance by birth for sons/not for daughter.
  - 3.3. Inheritance right of women under Christian Law.
  - 3.4. Parsi law - daughter's share: half of that of the son
  - 3.5. Parsi law - Mother's property: son and daughter equal share.
  - 3.6. Muslim law.
  - 3.7. Movement towards Uniform Civil Code.
- 4. Guardianship** **units 3**
- 5. Divorce** **units 4**
  - 5.1. Christian Law - discriminatory provision.
  - 5.2. Muslim Law - inheritance and divorce.

- 6. Criminal Law** **units 3**
  - 6.1. Adultery
  - 6.2. Rape
  - 6.3. Dowry death
  - 6.4. Cruelty to married women
  - 6.5. Bigamy
  
- 7. Social Legislation** **units 3**
  - 7.1. Dowry Prohibition
  - 7.2. Amniocentesis
  
- 8. Women and Employment** **units 8**
  - 8.1. Labour force
  - 8.2. Laws to protect women
  - 8.3. Non implementation of protective labour legislation
    - 8.3.1. Maternity Benefits Act
    - 8.3.2. Factories Act
    - 8.3.3. Equal Remuneration Act
    - 8.3.4. Implementation of wage laws of legislation on women employment.
  - 8.4. Inequality in the work place
    - 8.4.1. Additional burden of domestic responsibilities
    - 8.4.2. Male bias
  - 8.5. Absence of legal protection within the family circle
  - 8.6. Lack of neutrality in law
  
- 9. Matrimonial Property** **units 6**
  - 9.1. Law, concept and issues
    - 9.1.1. Separation of property

- 9.1.2. Community of property
- 9.2. Maintenance different system of personal law
- 9.3. Occupational right in matrimonial home
- 9.4. Division of assets on divorce

### ***Suggested readings***

Sivaramayya, B., *Matrimonial property Law in India* (1998), Oxford

Ratna Kapur and Brinda Cossman, *Subversive Sites: Feminist Engagemenmts with Law in India* (1996), Sage

Patricia Smith (Ed.), *Ferminist Jurisprudence* (1993), Oxford.

42nd Report Law Commission Dissenting Note Anna Chandy on provision of adultery p.366.

Towards Equality - Report of the Committee on the Status of Women (Govt. of India), Chapters IV & Section IV: General Conclusions & Recommendations

Lotika Sarkar, *The Law Commission of India* (1988)

Sathe, S.P., *Towards Gender Justice* (1993), *Research Centre for Women's Studies*.

Flavia Agnes, *State, Gender and the Rhetoric of Law reform* (1985). *Research Centre of Women's Studies*. SNDT Women's University, Bombay.

Jaya Sagada, *Law of Maintenance: An Empirical Study* (1996), Tripathi.

Law Commission of India, *One Hundred and Fifty Fifth Report on the Indian Penal Code, 1860* (1997)

**035 ORESTS AND THE LAW*****Objectives of the course***

Environment law is becoming an increasingly important subject in the law curriculum in light of the major ecological crisis that our nation is presently facing. This crisis is simultaneously also a natural resource crisis, endangering the survival of the poor who are directly dependent on the natural resources for their fuel, fodder, food and housing needs. Laws concerning forests is of prime significance in relation to all environmental laws. This is mainly because natural forests form the primary basis for the ecological systems. Biological diversity, prevention of soil erosion, flood control and maintenance of over and underground water systems, are all dependent on the existence of natural tree coverage. A course on forest laws should be able to show the inter-connection between deforestation, drought, floods and the ecological cycles. Since the Indian forests are inhabited by the tribals, any study of forests laws should also lead to the exposition of the problems faced by the tribals. The course should be able to bring out whether, and how far, the various forest laws have contributed to the ecological devastation of India, and in what ways they are responsible for the impoverishment of the tribal and the rural people.

The following syllabus prepared with this perspective will comprise of about 42 units of one hour duration each to be spread over a period of one semester.

***Syllabus***

- |   |                |
|---|----------------|
| <b>1. Introductory</b>  | <b>units 4</b> |
| 1.1. A Geographical and economic survey of the forest resources of India over this century: |                |
| 1.1.1. Tree and plant resources   |                |
| 1.1.2. Wild life resources  |                |
| 1.1.3. Human Habits and cultures  |                |
| <b>2. Historical Background to the making of the forest laws in India</b>                   | <b>units 4</b> |
| 2.1. The making of the Indian forest laws   |                |

2.1.1. The debates between the British administrators on the question of people's and the sovereign's rights in forests.

2.2. The acquisition of village and zamindari forests by the State legislation

**3. The modeling of the state Acts on the Central (1927) act, after independence, and its consequences units 7**

3.1. The details of the central forest Act, in terms of the rights of the state government to declare and reserve forest areas, set up the administration under the Act and enforce punitive measures for violation of the Act.

3.2. The constitutional arrangement for Center and State powers over forest land and forest resources.

3.3. Procedure of forest acquisition under forest laws and its relation to the Land Acquisition act; with special reference to:

3.3.1. fairness of the procedure, and whether the procedure has been satisfactorily implemented;

3.3.2. settlement of rights, and the powers of the forest;

3.3.3. occupancy and group rights of the local inhabitants.

**4. State monopoly and the degradation of India's forests units 7**

4.1. Forests as a source of state revenue under the Act, and the extent of exploitation of India's forests resources during the two world wars.

4.2. The commercialization forests and the forest laws and its exploitation by the Independent India governments.

4.3. The vesting of village forests in the panchayats under the Panchayat Acts: the reasons for the failure of regeneration of village forests.

4.4. Other reasons for the degradation of forests: agricultural policy, industrial policy, population growth, land use policy, etc.

4.5. Wild Life Protection

4.6. Conservation of biological diversity.

**5. Problems in conservation on forest units 7**

5.1. The history behind the Forest Conservation Act 1980 and its amendments.

- 5.2. The problem of balancing the industrial, commercial or tourism demands against conservation.
- 5.3. The problems of submergence of forests in big hydroelectric or irrigation projects.
- 5.4. The difficulties in implementing India's National Forest Policies.
- 5.5. International Conventions concerning conservation and protection of natural resources

## **6. Problems of Afforestation**

**units 11**

- 6.1. Afforestation programmes of the Central and State governments: national, regional and international mechanisms.
- 6.2. Afforestation programmes under rural development and poverty alleviation schemes, by the Central and State Governments.
- 6.3. Law reform required to make afforestation successful, in terms of:
  - 6.3.1. changes in the Panchayat Acts;
  - 6.3.2. people's participation;
  - 6.3.3. rural banking laws;
  - 6.3.4. rural credit laws;
  - 6.3.5. usufruct and patta rights;
  - 6.3.6. marketing and harvesting rules of trees on private lands;
  - 6.3.7. timber transit rules
  - 6.3.8. land use rules, under the ceiling Acts, Land reforms and Land Development Act.
  - 6.3.9. Forest offenses.

### ***Suggested readings***

R.N.Choudhory, *Forest Laws in India*(1992), Orient Publishing Company, N.Delhi.

Leelakrishnan.P., *The Environmental law in India* (1999), Ch.II.pp. 9-32, Butterworths - India, New Delhi.



B.R.Beotra, *Law of Forests (Central & State)* 6th Edition 1999, The Law Book Company.

A Krishnan, *Forest Laws in India*, 1998, Asia Law House

Srivastava, *Encyclopedia on forest* 1998. Asia Law House.

Padala rami Reddy, *Forest Laws*, 1989, Asia Law House

Baden Powel, *Manuel of Jurisprudence for Forests Officers* (1982)

Anil Agarwal, (ed.), *"The State of India's Environment: The Second Citizen's Report"* (1985).

Chhatrapati Singh, *Common Property and Common Poverty* (1985)

Chhatrapati Singh, *"Forestry and the law in India"*, in 29 Journal of India Law Institute (1987).

Karl Marx, *"The laws on the Theft of Woods"*, in Rhenisce Zeitung Werke 113-16, 145 ff. Vol.I (1956)

Ramchandra Guha, *"Forestry in Pre-British India"* in 18 Economic and Political Weekly 45, (1983).

**036 AGRARIAN REFORMS: SELECT PROBLEMS*****Objectives of the course***

Agrarian reforms, however, weakly implemented, occupy a pivotal place in the Independent India. Many of the developments in constitutional law owe their existence to the movement of land reforms. Although land reforms in their sweep include abolition of Zamindaris and intermediaries, the topics that need specific emphasis are tenancy reforms, ceilings on land holdings, and consolidation of holdings.

As a background, the course is expected to deal with the judicial response to land reforms. No doubt, the land reforms conform to the broad policies and guidelines formulated by the planning commission, the various task forces and conferences at the central level; but in view of the fact the agriculture is in the State List, the legislations, the critical aspects pertaining to implementation and the lag between the practice and the precept will have to be studied in the context of each State.

More importantly, tenancy reforms and land ceilings have brought in their wake certain developments like lease in arrangements, underground tenancies and capitalist farming, cutting at the root of some of the basic assumptions of land reforms. The experience of states varied according to their context. Thus, as pointed out by the National Commission on Agriculture, in the Punjab Lease-in arrangements have been resorted to, wherein West Bengal Lease-in arrangements by big landowners to small landowners still continue. The course should take note of these developments pertaining to the State where the course is being offered. Also, special emphasis should be laid on aspects like criteria that have been adopted in the State relating to the selection of beneficiaries for distribution of surplus land. Problems of the beneficiaries since getting the land and retaining it should also be considered.

Land consolidation and cooperative farming have been neglected in the study of Land Reforms. The course content should remedy this drawback.

The following syllabus prepared with the above objectives will comprise of 42 units each of one hour duration spread over a period of one semester.

**Syllabus**

- 1. Pre-Independence position** **units 4**
  - 1.1. Zamindari Settlement
  - 1.2. Ryotwari Settlement
  - 1.3. Mahalwari System
  - 1.4. Intermediaries
  - 1.5. Absentee Landlordism
  - 1.6. Large holdings
- 2. Constitutional Perspectives** **units 4**
- 3. Post-Independence Reforms**
  - 3.1. Abolition of Zamindaries
  - 3.2. Abolition of Intermediaries
  - 3.3. Tenancy Reforms
    - 3.3.1. Land to the tiller
    - 3.3.2. Personal Cultivation
    - 3.3.3. Voluntary Surrenders
- 4. Evaluation of Land Reforms** **units 10**
  - 4.1. Lack of Political will as an impediment to land reforms
  - 4.2. Role of Law
    - 4.2.1. Role of Law and Legal Profession in implementation
    - 4.2.2. Imposition of bars to the jurisdiction of civil courts
  - 4.3. Role of administrative agencies
  - 4.4. Lack of demand from beneficiaries
  - 4.5. Lack of organization of beneficiaries
  - 4.6. Other constraints
    - 4.6.1. Moral
  - 4.7. Results of Land reforms
    - 4.7.1. Leasing in and Leasing out

- 4.7.2. Underground tenancies
- 4.7.3. Green Revolution and development of capitalistic farming

**5. Socialistic Goals and Land Management** **units 6**

- 5.1. Co-operative Farming
  - 5.1.1. Foreign models
  - 5.1.2. Avadi Resolution
- 5.2. Ambedkar's views on Socialization of Land
- 5.3. State Farming in Mixed Economy
- 5.4. Problems and perspectives of Nationalization of Land

**6. Consolidation of Holdings** **units 10**

- 6.1. Socio-economic background of land consolidation
- 6.2. Experience in land consolidation
  - 6.2.1. Foreign experience
  - 6.2.2. Indian experience
- 6.3. Legislation relating to consolidation
- 6.4. Procedures relating to consolidation
- 6.5. Survey and recording of rights

***Suggested readings***

Upendra Baxi, *Towards a Sociology of Indian Law*, pp.25-65 (1986)

Atul Kohli, *The State and Poverty in India* (1987)

Francine R.Frankel, *India's Political Economy:1947-1977* (1988)

L.H.Rudolph and S.H.Rudolph, *The Political Economy of Lakshmi* (1987).

Mohamed Ghouse, "Nehru and Agrarian reform" in Rajeevan Dhaven and Thomas Paul (eds.), *Nehru and the constitution* (1992), Thripathi.

Walter C.Neale, *Developing Rural India Policies and Preogress* (1990) Allied

Alice Jacob, *Land Reform and Rural Change* 6-19 (1992), Land Reforms in India: A Review, IASSI, quarterly 1992, Vol.X, Numbers 3 and 4.

## **037 JUDICIAL POWER AND JUDICIAL PROCESS**

### ***Objectives of the course***

Prior to independence the nature of judicial process was viewed restrictively and narrowly as confined to interpretation of the laws. But after the advent of freedom, the founding fathers envisaged an important and wider role to the judiciary, namely, to protect the liberties of citizens and to declare invalid any law that abridges the Fundamental rights guaranteed under the constitution. Thus the nature of judicial process received a qualitative change under the constitution. The judges therefore in the discharge of their functions had to balance the social interests with individual interests.

In the sixties the conservative judges invalidated many land reform legislations as violative of fundamental rights and constitution had to be amended from time to time to save agrarian reforms from judicial onslaughts. Many legislations dealing with land reforms were included in the 9th schedule to protect them from judicial invalidation.

A great change occurred during the late seventies. Activist judges galvanized the judicial process by relaxing the rules of locus standi on matters involving public interest and in favour of groups who are too weak and oppressed to assert their rights. In the decades that followed, courts exercised power to summon the authorities of the State and giving them directions in a variety of matters of public interest.

At the same time, one notices mounting arrears of cases before the courts and inordinate delays experienced by the litigant public in the disposal of cases which resulted in the people losing faith in efficacy of the judicial process.

These developments in turn have given rise to tendencies to manipulate the appointment of judge at various levels. Since early seventies, views have been expressed that “Committed judges” or “activist” judges or “progressive” judges should be appointed. The executive’s role in the appointment of judges and in transferring judges came in for criticism. Of recent times is the significant of primary of judiciary in judicial appointments. Will this be above criticism? There is thus a need to study the contemporary judicial process in India.

The following syllabus is prepared with this perspective will comprise 42 units of one hour duration each to be spread over a period of one semester.

