

VEER NARMAD SOUTH GUJARAT UNIVERSITY, SURAT.

LL.M.

LL.M. Programme – BACKGROUND

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

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

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

Foundation Courses :

1. Law and Social Transformation in India
2. Indian Constitutional Law: the New Challenges
3. Judicial Process
4. Legal Education and Research Methodology
5. Dissertation
6. Practical Examination

Optional Groups – Currently offered by the University :

(Whose discretion shall be final regarding offering of existing new groups)

Group-B : Criminal Law

1. Comparative Criminal Procedure
2. Penology : Treatment of Offenders
3. Privileged Class Deviance
4. Drug Addiction, Criminal Justice and Human Rights
5. Juvenile Delinquency
6. Collective Violence

Group-C : Business Law

1. Law of Industrial and Intellectual Property
2. Legal Regulation of Economic Enterprises
3. Law of Export – Import Regulation
4. Banking Law
5. Insurance
6. Corporate Finance

Group-D : Labour, Capital and Law

1. Collective Bargaining
2. Industrial Adjudication
3. Law Relating to Civil servants
4. Agricultural Labour
5. Wages
6. Social Security Law

General norms for LL.M. curriculum :

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

The course design shall be :

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

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

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

Practical examination

The practical examination shall be held during Part-II academic year on Research Methodology, Law Teaching and Clinical work. There shall be 25 marks each for doctrinal research and for non-doctrinal research and 25 marks each for law teaching and clinical work. How the components of practical shall be evaluated is left to P.G. Centres. They can formulate their own models of assessment. However, for making the practical examination objective and meaningful, the following guidelines shall be adhered to.

1. Research Methodology

(i) Doctrinal research (25 marks)

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

(ii) Non-doctrinal research (25 marks)

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

2 Clinical work (25 marks)

The modalities can be evolved by the P.G. Centres. One method is that the legal and clinical of the law school can involve itself with other legal programmes, working of a only to work with the clinical but also to acquaint themselves with court proceedings, working of a business organization tacking of labour disputes, drafting of business or other deeds and with public interest litigation. The initiative and potential of the students and the actual work turned out by him shall be assessed by the faculty.

Law Teaching (25 marks)

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

LL.M. SYLLABUS
COMPULSORY FOUNDATION COURSE PAPERS

(1) 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 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 law has played and has to play in the contemporary Indian society.

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 colonization and the introduction of common law system and institutions in India and its impact of 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 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 of region 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 institution 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 decentralization 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 nyanalayas.
 - 9.2 Socialist thought on law and justice: An enquiry through constitutional debates on the right to property.
 - 9.3 India 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 (1992), 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) Anmol Publication, Delhi.
- Savitri Goonasekhare: 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,
- Agnes, Flavia: Law and Gender inequality: The Politics of Women's Rights in India (1999) Oxford.

(2) INDIAN CONSTITUTIONAL LAW : THE NEW CHALLENGES

Objective 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.

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 Direction 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 State.
 - 1.7.1 Tribal Areas: Scheduled Areas.

2. "State" : Need for widening the definition in the wake of liberalization.

3. Right to equality: privatization 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.
 - 6.1.1. 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 removed of judges.
- 9.4 Accountability: executives and judiciary.
- 9.5 Tribunals.

10. Democratic process

- 10.1 Nexus of politics with criminal and 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 courses since the course materials obviously depends upon the latest development. These development in the areas specified in the course can be pothored from the recent materials such as cases law, changes and amendments of laws. critical comments, studies and reports, articles and research papers and lastly contemporary emerging acts impacting on constituently values.

(3) 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 of 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 familiarize the students with various theories, different aspects and alternative ways, of attaining justice.

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 realization 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* (1996), 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.Sotne, *Legal System and Lawyers' Reasoning* (1999), Universal, Delhi

Rajeev Dhavan, *The Supreme Court of India – A Socio-Legal Critique of the Juristice Techniques* (1977), Tripath, Bombay.

John Rawls, *A Theory of Justice* (2000), Universal, Delhi.

Edward H. Levi, *An Introduction to Legal Reasoning* (1970), University of Chicago.

