

## CHAPTER-IV

### LL.B. (Hons.) SYLLABUS

#### **033 Compensatory discrimination**

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

The Indian Constitution visualizes total elimination of social equality. This has to be achieved through a two-pronged strategy. The first strategy consists of providing equality in future and prohibiting discrimination on the grounds of religion, caste, race and sex and affirmatively helping the disadvantaged sections of society to come up to a level from which they should be able to compete with other advanced sections on a footing of equality. The second strategy is called “compensatory discrimination”. In India, the disabled sections such as the scheduled castes, scheduled tribes, other backward classes, women and children are the groups which have suffered most due to social prejudice and denial of opportunities of education. Further, the Constitution talks of “socially and educationally backward classes” as well as “weaker sections of society”. The purpose of this paper is to sensitise the students of law to the problems of such disadvantaged sections and create among them a critical attitude towards policies and methods of compensatory discrimination.

The following syllabus prepared with this perspective will comprise about 42 units of one hour duration each to be spread over a period of one semester.

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

- |   |                |
|---|----------------|
| <b>1. Constitutional Perspectives</b>                             | <b>units 6</b> |
| 1.1. Preamble: Directive Principles of state Policy               |                |
| 1.2. Fundamental Rights - Articles 14, 15, 16, 17, 29(2) and 325. |                |
| 1.3. Article 46 - Directive Principles                            |                |
| 1.4. Seats in Legislature   |                |
| <b>2. Ameliorative Provision</b>                                  | <b>units 6</b> |
| 2.1. Protection of Civil Rights Act.                              |                |

- 2.2. Educational facilities; tuition waiver; age relaxation.
  - 2.3. Welfare programmes.
  - 2.4. Housing preference for S.C./S.T. and economically backward classes dependent women
  - 2.5. Fiscal law: special provisions for the benefit of SC/ST and economically backward classes.
- 3. Special Protection for SC/ST and Backward Classes, women, older persons units 8**
- 3.1. Article 15(4): leading and trend-setting cases
  - 3.2. How much reservation?
  - 3.3. Is reservation a constitutional right?
  - 3.4. Identification of the recipients of compensatory discrimination
  - 3.5. Should compensatory discrimination be on economic criteria?
- 4. Discrimination in Government Service units 6**
- 4.1. Articles 16(4) and 335.
  - 4.2. 78th and 79th Constitution amendment
- 5. Reservation of Seats in Legislatures units 4**
- 5.1. Articles 330, 331, 332, 333 and 334
  - 5.2. Reservation for women
- 6. Social Audit of Compensatory Discrimination units 3**
- 6.1. Prospect and problems
  - 6.2. How has it been implemented?
  - 6.3. How to sub-classify?
  - 6.4. Gradual rescheduling
- 7. Violence against weaker sections units 3**
- 7.1. How far compensatory discrimination gives rise to violence?
  - 7.2. Awareness of rights on the part of SC/ST: a cause of tension.

**8. Women and the Law****units 6**

- 8.1. Article 14, 15, 16
- 8.2. Why discrimination of the ground of sex not forbidden by Article 29(2).
- 8.3. Meaning of Article 15(3)
- 8.4. Women and affirmative action

***Suggested Readings***

M.P.Singh, V.M.Sukha's *Constitution of India*. (1994)

Basu, *Shorter constitution of India*, (1996), Printice Hall, New Delhi.

Indian Law Institute, *The Minorities and the Law* (ILI 1972).

U.Baxi, "Legislative Reservations for Social Justice" in *From Independence to Statehood : Managing Ethnic Conflict in Five African and Indian States*, 210-224 (1984)

U.Baxi, "Untouchability, Constitution, Law and Plan" in *Law and Poverty: Critical Essays* 165 (1988).

Andre Beteille, *The Backward Classes and the New Social Order* (1981).

Mata Din Madholia, *Supreme Court on Reservation* (1981)

Marc Galanter, *Competing Equalities* (1982)

Marc Galanter, "Chaning Legal Conceptions of Caste" in *Structure and Change in Indian Society* edited by Miton Singer and Bernard S.Kohn (1968)

Marc Galanter, "The Untouchability and the Law", *Economic and Political Weekly*, Vol.IV, p.131 (1970)

Parmanand Singh, "Some Reflections on Indian Experience with Policy of Reservation", 25 J.I.L.I 46 (1983).

B.Sivaramayya, *Inequalities and the Law* (1985) (Eastern Book Company).

The students should consult relevant volumes of the Annual Survey of India Law, published by the Indian Law Institute, (see Constitutional Law I, Women and the Law, etc.).

**034 GENDER JUSTICE*****Objectives of the course***

The need to study gender justice as a special subject is because the constitutional guarantees have not achieved the necessary results. The Constitution guarantees equality of status and opportunity and no discrimination inter alia on ground of sex. These fundamental rights did not preclude having special provisions for women.

The planners and the policy makers therefore treated women only as beneficiaries of welfare measures. The hope was the benefits of development would percolate below to all including women and therefore there was no need for special efforts to bring them into the mainstream.

Reality after all these years showed that the trickle down theory of development had not affected the large majority of women.

Equal opportunity guaranteed under the Constitution had meant for the women that 89.5% of the women workers were engaged in the unorganized sector and who were deprived of all the benefits given to women workers under the various labour laws. No discrimination had meant that only 994 women held senior management/administrative posts as against 15,993 in similar jobs. In all India Services women constituted only 5.8%.