## **Syllabus**

- 1. The Need for conferment of Power** **units 3**
  - 1.1. Federal Structure
  - 1.2. Separation of powers under the Constitution
  - 1.3. Protection of the Rights of Individuals
  
- 2. Judicial Structures** **units 4**
  - 2.1. Hierarchy of Courts
  - 2.2. Civil Courts and Criminal Courts
  - 2.3. Administrative and other Tribunals
  
- 3. Appointment of Judges** **units 5**
  - 3.1. Method of appointment of judges
    - 3.1.1. Supreme Court
    - 3.1.2. High Courts
    - 3.1.3. District Courts
  - 3.2. Available alternatives to the existing modes of appointment of judges
    - 3.2.1. Collegium
    - 3.2.2. All India Judicial Service
  - 3.3. Removal and transfer
  
- 4. Who are Judges?** **units 3**
  - 4.1. Existing provisions and practices
  - 4.2. Who ought to be judges?
  - 4.3. Background of Judges
    - 4.3.1. Caste
    - 4.3.2. Class

- 4.3.3. Sex
- 4.3.4. Education
- 4.3.5. Reservation

## **5. Kinds of Power**

**units 27**

### 5.1. Constituent Power

- 5.1.1. Judicial review on constitutional amendments: Parliament's unlimited power
- 5.1.2. Fundamental rights as unamendable rights
- 5.1.3. Basic structure theory: new dimensions

### 5.2. Expansion of Interpretations and constitutional developments: life, liberty and equality

- 5.2.1. Due process
- 5.2.2. Death penalty
- 5.2.3. Right to livelihood
- 5.2.4. Speedy trial
- 5.2.5. Legal aid
- 5.2.6. Right to a health environment
- 5.2.7. Applying international norms and conventions

### 5.3. Affirmative use of Judicial power

### 5.4. Contempt power

### 5.5. Rule-making power - Article 145

### 5.6. Superintendence power - Article 227

### 5.7. Appellate, Original and Inherent powers and power to constitute Benches

### 5.8. Doing complete justice - Article 142

## **6. Limits of Judicial Power**

**units 6**

### 6.1. Self-imposed limitations

### 6.2. Res-judicata

### 6.3. Accountability: To whom? On what criteria?

#### 6.3.1 To the Profession

#### 6.3.2 To the Constituents

#### 6.3.3 To the people, Parliament and Press

- 7. Judicial power versus Legislative power** **units 2**
- 8. Judicial process - kinds of processes** **units 4**
  - 8.1. Adversary
  - 8.2. Inquisitorial
  - 8.3. Arbitration
  - 8.4. Public InterestLitigation
- 9. Judicial Process distinguished from other process** **units 2**
  - 9.1. Legislative Process
  - 9.2. Administrative Process
  - 9.3. Conciliation
  - 9.4. Mediation
- 10. Stage in Judicial Process** **units 2**
  - 10.1. Advisory
  - 10.2. Pre-trial
  - 10.3. Trial
  - 10.4. Appellate
  - 10.5. Appeal
  - 10.6. Revision
- 11 Elements of judicial proces** **units 5**
  - 11.1. Practice and Procedure
    - 11.1.1. Fact finding
    - 11.1.2. Issues
    - 11.1.3. Evidence
    - 11.1.4. Arguments
    - 11.1.5. Judicial reasoning and judicial techniques
    - 11.1.6. Reporting
    - 11.1.7. Attendance and management



<b>12</b>	<b>Drawbacks of Judicial Process</b>	<b>units 6</b>
12.1.	Costs	
12.2.	Delay	
12.3.	Inadquate representation	
12.4.	Class Structure	
12.5.	Technicality	
<b>13</b>	<b>Judicial process and Legal profession</b>	<b>units 6</b>
13.1.	Class Character	
13.2.	Educational background	
13.3.	Legal profession and social justice in post-Independent India.	
13.4.	Professional Ethics - Theory and Practice	
<b>14</b>	<b>Judicial Process and Class Structure</b>	<b>units 6</b>
14.1.	Property Relations	
14.2.	Tribals, Slum Dweller, Socialist Principles	
14.3.	Equal Pay for Equal Work	
<b>15</b>	<b>Access to justice - locus standi: PIL</b>	<b>units 4</b>
15.1.	Legal services authority	

### ***Suggested readings***

UNESCO, Commission on Human Rights: The Administration of justice and the Human Rights of detainees: Study of the Independence and Impartiality of the Judiciary, Jurors and assessors and the Independence of Lawyers, 1985, 1987, 1988, 1991, 1992, 1993, 1995.

Upendra Baxi, *Towards a Sociology of India Law* 108-117 (1986)

Upendra Baxi, *Liberty and Corruption: Antulay Case and Beyond* (1990)

Rajeev Dhavan and Alice Jacob, *Selection and Appointment of Supreme Court Judge, A case study* (1978), Tripathi

K.L.Bhatia, et.al., *Delay - a riddle wrapped in mystery inside an enigma*, JILI (1995)

**038 LAW AND THE DISABLED*****Objectives of the course***

The disabled do need a very special attention. This has been so recognized in our Constitution. Within the limits of its economic capacity and development, under Article 41, the state is directed to make effective provisions for securing right to work, to education, to public assistance in cases of unemployment, old-age, sickness and disablement, and other cases of undeserved want, Again in Article 46, the State is directed to promote with “special care” the educational and economic interests of the “weaker sections” of society, obviously including within its ambit the disabled. The concern of the international community is reflected in the resolution of the general Assembly of the United Nations, proclaiming 1981 as the International year of the Disabled persons with the following objectives.

- (i) Helping disabled persons in their physical and psychological adjustment to society.
- (ii) Promoting all national and international efforts to provide disabled persons with proper assistance, training, care guidance, to make available opportunities for suitable work and to ensure their full integration in society.
- (iii) Encouraging study and research projects designed to facilitate the practical participation of disabled persons in daily life, by improving their access to public buildings and transportations system.
- (iv) Educating and informing the public of the rights of disabled persons to participate in and contribute to various of economic, social and political life.
- (v) Promoting effective measures for prevention of disability and for rehabilitation of disabled persons.

India is a signatory to this Resolution and is, hence, obliged to realize its objectives through a sustained national plan of action by integrating the whole range of efforts with the national development plans.

The purpose of evolving this course as an optional paper for the students of LL.B. (Hons.) is to provide to a body of motivated students a critical exposure in an area of social interest which has hitherto remained unexplored. In this course they would also gain insight into a multidisciplinary developing remedial jurisprudence.

The following syllabus prepared with this perspective will comprise 42 units of one hour duration each to be spread over a period of one semester.

### **Syllabus**

#### **1. Introductory units 2**

- 1.1. Why this course?
- 1.2. Magnitude of disablement

#### **2. Conceptions of Disability units 3**

- 2.1. Moral of religious disability

(resulting into excommunication or degradation as for example under Shastric law, where such disabilities were caused by irreligion or renunciation of religion: unchastity; addiction to vice: enmity to father or to propositus; adoption of religious order, which is tantamount to civil death).

- 2.2. Pathological disability: Physical and mental
- 2.3. Social disability

(Social conception of disability does not necessarily follow the logic of biological nature of reality, and vary from society to society, and even within the same society with the flux of time)

- 2.4. Legal disability as expounded under different laws
- 2.5. Kinds of disability:
  - 2.5.1. Temporary and permanent
  - 2.5.2. Partial and total

#### **3. Potential sources of disability units 3**

- 3.1. Congenital disability
- 3.2. Disability caused by natural calamity - Floods, drought, epidemics, etc.
- 3.3. Disability caused by accident
- 3.4. Disability as a result of working in high risk industrial establishments

- 3.4.1. Private undertakings - e.g. Bhopal case
- 3.4.2. Public undertakings - e.g. Atomic plants
- 3.5. Disability which is self-invited or self-inflicted (drinking, smoking, drug addiction)
- 3.6. Disabilities of agencies

**4. Basic approaches to Disability** **units 3**

- 4.1. Traditional approach of sympathy and charity
- 4.2. Modern approach of rationality, secularity and human dignity

**5. Determination of disability**

- 5.1. Varying criteria under different laws
- 5.2. Administrative process for determining disability:
  - 5.2.1. Issues of policy and law
  - 5.2.2. Reference to medical opinion for determining the nature and extent of disability
  - 5.2.3. Evaluation of the nature and extent of disability by the adjudicating authority
  - 5.2.4. Appeals against adjudication

**6. Concern for the Disabled: In Retrospect at the International level** **units 11**

- 6.1. Initiatives of I.L.O. through
  - 6.1.1. International Labour conference of 1925 (recognizing the vocational needs of the disabled by including a provision in the Workmen's compensation or the vocational re-education of injured workmen).
  - 6.1.2. International Labour Conference of 1944 (re-affirming in the Employment (Transition from War to peace) recommendation that disabled workers should be provided full opportunities for rehabilitation, specialized vocational guidance, training,. Retraining and employment on useful work).
  - 6.1.3. International Labour Conference of 1952(adopting the Vocational Rehabilitation (Disabled) Recommendation, articulating the essential elements of vocational rehabilitation and showing how to apply them in practice).
  - 6.1.4. International Labour Conference of 1975 (calling upon all public authorities and organizations of employers and workers to promote maximum opportunities for disabled persons to perform, secure and retain suitable employment).
- 6.2. U.N. Declaration of Human rights 1948 (proclaiming), inter alia, that every one has the right to an adequate standard of living and to security in the event of unemployment, sickness and disability).

- 6.3. U.N.General Assembly Declaration of the Year 1968 as the International year of Human Rights
- 6.4. U.N.General Assembly Declaration on the Rights of Mentally Retarded Persons (1971).
- 6.5. U.N.General Assembly Declaration on the Rights of Disabled person (1975)
- 6.6. U.N.General Assembly Resolution of 1976 declaring 1981 As the International year of Disabled persons with the objectives to ensure full “participation and equality” to the disabled and calling upon member nations and organizations concerned to adopt measures to implement those objectives.
- 6.7. U.N.General Assembly Resolution of 1998 declaring 1999 as the international year of older persons.

At the National Level

- 6.8. Disabilities removal Acts:

The Caste Disabilities Removal Act, 1850: Hindu Inheritance (Removal of Disabilities) Act, 1928; Hindu Succession Act, 1956.

(The crucial question to be asked here is: For whose benefit exclusion from inheritance of partition was sanctioned? For the benefit of the heir? Or, Disabled himself or herself?)

- 6.9. The persons with disabilities (Equal opportunities, protection of rights and full participation Act 1995)
- 6.10. Section 84 of the Indian Penal Code, 1960 (absolving a person of unsound mind from criminal liability for commission of certain offences).
- 6.11. Indian Contract Act, 1872: sections 11 and 12 (absolving a person of unsound mind from a contractual liability).
- 6.12. Compensation for injury for work-related accidents.
- 6.13. Indian Leprosy Act of 1989 and the Mental Health Act 1987
- 6.14. The Factories Act, 1948 (aiming at promotion of health, safety and welfare of workers).
- 6.15. Successive Five-Year Plans and the National Plan of Action (1980) reflecting the concern articulated in constitutional directives as well as the commitment made as a signatory to the U.N. Resolution on the Welfare of the Disabled).
- 6.16. National Policy on older persons (Government of India)

**7. Ameliorative Measures for the Disabled****units 10**

- 7.1. Reservation-Priority-Relaxation of rules - policy of the Central Government for the employment of the disabled in central services and Government of India public sector undertakings with a provision of interchangeability and carrying forward (Note: Study of a similar corresponding polity in respective States is recommended).
- 7.2. Reservation of seats in educational institutions
- 7.3. Relaxation of conditions for admission in Industrial Training Institutions (I.T.I.) for physically handicapped where they are otherwise suitable and fit for training
- 7.4. Special scholarships
  - 7.4.1. The Scheme of the Ministry of Social Welfare for granting scholarships for general education (From class IX onward) and for technical training at certificate, diploma and degree levels).
  - 7.4.2. Scholarships for the blind, deaf and orthopaedically handicapped, extending upto doctoral level under special schemes of the government.
  - 7.4.3. U.G..C. junior and senior doctoral and post-doctoral fellowships.
- 7.5. Grant-in-aid to voluntary social welfare agencies serving the handicapped.
- 7.6. Special financial assistance to organizations engaged in the promotion of education and training of the disabled.
- 7.7. Special facilities for improving qualifications, like the permission to appear as private candidate in various examinations; permission to type-write the answers: provision of amanuensis in the examination
- 7.8. Scheme of integrated education for placing the handicapped children along with normal ones with the help of special teachers, aids and other facilities
- 7.9. Incentives for self employment, such as soft credit loans from banks and other financing agencies for starting small business or a small scale industry.
- 7.10. Special exemptions in income tax (Section 80D of the Income-tax Act allows deduction in respect of medical treatment of the handicapped dependents; whereas under section 90U an individual who is totally blind or physically handicapped is entitled to a deduction of Rs.10,000 in computing taxable income)

**8. Some ponderable issues****units 10**

- 8.1. Whether a disabled person has such personal right as right to marry, irrespective of the nature of his disability, say, incurable insanity.

(Such a question is pertinent in the discussion of various conditions laid down for contracting or solemnizing marriage, the violation of which results in either treating the marriage void or declaring it annulled or permitting divorce).

- 8.2. If the answer to the above question is in the affirmative, than should be also have a right to procreate children? Can the State resort to compulsory sterilization in such a case in the interest of society?
- 8.3. The problem of euthanasia vis-à-vis disabled persons suffering from incurable and painful disease. What kind of life is worth preserving and who should decide that a life should be prolonged. Should it be decided by the doctors on the basis of some technological definitions of the quality of life? Or, should such matters be left to be handled by the patients, the families, or failing those, to the course, with doctors in advisory roles?
- 8.4. Is there a right not to be born and suffer from genetic disease? Will genetically afflicted persons sue their parents for not preventing their births? If a right not to right belong? Can society oblige couples by law to have children they do not want?
- 8.5. Institutionalization of the disabled: should it be a substitute for family shelter?
- 8.6. Shouldn't there be a compulsory comprehensive social insurance to cover all risks undeserved wants?

### ***Suggested readings***

The following articles in the special issues of the 34 Punjab University Law Review, (1982) may be usefully referred:

S.L.Sharma, "*Changing social structure and the status of the disabled*", at 114-21

J.K.Mittal, "*Conceptual Framework for the welfare of disabled persons*" at 42-60

Paras Diwan, "*Keynote paper*" on the disabled, at 1 - 14.

Bal Krishna, "*Disabled and the tax laws*", at 25 - 30

Balram K. Gupta, "*The Rights of the disabled: a foot note on the constitutional position*", at 61-63

I.P.S.Sidhu, "*Disabled and law of corporations*", at 31-53

R.K. Bangia, "*Compensation for pre-natal injuries to children born disabled*", at 38-41.

Virendra Kumar, *"Institutionalisation of the disabled: should it be a substitution for the family shelter"* At 15-24

Special issue of the 37 Indian Journal of Public Administration, (1981) consists of the following useful reports/articles.

Report of the Director-general to the International Labour Conference, Part-I (1981)

S.R.Mohsini, *"Emerging concept of welfare of the physically handicapped"*.