(4) 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 organization of seminars, publication of law journals and holding of legal aid clinics.

Law is taught in different ways in different countries. The LL.M. Courts, being intended also to produce lawyers with better competence and expertise, it is imperative that the student should familiarize 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 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 skill in research and writing in a systematic means.

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 and case materials and juristic literature
 - 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, Nigal 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, Lukhnow.

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 is Social Research (1965)

Erwin C. Surrency, B. Fielf and J. Creas, 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.

ILI Publication, Legal Research and Methodology

GROUP-B CRIMINAL LAW

(1) 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 of India, England, France and China.

Syllabus

1. Organisation of Courts and Prosecuting Agencies

Hierarchy of criminal courts and their jurisdiction

Nyaya Panchayats in India

Panchayats in tribal areas

Organisation of prosecuting agencies for prosecuting criminals

Prosecutors and the police

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

Wilking 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, Lacknow.

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

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.

(2) 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: decriminalization, dependization, deinstitutionalization, Broadly, the course will concern itself with:

Theories of Punishment

Approaches to Sentencing

Alternatives of Imprisonment

The State of Institutional Incarceration in India: Jails and other custodial Institutions.

The problematic of Capital Punishment

Penology in relation to privileged class deviance

Penology in relation to marginallized deviance of criminality

The distinctive Indian (historical and contemporary) approaches to penology

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 case law.

3.3 Law Reform Proposals

4. Approaches to Sentencing

4.1 Alternatives of 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 Open prisons
- 6.6 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 Section* (1968)

Alf Ross, *On Guilt, Responsibility and Punishment* (1975)

A.Siddique, *Criminology* (1984) Eastern, Lucknow.

K.S.Shukla, "Sociology of Deviant Behaviour" in *3 ICSSR Surver of Sociology and Social Anthropology 1969-179* (1986)

Tapas Kumar Benerjee, *Background to Indian Criminal Law* (1990), R.Campary & Co., Calcutta.

(3) PRIVILEGED CLASS DEVIANCE

Objectives of the course

This course focuses on the Criminology 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 focuses 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 the 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.

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 legislation, 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 of electoral process (rigging, booth capturing, impersonation, corrupt practices)
 - 1.4.7 Gender-based aggression by socially, economically and politically powerful.

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

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- 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 Cases 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 Rotherm und "Patterns of Trade Union Leadership in Dhanbad Coal fields" 23 *J.I.L.I.*523 (1981)

(4) 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 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 regulated, what penal polices should be appropriate? What human rights costs in the administration of criminal justice should be considered acceptable? The international response to these questions in indicated by the Single Convention on Narcotic Drugs, 1961, adopted in New York, 30 March 1961 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 a Narcotic Substance 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.

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 inkate
 - 3.13 Pattern of the-Use
 - 3.14 Average Quantity and Cost
 - 3.15 Consequences on addict's health (physical/psychic)
- 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 Bail
- 6.4 Bail
- 6.4 The Problem of differential application of Legal 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 or 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.) *Durg Problems in Britain : A Review of Ten Years* (1981)

P.Kondanram and Murthy, "Drug Abuse and Crime : A preliminary Study" 7 *Indian Journal of Criminology*, 65-68 (1979).

P.R. Rajgopat *Violence and Response : A Critque 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 :

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, III)
- (vii) International Journal of Offender Therapy and Comparative Criminology (London)
- (viii) Bulletin on Narcotics (United Nations)

5. 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 traditions 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 juvenile 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.

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 State

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, varants.
- 4.3 Labourers
 - 4.3.1 In unorganized sector like zari, carpet, bidi, glass
 - 4.3.2 In unorganized 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 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.

(6) 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 and citizen investigative reports. The emphasis of the course will be on fashioning overall democratic understanding and responses to meet this problem.

