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SYLLABUS OF LL.M. [U.G.C.]

PART-I

AND

PART-II

[EFFECTIVE FROM JUNE – 2005]

LL.M. SYLLABUS
PART-I
COMPULSORY COURSE (PAPER – I)

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 endeavor 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 these perspectives will be spread over a period of one year.

Syllabus :-

1. Law and social change

- 1.1 Law as an instrument of social change with reference to Sociological school of Jurisprudence.
- 1.2 Law as the product of tradition and culture with reference to Historical School of Jurisprudence: Impact of Colonialism on Indian Laws and its criticism with special reference to justice delivery system.

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 under following personal laws.
 - 2.3.1 Hindu law, Muslim law, Parsi law and Christian law.
 - 2.3.2 Uniform Civil Code: It's feasibility.
- 2.4 Freedom of religion and non-discrimination on the basis of religion under Indian Constitution.(Interrelationship of Arts 15,16, 25, 28 *et. al.*)
- 2.5 Religious minorities and the law: Constitutional perspectives (Arts 29,30 *et. al.*)

3. Language and the Law.

- 3.1 Language as a divisive factor.
- 3.2 Constitutional Recognition of Linguistic Pluralism: formation of linguistic states. Constitutional Recognition of Linguistic Pluralism: formation of linguistic states.
- 3.3 Constitutional guarantees to linguistic minorities.
- 3.4 Language policy and the Constitution: Official languages (Arts 343-351 *et. al.,*)
- 3.5 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 Affirmative Action: Reservation; Statutory Commission, Statutory provisions.

5. Regionalism and the law

- 5.1 Regionalism as a divisive factor.
- 5.2 Concept of India as one unit: Impact of Multiculturalism and ethnicity
- 5.3 Constitutional safeguards against regional barriers
 - 5.3.1 Right of movement, residence and business:
Impermissibility of state regional barriers.
 - 5.3.2 Concept of permissibility in the context of Jammu & Kashmir under Indian Constitution/Constitution of Jammu and Kashmir.
- 5.4 Equality in matters of employment: "Sons of Soil" Movement and Preferential Discrimination: The Legal Response.
- 5.5 Admission to educational institutions: preference to residents of a state (Arts 15, 29 read along with Relevant Directive Principles of State Policy).

6. Women and the Law

- 6.1 Crimes against women: Constitutional & Criminal law fusion, Present judicial trend.
- 6.2 Jurisprudential dimensions of Gender injustice and its various forms.
- 6.3 Women's Commission: Some Legal aspects
- 6.4 Empowerment of women:
 - 6.4.1 International Ramifications.
 - 6.4.2 Indian Constitution and other legal provisions.

7. Children and the Law

- 7.1 International Norms governing Rights of Children
- 7.2 Child labour.
- 7.3 Sexual exploitation.

7.4 Adoption and related problems.

7.5 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 Agrarian reform: Industrialization of agriculture.

8.2.2 Industrial reform: Free enterprise v. State regulation

8.2.3 Industrialization v. environmental protection.

8.3 Criminal law: Inquisitorial System; Plea bargaining; Compounding and Payment of Compensation to victims: Witness Protection schemes: Prison Reforms:

8.4 Civil Law: Confrontation v. Consensus.

8.4.1 ADRS - Mediation and Conciliation; *Lok adalats*.

8.5 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 nayalayas*.

9.2 Ideological Perceptions and Programmes of National Political Parties in relation to the Indian Legal Order - Coalition Era.

9.3 Indian Marxist critique of law and justice.

Select Bibliography

Marc Galanter (Ed.) *Law and Society in Modern India* (1997) Oxford.

Robert Lingat. *The Classical Law of India* Oxford.

Upendra Baxi, *The Crisis of the Indian Legal System* Vikas, New Delhi.

Upendra Baxi (Ed.) *Law and Poverty Critical Essays* Tripathi, Bombay.

Munshi, *A journal About Women and Society.*

Duncan Derret, *The State, Religion and Law in India,* Oxford University Press, N. Delhi

H.M. Seervai, *Constitutional Law of India*

D.D. Basu, *Shorter Constitution of India.*

Sunil Deshta and Kiran Deshta, *Law and menace of Child Labour*

Savitri Gunasekhare, *Children, Law and Justice*

Indian Law Institute, *Law and Social Change: Indo-American Reflections,* Tripathi

J. B. Kriplani, *Gandhi: His Life and Thought,* Ministry of Information and Broadcasting, Government of India

M. P. Jain, *Outlines of Indian Legal History,* Tripathi, Bombay.

Agnes Flavia, *Law and Gender Inequality: The Politics of Women 's Rights in India* Oxford.

Austin Granville - *The Constitution of India, Cornerstone of the Nation* Oxford

Constitutional Assembly Debates

M.P. Jain, *Indian Constitutional Law,* Latest Edn.

M.Y. Pylee, *Constitutional Amendments in India*

Note:- All latest volumes of above mentioned books must be preferred. The above list of books is not an exhaustive one.

LL.M. SYLLABUS
PART-I
COMPULSORY COURSE (PAPER -II)
02. 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 specialization. Obviously, rubrics under this paper require modification and updating from time to time.

The following syllabus prepared with these perspectives will be spread over a period of one year.

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 Centre's responsibility and internal disturbance within States.

- 1.4 Directions of the Centre to the State under Article 356 and 365.
- 1.5 Federal Comity: Relationship of trust and faith between Centre and State.
- 1.6 Special status of certain States.
 - 1.6.1 Tribal Areas, Scheduled Areas.

2. "State": Need for widening the definition in the wake of liberalization, globalization and privatization.

3. Right to Equality

- 3.1 Privatization and its impact on affirmative action.
- 3.2 Critical analysis of Moves of Government of Maharashtra.

4. Freedom of Press and challenges of new scientific development

- 4.1 Freedom of speech and expression
 - 4.1.1 Right to broadcast and telecast.
 - 4.1.2 Convergent Media: Prasar Bharti
 - 4.1.3 Impact of Information Technology Act, 2000
- 4.2 Right to strikes, *hartal* and *bandh*

5. Emerging regime of new rights and remedies.

- 5.1 Reading Directive Principles and Fundamental Duties into Fundamental rights.
 - 5.1.1 Compensation jurisprudence.
 - 5.1.2 Right to education.
 - 5.1.3 Commercialisation of Education and its impact.

6. Right of minorities to establish and administer educational institutions and state control: Critical Analysis of *Pai Foundation* & its aftermath.

7. Separation of powers: stresses and strains.

- 7.1 Judicial activism and judicial restraint.
- 7.2 PIL : implementation.
- 7.3 Judicial independence.
 - 7.3.1 Appointment, transfer and removal of judges.
- 7.4 Accountability: Executive and judiciary.
- 7.5 Tribunals: Pre - *Chandrakumar* and Post - *Chandrakumar* scenario.

8. Democratic process.

- 8.1 Nexus of politics with criminals and the business.
- 8.2 Election: Jurisprudence of Representation; Role of Election Commission.
- 8.3 Electoral Reforms: Contribution of Judiciary.
- 8.4 Coalition government, 'stability, durability, corrupt practice'

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.