V. Ramalingaswami, *"Rehabilitation of the disabled"*

H.J.M. Desai, *"The need for radical change in the administrative structure of our services for the disabled"*.

Seeta Sinclair, *"A Future of the mentally handicapped"*

P. Trivedi, *"Is disability a handicap and need it be perpetuated"*

Bata K.Dey, *"Reservation for the handicapped: Constitutional and programmatic issues"*

S.K.Verma and Anil Chawla, *"The Disabled - their problems and solutions"*

Mikhavilli Seetharam, *"Legislation for rehabilitation services for the disabled in India"*

Ravindran Nair, *"Welfare of the handicapped - the role of voluntary organizations"*

Human Rights, A compilation of International instruments (1987).

Year Book on Human Rights for 1975-76 (1981)

For the textual law on exclusion from inheritance under Hindu law, see:

Golap Chandra Sarkar Sastri's Hindu Law, Ed. Rishindra Nath Sarkar, at 502 (Cal. 1940)

Mayne's Treatise on Hindu Law and Usage, at 713-17 and also the usefully collected judicial decisions in note (k) at 714 - 15 and note ® at 716.

National Plan of Action for the International year of Disabled Persons (1980).

Amita Djamda, Legal Order and Mental Disorder (1999) Sage



## **039 IMPLEMENTATION OF HUMAN RIGHTS STANDARDS**

### ***Objectives of the course***

This is essentially a seminar, rather than a course followed by examination. Apart from grounding in international Human Rights Instruments, the class would be expected to develop skills for:

- human rights advocacy by raising public consciousness
- building of campaigns for public education of the legislators
- styles of lawful protest against violations of rights
- devising official and popular means of investigation of human rights standards.

Non-governmental organizations in the region should be able to assist the class as well as judges, prosecutors and police officials.

The problems to be selected must be contemporary and widely discussed in the region. Students must be encouraged to devote half the course-time in seeking to develop the foregoing skills.

#### **1. Information Analysis**

Perhaps, the essential starting points will be provided by the local, regional daily newspaper or a periodical. The first skill students should develop is the skill of preparing a dossier on how violation of rights is actually brought to public notice, how it is followed up in mass media, how different priorities are assigned by it, the level of public response (from letters to editor, reports of meetings, processions and demonstrations).

#### **2. Legal Analysis**

The dossier should then be subjected to legal analysis. Are facts disclosed such as to constitute prima facie case for criminal, civil or other (social action litigation) proceedings? Briefs should be prepared for prosecution and defence.

#### **3. Verification**

Circumstances permitting, student must be encouraged to visit the scene of the happening and cull out relevant information.

**4. Campaigning**

Based on (2) and (3), students should be encouraged to outline scenarios for active campaigning to generate courage, interaction and official action. The kinds of briefing materials for the press, NGOs, Police, concerned public authorities should be prepared.

**5. Past Violations**

Wherever violations of reports by Amnesty, PUCL or PUDR are available, these must be examined in terms of their credibility, meticulousness and analysis and legitimacy of inference regarding violation .

**6. Law Reform**

The class must be encouraged to study leading international human rights instruments to ascertain areas where law reform is needed.

**units 42**

***Suggested readings***

Paul Segart, *The Lawful Rights of Mankind* (1986)

## **040 DISARMAMENT AND PEACE STRATEGIES**

### ***Objectives of the course***

Disarmament has been a major issue in international relations for creating conditions of peace. Even the developing nations have found it essential to divert their meager resources for the acquisition of sophisticated arms and a significant proportion of national resources is pent on acquisition, production and upkeep of military hardware.

The ownership patterns for mass production of armaments need a close scrutiny and the methods used by giant manufacturers of sophisticated armaments to push sales have recently come under severe attack. These have a direct bearing on national policies for production and sale of armaments. The implications of transfer of technology are grave and need a thorough understanding of the issues involved.

The course will explore the alternative strategies for creating conditions of peace. This would involve a critical examination of dispute resolutions and crisis management techniques, presently in vague equitable allocation of world's resources and economic development of less developed countries.

The following syllabus prepared with this perspective will be spread over a period of one semester comprising 42 units of one hour duration.

### ***Syllabus***

- |   |                |
|---|----------------|
| <b>1. The conceptions of Disarmament</b>                                      | <b>units 4</b> |
| 1.1. Disarmament and world security, Military alliances, Arms Trade.          |                |
| 1.2. Changing conceptions of disarmament                                      |                |
| <b>2. The Dynamics of the Arms Race</b>                                       | <b>units 4</b> |
| 2.1. The reasons of arms race including nuclear weapons                       |                |
| 2.2. Consequences of arms race in terms of resources and economic development |                |
| 2.3. International implications of the arms race                              |                |

- 3. Disarmament and the United Nations** **units 6**
  - 3.1. History of the Failure of disarmament efforts
  - 3.2. U.N. Disarmament Commission, its achievements and limitations
  - 3.3. U.N. Efforts towards Disarmament
  
- 4. Nuclear Disarmament, Problems and Perspectives** **units 6**
  - 4.1. Nuclear Non-Proliferation treaty and Intermediate Range Missile Treaty
    - 4.1.1. Nuclear Test Ban Treaty 1968, 1987
    - 4.1.2. Comprehensive Test Ban Treaty
  - 4.2. International regulation of nuclear weapons
    - 4.2.1. Nuclear Policy : India
  
- 5. International Regulation of Biological and Chemical Weapons of Mass Destruction** **units 6**
  
- 6. Sea, outer space and special regimes** **units 8**
  - 6.1. Law of the sea
  - 6.2. International Regulation and Control of Militarization of Outer Space
  - 6.3. Space Treaty 1967, Antarctica 1959,
  - 6.4. Moon Treaty 1979
  
- 7. Conceptions of peace and of conflict management in international order** **units 8**
  - 7.1. Conserving the world's resources
  - 7.2. Assisting the economic development of Less Developed Countries
  - 7.3. Harnessing science and technology for development
  - 7.4. Protection of Human Rights
  - 7.5. Peaceful Settlement of International Disputes
  - 7.6. Towards a Balanced World Trade
  - 7.7. Peace Research and its significance

**Suggested readings**

Burns H. Weston, *Towards Nuclear Disarmament and Global Security: A search for Alternatives* (1982)

J.School, *The Fate of the Earth* (1982)

J.N.Singh, *Use of Force Under International Law* (1984)

Julius Stone, *Legal Controls of International Law* (1954)

M.Walzer, *Just and Unjust Wars I*(1979)

Allen Gotlet, *Disarmament and International Law* (1985)

Bruce A Hurwitz, *The Legality of Space Militarization* (1986)

United Nations Commission on Environment and Development. *Our Common Future* (1987)

U.N.Common Security: A programme for Disarmament The Report of the Independent Commission on Disarmament and Security under the Chairmanship of Olef Palme (1982).

The Course must prescribe current readings from leading international law reviews; the most important source, among non-legal journals, is *Alternatives* - a quarterly published by Centre for the Study of Developing Societies, Delhi.

**041 EDUCATIONAL PROCESS, PLANNING AND THE LAW*****Objectives of the course***

Education is an important instrument of social control, which enriches human life materially as well as culturally. Education at the grassroots level means freedom from ignorance, which ultimately must also mean freedom from exploitation and oppression. Education epistemologically is liberating, modernizing, and humanizing also. In a way, education is a resource, which must be distributed equitably in terms of opportunities. Education as a resource is precious because its acquisition opens up opportunities for competing for other material resources such as wealth, status, power or excellence. Education and law, both are resources, and both are means to acquire other resources. Law as supreme regulator of political economy has to umpire, monitor as well as manipulate the distribution of education as a resource. This is what we mean by educational planning which has to be informed by social transformational aspirations. But educational planning does not mean regimented orchestrated performance of various factors of the educational process. Some autonomy of such factors is necessary to lent legitimacy to educational process. A delicate balance between autonomy and regulation has to be maintained this paper will deal with education as a resource, its planning by the law and legal regulation of various administrative, legislative, and quasi judicial processes of educational institutions or functionaries and interaction between such institutions and the government and the people .

The following syllabus prepared with this perspective will comprise about 42 units of one hour duration each to be spread over a period of one semester.

- |  |                |
|--|----------------|
| <b>1. Education: Constitutional Allocation of Power</b>                        | <b>units 6</b> |
| 1.1. Articles 246 read with the Seventh Schedule                               |                |
| 1.2. Concurrent List Entry 25.   |                |
| 1.3. Union List Entries 63, 64, 65, and 66.                                    |                |
| 1.4. <i>Gujarat University v. Srikrishna</i> A.IR. 1963 SC 703                 |                |
| 1.5. Why was education transferred from the State List to the Concurrent List? |                |
| 1.6. Areas of Central legislation over Education, the UGC Act, etc.            |                |

- 2. Constitutional Goals** **units 6**
  - 2.1. Right to Education
  - 2.2. Free and compulsory education for children below 14 years
  
- 3. Equality of opportunity to education** **units 6**
  - 3.1. Articles 14, 15, 16, 21, 29(2), 41 and 45
  - 3.2. Reasonable classification
  - 3.3. Affirmative action and the deprived
  
- 4. Minority and Education**
  - 4.1. Minority Rights - Right to conserve distinct script and culture
  - 4.2. Right to establish and administer educational institutions of their choice
  - 4.3. Minority Institutions - right to compensation
  - 4.4. No discrimination in grant-in-aid
  
- 5. Government Control and Educational Institutions** **units 5**
  - 5.1. Chancellor - Governor
  - 5.2. How are Vice-Chancellors appointed?
  - 5.3. Government power to nominate members on various university bodies and the role of these bodies
  - 5.4. Zilla Parishad and Primary-Secondary Schools Relationship
  - 5.5. Funding of Education
  - 5.6. Autonomy v. Social Control
  
- 6. Fair Hearing in Educational Matters** **units 4**
  - 6.1. Students - Discipline and Action, Mass copying, etc.
  - 6.2. Staff v. Management
  - 6.3. Grievances
  - 6.4. Rules of Natural Justice

- 7. Dispute settlement Mechanism for Educational Institution** **units 6**
- 7.1. Chancellor
  - 7.2. Educational Tribunals
  - 7.3. Judicial Review
- 8. Market economy, education and the law** **units 3**

### ***Suggested readings***

B.M. Sankhdher, *Encyclopaedia of Education System in India* 1999, Deep Publications.

P.L.Mehta, R.Poonga, *Free and Compulsory Education*, (1997), Deep & Deep Publications.

R.D.Agarwal, *Law of Education and Educational Institutions* (Higher, Secondary and Basic Institutions - Govt., aided, Public Private institutions and Universities), 1999, The Law Book Company.

D. Thakur & D.N.Thakur, *Studies in Educational development*, (1993), Asia Law House

R.D.Agarwal, *Law of Education and Educational Institutions in India*, (1983).

Upendra Baxi, "Mass copying : should Courts Act as Controllers of Examination?" 6& 7 Delhi Law Review 144-153 (1978-79)

Indian Law Institute, *Minorities and the Law* (1972)

S.P. Sathe, "Fundamental Rights and Directive Principles of State Policy" in Constitutional Developments since Independence (Indian Law Institute) (1974)

G.S.Sharma, (ed.), *Educational Planning: Its Legal and Constitutional Implications in India*, (1967)

Sreenivas Rao "Writs Against Educational Institutions" 26 Journal of the Indian Law Institute 40 (1984).

Cases reported in Education and Educational Institutions Cases, Malhotra and Company.

Students should consult relevant volumes of the Annual survey of India Law Published by the Indian Law Institute (Constitutional Law, I, II, Administrative Law and Education).



**042 LEGAL PROFESSION AND LEGAL ETHICS*****Objectives of the course***

Lawyers are supposed to perform an important function of helping people to abide by the law. They are officers of courts and supposed to help them arrive at the truth and just resolution of disputes. In the successful operation of the lawyers to the cause of Justice, various ethical questions arise. The purpose of this paper is to acquaint the student with:

- (a) Social background of the lawyers;
- (b) How far career opportunities in the profession are determined by their caste/class/sex context and public relations backgrounds?
- (c) How far legal profession is apprised of the law as an instrument of social change?
- (d) How far legal profession is apprised of the law as an instrument of social change?
- (e) How far it can participate meaningfully in the transformation effort?
- (f) What ethical standards are expected of the lawyers and how are such standards enforced ?

The following syllabus prepared with this perspective will comprise 42 units of one hour duration each to be spread over a period of one semester.

***Syllabus***

- |  |                |
|--|----------------|
| <b>1. Legal Profession - Historical Perspective</b>                  | <b>units 6</b> |
| 1.1. Were there lawyers in Ancient India?                            |                |
| 1.2. Role of the jurists in development of Hindu Law, Mahommedan Law |                |
| 1.3. Origin of common law lawyering in India.                        |                |
| 1.4. Barrister - vakils - high court pleaders, advocates etc.        |                |
| 1.5. Legal Practitioners Act   |                |
| 1.6. Origin of Legal education in India.                             |                |

- 2. Lawyers in Politics** **units 4**
- 2.1. Why were lawyers in the forefront in the national movement for independence?
  - 2.2. Lawyers in the Constituent Assembly - Successive Parliaments.
- 3. Role Allocation for the Legal Profession in Independent India** **units 6**
- 3.1. Judicial Review : Fundamental Rights, Directive Principles.
  - 3.2. Advocates Act - Uniform Bar, All India Bar
  - 3.3. Lawyer's Role in Accelerating and facilitating the social change visualized by the Indian Constitution
  - 3.4. Right to legal aid
  - 3.5. Monopoly of representation
  - 3.6. Exclusion of lawyers
  - 3.7. Self-representation by Litigants
- 4. Professional Ethics** **units 5**
- 4.1. Bar against soliciting work
  - 4.2. Under-cutting : An Unethical Practice
  - 4.3. Breif - Stealing
  - 4.4. Lawyer not to advertise
  - 4.5. Not to use touting
  - 4.6. Fee structure - Black Money and High Fees
  - 4.7. Is a lawyer bound to accept a brief?
  - 4.8. Accountability to the client
  - 4.9. Self Regulation/Legal Regulation
  - 4.10. Collusion with the opposite paprty
  - 4.11. Legal profession and strike
- 5. Social profile of the legal profession** **units 6**
- 5.1. Class/Caste/education/sex/composition of the Bar

- 5.2. Professional opportunities - Upward Mobility
- 5.3. How far have underprivileged groups such as SC/ST advanced in the profession
- 5.4. Women lawyers - opportunities and handicaps.