Syllabus

1. Introductory

- 1.1 Notions of "force", "coercion", "violence"
- 1.2 Distinctions : "symbolic" violence, "institutionalized" violence, "structural violence"
- 1.3 Legal order as a coercive normative order
- 1.4 Force-monopoly of modern law
- 1.5 "Constitutional Law" 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 of 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

- Incidence and courses of "communal" violence
- Findings of various commission of enquiry
- The role of police and para-military systems in dealing with communal violence
- Operation of criminal justice system tiring, and in relation to, communal violence

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.Dhangar, Peasant Movement in India : 1920-1950 (1983)
- Ranjit Guha, Element any Aspets of Peasant Insurgency in Colonial India (1983) Rankit Guba (ed.) Subaltern Studies Vol.1-6 (1983-1988)
- T.Honderich, Violence of Equality (1980)
- Mark Juergensmeyer, "The Ligic of Religious Violence : The Case of Punjab" 22 Contribution 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

(1) 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 this international arena as well as in the nation-to-nation relations. The impact of IPR regime on the economic front is emphasized 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.

Syllabus

- 1. IPR and International Perspectives**
- 2. Trademarks and Consumer Protection (Study of UNCTED 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 The Indian situation
- 4. Special Problems of the Status of Computer Software in Copyright and Patent Law : A Comparative Study.**
- 5. Biotechnology Patents :**
 - Nature and types of biotechnology patents
 - Patent over new forms of life : TRIPS obligations
 - Plant patenting
 - Sui generic protection for plant varieties
 - Multinational ownership
 - Regulation of environment and health hazards in biotechnology patents
 - 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.

The evidentiary problems in action of passing off.

The proof of non-anticipation, novelty of inventions protected by patent law

Evidentiary problems in piracy : TRIPS obligation - reversal of burden of proof in process patent.

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.

Tevenee P. Stewart (ed.), *The GATT Uruguay Round : A Negotiation History (1986-1994) the End Game (Part-1)*(1999), Kluwer.

Ner 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

(2) LEGAL REGULATION OF ECONOMIC ENTERPRISES

Objective 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 liberalization 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.

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

Development and Regulation of Industries

Take-over of Management and Control of Industrial Units

Sick Undertakings : Nationalization or Winding Up?

Licensing Policy and Legal Process - Growing Trends of Liberalisation

Deregulation of essential commodities : developmental sign or a social mishap?

Financial Services : Changing Techniques of Regulation

Critical Issues Regarding the Capital Issues

- Equity and debt finance
- Global depositories
- 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

Collaboration agreements for technology transfer

Development and regulation of foreign investments

Investment in India : FDIs and NRIs

Investment abroad

Select bibliography

S.Aswami Kuamr, 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 of 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. Dhandha, Valiant Victims and Lethal Litigation : The Bhopal Case (1989)

Indian Law Institute, Law of International Trade Transactions, (1973)

(3) 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 modernization 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 emphasized. 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 to 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 student about the parameters of legal controls on imports and exports.

Syllabus

1. Introduction

- 1.1 State control over import and export of goods - from rigidity to liberalization.
- 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 amt-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

General scheme

Legislative control

Power of control : Central government and RBI

Foreign Trade Development and Regulation Act, 1992

Restrictions under customs law

Prohibition and penalties

Export-Import formulation : guiding features

Control under FEMA

Foreign exchange and currency

Import of goods

Export promotion councils

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

Investment policy : NRIs, FLLS (foreign institutional investors), FDIs

Joint venture

Promotion of foreign trade

Agricultural products

Textile and cloths

Jewellery

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

Borrowing and lending of money and foreign currency

Securities abroad - issue of

Immovable property - purchases abroad

Establishment of business outside

Issue of derivatives and foreign securities - GDR (global depositories receipts), ADR (American depository receipts) and Uro.

Investment in Indian banks

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 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.

(4) 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 has 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 nationalization of banks.

The conventional banking system, found to be deficient for planned developmental purposes, paved the way of 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 liberalization. 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.