LL.M. SYLLABUS
PART-I
COMPULSORY COURSE (PAPER -III)

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 year.

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 Concept 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 of the Supreme Court where judicial process can be seen as influenced by theories of justice.

Select Bibliography

Julius Stone, *The Province and Function of Law, Part II*, Chs, I, 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.

M.D.A. Freeman, *Lloyd's Introduction To Jurisprudence*

Bodenheimer, *Jurisprudence - the philosophy and Method of the Law* (1997), Universal, Delhi.

Upendra Baxi, *The Indian Supreme Court and Politics* (1980), Eastern, Lucknow.

Rajeev Dhavan, *The Supreme Court of India - A Social-Legal Critique of its Juristic Techniques* (1977), Tripathi, Bombay.

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

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

Note:- ***All latest volumes of above mentioned books must be preferred. The above list of books is not an exhaustive one.***

LL.M. SYLLABUS
PART-I
COMPULSORY COURSE (PAPER-IV)

04 *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. 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.

The following syllabus prepared with this perspective will be spread over a period on one year.

Syllabus :**PART - I****A. Theory**

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. Clinical legal education - legal aid, legal literacy, legal survey and law reform.

B. Practical

The following portion should be covered under the head of Internal Assessment

8. Student participation in law school programmes - Organisation of Seminars, publication of journal and assessment of teachers.

PART-II**A. Theory****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 Formulation of the Research problem

11. Preparation of the Research Design

- 11.1 Devising tools and techniques for collection of data:
Methodology
 - 11.1.1 Methods for the collection of statutory and case materials and juristic literature.
 - 11.1.2 Use of Historical and Comparative research materials.
 - 11.1.3 Use of Observation studies.
 - 11.1.4 Use of Questionnaires / Interviews.
 - 11.1.5 Use of Case Studies
 - 11.1.6 Sampling procedures - design of sample, types of sampling to be adopted.
 - 11.1.7 Use of Scaling techniques.
 - 11.1.8 Jurimetrics.
- 11.2 Computerized Research - A study of legal research programmes such as Lexis and West law coding.
- 11.3 Classification and tabulation of data - use of cards for data collection Rules for tabulation. Explanation of tabulated data.
- 11.4 Analysis of data.

B. Practical (Home Assignment)

The following portion should be covered under the head of Internal Assessment

12. *Survey of available literature and bibliographical research.*
 - 12.1 *Legislative materials including subordinate legislation, notification and policy-statement.*
 - 12.2 *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 overruled; discovering judicial conflict in the area pertaining to the research problem and the reasons thereof.*
 - 12.3 *Juristic writings - a survey of juristic literature relevant to select problems in India and foreign periodicals.*
 - 12.4 *Compilation of list of reports or special studies conducted relevant to the problem.*

Select Bibliography

High Brayal, Nigel Dunne 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 Bysiewicz, *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 Act 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*.

ILI Publication, *Legal Research and Methodology*.

Note:- ***All latest volumes of above mentioned books must be preferred. The above list of books is not an exhaustive one.***

LL.M. SYLLABUS
GROUP A: CONSTITUTION AND LEGAL ORDER
[LL. M. PART-I]
OPTIONAL PAPER-I

01 MASS MEDIA LAW

Objectives of the course

Mass media such as press, radio and television, films, internet play a vital role in indoctrination, socialization, culturalisation, modernization and commoditization of a society. The visual media are bound to have a much greater impact on conditioning of human mind and- brain. But while these media have such a potential value as man educators, they are also susceptible to destructive and harmful uses for promoting criminal anti-social, anti-cultural, immoral and selfish escapist tendencies. In this IT age in transnational world, information play critical role in ordering the ideology and conceptual reconstruction.

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 protect the creative freedom involved in them, on the other, it has to regulate them so as to avoid their possible abuse. In post-gulf war era, the issues of information imbalance are also the emerging threat for third world countries especially after advent of WTO, where role of media is very crucial from futuristic point of view. 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 on one year.

Syllabus :**1. Role of Mass Media - Democratic Aspiration and Social Ordering**

- 1.1 Role of Mass media in ordering, conditioning and socialization of community
 - 1.1.1 Role of Mass Media for developing notion of 'Nation as a Unit' in multicultural, multilingual, ethnic and heterogeneous society.
 - 1.1.2 Mass Media Sustainable development and development communication
 - 1.1.3 Mass Media - National security; Terrorism
- 1.2 Role of Mass Media as 'Watchdog' of democracy
- 1.3 Development communication & Sustainable development
- 1.4 Various communication models of instruction: Authoritarian, Liberal, Dictatorship, Comparative Study- International and National communication.
- 1.5 Convergent media: Issues and Emerging trends, Political Ownership of Media
- 1.6 Mass Media - Objectives in Democracy

2. Mass Media-Types of – Press, films, Radio Television .

- 2.1 Ownership patterns - Press - Private- Public
- 2.2. Ownership patterns - Film - Private
- 2.3 Ownership patterns - Radio & Television, Public
- 2.4 E-Media – Free Flow of Information beyond boundaries and barriers.

3. Laws relating to Mass Media: Media Autonomy v Government Control

- 3.1 Protecting Civil Rights and Liberties – Right to Privacy, Laws of defamation, obscenity, blasphemy and sedition.
 - 3.1.1 Investigative Journalism & Sting operation – Harmonizing the Social Interest and promoting transparency.
- 3.2 The press Council- Maintaining the autonomy of Media; The Press Council Act, 1978.
- 3.3. The Press and Registration of Books Act, 1867, The Indian Official Secrets Act, 1923; Right to Know Emerging issues in Scientific and Technological era.
- 3.4 The law relating to Mass Media employees: Wages and Service conditions; Working Journalistic Act, 1958.
- 3.5 Price and Page Schedule Regulation – The Prize Competitions Act, 1955.

4. Press – Freedom of Speech and Expression–**Article 19(1)(a)**

- 4.1 Whether includes freedom of the Press?
- 4.2 Laws of defamation, obscenity, blasphemy, yellow journalism and sedition.
- 4.3 Newsprint Control Order
- 4.4 Advertisement – is included with freedom of speech and expression?
 - 4.4.1 Misleading Advertisement vis-à-vis Consumers rights
- 4.5 Press and the Monopolies and Restrictive Trade Practices Act.

5. Films – How far included in freedom of Speech and Expression?

- 5.1 Censorship of films – constitutionality; The Abbas case
- 5.2 Difference between films and Press – why pre-censorship valid for films but not for the press?
- 5.3 Censorship under the Cinematography Act, 1952.

6. Radio and Television – Government monopoly

- 6.1 Why Government department ?
- 6.2 Should there be an autonomous corporation?
- 6.3 Effect of television of people.
- 6.4 Report of the Chanda Committee.
- 6.5 Prasar Bharti - Government policy under Liberal and Private economy
- 6.6 Commercial advertisement
 - 6.6.1 Internal Scrutiny of serials, etc
 - 6.6.2 Judicial Review of Doordarshan decision: Freedom to telecast

7. Constitutional Restrictions

- 7.1 Restrictions impose on Freedoms
- 7.2 Radio and television - subject to law of defamation and obscenity.
- 7.3 Government Power to legislate - Article 246 read with the Seventh Schedule.
- 7.4 Power to impost Tax -licensing and licence fee.