**6. Professional misconduct and control** **units 5**

- 6.1. Advocates Act
- 6.2. Function of the Bar Councils
- 6.3. Disciplinary committees - tribunals
- 6.4. Appeals to the Supreme Court, etc.
- 6.5. Contempt proceedings against lawyers

**7. Types and classes of Lawyers** **units 4**

- 7.1. Delhi - Supreme Court, Senior Advocates, Advocates on Record
- 7.2. Bombay, Calcutta, etc. - Advocates : Original side- Advocates: Appellate side - Solicitors
- 7.3. Mofussil - Advocates
- 7.4. Muktiars
- 7.5. Bare - Footed lawyers
- 7.6. Lawyers' collectives and firms
- 7.7. Senior - Junior relationship
- 7.8. Problems of retired high court judges

**8. Lawyers in Court** **units 2**

- 8.1. How to address the court?
- 8.2. Attitude towards opponent counsel
- 8.3. Duty to cite all relevant authorities
- 8.4. Arguments should be precise and brief
- 8.5. Selective use of precedents

**9. Accountability and role conflicts - the Bar Council of India and University Grants Commission** **units 5**

**Suggested readings**

Bhagavati, P.N., Challenges to the Legal Profession - Law and Investment in Developing Countries

J.B.Gandhi, Sociology of Legal Profession and Legal System (1987).

Sathe, Kunchur, Kashikar - "Legal Profession: Its Contribution to Social Change" in to 13 ICSSR Research Abstracts Quarterly 111-127 (1984) Also see 10 Ind. Bar Rev. 47-81 (1983).

K.L.Sharma "Sociology of Law and Legal Profession: Cross Cultural Theoretical perspective" 24 J.I.L.I. 528 (1982).

A.N.Veeraraghavan "Legal Profession and the Advocates Act, 1961" 14 J.I.L.I. 229 (1972)

Anil Nauriya, "Agitation by Advocates" 23 e.p.w. 623-25 (march 26, 1988)

Upendra Baxi, "*The Pathology of the India Legal Profession*", 13 Ind. Bar. Rev. 455 (1986)

S.P.Sathe, *Administrative Law* (1998)

K.L.Bhatia, *Socio-Legal Study of Occupational Status of Law Graduates*, (1994)

**043 PUBLIC HEALTH LAW**

Public health has not received due attention in legal studies. The course attempts to fill this lacuna.

The Course will be essentially a seminar course followed by evaluation. Association of Concerned medical practitioners in the area with the course should be encouraged.

The following syllabus prepared with this perspective will comprise of about 42 units of one hour duration spread over a period of one semester.

**Syllabus****1. Introductory**

- 1.1. The right to health as emergent from parts III and IV of the Constitution
- 1.2. National Health Policy
- 1.3. Indigenous and Allopathic Health Systems

**2. Duties of employer, community and state in**

- 2.1. Industrial Accidents (e.g. Bhopal)
- 2.2. Rail, Air, Eco Disasters (duties of carriers as well).
- 2.3. Flood - related epidemics
- 2.4. Other epidemic situations

**3. Organisation of public health care in India**

- 3.1. Legal organization of public hospitals
- 3.2. Medico-legal cases and duties of hospitals
- 3.3. Liability for medical negligence in public hospitals
- 3.4. Mental health care in public hospitals : duties and liabilities
- 3.5. Rural health care

**4. Organization of private health care**

- 4.1. Legal aspects of private medical practice
- 4.2. Medical negligence
- 4.3. Amniocentesis
- 4.4. Public service related situations - negligence of private doctors in eye camps, sterilization camps, etc.
- 4.5. The problem of disposal of medical and surgical wastes and liabilities of private and public health care units.
- 4.6. Side effects

**5. Cost and Insurance**

- 5.1. Types of Health Insurance in India
- 5.2. Employee's Health Insurance Corporation
- 5.3. Cost of Health Care and Weaker Sections of Society.

**6. Medical Jurisprudence****7. Market economy, public health and law*****Suggested readings***

Reading may be derived from the courses mentioned above and from the local studies of health care organizations

## **044 PROBLEMS OF ACCESS, GOVERNANCE, PUBLIC PARTICIPATION AND LEGAL INSTITUTIONS**

### ***Objectives of the course***

The governing institutions of any society constantly require feed back from society and have to respond to the urges and aspirations of such society. Such an interaction between the governing institutions and the people depends upon their accessibility to the people and the people's participation in decision-making of such institutions. Governance is best when it is consensual and such consensuality can be maximized in proportion as access of the people and their participation in the governing process increases. Consensuality also lends legitimacy to the governing processes and institutions. In this paper a student will be exposed to the existing facilities of access and public participation and made to reflect on the adequacy or inadequacy of such facilities and provoked to think of alternative to the system as well as reforms in the systems with a view to maximizing its responsiveness to the people.

The following syllabus prepared with this perspective will comprise of about 42 units of one hour duration each to be spread over a period of one semester.

### ***Syllabus***

- 1. Public participation, Access and Governance** **units 2**
  - 1.1. Conceptual Analysis - Meaning of Democracy - How democracy can be non participatory?
  - 1.2. Why should access and public participation be facilitated?
  
- 2. Mapping out the main governing decision-making institutions** **units 3**
  - 2.1. Parliament, Government of India
  - 2.2. State Legislatures - State Government
  - 2.3. Local self - governing authorities
  - 2.4. Statutory Authorities
  - 2.5. Administrative Authorities

2.6. Courts, Tribunals, Lok Adallaths

2.7. Ombudsman

**3. Public Participation and Access to Legislative Process**

**units 4**

3.1. Legislature - Membership - Qualifications

3.2. Functions of the Legislature

3.3. Elections of members - "Right to recall"

3.4. Privileges of the Legislature

3.5. Duties of a Member of the Legislature Serving the constituency

3.5.1. Pension of the members of the Legislature

3.6. Social profiles of M.Ps and M.L.As.

3.7. Role of Press

3.8. Provisions for publications of the laws

3.9. Committees of Parliament

**4. Public participation and access to administrative process**

**units 6**

4.1. Delegated legislation

4.1.1. Ultra virus doctrine

4.1.2. Publication

4.2. Publication of Delegated Legislation

4.3. Existing inaccessibility of Legislation and Delegated Legislation

4.4. Hearing in Administrative Decision-making - Audi Alteram Partem

4.5. Liberalisation of the rules of locus standi

4.6. Who can challenge an administrative action ?

4.6.1. Standing of a third person - standing of a social action group

4.6.2. Public Interest Litigation and Environmental Protection



- 5. Access to Information** **units 6**
- 5.1. Extent of literacy - Extent of legal illiteracy.
  - 5.2. Need to spread knowledge of laws
  - 5.3. Provisions for free and compulsory education for children below the age of 14 - Article 45 of the Constitution
  - 5.4. Right to information - Fundamental Right ?
  - 5.5. Official Secrets Act, Government Privilege to withhold Disclosure of Documents
  - 5.6. Public Inquiries: Commissions of Inquiry appointed by NGOs.
- 6. Access to Judicial Process** **units 4**
- 6.1. Rules of Locus Standi
  - 6.2. Requirement of Court fee-Provision for Proper Suits
  - 6.3. Delays, Expensiveness and hyper-technicality of the judicial process.
  - 6.4. Lack of public participation - Alienation of the people - liberal rules of locus standi to appeal in criminal cases.
  - 6.5. Representative suits under civil procedure code
  - 6.6. Media and Public participation
    - 6.6.1. Role of Media
    - 6.6.2. P.C.Joshi Committee Report
    - 6.6.3. The Prasad Bharti Act
- 7. Public interest Litigation** **units 4**
- 8. Alternative Models of Dispute Settlement** **units 4**
- 8.1. Tribunals - Articles 323A and 323B
  - 8.2. Family Courts, Consumer Councils and Fori
  - 8.3. Lok Nyayalayas
  - 8.4. Lokpal and Lokayukthas
  - 8.5. Judicial review of decision of alternative agencies

- 9. How to facilitate access and public participation** **units 6**
- 9.1. Procedural Reforms
  - 9.2. Alternative models of dispute resolution Lok Nyayalaya - Grassroots Justice
  - 9.3. Legal aid movement - legal literacy - Social Action Litigation - legal mobilization of the poor.
  - 9.4. Decentralisation of power - federalization of Panchayat Raj
  - 9.5. Suspension or Dismissal of Local Self Government: Experiment in West Bengal and Karnataka
  - 9.6. Growth of Mass movements for Social transformation
  - 9.7. Participatory movements
  - 9.8. Public participation in environmental decision-making
    - 9.8.1. Decision on environmental issues
- 10. Public participation in Law Reforms** **units 3**
- 10.1. Women's Groups, environmental groups
  - 10.2. Circulation of Draft legislation for public reaction
  - 10.3. Planning process and public participation

### ***Bibliography***

U. Baxi, *Crisis of the Indian Legal System* (1982)

U.Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" in Dhavan, Sudarshan and Kurshed (ed) *Judges and the Judicial Behaviour* at (1985)

V. Dhagamwar, "Problems of Implementing Agrarian Legislation in India" 23 J.I.L.I.P. 228-254 (1981).

R.Dhavan, *Litigation Explosion in India* (ILI 1986)

S.P. Sathe, "Legal Activism, Social Action and Government Lawlessness":

In Leelakrishnan (ed) *New Horizons of Law* (1988).

Law Commission of India, 114th Report on Gram Nyayalaya (1987).

U.Baxi, "Access, Development and Distributive Justice: Access Problem of the Rural Population" 18 J.I.L.I. 375 (1976).

S.P.Sathe, *Administrative Law* (1998), Butterworths

S.P.Sathe, "Public Participation in Judicial Process: New Trends in Law of Locus Standi with special reference to Administrative Law" 26 J.I.L.I. (1984)

P. Leelakrishnan, "Public Participation in Environmental Decision-making" in P. Leelakrishnan, *The Environmental Law in India* (1999), Chapter XII.

Social Action Litigation, (1984) Cochin University Law Review, pp.433-546

T.S.Misra, "Alternatives to the Present System of Settling Village Disputes of Civil Nature" 22 J.I.L.I. 210 (1980)

S.N.Jain, "Law, Justice and Affirmative Action" 21 J.I.L.I. 262 (1979)

Rajeev Dhavan, "Engrafting the Ombudsman Idea on a Parliamentary Democracy" 19 J.I.L.I. 217 (1977)

Balram Gupta, "A Balance Sheet of State Lokayuktas" 26 J.I.L.I. 122 (1984)

S.S.Singh, "Constitutional Compulsion of Legal Aid: Role of Voluntary Organisation" 33 I.J.P.A. 643 (1987)

Jagar Narain, "Legal Aid - Litigational OR Educational: An Indian Experience" 28 J.I.L.I. 72 919860.

K.L.Bhatia, *Judicial Review and Judicial Activism* (1997)

K.L.Bhatia, et.al., *Delay a Riddle Wrapped in Mystery inside an Enigma*, JILI (1995)

Law Commission of India, 14th Report, 31st, 79th, 80th, 120th, 121st 124th Reports.

Government of India, The Arrears Committee Report (Justice V.S.Malimath), 1990.

**045 LAW AND PUBLIC SERVANTS*****Objectives of the course***

Civil service constitutes the backbone of the modern welfare state administration. This paper will examine at the threshold level, the historical and comparative growth of the civil service law during the colonial and post-independent era.

How far are the rights available to the general public applicable to the civil servants? Necessarily the constitutional concepts of equality and protective discrimination are to be examined in this respect. The constitutional bases for the regulation of services, the doctrine of pleasure and the limitations put on it are prominent areas.

Recruitment and promotion are two strong foundations of an efficient civil service. The dimensions and the power of the public service commissions in these areas are to be highlighted.

Human and fair conditions of service are other bases for an efficient system of administration. Machinery for fixation of pay and allowances and other conditions of service, social security benefits, civil and criminal immunities for "good faith" actions are all matters to be examined in this paper. The legislation and the rules relating to these areas available in the state where the course is offered should form part of the paper. *Pari pasu* a comparative analysis of the corresponding regulation relating to the employees of the Central government may also be made.

The neutrality-commitment dilemma, the principle of seniority-cum-merit basis for recruitment and promotion, the advantages and disadvantages of the spoils system and the areas like frequent transfer, housing, education of children, and politicization of service organizations present other segments of study.

Special categories of services such as the judicial service-the subordinate judiciary and higher judiciary-and the All India services should form a separate component of the paper.

Settlement of disputes over service matters is a litigation prone area. The remedies provided at departmental level, remedies before the administrative tribunal and the remedies by way of judicial review should be studied in depth with a comparative emphasis.

The following syllabus prepared with this perspective will comprise 42 units of one hour duration each to be spread over a period of one semester.

## **Syllabus**

- 1. Historical and comparative perspectives** **units 4**
  - 1.1. Civil service in Colonial India: origin, objectives and commitment.
  - 1.2. Changeover in the post independent era: neocolonial characteristics and problems.
- 2. Civil servants: Constitutional dimensions** **units 14**
  - 2.1. Are the civil servants a category different from other citizens vis-à-vis fundamental rights.
    - 2.1.1. Concept of equality and civil servants
    - 2.1.2. Right to form associations or unions-police and judicial officers-scheduled castes & backward classes.
    - 2.1.3. Right to strike and to collective bargaining.
  - 2.2. Heterogeneity of social, educational and communal backwardness and its impact on recruitment, promotion and work atmosphere.
  - 2.3. Serviceregulations: the Constitutional bases.
    - 2.3.1. Formulation of service rules
    - 2.3.2. Doctrine of pleasure
    - 2.3.3. Limitations on doctrine of pleasure
  - 2.4. Impact of Essential Service Maintenance Law
- 3. Recruitment and Promotion** **units 6**
  - 3.1. Union public service commission and state public service commissions.
    - 3.1.1. Jurisdiction and functions
    - 3.1.2. Membership; immunities
  - 3.2. Consultation with commission
- 4. Conditions of service** **units 6**
  - 4.1. Pay, dearness allowance and bonus: machinery for fixation and revision, pay commission.

- 4.2. Kinds of leave and conditions of eligibility
  - 4.3. Social security: provident fund, superannuation and retiral benefits, medicare, maternity benefits, and employment of children of those dying in harness, compulsory insurance.
  - 4.4. Comparative evaluation with private sector
  - 4.5. Comparative evaluation between the state government employees and the central government employees - the state laws and regulations in comparison with Central regulations.
- 5. Civil service: the dilemmas in operation units 6**
- 5.1. Neutrality, permanency and expertise.
  - 5.2. Spoils system, seniority-cum-merit for promotion, direct recruitment and promotion.
  - 5.3. Frequent transfers, education of children, housing and accommodation-the problem of central government employees.
  - 5.4. Civil service and politics, over politicization of government servants, organization and inter union rivalry.
- 6. Special categories of services units 6**
- 6.1. Judicial services: subordinate judiciary-judicial officers and servants: appointment and conditions of service
  - 6.2. Officers and servants of the Supreme Court and the High Courts: recruitment, promotion, conditions of service and disciplinary action.
  - 6.3. All India Services: object, regulation of recruitment and conditions of service, disciplinary proceedings.
- 7. Settlement of disputes opver service matters units 6**
- 7.1. Departmental remedies: representation, review, revision and appeal, role of service organizations
  - 7.2. Remedy before the Administrative Tribunal: jurisdiction, scope and procedure merits and demerits - exclusion of jurisdiction of courts.
  - 7.3. Judicial review of service matters - jurisdiction of the Supreme Court and High Courts.