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 reorganization
 - 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, nationalization and disinvestment
- 3.3 Protection of depositors
- 3.4 Priority lending
- 3.5 Promotion of under privileged classes

4. Deposit Insurance

The Deposit Insurance Corporation Act 1961: objects and reasons

Establishment of Capital of DIC

Registration of banking companies insured banks, liability of DIC to depositor

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

Legal character

Contract between banker and customer

Banker's lien

Protection of bankers

Customers

Nature and type of accounts

Special classes of customers - lunatics; minor, partnership, corporation, local authorities

Banking duty to customers

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**
 - Good lending principles
 - Lending to poor masses
 - Securities for advance
 - Kinds and their merits and demerits
 - Repayment of loans : rate of interest, protection against penalty
 - Default and recovery
 - 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
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- Ross Cranston, Principles of Banking Law (1997) Oxford.
- L.C.Goyle, The Law of Bankig and Bankers (1995) Eastern
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- K.C.Shekhar, Banking Theory and Practice (1998) UBS Publisher Distributors Ltd. New Delhi.
- M.Dassesse, S.Isaacs and G.Pen, E.C. Banking Law, (1994) Lloyds of London Press, London.
- V.Conti and Hamaui (eds.), Financial Markets' Liberalization and the Role of Banks', Cambridge University Press, Cambridge, (1993)
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- C.Goodhart, The Central Bank and the Financial System (1995) : Macmillan, London
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- M.A.Mir, The Law Relating to Bank Guarantee in India (1992), Metropolitan Book, New Delhi.
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(5) 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.

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

Definition, nature and history

The risk - commencement, attachment and duration

Assignment and alteration

Settlement of claim and subrogation

Effect of war upon policies

3. Indian Insurance Law : General

- 3.1 History and development
- 3.2 The Insurance At 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

- Nature and scope
- Event insured against life insurance contract
- Circumstances affecting the risk
- Amounts recoverable under life policy
- Persons entitled to payment
- 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

- The Fatal Accidents Act, 1855
 - Objects and reasons
 - Assessment of compensation
 - Contributory negligence
 - apportionment of compensation and liability
- the personal Injuries (Compensation insurance) Act, 1963
 - Compensation payable under the Act
 - 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

The Motor Vehicles Act, 1988

Nature and scope

Effect of insolvency of death on claims of insolvency and death of parties, certificate of insurance

Claims tribunal; constitution, functions, application for compensation, procedure, powers and award

Liability Insurance

Nature and kinds of such insurance

Public liability insurance

Professional negligence insurance

9. Miscellaneous Insurance Schemes : New Dimensions

- 9.1 Group life insurance
- 9.2 Mediclaim, sickness insurance

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Edwin W. Patterson, Cases and Materials on Law of Insurance (1995)

M.N. Sreenivasan Law and the Life Insurance Contract (1914)

(6) CORPORATE FINANCE

Objectives of the course

Industrialization 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 instruments 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, utilizing 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 To acquaint the students with the organization, 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.

Syllabus

1. Introduction

Meaning, importance and scope of corporation finance

Capital needs - capitalization - working capital - securities - borrowings - deposits debentures

Objectives of corporation finance - profit maximization and wealth maximization.

Constitutional perspectives - the entries 37, 38, 43, 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

Debentures

Nature, issue and class
Deposits and acceptance
Creation of charges
Fixed and floating charges
Mortgages
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

Need for creditor protection
 Preference in payment
Rights in making company decisions affecting creditor interests
Creditor self-protection
 Incorporation of favourable terms in lending contracts
 Right to nominate directors
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-organization of shares
- 6.6 Transfer and transmission of securities
- 6.7 Dematerialization of securities

7. Corporate Fund Raising

Depositories – IDR (Indian depository receipts), ADR (American depository receipts)
 GDR (Global depository receipts)
Public financing institutions – IDBI, ICICI, IFC and SFC
Mutual fund and other collective investment schemes
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

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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,

Statutory Materials – Companies Act and laws relating SEBI, depositories, industrial financing and information technology.

GROUP-D : LABOUR, CAPITAL AND LAW

(1) 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 influences 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.

Syllabus

(1) Freedom of Organization

International norms; right to association of industrial and unorganized laour.

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

Empirical Indian studies

Types of bargaining : Plant level, industry level and national level

(4) Legal Control of Collective Bargaining Endeavours

4.1 Strike (pen-down, too down, go slow, work to rule, stay in, sit in, picketing).

4.2 Gherao

4.3 Lock out

(5) Factors Affecting on Collective Bargaining

Multi-unionism

Other factors

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

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- Sahab Dayat "Revival of Collective Bargaining in India : Some Recent Evidence" 17 Indian Journal of industrial Relations 329 (1982).