Select Bibliography

M.P. Jain, *Constitutional Law of India* (1994) Wadawa, Nagpur

H.M. Seervai, *Constitutional Law of India 2002 Vol. 1 Universal*

John B. Howard, *"The Social Accountability of Public Enterprises" in Law and Community Controls in New Development Strategies (International Center for law in Development 1980)*

Bruce Michael Boys, *"Film Censorship in India: A Reasonable Restriction on Freedom of Speech and Expression"* 14 J.I.L.I. 501 (1972).

Rajeev Dhavan, *"On the Law of the Press in India"* 26 J.I.L.I. 288 (1984).

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

Soli Sorabjee, *Law of Press Censorship in India* (1976).

Justice E.S. Venkaramiah, *Freedom of Press: Some Recent Trends* (1984).

D.D. Basu, *The Law of Press of India* (1980)

Note:- [1] **Student 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).**

[2] **All latest volumes of above mentioned books must be preferred. The above list of books is not an exhaustive one.**

LL.M. SYLLABUS
GROUP A: CONSTITUTION AND LEGAL ORDER
[LL.M.-PART-I]
OPTIONAL PAPER-II

02 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 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.

Syllabus:

- 1. Public Utilities and its impact
 - 1.1 Government machineries and functioning - Impact of failure of Public Utility Service.
 - 1.2 Railways, Electricity, Gas, Road Transport, telephone, post and telegraph services, Police, Fire Brigade, Hospital etc.
 - 1.3 Growth and evolution of public utilities and their legislation- Concept Essential services.

2. Public Utilities - Why Government Monopoly?

- 2.1 Government and Parliamentary Control - Strategies to deal with dispute in Public Utility Services.
- 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

- 4.1 Quasi-Judicial Decision - Administrative Discretion.
- 4.2 Judicial approach.

5. Public Utilities and Consumer Protection

- 5.1 Exclusion from M.R.T.P. Act.
- 5.2 Rights of consumers protected by the Consumer Protection Act, 1986.
- 5.3 Rights Arising from law of Contract and law of Torts.

6. Public Utilities And their Employees.

- 6.1 Application of articles 16, Art 19 and 311?
- 6.2 Application of Industrial law.
 - 6.2.1 Public Interest vis-a-vis Right to Strike - Emerging trends.

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 concept of State

7.4 Public Utilities under changing market strategies-Liberalization & Privatization.

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.PA. pp. 133-141 (1987)

G. Ramesh, "Characteristic of Large Service Organization in a Developing Country like India". 32 I.J. Pa. 77 (1986).

Nalini Paranjpe, "Planning for Welfare in the Indian Railways" 31 I.J.PA. 171-180 (1985)

Arvind K. Sharma, "Semi-Qutonomous Enterprise: Conceptual Portrait - Further Evidence on the Theory of Autonomy" 33 I.J.PA. 99-113.

S.P. Sathe, *Administrative Law*, (1998)

Jain & Jain, *Principles of Administrative Law*, (1986)

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

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

Law Commission of India, (38th Report) : *Indian Post Office Act*, 1898, (1968)

Note:- [1] 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).

[2] All latest volumes of above mentioned books must be preferred. The above list of books is not an exhaustive one.

LL.M. SYLLABUS

GROUP A : CONSTITUTION AND LEGAL ORDER

[LL.M. PART-I]

OPTIONAL PAPER-III

03 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 center 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 year.

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-
 - 1.3.1 Colonial Impact on distribution of power.
 - 1.3.2 Indian Federalism - Model for Indigenous suitability, requisite and stability.

2. Distribution of Legislative Power/Administrative Power

- 2.1 Indian Constitution - Priority of Central rule over State.
- 2.2 Centre-State relations.
- 2.3 Factors responsible for subordination of States.
- 2.4 Role of Government - Constitutional provision and political practice.
- 2.5 Administrative relations - Instruction from Centre, All India Services.
- 2.6 Recommendations of various commissions and committees on Centre-State 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
- 3.4 Tax reforms.

4. Restrictions of Fiscal Power

- 4.1 Fundamental Rights.
- 4.2 Inter-Government tax immunities.
- 4.3 Difference between tax and fee.

5. Difference between tax and fee

- 5.1 Distribution of Tax Revenues.
- 5.2 Tax-sharing under the Constitution.
- 5.3 Finance Commission - Specific purpose grants (Article-282).
- 5.4 Role of Extra-constitutional Agencies - Planning Commission.

6. Borrowing Power of the State

- 6.1 Source of borrowing - National and International.
- 6.2 Borrowing by the Government of India.
- 6.3 Borrowing by the States – Limitation.

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 will trade and commerce.
- 7.3 State Monopoly v. barriers free trade, commerce and occupation Constitutional provisions.

8. Planning Commission

- 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?
- 10.4 Federalism under changing political scene in India.
- 10.5 Federalism under changing political scene in India.

11. Federalism and changing political scene in India

- 11.1 Under Single Party dominating era - till 1977.
- 11.2 During the period of political turmoil.
- 11.3 Under coalition form of government.
- 11.4 Federal form of Government: Effect of multi-party system and regionalist.

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K. Subba Rao, *The Indian Federation* (1969)

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Note:- [1] ***Students should consult relevant volumes of the Annual Survey of Indian Law Institute published by the Indian Law Institute (Constitutional Law II);***

[2] ***All latest volumes of above mentioned books must be preferred. The above list of books is not an exhaustive one. All latest volumes of above mentioned books must be preferred. The above list of books is not an exhaustive one.***

LL.M. SYLLABUS
CONSTITUTION AND LEGAL ORDER
(LL.M.- PART-II)
OPTIONAL PAPER-IV

04 CONSTITUTIONALISM: PLURALISM AND FEDERALISM

Objectives of the course

Constitutionalism essentially means a limited government, where government function according to certain principles. It is said to be abiding by constitutionalism. Must it be 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 sovereign. 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 subnational/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 year.

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 and Post Gorbachov era.
- 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.
- 3.4 Freedom of speech and expression.
- 3.5 Freedom of the Press.
- 3.6 Freedom of Association
- 3.7 Rights to Separateness.
- 3.8 Freedom of Religion
- 3.9 Rights of the religious and linguistic minorities.
- 3.10 Compensatory discrimination for backward classes.
- 3.11 Women - rights to equality and right to special protection.
- 3.12 Scheduled tribes, Distinct identity - protection against exploitation Exclusion from Hindu Law.

4. Uniform Civil Code

- 4.1 Non-State Law (NSLS) and State Law System – Problem of a Uniform Code v. Personal Laws-vertical federalism.

5. Equality in Plural Society

- 5.1 The concept of "Equality" in heterogeneous society".
- 5.2 Effect of concept like Multiculturalism, ethnicity and its consideration pluralistic society.
- 5.3 Right to equality and reasonable classification.
- 5.4 Prohibition of discrimination on ground of religion, caste, sex, language.
- 5.5 Abolition of untouchability.
- 5.6 Secularism - constitutional principles.
- 5.7 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.