**Suggested readings**

Malhotra, L.C., *Dismissal, Discharge, Termination of Service and Punishment* (1998), The University Book Agency, Allahabad

ILL (by Justice M. Ram Jois), *Services under the State* (1987)

Pal, S., *The Law relating to Public Service* (1998) Eastern

K. Goyal, *Administrative Tribunals Act 1985* (1987)

Seervai, *Constitutional Law of India*, 1.1.(1983); Chs.9 & 10 and Vol.II Ch.17 (1984).

Basu, *The Constitution of India* (1996), Prentice Hall, New Delhi.

Arjun. P. Aggarwal, "Strikes by Government Employees: Law and Public Policy", 14 J.I.L.I 358 (1972)

Mohammed Imam, "Power to initiate and conduct disciplinary proceeding", 12 J.I.L.I. 70 (1970)

Mohammed Imam, "Reviewability of compulsory retirement order", 12 J.I.L.I. 633 (1970)

Arjun P. Aggarwal, "Freedom of Association in Public Employment" 14 J.I.L.I. p.1(1972)

C.K.Kochukoshy, "All India Services-Their Role and Future", 1972 I.J.P.A. 67

Sharma and Nanda, *Bahri's Guide on Service Rules* (1997), Bahri Brothers, Delhi.

R.K.Mishra, *Rules and Orders Relating to Government Servants and their Dismissal* (1990), the University Book Agency, Allahabad.

R.Deb, "Public services under the rules of law - right to disobey illegal order" 30 J.I.L.I. 574 (1978)

Douglas Vass, "The Public Service in modern society" 1983 I.J.P.A. 970.

Z.M.S.Siddiqi, "Sanctions for the breach of contracts of service" 25 J.I.L.I. 359 (1983).

O.P.Motiwal, "Compulsory Retirement", 1975 I.J.P.A. 247

D.S.Chopra, "Doctrine of Pleasure-its scope implications and limitations" 1975 I.J.P.A. 92.

G.C.V.Subba Rao, "The O.N.G.C. case and new horizons in public services law", 1975 S.C.J. 29.

**O46 PLAN AND POLICY-MAKING*****Objectives of the course***

The process of planning is critical to Indian development. Although not created by the Constitution, the Planning Commission of India is a nationally vital agency. The successive five-year plans have identified national development priorities and formulated the twin objectives of growth and social justice within which national development must move. The planning process, however, has to be appraised from distinct constitutional perspectives. This has not happened because law persons have taken the Plans as given totalities and the formulators of Plans - mainly economists and technocrats - are not endowed with legal and juristic literacy resources. Very often, then, there arises dislocation between the planning processes and constitutional visions, especially the fundamental rights and directive principles of state polity. This course assesses the relationship between law and planning.

This course will be offered for one semester only.

***Syllabus***

- |   |                |
|---|----------------|
| <b>1. Introductory</b>  | <b>units 4</b> |
| 1.1. Objectives of national development as reflected in:  |                |
| 1.1.1. Nationalist Struggle   |                |
| 1.1.2. Constitution making'   |                |
| 1.1.3. Constitution of India  |                |
| 1.2. Distinctive Objectives of plans under Nehruvian era.   |                |
| 1.3. Objectives of Five Year Plans  |                |
| 1.4. Assessment of the plan objectives with the understanding arising out of the constitutional objectives. |                |
| <b>2. The Planning Process</b>  | <b>units 5</b> |
| 2.1. Nature and Composition of Planning Commission  |                |



- 2.2. State planning process
  - 2.3. Parliamentary processes and planning
  - 2.4. Awareness of the Constitutional powers, procedures and of law in the planning process.
  - 2.5. “Justifications” for regarding administration of justice, correctional services and law enforcement as non-plan expenditures.
- 3. Agrarian reforms units 4**
- 4. Concentration of economic wealth: Public Sector & restrictions on Private Sector units 3**
- 5. Poverty amelioration units 5**
- 5.1. *Garibi Hatao* and planning
  - 5.2. Various schemes aimed at amelioration of poverty
  - 5.3. Integrated Rural Development Programme
  - 5.4. Minimum Needs Programme
- 6. Planning and Untouchability Eradication units 4**
- 7. State Capitalism and Mixed Economy units 6**
- 7.1. Distinction between state Socialism, State regulated capitalism and private capitalism
  - 7.2. The dominant capitalist growth goals, and result of planning
  - 7.3. Nationalization
  - 7.4. Licensing
  - 7.5. Strategic areas of industrialization
  - 7.6. Taxation and related redistributive policies
  - 7.7. Structural readjustment programmes
- 8. Planning and Environment units 5**
- 8.1. Natural Resources Planning
  - 8.2. Public protests, displacement and planning (cost-benefit analysis/human right costs)

- 8.3. Planning and Urbanization
- 8.4. Planning and Industrial Pollution
- 8.5. Irrigation Planning

**9. Planning and Indian federalism**

**units 6**

- 9.1. The Indian federal principles and Centralized planning
- 9.2. Areas of planning by national plans, otherwise within state power exclusively.
- 9.3. Grass root planning and local bodies
- 9.4. Neglected area, regions, states.
- 9.5. Problem of state planning process

***Suggested readings***

M. Galanter, *Competing Equalities* (1984).

U.Baxi (Ed.), *Law and Poverty* (1988)

Arun Ghosh, *Planning in India: the Challenge for the Nineties*, (1992), Sage

Adiseshia (Ed.), *Seventh Plan Perspectives*, (1985), Lancer International.

Mahender reddy, *et.al. (Ed.) Seventh Five Year Plan: Performance and perspectives*, (1989), Sterling Publishers.

J.C.Agarwal, *Eight Five Year Plan: Planning and Development in India*, (1993), Shipra.

Various articles, relevant to the topics, published in *Economic and Political Weekly*.

## **047 LAW AND MASS DISASTERS**

### ***Objectives of the course***

The hazards of complex industrial society of our times are numerous. Apart from natural calamities which cause death, destruction and suffering on a vast scale, our civilization is increasingly getting exposed to hazards arising out of technological progress. The factories and industrial establishments involved in the manufacture, distribution and transportation of hazardous products are under legal obligation to comply with numerous provisions of law aimed to prevent mass disaster, and to provide information to persons likely to be exposed to the hazards regarding safety measures to be taken.

The legislative and administrative responses have been lacking with the result that such disasters are increasing in magnitude and frequency. Every time adhoc arrangements are made to face the disaster but not before incalculable damage is done and avoidable hardships suffered. What is needed is an integrated approach for prevention and mitigation of sufferings arising out of mass disasters. A policy oriented approach would need examination of duties and obligations of various persons connected with disaster management.

Victims of mass disaster, being amorphous body of individuals, look at the bounty of the state rather than the court process to vindicate their rights under the law. Inquiries and investigations are conducted only on public demand. There is no uniformity regarding the system of investigating authority, procedures to be followed and the obligatory force of recommendations made by the investigating agency. The existing court process is dilatory and cumbersome. Due to obvious reasons the victims do not wish to undergo another ordeal of initiating proceedings for legal redress. The mismanagement and corruption in administering relief has also reached alarming proportions.

The course is, therefore, designed to have an insight in to the problem arising out of mass disasters and inadequacies of the court process. The public law perspectives of this kind of litigation will open new vistas of remedial process including risk coverage through public liability insurance.

The following syllabus prepared with this perspective will comprise of about 42 units of one hour duration each to be spread over a period of one semester.

**Syllabus**

- 1. Introductory** **units 5**
  - 1.1. Meaning of Mass Disaster
    - 1.1.1. Distinction between natural and man-made disaster
  - 1.2. High Potential and Low Potential Disaster
  - 1.3. Escape of dangerous substances
  - 1.4. Explosions
  - 1.5. Nuclear Radiation, Poisoning
  - 1.6. Dam Bursts, Fires, Collapse of Structures, Earth quakes
  - 1.7. Accidental Disasters (rail, air, sea)
  - 1.8. Victims of Mass Disaster
- 2. Ad-hoc character and inadequacy of legislative Responses - Laws relating to atomic energy, explosives, air crafts, insecticides, factories, motor vehicles, railways and petroleum products.**
- 3. Disaster Management** **units 5**
  - 3.1. First aid
  - 3.2. State responsibility to provide short term relief
  - 3.3. Legal responsibilities of officials of the state
  - 3.4. Role of Voluntary Organisations
  - 3.5. Disbursement of relief grants and public accountability of official and other voluntary disbursement agencies
  - 3.6. Participative management by trade unions
  - 3.7. Right of certain classes of victim: children, women
- 4. Inquiries and investigations for mass disasters** **units 5**
  - 4.1. The duty to institute investigations and inquiries to determine causes of mass disaster
  - 4.2. The investigation process

- 4.3. Right to hearing to affected individual
- 4.4. Right to hearing to voluntary organisations and public spirited individuals
- 5. Liability for Mass Disaster** **units 5**
  - 5.1. Statutory liability
  - 5.2. Contractual liability
  - 5.3. Tortious liability
  - 5.4. Criminal liability
  - 5.5. Measure of damages
- 6. The Court Process** **units 6**
  - 6.1. Initiation of proceedings
  - 6.2. Representative suits
  - 6.3. Costs of litigation - court fee, counsel fee
  - 6.4. Rules of evidence
  - 6.5. Problems of execution
  - 6.6. Need for reform - dilatory and expensive character of court processes.
- 7. Towards an Integrated Rail Management** **units 6**
  - 7.1. Public liability insurance
    - 7.1.1. Mandatory insurance in certain cases
    - 7.1.2. Need for covering third party risks
  - 7.2. International
- 8. Case studies, Bhopal etc.** **units 4**

### ***Suggested readings***

Government of India, Department of Environment, Management of Hazardous Substances Control Act and Structure and Functions of Authority Created Thereunder.

Indian Chemical Manufacturers' Association & Loss Prevention Society of India, Proceedings of the National Seminar on Safety in Road Transportation of Hazardous Materials: (1986).

Industries Commissionerate Ahmedabad, Task Force Report: 9J.J.MeHTA), To Oversee Safety Measures in variuouys Industries dealing with Hazardous and Toxic Materials (1986)

Report of the Empowered Committee to Process Recommendations of the Task Force: To oversee safety Measures in various industries dealing with Hazardous and Toxic Materials (1986)

Organization for Economic Co-operation & Developoment, (Paries), Safety of Consumer Products: Policy & Legislation if OEOE Countries.

Indian law Institute (Upendra Baxi and Thomas Paul (ed.), *Mass Disasters and Multinational Liability: The Bhopal Case* (1986)

Indian Law Institute, Upendra Baxi (ed.), *Environment Protection Act: An Agenda for Implementation* (1987)

Asian Regional Exchange for Prof.Baxi., *Nothing to Lose But our Lives: Empowerment to Oppose Iondustrial Hazards in a Transnational world* (1989)

Gurudip Singh, *Emnvironmental Law: International and National Perspectives* (1995), Lawman (India) Pvt. Ltd.

Leelakrishnan, P, *The Environmental Law in India*, Chapters VIII, IX and X (1999), Butterworths, New Delhi.

Chaturvedi and Chaturvedi, *The Law on Protection of Environment and Prevention of Pollution* (1996)

**O48 LAW AND THE CHILD*****Objectives of the course***

Children constitute the weakest and most vulnerable, most helpless as well as the most precious segment of the human society. By law they are denied participation in decision making even indirectly and by nature they lack effective articulation and indication of their rights. Children are recognised as legal persons for many purposes if not for all legal rights are conferred by the legal system. The course should draw attention to the helpless condition of children and their exploitation and the sufferings of children in poverty. The legal limitation on their capacity in such cases as contracting as marriage and voting and legal rights conferred and legal protection provided in the constitution and in varieties of laws are to be studied critically with the understanding that either the parents or the society or state shall be held legally responsible for the survival, development of personality and happiness of the children

The following syllabus prepared with this perspective will comprise of about 42 units of one hour duration each to be spread over a period of one semester.

***Syllabus***

- 1. Social, Constitutional and International Legal Status of Child** **units 5**
  - 1.1. Introduction: Significance and scope and magnitude of the problem
  - 1.2. Social endeavour towards and recognition of the special status of child; and the need for the formulation of a comprehensive policy guidelines with regard to child for implementation at the national and state levels - various National policy declarations.
  - 1.3. Constitutional concern - protection of the special status of children and the endeavour of the for the welfare of the children: Article 15(3):
    - 1.3.1. Power of the state to make special provisions in favour of childred, Article 24;
    - 1.3.2. Fundamental right of the child against any hazardous employment, Article 39(e) & (f).

The endeavour of the state to protect children of tender ages in matters of conditions of work and employment and against exploitation and moral and material abandonment.

- 1.4. International concern and endeavor for the welfare of the children: the various conventions and declaration.

**2. Problems of conception, birth and nourishment and health of the child                      units 3**

- 2.1. Legal status of child in the work
- 2.2. Tortious liability against injuries to unborn children
- 2.3. Coparcenary and property rights of the unborn children
- 2.4. Law relating to maternity benefit and relief.
- 2.5. Lack of legal protection of children of impoverished parentage, viz., undernourishment and mal-nourishment. Proper health care and revision of basic medical facilities.

**3. State responsibility for the education of children    units 5**

- 3.1. Evaluation of the efforts of the state towards the provision of education to children.
- 3.2. Pre-primary and nursery education: elementary education
- 3.3. Contributions by international organizations for elementary education i.e. UNESCO, UNICEF and others.
- 3.4. Constitutional provision: Article 45 of the constitution of India:

**4. Legal Control of Child Labour    units 5**

- 4.1. Regulation of the employment of children in various occupations and the protection of the health and well-being of the children
- 4.2. International Conventions and recommendations of the ILO
- 4.3. Recommendations of the National Commission of Labour
- 4.4. The Constitutional and statutory protection

**5. Family Relations and Child    units 5**

- 5.1. The status of a child in matters of marriage, legitimacy, guardianship, adoption, maintenance and custody.



