

**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.

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

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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)

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*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)

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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.

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Workplace", 29 J.I.LI 201 (1987)

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**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)

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**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

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S.K.Jain and A.R.K.Sastry, *Threatened Plants of India: A State of the Art Report* (1980)

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**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

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**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***

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Nathali L.T.J. Horbach, *Contemporary Developments in Nuclear Energy Law* (1999), Kluwer.

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**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 Plants**
  - 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

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**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***

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**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**

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Henry J. Abraham, *The Judicial Process* (1995), Universal

Ronald Dworkin, *Taking Rights Seriously* (1996), Universal

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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)

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**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)

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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***

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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)

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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)

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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)

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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 from 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).



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- R. Martin and J.W. Nickel, Recent Work on the Concept of Rights, *17 American Phil. Quar.*, (1980).
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- T. Hobbes, *Leviathan* chs. 13-14, 21 and 29.
- J. Locke, *Two Treatises of Government*, 11, chs. 2,5,11 and 18 (1689).
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- E. Burke, *Reflections on the Revolution in France* (1790).
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- 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).
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- J. Feinberg, 'Duties, Rights and Claims, 3 *American Philosophical Quarterly* 137 (1966).
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- W.N. Hohfeld, *Fundamental Legal Conceptions* (1923).
- D. Lyons, 'Rights, Claimants and Beneficiaries 6 *American Philosophical Quarterly* 173 (1969)
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- 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).

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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*.

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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).

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**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).

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Rajeev Dhavan, "Legitimizing Government Rhetoric: Reflections on Some Aspects of the Second Press Commission" 26 *J.I.L.I.* 391 (1984).

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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)

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Jagdish UI, *Handbook of electricity Laws*, (1978)

Bhaumik, *The Indian Railways Act*, (1981)

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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)

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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)

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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***

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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).

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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)

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- Madhavtirtha, *Human Rights*, (1953)
- Beddard H., *Human Rights and Europe*, (1980)
- Swarup J., *Human Rights and Fundamental Freedoms*, (1975)
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- Moskowitz, *Human Rights and World Order*, (1958)
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- 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)
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- Sohn, Lonis & Burgenthal, *International Protection of Human Rights*, (1973)
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- 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 Prasad 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).