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Note:- **[1] Students should consult relevant volumes of the Annual Survey of Indian Law published by the Indian Law Institute.**

[2] All latest volumes of above mentioned books must be preferred. The above list of books is not an exhaustive one.

LL.M. SYLLABUS
CONSTITUTION AND LEGAL ORDER
(LL.M.- PART-II)
OPTIONAL PAPER-V

05 HUMAN RIGHTS

Objectives of the course

Lately, the Universities in India have started showing greater concern for teaching a course on Human Rights. Human right is doubtless the major concern of all societies, developed as well as developing. Formerly, rights were conceived rather narrowly as mere freedom from arbitrary government and classical constitutions provided guarantees of individual liberty or minority Protection against the state in their constitutional bill of rights. It was realized later, and much more so during last forty 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. Their assertion of sovereignty challenged many premises of international law which had been taken as established by the developed nations. 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 value. 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. If law was to be a real instrument of social engineering, the lawyers, judges as well as law teachers had to be informed by human rights at the LL.M. level would essentially seek to consciencitize the future law teachers, researchers and activists about human rights.

The focus of a course on human rights must be on the national problems with an international or global perspective. Thoughts and ideas cannot be parochial or national. They are universal. But their articulation becomes meaningful only when they are seen in the context of local experience. The course content must be informed by transformational dimension. The study methodology must be macro at the thought level and micro at the experience level. While we must therefore focus on the local problems we must not let the global perspective go out of our sight. The world community's concerns about human rights have been expressed through various conventions and poverty, ignorance and exploitation. 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 acquired 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 of a just society and future lawyers must be able to assess any programme of social transformation with reference to them.

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, Part drafting Process.

- 1.4 Subsequent development in International Law and the Position in India (e.g. Convention of Social discrimination, torture, gender discrimination, environment, and the human rights covenants).

2. Fundamental Rights Jurisprudence as Incorporating Directive Principles

- 2.1 The dichotomy of Fundamental Rights and Directive Principles
- 2.2 The interaction between Fundamental Right and Directive Principles
- 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 of 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 Scope of protection.
- 4.2 The position of Minority "Woman" and their basic rights.
- 4.3 Communal Riots as Involving violation of 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 People's Union for Civil Liberty
 - 6.1.1 People's Union for Democratic Rights-
 - 6.1.2 Mahila Dakshata Samiti.
 - 6.1.3 Lawyers Collective.
 - 6.1.4 Other's Group: Issue-related like Chipko Bhoomi Sena, Groups against power Dams etc.
 - 6.1.5 Legal Profession.
- 6.2 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 people: 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 on 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.

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U. Baxi, *The Crisis of the Indian Legal System*

F. Kazmi, *Human Rights*

L. Levin, *Human Rights*

Madhavtirtha, *Human Rights*

W.P. Gromley, *Rights and Environment*

H. Beddard, *Human Rights and Europe*

J. Svarup, *Human Rights and Fundamental Freedoms*

Nagendra Singh, *Human Rights and International Co-operation*

S.C. Kashyap, *Human Rights and Parliament*

S.C. Khare, *Human Rights and United Nations* Moskowitz, *Human Rights and World Order*

Drost, *Human Rights as Legal Rights*

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I Menon (ed), *Human Rights in International Law*

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E. Lauterpacht, *International Law and Human Rights*

E. Robertson, *Human Rights in the World*

E. Robertson, *Introduction to the Study of Human Rights*

John, Louis & Burgenthal, *International Protection of Human Rights*

Upendra Baxi, "Human Rights, Accountability and Development" *Indian Journal of International Law* 279 (1978)

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Note:- All latest volumes of above mentioned books must be preferred. The above list of books is not an exhaustive one.

LL.M. SYLLABUS
CONSTITUTION AND LEGAL ORDER
(LL.M.- PART-II)
OPTIONAL PAPER-VI

**06 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 even in such circumstance, the democratic forces must assert that even for survival of the State, the least possible liberty should sustain. The Students should analyze different aspects of such emergency powers and scrutinizing intellectual attitude towards such powers.

The following syllabus prepared with this perspective will be spread over a period of one year.

Syllabus

1. National Security, Public Orders and Rule of Law

- 1.1 Emergency Detention in England - Civil Liberties
- 1.2 *Liveridge v. Anderson*

- 1.3 Korematsu v. U.S.
- 1.4 Estugbargi v. Govt. of Nigeria
- 1.5 Pre-independence law - Keshav Talpadi's case

2. Preventive Detention and Indian Constitution

- 2.1 Article 22 of the Constitution
- 2.2 A. K. Gopalan V. State of Madras
- 2.3 Preventive Detention and Safeguards
- 2.4 Declaration of Emergencies
- 2.5 1962, 1965 and 1970 Emergencies
- 2.6 1975 Emergency
- 2.7 Makhan Singh v. Punjab
- 2.8 A.D.M. Jabalpur v. Shiv Kant Shukla

3. Exceptional Legislation

- 3.1 COFEPOSA, MISA and Other Legislation to curb economics offenders
- 3.2 Anti Terrorist legislation e.g. TADA, POTA
- 3.3 Special Courts and Tribunals under Anti Terrorist Act
- 3.4 Due Process and Special Legislation

4. Civil Liberties and Emergency

- 4.1 Article 19 : various dimensions and limitation impose of utilization of such liberties
- 4.2 Meaning of "Security of State"
- 4.3 Meaning of "Public Orders"
- 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-suspend ability
- 4.7 Suspend ability - 44th Amendment.

5. Access to Courts and Emergency

- 5.1 Article 359
- 5.2 Makhan Singh v. State of Punjab
- 5.3 A.D.M. Jabalpur v. Shiv Kant Shukla
- 5.4 Constitution (Forty-fourth), Amendments Act, 1978.
- 5.5 Constitution (Fifty-ninth), Amendments 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

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LL.M. SYLLABUS
GROUP – B LABOUR, CAPITAL & LAW
[LL.M.- PART-I]
OPTIONAL PAPER-I

01 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 comparative emphasis wherever possible.

The following syllabus prepared with these perspectives will be spread over a period of one year.

Syllabus :

1. Freedom of Organization And Certain Key Concepts

- 1.1 Definitions: "Trade Union", "Trade Dispute" - Kinds of Trade Disputes *T.U. Act*, 1926 and "Industry", "Industrial Dispute" *I.D. Act*, 1947-Comparison in the light of relevant case law

- 1.2 "Trade Unionism" - Essence of - Reference to the Preamble of the Indian Constitution and the relevant Directive Principles of State Policy.
- 1.3. Trade Union Objects - Methods adopted by Trade Unions for accomplishing their objects.
- 1.4 International norms: Right to Association of industrial and unorganized labour. Right to Association Indian Perspectives: Constitutional and legal aspects - Art. 19 (1) (c), case law discussing whether the Right to form a Union carries with it the concomitant rights to Recognition, Collective Bargaining and strike.