- 5.2. Statutory provisions regarding child marriage, guardianship and warship and adoption and maintenance
- 6. Child and Contractual Liability** **units 5**
- 7. Child and Criminal Liability** **units 5**
- 7.1. Crimes committed by child; crimes committed by others in relation to children;
- 7.2. Implementation of social policy through criminal sanctions in relation to child;
- 7.3. Variation of procedure in case of child offender
- 7.4. Judicial proceedings in criminal cases relating to children
- 8. Law and Offences Against Child** **units 5**
- 8.1. Provision for the protection of neglected children
- 8.2. Institutions for the protection of neglected children;
- 8.3. Procedure for child welfare boards and juvenile courts; institutional care for children;
- 8.4. Contribution by parents, licensing ;
- 8.5. Protection of girls from immoral traffic
- 8.6. Prevention of vagrancy and beggary;
- 8. Discrimination Against Female Children (amniocentesis, deferred infanticide through based nutritional discrimination)**

***Suggested readings:***

Awasthi, S.K., *Juvenile Justice Act 1986*, (1998), Law Vishon, Allahabad

Indian Law Institute, *Treatise on the Juvenile Justice Act* (1993)

Indian Law Institute, *Child and the Law* (1979, S.N.JAIN ED.)

Judith Timms, *Children's Rights and Representation* (1995), Sweet and Max Well Law Book Company.

P.L.Mehta and S.S.Jaswal, *Child Labour and the Law* 1996, Deep and deep Publications.

L.S.Sastri, *Child Marriage Restraint Act* 1996, The Law Book Company.

S.R.Bakshi and Kiran Bala, *Development of Women, Children and Weaker Sections* 1999), Deep &n Deep Publications.

U.Baxi (ed.) *Law and Poverty: Critical Essays* (1988) (Selected readings concerning the positions of children may be prescribed)

Judicial decisions, especially in social action litigation, should be carefully examined (e.g. *Sheela Barse*)

In particular, students should be encouraged to look at the distinctive legal problems of children in the area where instruction is imparted. The literature on children's plight is vast and varied. But it is important that the focus of the course be on understanding of the distinctively legal problems in the region and ways in which we can contribute to change.

**049 LEGISLATIVE DRAFTING****Objectives of the course**

Probably, no exercise initiates a student into the complexity of law than that of legislative drafting. Contrary to the prevalent belief, the draftsman is no more technicians transmuting some one else's policies into law: she is also a co-architect of policies. For how policies get written into law decides the career and fate of the policy; of course, how laws are drafted also affect the destiny of law.

With a minimum grounding in theory, students should be assigned drafting of whole statute. The following drafting exercises ought to be assigned;

- (a) definition of key words;
- (b) sections creating offences of various kind (strict, joint, vicarious liability)
- (c) a charging section (for fiscal laws)
- (d) a penal clause;
- (e) sections prescribing powers and functions of an authority under the Act.
- (f) an amending section;
- (g) a repealing section
- (h) a preamble and a long title

Basic theoretical grounding, with appropriate case material, should be, of course, provided in statutory interpretation. Without this grounding, drafting to laws turns out to be wholly countered productive.

The following syllabus prepared with this perspective will comprise of about 42 units of one hour duration each to be spread over a period of one semester.

**Syllabus**

- 1. Forms of Legislative Instrument** **units 2**
  - 1.1. Bills
  - 1.2. Acts
  - 1.3. Orders
  - 1.4. Rules
  - 1.5. Schedule
  
- 2. Ideals of Drafting** **units 2**
  - 2.1. Simplicity
  - 2.2. Preciseness
  - 2.3. Consistency
  - 2.4. Alignment with existing law
  - 2.5. Brevity
  
- 3. Part of a Statute** **units 2**
  - 3.1. Long Title
  - 3.2. Preamble
  - 3.3. Enacting Formula
  - 3.4. Short Title
  - 3.5. Extent and Application
  - 3.6. Definitions
  - 3.7. Principle Provisions
  - 3.8. Administrative Machinery, if any, contemplated by the Statute.
  - 3.9. Penal Provisions
  - 3.10. Rule and Regulation Making Power
  - 3.11. Temporary Provisions
  - 3.12. Repeal and Savings
  
- 4. Other Aspects of Acts** **units 4**
  - 4.1. Punctuation

4.2.	Marginal Notes	
4.3.	Provisions	
4.4.	Illustrations	
4.5.	Presumptions	
4.6.	Use of non-obstante clauses	
4.7.	Retrospective Effect	
4.8.	Henry VIII clause	
4.9.	Exceptions	
4.10.	Fictions	
4.11.	Explanations	
<b>5.</b>	<b>General Clauses Act, 1897</b>	<b>units 14</b>
<b>6.</b>	<b>Maxims of Interpretation; General Approaches</b>	<b>units 4</b>
<b>7.</b>	<b>Directive Principles as Principles providing rules for Constitutional and legal interpretation</b>	<b>units 4</b>
<b>8.</b>	<b>Penal and Remedial Statutes: Section 26 of the General Clauses Act, 1897 and the Rule of Strict Interpretation</b>	<b>units 2</b>
<b>9.</b>	<b>Legislation by reference; incorporation</b>	<b>units 2</b>
<b>10.</b>	<b>Amending, a Consolidating and Codifying Statutes</b>	<b>units 2</b>
<b>11.</b>	<b>General Rules of Interpretation, including a Constitutional Interpretation</b>	<b>units 4</b>

### ***Suggested readings***

Indian Law Institute, *The Drafting of Laws* (1980)

Vepa P. Sarathil, *Interpretation of Statutes* (1981) (Second ed. Or the latest edition).

Allen, *Law in the making*, Sweet and Max Well

Thomson. G.C., *Legislative Drafting*, Butterworths, London

Zander, M., *The Law Making Process*, Widenfeld & Icholson, England.

Renton C'Hee Report, *Preparation of Legislation*, Sweet and Max Well.

**050 LAW AND CREDIT*****Objectives of the course***

In a developing country like India the availability of credit for the developmental activities assumes great importance. The role of financial institutions in public sector in promoting goals of development is now well recognised.

A significant development in the last two decades has been the realization of the need to promote banking in rural areas. As pointed out by the Report of the Second Agricultural Labour Inquiry Committee, agriculturists whether landowners, tenants or labourers suffer from paucity of funds, the agricultural producers who are often marginal farmers require funds for purchasing of seeds and implements and the labour for family expenditure.

In the past and to some extent even now, the credit needs of rural population are met by private moneylenders. Now a days the IRDP envisages the uplift of select beneficiaries from the "Poorest of the Poor" by enabling them to purchase income - yielding asset. The purchase money is given partly as loan from a bank and partly as grant. The Regional Rural Banks have been established to meet the needs of the rural poor. Private money lending has been regulated by means of legislation.

As Banks utilise the monies of depositors drawn from all walks of life it is important for the protection of their rights and for recycling the funds that the loans are recovered.

For promotion of credit facilities for industries, banking system has been considerably expanded in recent times. A knowledge of these institutions and the legislation's establishing them is needed.

The following syllabus prepared with this perspective will comprise of about 42 units of one hour duration each to be spread over a period of one semester.

***Syllabus***

- |  |                |
|--|----------------|
| <b>1. Rural Credit</b>   | <b>units 1</b> |
| 1.1. Major classification of rural credit  |                |
| 1.1.1. Crop loans - for financing current expenditure in connection with raising of crops and maintenance of plantations |                |

- 1.1.2. Medium and long term loans to increase out put like irrigation facilities and agricultural implements
- 1.1.3. Long term loans e.g. purchase of tractors, for tube wells.
- 1.2. Non-institutional creditors **units 2**
- 1.2.1. Cause behind dependence on non-institutional credit.
- 1.2.2. Traders
- 1.3. Regulation of non-institutional credit **units 4**
- 1.3.1. Interest Act, 1839
- 1.3.2. Usurious Loans Act, 1918
- 1.3.3. Moneylender's Act (the relevant Act of the State should be studied).
- 1.4. Institutional credit **units 10**
- 1.4.1. Co-operative Banks: Law relating to co-operative credit societies
- 1.4.2. Land development Banks
- 1.4.3. Commercial banks
- 1.4.4. Regional Rural Banks
- 1.4.5. National Bank for Agricultural and Rural Development (NABARD)
- 1.5. Recovery of overdues: co-operative credit institutions **units 8**
- 1.5.1. Recovery through sale and restraint proceedings
- 1.5.2. Exemption from attachment and sale of produce under the provisions of the Civil Procedure Code
- 1.5.3. Problems of priority arising out of the existing law of fixtures when pump sets or agricultural machinery is purchased under the Hire-purchase agreements.
- 1.5.4. Is agricultural machinery "Implements of husbandry" under the C.P.C.?
- 1.5.5. Mortgage as declaratory charge for long term credit.
- 1.5.6. Co-operative loans as first charge under State Co-operative laws.
- 1.6. Commercial banks
- 1.6.1. Principles of good lending: working capital assessment
- 1.6.2. Types of securities usually insisted upon

- 1.6.3. Politicization of Banking and waiver of loans
- 1.6.4. Credit for consumption purposes
- 1.6.5. Debt recovery tribunal
- 1.7. Land Development Banks **units 2**
- 1.8. Regional Rural banks **units 2**
- 1.8.1. Credit needs of the rural poor
- 1.8.2. Sponsorship by a Nationalized Bank
- 1.9. National Bank for Agricultural and Rural Development (NABARD)
- 2. Institutional Finance for Industrial Development **units 9****
- 2.1. Industrial Finance Corporation of India (IFICI)
- 2.1.1. Functions
- 2.1.2. Performance
- 2.2. Industrial Credit and Investment Corporation of India (ICICI)
- 2.3. State Finance Corporation (SFC)
- 2.4. State Finance Corporation Bank of India (IDBI)
- 2.4.1. Functions: refinance against loans
- 2.4.2. Rediscounts of machinery bills
- 2.4.3. Industrial Reconstruction Bank of India

### ***Suggested readings***

Vasantha Desai and Joshi, *Managing Indian Banks* (1998), Sage, New Delhi.

Varma, J.C. *Venture Capital Financing in Indian* (1997), Indian Institute of Banking, New Delhi.

R.C.Sekhar, *Ethical Choices in Business* (1997), T.A. Pai Institute of Management, Manipal.

H.B. Shivaraggi, "Credit for Agriculture and Rural Development" in M.L. Dantwala (ed.) *Indian Agricultural Development Since Independence* 270 (1986).

*Report of the Study team on Overdues of Co-operative Credit Institutions* (1977)

Banking Law Committee, *Report on Real Property Security Law* (1977)

Varma, J.C., *Guide to Non-Banking Financial Companies*, (1997)



## **051 CORPORATE FINANCE**

### ***Statement of objectives***

Industrialisation has played, and has to play, a very vital role in the economic development of India. In the post independent era, industrial development is regarded, and hence employed, as principal means in the strategy for achieving the goal of economic and social justice envisioned in the constitution. Corporation, both public and private, are viewed as a powerful instrument for development, and a means for ameliorating the living standards of masses. In a developing society like India enormous varieties of consumer goods are manufactured or produced. Obviously, the situation raises the issues of procuring utilising and managing the finances. For this purpose a science of financial management techniques has been evolved. The faculties of commerce, business and management studies have since last decades started to impart instruction so as to turn out sufficiently well equipped and adequately trained financial personnel. However, the legal and juristic aspects of corporate finance have been more or less not effectively taken care of. The CDC recognised the importance of these aspects. A law person has to play noteworthy role in the developmental processes.

In view of the above perspectives the broad objectives of this course may be formulated as follows-

- (i) to understand the economic and legal dimensions of corporate finance in the process of industrial development in establishing social order in the context of constitutional values
- (ii) to acquaint the students with the normative philosophical and economic contours of various statutory rules relating to corporate finance
- (iii) to evaluate the application and functioning of such statutory rules in their role for the establishment of “just” order in India.
- (iv) to acquaint the students with the organisation, functions, lending, and recovery procedures, conditions of lending and accountability of international national and state financing institutions and also of commercial banks; and
- (v) to acquaint the students with the process of the flow and outflow of corporate finance.

The following syllabus prepared with the above perspective comprise of 42 units to be spread over a period of one semester.

## **Syllabus**

### **1. Introduction**

- 1.1. Meaning, importance and scope of corporation finance
- 1.2. Capital needs - capitalisation - working capital - securities-borrowings-deposits, debentures
- 1.3. Objectives of corporation finance - profit maximisation and wealth maximisation
- 1.4. Constitutional perspectives - see the following entries 37, 38, 43, 44, 45, 46, 47, 52, 82, 85, and 86 of List 1 - Union List; entry 24 of List 11 - State List 2.

### **2. Equity finance**

- 2.1. Share capital
  - 2.1.1. Prospectus - information disclosure
  - 2.1.2. Issue and allotment
  - 2.1.3. Shares without monetary consideration
  - 2.1.4. Non-opting equity shares

### **3. Debt finance**

- 3.1. Debentures
  - 3.1.1. Nature, issue and class
  - 3.1.2. Deposits and acceptance
  - 3.1.3. Creation of charges
  - 3.1.4. Fixed and floating charges
  - 3.1.5. Mortgages
  - 3.1.6. Convertible debentures

### **4. Conservation of corporate finance**

- 4.1. Regulation by disclosure
  - 4.1.1. Control on payment of dividends
- 4.2. Managerial remuneration
- 4.3. Payment of commissions and brokerage
- 4.4. Inter-corporate loans and investments

4.5. Pay-back of shares

4.6. Other corporate spending

## **5. Protection of creditors**

5.1. Need for creditor protection

5.1.1. Preference in payment

5.2. Rights in making company decisions affecting creditor interests

5.3. Creditor self-protection

5.3.1. Incorporation of favourable terms in lending contracts

5.3.2. Right to nominate directors

5.4. Control over corporate spending

## **6. Protection of investors**

6.1. Individual share holder right

6.2. Corporate membership right

6.3. Derivative actions

6.4. Qualified membership right

6.5. Conversion, Consolidation and re-organisation of shares

6.6. Transfer and transmission of securities

6.7. Dematerialisation of securities

## **7. Corporate fund raising**

7.1. Depositories - IDR(Indian depository receipts), ADR(American depository receipts), GDR(Global depository receipts)

7.2. Public financing institutions - IDBI, ICICI, IFC and SFC

7.3. Mutual fund and other collective investment schemes

7.4. Institutional investments - LIC, UTI and banks

7.5. FDI and NRI investment - Foreign institutional investments (IMF and World bank

## **8. Administrative regulation on corporate Finance**

8.1. Inspection of accounts

8.2. SEBI

- 8.3. Central government control
- 8.3.1. Control by Registrar of companies
- 8.3.2. RBI control

### ***Suggested readings***

Alastair Hundson, *The Law on Financial Derivatives* (1998), Sweet & Maxwell

Eil's Ferran, *Company Law and Corporate Finance* (1999), Oxford.