(2) 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.

Syllabus

(1) Constitutional Perspectives and Foundations

Constitutional authorization for institutional framework (legislative entries, Article 323.B)
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
Extent of government discretion : time, expediency and matters for adjudication
Limitations on discretion
Political overtones and pressure tactics
Judicial restraint or liberalism, the ideal juristic approach
Direct access to adjudicatory authority by employer and employee : problems and perspectives.

International Norms

Comparative overview of access to adjudicatory process in the U.K. and Australia

(3) Adjudicatory Process

3.1 Industrial adjudication as a modality of harmonizing 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

Finality of decision making in adjudicatory process : a myth
Jurisprudence of industrial adjudication : formulation through constitutional remedies of writs and appeal
Jurisdiction of the adjudicatory authority in respect of dismissal of workmen

Juridical formulation of the concept of industry
Retrenchment the widening dimensions through decisional law.

Select Bibliography

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(3) 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.

Syllabus

(1) Civil Servants : Constitutional Dimensions

- 1.1 Civil servants and the fundamental rights – Historical and comparative perspective.
- 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 authority not subordinate to the appointing authority
 - 1.4.2 Opportunity of being heard and its exceptions.

(2) Recruitment and Promotion

Central and state agencies for recruitment

Methods, qualification

(3) Conditions of Service

- 3.1 Pay, dearness allowance and bonus : machinery for fixation and revision, Commission.
- 3.2 Kinds of leave and conditions of eligibility
- 3.3 Social security : provident fund, superannuation and retriial benefits, Medicate, maternity benefits, employment of children of those dying in hearness, 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

Neutrality – commitment dilemma, permanency, expertise and institutional decision making.

Relaxation of age and qualification in recruitment, spoils system, seniority-cum merit recruitment and promotion.

Frequent transfers, education, of children, housing and accommodation

Civil service and politics, politicization of government servants organization 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

Departmental remedies : representation, review, revision and appeal :role of service organizations.

Remedy before the Administrative Tribunal : jurisdiction, scope and procedure merits and demerits – exclusion of jurisdiction of courts.

Comparative position in England, United States and France.

Select Bibliography

Students are to study that state laws and rules relating to service matters, make empirical investigations and write a paper on a significant problem.

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(4) 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 organization 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.

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

Unorganised nature

Seasonal character

Political movements

State, regional and macro-regional disparities in collective bargaining organization 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

Need for state initiative and support

Assessment of existing measures : statutory and non-statutory

Agrarian reform as agricultural labour protection measure-land to the tiller doctrine

Environmental impact of distribution of forest land among agricultural labourers.

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)

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Abdul Aziz, "Unionizing Agricultural Labourers in India. A Strategy", 13 Indian Journal of Industrial Relations 307 (1977)

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(5) 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 upto 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.

Syllabus

(1) Constitutional Perspectives on Wages

Denial of minimum wage as forced labour

Constitutionalization of legal rights; elevation of legal rights to fundamental right

The constitutional ideals

 Rights to work

 Right to living wage

 Right to equal pay for equal work

 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

Increase of wages – impact on price

Increase in price – impact on wages

Tax – impact on price and wages

 Taxation on goods and increase of prices

 Taxation on wage income – a cut on real wages

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

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- R.L.Chawla, "Wage Policy and Industrial Relations. A Brazilian Case Study", 17 Indian Journal of Industrial Relations 27 (1981)

(6) SOCIAL SECURITY LAW

Objective 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.

Syllabus

(1) Social Security

Meaning

Distinction with labour welfare

Modality: social prescription, social assistance and social insurance

Labour social as part of the general social security in the welfare state

(2) Origin and Development

2.1 Western Countries – charitable institutions – professional guilds – philanthropic organizations – 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

Fundamental Rights : realization of the rights through meaningful social security measures : right to life, the wider dimensions.

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

The United Kingdom

The United States

(6) Towards and ideal Social Security Scheme : The Futuristic

6.1 Comprehensive and integrated social security : an utopian concept or 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

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