2. Trade Unions: Historical Perspectives

- 2.1 A brief history of the British Trade Union Movement to highlight the travails of Trade Unions in the *Laissez faire era*, with reference to landmark decisions of the English courts
- 2.2 History of the Indian Trade Union Movement - Major Trade Union federations in India, their objects and political affiliations - Political fund of Trade Unions
- 2.3 Registration of Trade Unions - Cancellation/Withdrawal of Registration certificate - Relevant case law
- 2.4 Rule Book of Trade Unions: Importance of and judicial interpretations bearing upon Rule Book

3. Advantages of Registered Trade Unions

- 3.1 Trade Union Immunities - case law/ a critical evaluation under The Trade Unions Act, 1926.

4. Collective Bargaining: Conceptual and Procedural Issues.

- 4.1 Collective Bargaining Concept - Meaning, methodological aspects and a comparative appraisal.
- 4.2 Collective Bargaining *vis-a-vis* Compulsory Adjudication.
- 4.3 Bargaining Power - Tactics/Methods employed by Trade Unions/ Employees to increase their Bargaining Power.
- 4.4 Factors that promote Collective Bargaining and that hinder Collective Bargaining.
- 4.5 Subject matter of Collective Bargaining - Levels of Bargaining (Plants, Industry & National)
- 4.6 Enforceability of Collective Bargaining Agreements - Indian, English and American Position.

5. Legal Control of Collective Bargaining Endeavours.

- 5.1 Strike (pen-down, tool down, go slow, work to rule, stay in, sit in, picketing).
- 5.2 Gherao.
- 5.3 Lock out.

6. Factors Affecting on Collective Bargaining

- 6.1 Problems of Trade Unions - Union Finance - Outsider problem - Union Privileges (Inter Union & Intra Union Rivalries) - Trade Unions & Politics - Recognition of Trade Unions (Maharashtra Laws) Economic Implications of Collective Bargaining.

7. Economics Implications of Collective Bargaining

- 7.1 Impact of New Economic Policy on Trade Union Activities -
Wage policy, work discipline, National income and profit.

Select Bibliography

Gillian S. Morris and Timothy J. Archer, *Collective Labour Law*
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ILO, *Collective Bargaining in Industrial Market Economics* Latest Edn.

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Victor Feather, *Essence of Trade Unionism* Latest Edn.

International Labour Conventions and Recommendations 1919-1981

(Geneva: International Labour Office, 1985) (Till date - Latest Editions)

I.L.O. *Conciliation and Arbitration of Industrial Disputes in English Speaking Countries of Africa*, (Record of Proceedings of, and Contribution submitted to an African Regional Seminar,

Labour Management Relations Series No. 37) (Geneva: International Labour Office, 1993)

Industrial Democracy Some Issues And Experiences, (Thakur, P.c. & Sethi, K.C., Edn) (New Delhi: Shri Ram Centre For Industrial Relations & Human Resources, 1973)

Conciliation In Industrial Disputes a practical guide, ILO Geneva 5th edn.

Government of India, *Agricultural Labour Enquiry* (1954)

ILO, *Conventions and Recommendations*

ILO, *Collective Bargaining*

ILO, *Collective Bargaining in Industrialization Market Economics*

Relevant portions of the Report of the National Commission on Labour (1968) Relevant portions of the Second Report of the National Commission on Labour (2002)

Various Five Years Reports (Relevant chapters)

Note: ***Latest Case Laws and Journal Articles should be updated regularly and included in the curriculum. The above list of books is not an exhaustive one.***

LL.M. SYLLABUS
GROUP – B LABOUR, CAPITAL & LAW
[LL.M.- PART-I]
OPTIONAL PAPER-II

02 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 these perspectives will be spread over a period of one year.

Syllabus

- 1. Industrial Adjudication: Some Key concepts under Industrial Disputes Act, 1947**
 - 1.1 Industry
 - 1.2 Industrial Dispute
 - 1.3 Workmen
 - 1.4 Appropriate Government

2. Constitutional Perspectives and Foundations

- 2.1 Constitutional authorization for institutional framework (legislative entries, Article 323B).
- 2.2 Constitutional goals protecting capital and labour enshrined in the fundamental rights and duties and the directive principles.

3. Access to adjudicatory Justice

- 3.1 Composition, Powers, Duties, Functions and Jurisdiction of Labour Courts, Industrial Tribunals and National Tribunals.
- 3.2 Extent of governmental discretion: time, expediency and matters for adjudication.
- 3.4 Limitations on discretion.
- 3.5 Political overtones and pressure tactics.
- 3.6 Judicial restraint or liberalism, the ideal juristic approach.
- 3.7 Direct access to adjudicatory authority by employer and employee: Problem and perspectives.
- 3.8 International norms.
- 3.9 Comparative overview of access to adjudicatory process in the U.K. and Australia.

4. Adjudicatory Process

- 4.1 Industrial adjudication as a modality of harmonizing interests of capital and labour.
- 4.2 Impact on employer's prerogatives and employee's rights.
- 4.3 Silence of the statute on criteria for adjudication.
- 4.4 Equity and justice as guiding principle.
- 4.5 Industrial conflicts and the vistas of decisional process: a comparative probe.
- 4.6 Post-natal control by government over adjudication.

5. Judicial Review of the Adjudicatory Process

- 5.1 Definition of "Award" case law.
- 5.2 Finality of decision making in adjudicatory process: a myth.
- 5.3 Jurisprudence of industrial adjudication: formulations through constitutional remedies of writs and appeal.
- 5.4 Jurisdiction of the adjudicatory authority in respect of dismissal of workmen.

6. Alternatives to Industrial Adjudication Under the Industrial Disputes Act, 1994.

- 6.1 Collective Bargaining
- 6.2 Works Committee
- 6.3 Conciliation/ Mediation
- 6.4 Voluntary Arbitration

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ILL, *Labour laws and Labour relations*, Parts II, IV, VI, VII, IX and XI

R.W.Rideout, *Principles of Labour Law* (1983), Ch. 4,5 and 6

Robert A. Gorman, *Basic Text of Labour Law*, Ch. 23, 24 and 25 (1976)

Giri V.V., *Industrial Relation*

Giri V.V., *Labour Problems in Indian Industries* Latest Edn.

Memoria and Memoria, *Dynamics of Industrial Relations* Latest Edi.

Bhagoliwal T.N, *Economics of Labour and Social Welfare* Latest Edi.

Kahn-Freund Otto, *Labour and the Law* Latest Edn.

Lord Wedderburn, *Worker and the Law* Latest Edi.

Charles Gregory, *Labour and the Law* Latest Edn.

Citrine's, *Trade Union Law* (Edited by) M.A. Hicklin

Gillian S. Morris and Timothy J. Archer, *Collective Labour Law* Latest Edn.

John Bowers & Simon Hentyball, *Text Book on Labour Laws* Latest Edn.

Roger Blanpain, Chris Engels (ed), *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* Latest Edn.

Alan L. Goldman, *Labour Law And Industrial Relations In The United States of America*, (II nd edn., Kluwer Law and Taxation Publishers, 1984).

Carby-Hall, J.R., *Principles of Industrial Laws*, Latest Edn.

Raman Rao, A.V., *Mediation Conciliation And Arbitration U.S.A. And India A Comparative Study*, Latest Edn.

Richard Clutterbuck, *Industrial Conflicts and Democracy: The Last Chance* Latest Edn.

Subramanian, K.N., *Labour Management Relations In India*, Latest Edn.