Jonathan Charkham, *Fair shares : the Future of Shareholder Power and Responsibility* (1999), Oxford.

Ramaiya A, *Guide to the Companies Act* (1998), Vol. I, II and III.

H.A.J. Ford and A.P. Austen, *Fords' principle of Corporations Law* (1999) Butterworths.

J.H. Farrar and B.M. Hanniyan, *Farrar's company Law* (1998) Butterworths

Austen R.P., *The Law of Public Company Finance* (1986) LBC

R.M. Goode, *Legal Problems of Credit and Security* (1988) Sweet and Maxwell

Altman and Subrahmanyam, *Recent Advnces in Corporate Finance* (1985) LBC

Gilbert Harold, *Corporation Finance* (2nd rev. ed. 1956)

Henry E. Hoagland, *Corporation Finance* (3rd ed. 1947) Maryin M. Kristein, *Corporate Finance* (2nd ed., 1975) R.C. Osbom, *Corporation Finance* (1959)

S.C. Kuchhal *Corporation finance : Principles and Problems* (6th ed. 1966)

V.G. Kulkami, *Corporate Finance* (1961)

Y.D. Kulshreshta, *Government Regulation of Financial management of Private Corporate Sector in India* (1986)

Journals - Journal of Indian Law Institute, Journal of Business Law, Chartered Secretary, Company Law Journal, Law and Contemporary Problems.

Statutory materials - Companies Act and laws relating SEBI, depositories, industrial financing and information technology.

## **052 LAW AND THE UNORGANIZED LABOUR**

### ***Objectives of the course***

The unorganized labour constitute among the most vulnerable sections of the poor in the country. The organized sectors constitute vote-banks and some sections of them belong to high wage islands. The most significant proportion of those living below the poverty line are drawn from the unorganized sector and their problems are hitherto largely unattended.

Notable among these groups are bonded labour, agricultural labour, contract labour, migrant labour the brought prone areas. In the urban sector domestic servants, daily-wage earners and self-employed persons like rickshaw-pullers, shoeshine boys, dhobis, etc. The protective umbrella of protective labour legislation wages does not reach them and regulations relating to minimum wages and minimum hours of work are observed more in beach with respect to them.

There are two special categories among unorganized labour who deserve particular attention, viz., women and children. They are victims of special types of discrimination and exploitation.

These aspects relating to problems of unorganized labour are to be studied not only with respect to statutory provisions like Bonded Labour System (Abolition) Act, 1976, the Contract Labour (Regulation) Act, the Inter-state Migrant Labour Act, the Minimum wages Act but also with respects to aspects relating to enforcement and organising the vulnerable sections.

The following syllabus prepared with this perspective will comprise of about 42 units of one hour duration each to be spread over a period of one semester.

### ***Syllabus***

- |  |                |
|--|----------------|
| <b>1. Bonded Labour</b>  | <b>units 6</b> |
| 1.1. Dimensions of the Problem   |                |
| 1.2. Constitutional and Legislative Prohibition  |                |
| 1.3. Administrative and enforcement machineries under the Bonded Labour System (Abolition Act, 1976) |                |
| 1.4. Role of P.I.L. and Social Activists as instruments of enforcement of the Act.                   |                |

- 2. Contract Labour** **units 8**
- 2.1. Constitutional prohibition
  - 2.2. Contract Labour (Regulation and Abolition) Act, 1970
  - 2.3. Supreme Court on Abolition of Contract Labour
- 3. Migrant Labour** **units 4**
- 3.1. Drought Prone areas and Migrant Labour
  - 3.2. Role of Middlemen of agents and Migrant Labour
  - 3.3. Aspects relating to applicability of Inter-state Migrant Workmen (Regulation of Employment and conditions of Service) Act, 1959 and its implementation.
- 4. Women Labour** **units 6**
- 4.1. Patriarchal views of state and male workers with reference to Minimum Wages Act, 1948 and Equal Remuneration Act, 1976.
  - 4.2. Special provision for regulation of employment of women under various labour legislation
  - 4.3. Sexual harassment of women at work place.
- 5. Child Labour**
- 5.1. Eradication or Regulation under various legislation
  - 5.2. Special Problems of Enforcement of Child Labour Legislations
    - 5.2.1. Administrative Machinery
    - 5.2.2. Voluntary Organizations
    - 5.2.3. Courts as parens patriae
- 6. Legal Problems of Unorganized Labour in Urban Areas** **units 8**
- 6.1. Domestic Servants, Workers in restaurants etc.
  - 6.2. Daily-wage earners
  - 6.3. Self-employed persons like cobblers, washer men etc.
- 7. Aspects Relating to Enforcement of protective Legislations and Law Reform**
- 7.1. Enforcement
  - 7.2. Law Reform

**Suggested Readings**

S.C.Srivastava, *Labour Law in factories, Mines, Plantations, Transport, Shops and Other Industrial Establishments*, Prince Hall of India Ltd., New Delhi (1992).

Agricultural Labour : *Report of the National Commission on Agriculture* Ch.29, (1969).

Report of the National Commission on Labour (1991)

D and A. Thorner, *Land and Labour in India* (1969), Report of the Commission on Unorganized labour forth coming.

B.N.Jugal, *Child Labour and exploitation in Carpet Industry*\_(1978)

K.C.Seal "Children in Employment" in profile of the Child in India : Policies and Programmes 166 (1978).

Women labour, Maria Mies, *Indian Women in Subsistence and Agricultural Labour* (1987)

Walter Fernandes, Geeta Menon and Philip Viegas *\_Forests Environment and Tribal Economy : Deforestation Impoverishment and Marginalization in Orissa\_* (1988)

Joann Vanek " Household Work, Wage work and Sexual Equality" in F.Sarah Berk (ed.) *\_Women and Household Labour* (1980)

Government of India, *Towards Equality : Report of the Committee on the Status of Women in India* (1974)

N.K.Adyanthnay, "Women's Employment in India" to *International Labour Review* 44, (1954)

N.K.Adyanthnay , "Public Policy and Sex Discrimination in Employment in India" 14 *Indian Journal of Industrial Relations* 393, (1979).

N.K.Adyanthnay, "Discrimination against Women Workers in India" 20 *\_Southern Economics\_* 16, (1981)

Prabha Rai, "Unorganized Labour Force" 22 *Social Welfare* 10, (1975)

Nirmala Banerjee, *Women Workers and development* 6 *Social Scientist* 3, (1978)

Gita Sen and Chiranjit Sen, "Women's Domestic Work and Economic Activity, results from NSS" 20 *Economic and Political Weekly* 49, 56(1985).

Kalpna Bardhan, "Women's Welfare and Status : Forces of Tradition and Change in India" 20 *Economic and Political Weekly* 2207 and 2261(1985).

Upendra Baxi et al; Report of the Study Group on Labour Law, 11 Report of the National Commission on Rural Labour (Part II) Government of India, Ministry of Labour, New Delhi (1991).

S.C.Srivastava, "Unorganised Rural Labour and the Law" in Upendra Baxi (ed.), *Law and Poverty*, Tripathi (1988).

Banerjee Biswajit, *Rural to urban migration Labour Market* 1986.

I.L.O., *Why Labour leave the Land : A Comparative Study of Movement of Labour Out of Agriculture*.

I.L.O., *International Migration for Employment*, 1986.

Joshi, Vidyut, *Migrant Labour and Related Issues*, 1987.

Government of India, Report of National Commission on Rural Labour 1991.



**053 SOCIAL SECURITY LEGISLATION*****Statement of objectives***

Social security is an important fact of the multipronged legal measures to bring about upliftment of labour providing a measure of stability and a sense of protection.

The physical, economic and psychological repercussions of industrial accident vis-à-vis the workman and his family and the adequacy of the legislative attempts to contain or neutralize them will form an important part of this course. The conditions of eligibility to compensation under the Workmen's Compensation Act, the development of the concept of "accident arising out of and in the course of employment" and the notional extension of the time and space or the purpose, and evaluation principles of employer liability and a probe into the defects in the mechanics of workmen's compensation system as the employer's role liability gives way to the concept of insurance, the burden being borne not only by the employer but also by the employees and the state. The variety of benefits of the E.S.I. Scheme, conditions of eligibility, its comparative evaluation with workmen's compensation and study of the defects in law and lapses in practice will be another component.

Maternity benefit is an integral part of social security. In the background of the norms evolved by the ILO the paper should concentrate on an evaluation of the extent of maternity benefits provided by legislative measures in India.

The efficacy of provident fund, family pension, gratuity and other retrieval benefits has to be examined in this paper to assess how far they provide a satisfactory system.

While discussing judicial decisions in the areas of social security the students should be given insight into the role played by the judiciary in extending social security benefits to the workmen in full measure and the juridical techniques employed for that purpose.

Social security for labour is only a part of the general system of social security against want and distress, which should be available to each and every citizen. Students should be in a position to see the adequacy of the measures from this perspective. They should be enabled to think of an assess the relative merits of the possible alternatives to the existing system and measures of social security.

The following syllabus prepared with this perspective will comprise of 42 units of one hour duration each to be spread over a period of one semester.

## **Syllabus**

- 1. Introductory** **units 2**
  - 1.1. Concept of social security
  - 1.2. Classification of social security
- 2. Industrial accident and compensation** **units 8**
  - 2.1. Modification of common law by Fatal Accidents Act and Employer's Liability Act
  - 2.2. Workmen's Compensation Law
    - 2.2.1. Conditions for eligibility
    - 2.2.2. Concepts of 'accidents arising out of' and 'in the course of employment'.
    - 2.2.3. Doctrine of notional extension
  - 2.3. Quantum and method of Compensation
- 3. Employee's State Insurance** **units 8**
  - 3.1. E.S.I. Scheme: Salient Features
  - 3.2. Benefits and Conditions for eligibility
  - 3.3. Comparison with workmen's compensation scheme: Change in approach from compensation to insurance with tripartite bearing of the burden.
  - 3.4. Defects in workmen's compensation law and merits of E.S.I. Scheme
  - 3.5. Defects of E.S.I. in practice - workmen's apathy, lack of good medical facilities.
- 4. Maternity Benefits** **units 8**
  - 4.1. Importance of maternity benefit: ILO norms
  - 4.2. Maternity benefit under the Maternity Benefits Act 1961 and the Employees' State Insurance Act 1948
- 5. Retrial and service termination benefits** **units 8**

- 5.1. Provident fund and family pension - salient features and the scope of social security
- 5.2. Compensation for retrenchment, closure and transfer of industrial
- 5.3. Gratuity - conditions of eligibility - quantum and basis of calculation

## **6. Futuristic Approach**

- 6.1. Gaps in law and need for comprehensive scheme to cover all aspects of human misery
- 6.2. Integrated social security : problems and perspectives

### ***Suggested readings***

S.C. Srivastava, *Commentaries on the payment of Gratuity Act* (1999), Universal Book Co., New Delhi.

S.C.Srivastava, *Social Security and Labour Laws* (1985), Eastern Harry Calvert, *Social Security Laws* (1978)

*Report of the National Commission on Labour* (relevant portions)

Relevant portions of legislation on social security in India

Neeru Sehagal, “*Employment of women and Reproductive Hazards in Workplace*” 29 J.I.L.I 201 (1987)

Prakash Sinha, “*Quality of Working Life and quality of Life*”, (1982) *Indian Journal of Industrial Relations* 373

Mallik Jyostana Nath, “*Workmen’s Compensation Act and some problems of procedure*”, 3 J.I.L.I. 131 (1961)

P.G.Krishnan “*Law of Gratuity for Industrial Workers in India*”, (1978) *Cochin University Law Review* 279.

K.L.Bhatia, *Administration of Workmen’s Compensation law: A Socio-Legal Study*, 1987.

### **Public Regulation of business**

This course 054 is dropped as per the suggestion of the law panel

**055 LABOUR ADJUDICATION; SELECT ASPECTS*****Statement of objectives***

Industrial peace is the main concern of industrial jurisprudence in India. Labour adjudication occupies a pivotal position in this respect.

The historical background in which adjudication has developed as a tool of maintaining industrial peace, the difference agencies of adjudication such as labour courts, industrial tribunals and national industrial tribunals, their functions, jurisdiction and tenure, the binding nature of their awards and the scope of judicial review of the awards form important parts of the syllabus.

Arbitration is on the other hand an effective weapon. The international norms relating to arbitration and the amenability of arbitral awards to judicial review are questions which the students have to examine in this paper.

The discretion of the government in referring a dispute for adjudication is a complex problem with political overtones. The extent of this discretion and the way in which it should be structured are important areas to be examined.

The procedural norms, formulated by courts in respect of domestic enquiry, the powers and jurisdiction of the arbitrator and other adjudicatory agencies in deciding matters relating to punishment on the workman and the restrictions placed on the management's prerogatives during tendency of conciliation, arbitration and adjudication proceedings should be components of this paper. Lastly, a probe can be made into the possible alternatives like the Industrial Relations Commission suggested by the National Commission on Labour.

The conceptual conundrums and the judicial contributions in the development of the law in the following areas can be included: (I) Industry, (ii) Industrial Dispute, (iii) Retrenchment and (iv) Closure of Industrial Enterprises.

The following syllabus prepared with this perspective will comprise of 42 units of one hour duration each to be spread over a period of one semester

**Syllabus**

- 1. Introductory** **units 2**
  - 1.1. Industrial adjudication - the concept
  - 1.2. Pre-adjudicatory process : negotiation and conciliation
- 2. Adjudication: the Role of Government** **units 6**
  - 2.1. Reference of the dispute
    - 2.1.1. Delimitation of areas of adjudication
    - 2.1.2. Criteria for exercise of discretion - subjective or objective
    - 2.1.3. Political overtones in reference - party in power and favouritism to unions
  - 2.2. Post-natal control - the power to modify awards
- 3. Adjudicatory agencies: Jurisdiction, functions and structure** **units 6**
  - 3.1. Labour court
  - 3.2. Industrial tribunal
  - 3.3. National industrial tribunal
  - 3.4. Industrial Relations Commission and other new trends
- 4. Voluntary arbitration** **units 6**
  - 4.1. Procedure for appointing arbitrator
  - 4.2. Arbitrator: Whether tribunal or not?
  - 4.3. Problems and prospects
- 5. Process of adjudication** **units 6**
  - 5.1. Industrial jurisprudence: formation and determination of rights - the criteria of industrial harmony.
  - 5.2. Absence of statutory criteria: evolution of law through judicial decisions based on equity and social justice
- 6. Awards: commencement, binding Nature and enforceability** **units 6**
  - 6.1. Industrial adjudication and judicial review

- 6.1.1. Bar or jurisdiction of courts and finality of awards
- 6.1.2. Judicial review by High Courts and Supreme Court

**7. Judicial contributions to the development of concepts units 10**

- 7.1. Industry
- 7.2. Industrial and Industrial Disputes
- 7.3. Retrenchment
- 7.4. Closure

***Suggested readings***

Malhotra, *The Law of Industrial Disputes*, Vol.I and II (1998), Universal, Delhi.