William E. Simkin, *Mediation And The Dynamics of Collective Bargaining*, Washington D.C., The Bureau of National Affairs, Inc., 1971)

Labour Adjudication in India - Edited by Z.M.S. Siddiaqui & M. Afzal Wani Relevant portions of the *Report of the National Commission on Labour* (1968)

Relevant portions of the *Second Report of the National Commission on Labour* (2002)

Various Five Years plan Reports (Relevant chapters)

ILO Conventions and Recommendations

Government of India., *Report on the Second Agricultural Labour Enquiry* (1958)

Government of India., *Report on the Third Agricultural Labour Enquiry*
Report of the National Commission on Rural Labour (1991) New Delhi,
Government of India Ministry of Labour

Note: ***Latest Case Laws and Journal Articles should be updated regularly and included in the curriculum.***

The above list of books is not an exhaustive one.

LL.M. SYLLABUS
GROUP – B LABOUR, CAPITAL AND LAW
OPTIONAL PAPER-III

03 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 these perspectives will be spread over a period of one year.

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 Services Regulations: the constitutional bases – formulation of services rules – doctrine of pleasure.

- 1.4 Limitations on doctrine of pleasure
 - 1.4.1 Action only by 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 Services

- 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 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, condition 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 organizations
- 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

Select Bibliography

Marc Galanter (Ed.) *Law and Society in Modern India* (1997) Oxford.

Robert Lingat. *The Classical Law of India* (1998). Oxford.

Upendra Baxi, *The Crisis of the Indian Legal System* (1982), Vikas, New Delhi.

Upendra Baxi (Ed.) *Law and Poverty Critical Essays* (1988). Tripathi, Bombay

Munshi, *A journal About Women and Society*.

Duncan Derret, *The State, Religion and Law in India* (1999), Oxford University Press, N. Delhi

H.M. Seervai, *Constitutional Law of India* (2004) Universal Law Publishing Co., (P) Ltd. Vol 1-3

D.D. Basu, *Shorter Constitution of India* (1996), Prentice - Hall of India (P) Ltd., N. Delhi.

Sunil Deshta and Kiran Deshta, *Law and menace of Child Labour* (2000) Anmol Publications, Delhi.

Savitri Gunasekhare, *Children, Law and Justice* (1997), Sage Publication

Indian Law Institute, *Law and Social Change: Indo-American Reflections*, Tripathi (1988).

J. B. Kriplani, *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.

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LL.M. SYLLABUS
GROUP-B LABOUR, CAPITAL AND LAW
OPTIONAL PAPER-IV

04 AGRICULTURAL LABOUR

Objectives of the course

Agricultural laborers 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 other 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 areas of study for enabling the students to suggest law reforms.

The following syllabus prepared with these perspectives will be spread over a period of one year.

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: 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 Unorganized nature
- 2.2 Seasonal character
- 2.3 Political movements
- 2.4 State, regional and macro-regional disparities in collective bargaining, organization and remuneration

3. Industrial Labour Norms in the Agricultural Labour Area

- 3.1 Problem: 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
- 5.4 Statutory measures: conciliation, adjudication
- 5.5 Comparative study of state practices and laws

Select Bibliography

V.V. Giri, *Labour Problems in Indian Industry* Latest Edn.

R.R. Singh, *Labour Economics* Latest Edn.

ILO, *Conventions and Recommendations*

Report of the National Commission on Labour (Relevant Portions) 1969

State Legislation and other welfare schemes relating to agricultural labour.

Abdul Aziz, “Unionizing Agricultural Labourers in India: A Strategy”, 13 *Indian Journal 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* 77 (1979).

P.K. Bardhan, *Land Labour and Rural Poverty* (1984)

Kalpana Bardhan, “Rural Employment Wages and Labour Market in India: A Survey of Research”, 12 *Economic and Political Weekly* 1 June 25, 1977, II July 2, 1977 and III July 9, (1977)”.

Government of India, *Agricultural Labour Enquiry* (1954)

Government of India, *Report on the Second Agricultural Labour Enquiry* (1958).

Government of India, *Report on III Agricultural Labour Enquiry*

Bardhan & Rudra, *"Types of Labour Attachment in Agriculture"*, 15

Economic and Political Weekly August 30, 1980

National Institute of Rural Development, *Occasional Monograph*-
Agricultural Labour Unions (1978).

Report of the National Commission on Rural Labour (1991; New Delhi,
Government of India, Ministry of Labour; See especially Volume II, Part II
for the Legal Study Group Report.

Report of the Second National Commission on Labour 2002

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curriculum.***

The above list of books is not an exhaustive one.

LL.M. SYLLABUS
GROUP-B LABOUR, CAPITAL & LAW
OPTIONAL PAPER-V

05 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 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 these perspectives will be spread over a period of one year.

Syllabus

1. Constitutional Perspectives on Wages

- 1.1 The constitutional ideals: Right to work; Right to living wage; Right to equal pay for equal work
- 1.2 History of Wage legislation in India: Findings of Royal Commission on Wages 1931
- 1.3 Wage - Concept of Minimum Wage, Living Wage, Fair Wage. Principles governing fixation of these Wages.
- 1.4 Committee on Fair Wages 1949 (Recommendations)

2. Theories and Facets of Wages

- 2.1 Theories of wages: Wage differentials
- 2.2 Regulations of Payment of Wages: Safeguards against unlawful deductions and delay in payment of wages - *Payment of Wages Act*, 1936. Jurisdictions, Powers of Presiding Officer, Wages Authority.

3. Facets of Wages.

- 3.1 Methods for wage fixation - The Minimum Wages Act, 1923, Wage Fixation through Adjudication - Principles evolved by Judiciary; Wage Fixation by Wage Boards – Principals & Practices – Functionary & Wage Boards Critical Appraisal
 - 3.1.1 Dearness Allowance – Concept, meaning, Evolution; D.A. & Consumer Price Index – Controversies involved. Imposition of ceiling limit on the Extent of neutralization.
 - 3.1.2 Bonus concept - as "deferred wage", "Profit sharing"
Facets Attendance bonus, incentive bonus, Incentive Bonus, etc. Critical Study of *Payment of Bonus Act*, 1965
 - 3.1.3 Other Allowances and concessions :House rent allowance, City compensatory allowance, Educational allowance, Conveyance allowance, Cash incentives: percentage on turn-over, Medical allowance, Leave travel concessions, Free and subsidized food and products, Leave encashment, Overtime allowances, Low wages and high perks as a camouflaging stratagem of defeating ceiling on wages.

4. Wages, Price and Tax - Correlations

- 4.1 Increase of wages - impact on price
- 4.2 Increase of 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 Multi-national corporations

6. International Standardization

- 6.1 Role of ILO: Conventions and Recommendations relating to Wages

Select Bibliography

O.P. Malhotra, *Law of Industrial Disputes* Latest Edn.

R.R, Singh, *Labour Economics* Latest Edn.

G.L. Kothari, *Wages, Dearness Allowances and Bonus* Latest Edn.

Y. B. Singh, *Industrial Labour in India Part I* Latest Edn.

V.V. Giri, *Labour Problem in Indian Industry*

K.D. Srivastva, *Payment of Wages Act, 1936* Latest Edn.

K.D. Srivastva, *Payment of Bonus Act, 1936* Latest Edn.

Report of the National Commission on Labour 1969 (Relevant Portions)

International Labour Office, *Wages* (1968)

International Labour Office, *Wage Fixing* (1981)

International Labour Office, *Minimum Wage Fixing* (1981)

Suresh C. Srivastava, "Payment of Dearness Allowance to Industrial Worker in India, 15 J.I.L.I., 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. Agrawal, *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. Chawala, "Wage Policy and Industrial Relations, A Brazilian Case Study, 17 Indian Journal of Industrial Relations 27 (1981)

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LL.M. SYLLABUS
[PART-II]
GROUP – B LABOUR, CAPITAL & LAW
OPTIONAL PAPER-VI

06 SOCIAL SECURITIES LAW

Objectives of the course

Social security is a necessary phenomenon of a welfare stage. 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 diminutions of labour security measures and explore the possibility whether or not labour security is part of the comprehensive and integrated social security.

The following syllabus prepared with these perspectives will be spread over a period of one year.

Syllabus :

1. Social Security: Some key concepts

- 1.1 "Social Security", "Social Welfare", "Social Assistance",
"Social Insurance"

2. Origin and Development

- 2.1 Western countries - charitable institutions - professional guilds
philanthropic organizations - workmen's compensation law in
England
- 2.3 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 Right: 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 cases of unemployment, old age, sickness and disablement, maternity relief.

4. Social Security: Law and Practices, the comparative Perspectives

- 4.1 International norms on Social Security
- 4.2 Social Security laws - Comparison with U.K., U.S.A. etc.,

5. From Compensation to Insurance – Some Social Security Laws

- 5.1 Employers Liability Act, 1938
- 5.2 Workmen's Compensation Act, 1923
- 5.3 Employees State Insurance Act, 1948
- 5.4 Factories Act, 1948
- 5.5 Equal Remuneration Act,
- 5.6 Gratuity Act, 1972
- 5.7 Employees' Provident Fund And Miscellaneous Provisions Act, 1952
- 5.8 Pension Act,
- 5.9 Maternity Benefits Act,
- 5.10 Industrial Disputes Act, 1947 - Provisions relation to Retrenchment, Layoff, Transfer, Closure Compensation.

6. Towards an Ideal Social Security Scheme: the Futuristic

- 6.1 Comprehensive and integrated social security: a utopian concept or a pragmatic approach?
- 6.2 Role of trade unions as Social Security, Welfare Agencies - Whether feasible in India?

Select Bibliography

R.N. Chaudhary, *Commentary on the Workmen's Compensation Act, 1923*, Latest Edn.

S.C.Srivastava, *Social Security and Labour Laws*, Latest Edn.

R.W. Rideout, *Principles of Labour Law* Latest Edn.

H.K. Saharay, *Industrial and Labour Laws of India* Latest Edn.

Munkman, *Employers' Liability* Latest Edn.

Harry Calvert, *Social Security Laws* Latest Edn.

Report. of the National Commission on Labour 1969 (Relevant portions) .,

Neeru Sehgal, "*Employment of Women and Reproductive Hazards in Workplace*", 29 J.I.L.I. 201 (1987)

Prakash Sinha, "*Quality of Working Life and Quality of Life*", (1982) Indian Journal of Industrial Relations, p. 373

Mallik Jyotsana Nath, *Workmen's Compensation Act and some Problems of Procedure*", 3 J.I.L.I 131 (1961)

V.R. Bhattacharya, *Some Aspects of Social Security Measures in India* (1970)

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LL.M. SYLLABUS
GROUP–C CRIMINAL LAW
OPTIONAL PAPER-I

01 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 postgraduate 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 to renew and revise their laws to be in tune with developed systems. The paper is taught with reference to India, England, France and China.

The following syllabus prepared with this perspective will be spread over a period of one year.

Syllabus :

1. Organization of Courts and Prosecuting Agencies

- 1.1 Hierarchy of criminal courts and their jurisdiction
 - 1.1.1 Nyaya Panchayats in India: As prosecuting agencies at local level
 - 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 Adversarial system of trial and the Inquisitorial system
- 3.2 Role of the judges, the prosecutors and defence attorney in the trial
- 3.3 Referring the matter to Lok Adalats under Legal Services Authorities Act, 1987
- 3.4 Admissibility and inadmissibility of evidence
 - 3.4.1 Special reference to Information Technology Act, 2000
 - 3.4.2 Expert evidence
- 3.5 Appeal to the court in awarding appropriate punishment
- 3.6 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 Preventive measure under Cr.P.C (1973)
- 5.2 Special Enactments

6. Public interest Litigation: 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.), *KV. Kelkar's Outlines of Criminal Procedure* (2000), Eastern Lukhnow

Ratanlal & Dhirajlal, *Criminal Procedure Code*.

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 India Law Commission of India.

Hon'ble Justice V.S. Malimath Committee Report on Reformation of Criminal Justice System in India.

The Paper will be taught with reference, where necessary, to the procedures in India, England, US, France, Russia & China.

Note: ***Latest Case Laws and Journal Articles should be updated regularly and included in the curriculum.***

The above list of books is not an exhaustive one.

LL.M. SYLLABUS
GROUP-C CRIMINAL LAW
OPTIONAL PAPER-II

02 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:

- (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 India (historical and contemporary) approaches to penology

The following syllabus prepared with this perspective will be spread over a period of one year.

Syllabus

1. Introductory

- 1.1 Penology: A "Correctional" Science?
- 1.2 Notion of "Punishment" in Law
- 1.3 Distinction between Crime "Prevention" and "Control"

2. Theories of Punishment

- 2.1 Retribution
- 2.2 Utilitarian Prevention : Deterrence
- 2.3 Utilitarian: Intimidation
- 2.4 Behavioral Prevention: Incapacitation
- 2.5 Behavioral Prevention: Rehabilitation
- 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 Sentencing
 - 4.1.1 Probation & Parole
 - 4.1.2 Corrective Labour
 - 4.1.3 Fine
 - 4.1.4 Compensation to Victims of crime

5. Sentencing

- 5.1 Principal types of Sentences in Penal Code and Special Laws
- 5.2 The Problems of Default Sentence (Imprisonment for non-payment of fine)
- 5.3 Pre-Sentence Hearing
- 5.4 Sentencing for habitual offender
- 5.5 Summary punishment
- 5.6 Sentencing Process and Marginalized Accused

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 Chhabra, *The Quantum of Punishment in Criminal Law*

H.L.A. Hart, *Punishment and Responsibility*

Herbert L. Packer, *The Limits of Criminal Sanction*

Alf Ross, *On Guilt, Responsibility and Punishment* Latest Edn. See also

U. Baxi Review of this work in 21 J.I.L.I. 407 (1979)

A. Siddique, *Criminology*, Latest Edn.

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 1969-1979

Tapas Kumar Banerjee, *Background to Indian Criminal Law*

Note: ***Latest Case Laws and Journal Articles should be updated regularly and included in the curriculum.***