D.D.Seth, *Commentaries on Industrial Disputes Act, 1947* (1996), Law Publishing House, Allahabad.

ILL, *Labour Law and Labour Relations* Pts. 3, 4, 6, 7, 9 and 11, (1987)

6 *Cochin University Law Review* (1982), Special Number on Industrial Relations Legislation.

Relevant portions of *The Report of the National Commission on Labour*

Arjun P. Aggarwal, "Conciliation and Arbitration of Labour Disputes in Australia", 8 J.I.L.I. 30 (1966)

D.C.Jain, "*Meaning of Industry: Widerness of Conjectural Justice*", (1986 3 S.C.C. (Journal) 15.

T.N.Singh, "*Futuristic Industrial Jurisprudence Poser*", (1986) 3 S.C.C. (Journal) 15.

S.C.Srivastava, *Industrial Relations and Labour Law*, (1999), Vikas.

**056 TAX POLICIES PLANNING AND TAX EVASION*****Objectives of the course***

The direct taxation is a powerful incentive or disincentive to economic growth, a lever which can raise or depress savings and capital formation, and instrument or reducing income disparities. A student of taxation will have to make a detailed study of tax policy and tax in India. Our tax laws are said to be the most complicated ones in the world. An analysis of this aspect will have to be made so that the reasons of such complications can be known.

The following course content has been designed to provide a comprehensive picture of direct taxation in India.

The following syllabus prepared with this perspective will comprise of 42 units of one hour duration each to be spread over a period of one semester.

***Syllabus***

- |   |                 |
|---|-----------------|
| <b>1. History and Development of Taxation in India</b>              | <b>units 8</b>  |
| 1.1. Tax Planning and Tax Evasion: Meaning and concept.             |                 |
| 1.2. Acts on Direct taxation: substantive and procedural provisions |                 |
| 1.3. Critical analysis of taxation policy in India                  |                 |
| <b>2. Constitution and Tax Laws</b>                                 | <b>units 16</b> |
| 2.1. Taxing power and constitutional limitations                    |                 |
| 2.2. Centre-State Fiscal Relations                                  |                 |
| 2.3. Directive Principles and tax policy objective in India         |                 |
| <b>3. Tax Plan and Judicial Process</b>                             | <b>units 10</b> |
| 3.1. Tax evasion  |                 |
| 3.2. Tax avoidance  |                 |
| 3.3. Black Money  |                 |

3.4. Taxation of Agricultural Income and Wealth

3.5. Family as a unit for tax

**4. Principles of Accountancy**

**units 8**

4.1. General Principles of Accountancy

4.2. Methods of Accountancy

***Suggested readings***

Taxman, *Tax Planning and Management*, (1998), Taxman

Agarwal. A.N., *Indian Economics* (Selected Chapters (1997), Wishwa Prakashini, N. Delhi.

N.K.Palkhivala & B.A.Palkhivala (eds.), *Kanga and Palkhivalas's Income Tax Law and Practice* (7th ed. 1976)

Agarwal.V.S., *Taxation of Salaries with Tax Planning* (1990), Professional Book Publishers, New Delhi.

V.S.Sunderam, *Law of Income Tax in India* (11th ed. 1978)

A.C.Sampat Iyengar, *Three Taxes* (6th ed. 1987)

K.Chaturvedi and S.M. Pithisaria, *Income Tax Law* (3rd ed. 1981)

V.P.Gandhi, *Some Aspects of Indian Tax Structure: An Economic Analysis* (1970)

T. Mathew, *Tax Policy* (1975)

H.M.Seervai, *Constitutional law of India* (3rd ed, 1984)

I.P.S. Siddhu, *Company Taxation Cases*

M.P. Jain, *Indian Constitutional Law* (4th ed. 1994)

Bhagwati Prasad, *Direct Taxes: Law and Practice* (1996) Wishu Prakashan, New Delhi.



## **REPORTS**

Chelliah, Dr.Raj, *Tax Reforms Committee Report* (1991 & 1993)

*Report of the Taxation Enquiry Commission/ 1953-1954.*

Report of the Direct Taxes Administration Enquiry Committee 1958-59.

*Final Report on Rationalisation and Simplification of the Tax Structure* (Bhoothalingam's report, 1967)

*Administrative Reforms Commission's Report on Direct taxes Administration* 1964

*Report of the Committee on Taxation of Agricultural Wealth and Income* (Raj Committee report, 1972)

Final Report of Direct Taxes Enquiry Committee

*Interim Report of the Direct Tax Law Committee* (Choksi Committee Report, 1977).

*Final Report of the Direct Tax Laws Committee* (Choksi Committee Report, 1978).

**057 SOCIO-ECONOMIC OFFENCES*****Objectives of the course***

This course deals with a special category of offences known as “White collar crimes” or socioeconomic offences. These offences have to be understood in terms of the nature of development of Indian state and society. Their causes partly lie in the ways in which economic and political development occurs. The costs of such offences is, often, exorbitant and is borne most acutely by the most vulnerable segments of society. Combating socio-economic offences is a vital part of achievement of justice in society.

The course should be divided in 42 units of teaching we provide sufficient

flexibility in the syllabus; areas marked by an asterisk may be taken up only if

there is time as well as class interest.

***Syllabus*****1. Conceptions**

- 1.1. Nations of “White Collar Crimes” - Southerland’s analysis, critique of it, and applicability to Indian conditions.
- 1.2. From Santhanam Committee Report to the Twenty Ninth and Forty Law Commission of India Report; The Career of the conception of “Socio-economic offences” (hereafter SEO) “Socio-economic offences” (hereafter SEO)
- 1.3. Distinction between ‘Social’ and ‘Economic’ Crimes

**2. Corruption**

- 2.1. General conceptions of ‘corruption’, ‘nepotism’, ‘favouritism’ and ‘bribery’
- 2.2. Concept of ‘corruption’ under the Indian penal Code (161-165) and the Prevention of Corruption Act.
- 2.3. Santhanam Committee Analysis.
- 2.4. The Special legal regime;
  - 2.4.1. Investigation (Under Criminal laws Amendment Act, 1952)

- 2.4.2. Sanction for prosecution (under 197 Cr.P.C., prevention of corruption Act).
- 2.4.3. The category of 'Public Servants' liable for prosecution for corruption offences.
- 2.4.4. Relevant aspects of the Antulay Case
- 2.4.5. Central Vigilance Commissioner
- 2.5. "Causes of corruption"
- 2.6. Sentencing Policies and Patterns.

### **3. Black Money**

- 3.1. Conception of black money
- 3.2. Legal Provisions for investigating into black money
- 3.3. Disproportionate Assets
- 3.4. The Role of the Central Vigilance Commission
- 3.5. Sentencing Policies and Patterns
- 3.6. Amnesty - retroactive legalization of black money (through voluntary disclosure schemes, bearer bonds etc.)

### **4. Organized Crime**

- 4.1. Drug Trafficking addiction and abuse
- 4.2. Smuggling
- 4.3. Chit Fund swindles
- 4.4. Prostitution
- 4.5. Begging
- 4.6. Buying and selling of women across state borders

### **5. Crimes Against Consumers of Goods and Services**

- 5.1. Food Adulteration
- 5.2. Drug Adulteration
- 5.3. Offences relating to weights and measures
- 5.4. Pollution offences
- 5.5. Medical Malpractice

## **6. Crimes against Disadvantaged and Vulnerable Groups**

- 6.1. Dowry Murders
- 6.2. Offences and atrocities against Untouchables
- 6.3. Offences against bonded labour
- 6.4. Offences against children

## **7. Legal Regimes of Investigation and Enforcement**

- 7.1. Differentiation in onus of proof through presumptions of guilt and due process problems
- 7.2. The regime of special court
- 7.3. Group Liability (associational, corporate)
- 7.4. Strict and vicarious liability
- 7.5. The quantum of punishment
- 7.6. Problems of recidivism
- 7.7. The variety of enforcement mechanisms; specialized and general
- 7.8. Withdrawal from prosecution

## **8. Alternative/Additional Strategies**

- 8.1. Ombudsman
- 8.2. Tax reforms
- 8.3. Electoral reform
- 8.4. Reform of Prosecutorial Structures
- 8.5. Alternate Sanctioning Policies

### ***Suggested readings***

Upendra Baxi (ed.) *Law & Poverty: Critical Essays* (1988)

Upendra Baxi, *Liberty and Corruption Antulay case and Beyond* (forthcoming 1989)

P.R.Rajagopool, *Violence and Response: A critique of Indian Criminal Justice System* (1988)

Law Commission of India, (i) *One Hundred and Fifty Fourth report on Code of Criminal Procedure 1973*, (1996); (ii) *One Hundred and Fifty Fifth Report on then Indian Penal Code, 1860* (1997)

**058 LAW OF MONOPOLIES*****Objectives of the course***

Monopolies tend to lessen free competition. All democratic societies have found it essential to regulate monopolies and restrictive trade practices which give rise to situations detrimental to the public interest. In the United States comprehensive legislation was enacted towards the end of the 19<sup>th</sup> century, and since then it has been sustaining an effort to curb monopolistic power through the instrumentality of the law. In the United Kingdom regulation of monopolies started toward the end of the Second World War. The approach was to curb abuse rather than consider monopoly contrary to public interest. India has, more or less, followed the British pattern.

Vital decisions regarding monopolies in India are taken by the Central Government even without reference to the M.R.T.P. Commission. The Monopolies and Restrictive Trade Practices Act contains detailed rules for regulation of expansion and setting up of new undertakings. Procedures are also laid down for mergers and take-overs. Neither the business community nor the consumers seem to be satisfied with the existing state of law and practice.

In India giant monopolistic concerns are owned by the state. However privatization is setting in. Under the existing law, state undertakings, financial institutions such as banks and co-operative societies are exempt from the provisions of the MRTP Act.

The course is designed to develop among the students the ability to grasp issues relating to economic power and to understand the different ways in which laws tend to regulate and control economic power. The subsidiary object is to create awareness among them of the close connection between law and economics.

The following syllabus prepared with this perspective will comprise about units of one hour duration each to be spread over a period of one semester.

**Syllabus**

- 1. The Concept of Monopoly: Advantages and Disadvantages** **units 5**
  - 1.1. The Role of monopoly in Indian economy
  - 1.2. Constitutional directives regarding concentration of economic power.
  - 1.3. The Right of the state to set up a monopoly in trade or business,
  - 1.4. Monopolies in the Private and Public Sectors
  - 1.5. Monopolization of certain trades and services - Magnitude and trends.
  
- 2. Historical Introduction to Monopolies and Antitrust Legislation in U.S.A. and U.K.** **units 5**
  - 2.1. The Sherman Act, the Clayton Act and the Monopolies and Mergers Act.
  - 2.2. Monopolies Inquiry Commission ?Recommendations: Constitutional directive
  - 2.3. The per se and “abuse” approaches towards monopolies.
  - 2.4. Decision-making authority of the Central Government and Advisory character of MRTTP Commission: Policy and Law.
  - 2.5. Mandatory reference to commission in certain cases.
  - 2.6. Exemption of certain undertakings and institutions from the purview of MRTTP Act, justification thereof.
  
- 3. “Undertaking”** **units 5**
  - 3.1. Meaning
  - 3.2. Kinds of undertakings: interconnected, dominant and monopolistic
  - 3.3. The status of investment companies.
  
- 4. Anti-Concentration objectives: Law and Policy** **units 3**
  - 4.1. Nature and scope of anti-concentration Policy envisaged in MRTTP Act.
  - 4.2. C riterion of Public Interest
  
- 5. Regulation of Expansion and of New Undertakings** **units 5**
  - 5.1. Procedure for securing approval; conditional approval
  - 5.2. Establishment of new undertakings

- 5.3. Substantial expansion of existing undertakings
- 5.4. Diversification Proposal and their legal character
- 5.5. Power to exempt certain class of expansion and new unit proposals from anti concentration controls.

**6. Regulation of Mergers and Take-Over** **units 7**

- 6.1. Meaning of Merger
- 6.2. Procedure for obtaining approval
- 6.3. Meaning of take-over
- 6.4. Intercorporate investment
- 6.5. Deconcentration of single or interconnected enterprise

**7. Control of Monopolies and Monopolistic Trade Practices by MRTP Commission** **units 5**

- 7.1. Definitions and meaning of “Monopolistic Undertakings” and “Monopolistic Trade Practice”.
- 7.2. Public interest in relation to Monopolistic Practice
- 7.3. Sacchar Committee Recommendations regarding control of Monopolies
- 7.4. Powers of the Commission regarding monopolistic Trade Practices.
- 7.5. The New Economic Policy of 1991.

**8. Control of Restrictive Trade Practice by the MRTP Commission** **units 7**

- 8.1. Definition and meaning of Restrictive Trade Practice
- 8.2. Agreements which come within the purview of RTP
- 8.3. Public interest in relation to RTP
- 8.4. Prohibition of resale price maintenance
- 8.5. Powers of the MRTP Commission in relation of RTP

**Suggested readings**

Taxman, *Corporate Laws* (1994)

P.Asch, *Economic Theory and Anti-trust Dilemma* (1970)

J.M.Blair, *Economic Concentration - Structure, Behaviour and Piublic Policy* (1972)

S.M.Duggar, *Law of Restrictive trade Practices* (1976)

S.Sankaran, *Indian Economy* (1995)

Rowley, *International Mergers Anti-trust Process* (1996)

Evel and Little: *Concentration in British Industry* (1960)

J.B.health, (ed.) *International Conference on Monopolies - Mergers and Restrictive Practices* (1972)

C.Kaysen and Turner, *Anti-Trust Policy* (1959)

W.F.Muller, A. *Primer on Monopoly and Competition* (1970)

A.D.Neal, *Anti-Trust Law of U.S.A.* (1983)

A.Sutherland, *The Monopolies Commission in Action* (1969)

B.S.Yamay, *The Economics of Resale Price Maintenance Roman*

Government of India, *Report of the Industrial Licensing Policy Inquiry Committee* (1969)

Government of India, *Report of the High Powered expert Committee on the Companies Act the MRTTP Act (Sachar Committee)* (1978)

V.K.Singania, *Economic Concentration Through Intercorporate* (1980)

S.M.JhALA, *Monopolies and Restrictive Trade Practices in India* (1984)