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LL.M. SYLLABUS
GROUP – C CRIMINAL LAW
OPTIONAL PAPER-III

03 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 focuses on the relation between privilege power and deviant behaviour. The traditional approaches which highlight "white collar offences", "Socio-economic offences" or "Crime 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 newspaper/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 legislature, 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 electoral booth capturing, (rigging, on process 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 J ai Prakash Mission for surrender of Dacoits - in 1959 and 1971
- 2.3 The Das Commission Report on Pratap Singh Kairon
- 2.4 The Grover Commission Report on Dev Raj Urs
- 2.5 The Maruti Commission Report
- 2.6 The Thakkar-Natarajan Commission Report on Fairfax
- 2.7 Shah Commission Report

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 paramilitary 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, yellow journalism
- 4.4 Medical malpractices

5. Responses of Indian Legal Order to the deviance of Privileged Classes

- 5.1 Vigilance Commission: CVC
- 5.2 Public Accounts Committee
- 5.3 Ombudsman
- 5.4 Commission 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*

Upendra Baxi, *Law and Poverty; Essays*

Upendra Baxi, *Liberty and Corruption: The Antulay Case and Beyond*

Surendranath Dwevedi and G.S. Bhargava, *Political Corruption in India*

A.R. Desai (ed.), *Violation of democratic Rights in India*

A.G. Noorani, *Minister's Misconduct*

B.B. Pande, *The Nature and Dimensions of Privileged Class Deviance in The Other Side of Development* 136 (187; K.S. Shukla ed)

Indra Rothermund, *Patterns of Trade Union Leadership in Dhanbad Coal Fields*" 23 J.I.L.I. 522

Note: ***Latest Case Laws and Journal Articles should be updated regularly and included in the curriculum.***
The above list of books is not an exhaustive one.

LL.M. SYLLABUS
GROUP – C CRIMINAL LAW
OPTIONAL PAPER-IV

**04 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 of 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? Secondly, 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 board 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 to 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, 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 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) way 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 this perspective will be spread over a period of one year.

Syllabus

1. Introductory

1.1 Basic Conceptions

1.1.1 "drugs", "narcotics", "Psychotropic substances"

1.1.2 "dependence", "addiction"

1.1.3 "crime 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 sensitized by comparative studies. The principle 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 Convention on Psychotropic Substances, 1972
- 4.3 International collaboration in combating drug addiction
- 4.4 The SAARC, 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 IPe, See 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 Legal Regimes, especially in relation to the resourceless.

7. The Role of Community in Combating Drug Addiction

- 7.1 Profile of Community initiatives in Inhibition of Dependence and Addiction (e.g. deaddiction aftercare)
- 7.2 The Role of Educational System
- 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*

I.A. Incard, C.D. Chambers, (Eds) *Drugs and the Criminal Justice System*

R. CockeII, *Drug Abuse and Personality in Young Offenders*

T. Duster, *The Legislation of Morality: Law, Drugs and Moral and Judgement*

G. Edwards Busch, (ed) *Drug Problems in Britain: A Review ofTen Years*

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

P.R. Rajgopal, *Violence and Response: A Critique of the Indian Criminal System*

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. Journals of Drug Issues (Tallehesse Florida)*
- iii. International Journal of Criminology*
- 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 (Landon)*
- viii. Bulletin on Narcotics (United Nations)*

LL.M. SYLLABUS
GROUP – C CRIMINAL LAW
OPTIONAL PAPER-V

05 JUVENILE DELINQUENCY

Objectives of the course

Juvenile delinquency is considered an important branch of criminology. Young offenders have provided a lot of materials for theory building to adult sociologists and criminologists. The impact of juvenile delinquency upon the formation of Indian criminology tradition does not seem to be noticeable. But often careers in crime are learnt, even if involuntarily in adolescence. 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 senator 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 not its own autonomous characteristics.

In addition, the state and the law also have to deal with juveniles in certain situations, as a *parens patriae*. The category of 'neglected children' define 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; this, too, needs to be examined.

The institutional care of children poses its own distinctive dilemmas. These, too, should be discussed; especially, the level of resource investment compared with the extent of need.

The following syllabus prepared with this perspective will be spread over a period of one year.

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) Determining Factors of Juvenile Delinquency

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
- 3.5 Constitutional Aspects
- 3.6 Distinction between "Neglected" and Delinquent" Juveniles
- 3.7 Competent Authorities
- 3.8 Professional Safe guards for juveniles
- 3.9 Powers given to Government
- 3.10 Community Participation as envisaged under the Act

4. Indian Context of Juvenile Delinquency

- 4.1 The child Population Percentage to Total, Sex-Ratio,
Urbanl Rurall Rural Urban
- 4.2 Neglected - Below Poverty line, physically and mentally
disabled, orphans, destitute, vagrants
- 4.3 Labourers
 - 4.3.1 In organized industries like zari, carpet, bidi, glass
 - 4.3.2 In unorganized sector like domestic servant, shops and
establishments, ragpickers, family trade
- 4.4 Delinquent - number, sex-ratio, ratio to adult crime, types of
offences committed, recidivism, rate of increase background
- 4.4 Drug addicts
- 4.5 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 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, 2000*

K.S. Shukla, *Adolescent Offender*

United Nations, *Beijing Rules on Treatment of Young Offenders*

Myron Weiner, *The child and State in India*

The United Nation Declaration on the Rights of Children

UNICEF *Periodic Materials*.

Note: *Latest Case Laws and Journal Articles should be updated regularly and included in the curriculum.
The above list of books is not an exhaustive one.*

LL.M. SYLLABUS
GROUP – C CRIMINAL LAW
OPTIONAL PAPER-VI

**06 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 etiology 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 year.

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" and "Criminal" Speech: Speech as incitement to violence
- 1.6 "Collective political violence" and legal order
- 1.7 Nation 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 Century in 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 Finding of various Commission of Enquiry
- 5.3 The Role of Police and Para- Military Systems in Dealing with Communal Violence
- 5.4 Operation of Criminal Justice system during, and in relation to, communal violence

NOTE:- *Choice of further areas will have to be made by the teacher and the taught. The areas may be chosen from: electoral, campus, industrial, police violence).*

Select Bibliography

U. Baxi, *"Dissent, Development and Violence"* in R. Meagher (ed). *Law and Social Change Indo-American Reflections* Latest Edn.

U. Baxi, *Law and Poverty: Critical Essays*, Latest Edn.

A.R. Desai, *Agrarian Struggles in India: After Independence* Latest Edn.

D.A. Dhangare, *Peasant Movement in India: 1920-1950* Latest Edn.

Ranjit Guha, *Elementary Aspects of Peasant Insurgency in Colonial India* Latest Edn.

Ranjit Guha, (ed) *Subaltern Studies Viol.* 1-6 Latest Edn.

T. Honderich, *Violence for Equality* Latest Edn.

Mark Juergensmeyer, *"The Logic of Religious Violence: The Case of Punjab"* 22

Contributions to Indian Sociology Latest Edn.

Rajni Kothari, *State against Democracy* Latest Edn.

G. Shah, *Ethnic Minorities and Nation Building: Indian Experience* Latest Edn.

K.S. Shukla, *"Sociology of Deviant Behaviour"* in 3 ICSSR

Survey of Sociology and Social Anthropology 1969-1979 Latest Edn.

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