By the 6th plan it had been realized that special efforts needed to be made to integrate the women into the development process. The Plan therefore for the first time had a chapter devoted to women and development.

The course will concentrate on gender perspectives and study how the legal provisions continue the considerable bias and help in the continuance of the patriarchal values, which have been a part of our society.

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

**Syllabus**

- 1. Women in Pre-Independence India** **units 3**
  - 1.1. Social and legal inequality
  - 1.2. Social Reform movement in India
  - 1.3. Gandhian Movement
  - 1.4. Nehru's views - Joint Family etc.
  - 1.5. Karachi Congress - Fundamental Rights Resolution, Equality of Sexes.
- 2. Women in post-Independence India** **units 2**
  - 2.1. Preamble of the Constitution - Equality provisions in Fundamental Rights and Directive Principles of State Policy.
  - 2.2. Negative Aspects of the Constitution - Exploitation of Sex not mentioned in Article 23.
  - 2.3. Different personal laws - unequal position of women.
  - 2.4. Uniform Civil Code towards gender justice
  - 2.5. Indian tradition and family ideology: growth of feminism
- 3. Sex Inequality in inheritance Rights** **units 10**
  - 3.1. Continuance of Feudal Institution of Joint family - Women's inheritance position
  - 3.2. Right of inheritance by birth for sons/not for daughter.
  - 3.3. Inheritance right of women under Christian Law.
  - 3.4. Parsi law - daughter's share: half of that of the son
  - 3.5. Parsi law - Mother's property: son and daughter equal share.
  - 3.6. Muslim law.
  - 3.7. Movement towards Uniform Civil Code.
- 4. Guardianship** **units 3**
- 5. Divorce** **units 4**
  - 5.1. Christian Law - discriminatory provision.
  - 5.2. Muslim Law - inheritance and divorce.

- 6. Criminal Law** **units 3**
  - 6.1. Adultery
  - 6.2. Rape
  - 6.3. Dowry death
  - 6.4. Cruelty to married women
  - 6.5. Bigamy
  
- 7. Social Legislation** **units 3**
  - 7.1. Dowry Prohibition
  - 7.2. Amniocentesis
  
- 8. Women and Employment** **units 8**
  - 8.1. Labour force
  - 8.2. Laws to protect women
  - 8.3. Non implementation of protective labour legislation
    - 8.3.1. Maternity Benefits Act
    - 8.3.2. Factories Act
    - 8.3.3. Equal Remuneration Act
    - 8.3.4. Implementation of wage laws of legislation on women employment.
  - 8.4. Inequality in the work place
    - 8.4.1. Additional burden of domestic responsibilities
    - 8.4.2. Male bias
  - 8.5. Absence of legal protection within the family circle
  - 8.6. Lack of neutrality in law
  
- 9. Matrimonial Property** **units 6**
  - 9.1. Law, concept and issues
    - 9.1.1. Separation of property

- 9.1.2. Community of property
- 9.2. Maintenance different system of personal law
- 9.3. Occupational right in matrimonial home
- 9.4. Division of assets on divorce

### ***Suggested readings***

Sivaramayya, B., *Matrimonial property Law in India* (1998), Oxford

Ratna Kapur and Brinda Cossman, *Subversive Sites: Feminist Engagemenmts with Law in India* (1996), Sage

Patricia Smith (Ed.), *Ferminist Jurisprudence* (1993), Oxford.

42nd Report Law Commission Dissenting Note Anna Chandy on provision of adultery p.366.

Towards Equality - Report of the Committee on the Status of Women (Govt. of India), Chapters IV & Section IV: General Conclusions & Recommendations

Lotika Sarkar, *The Law Commission of India* (1988)

Sathe, S.P., *Towards Gender Justice* (1993), *Research Centre for Women's Studies*.

Flavia Agnes, *State, Gender and the Rhetoric of Law reform* (1985). *Research Centre of Women's Studies*. SNDT Women's University, Bombay.

Jaya Sagada, *Law of Maintenance: An Empirical Study* (1996), Tripathi.

Law Commission of India, *One Hundred and Fifty Fifth Report on the Indian Penal Code, 1860* (1997)

**035 ORESTS AND THE LAW*****Objectives of the course***

Environment law is becoming an increasingly important subject in the law curriculum in light of the major ecological crisis that our nation is presently facing. This crisis is simultaneously also a natural resource crisis, endangering the survival of the poor who are directly dependent on the natural resources for their fuel, fodder, food and housing needs. Laws concerning forests is of prime significance in relation to all environmental laws. This is mainly because natural forests form the primary basis for the ecological systems. Biological diversity, prevention of soil erosion, flood control and maintenance of over and underground water systems, are all dependent on the existence of natural tree coverage. A course on forest laws should be able to show the inter-connection between deforestation, drought, floods and the ecological cycles. Since the Indian forests are inhabited by the tribals, any study of forests laws should also lead to the exposition of the problems faced by the tribals. The course should be able to bring out whether, and how far, the various forest laws have contributed to the ecological devastation of India, and in what ways they are responsible for the impoverishment of the tribal and the rural people.

The following syllabus prepared with this perspective will comprise of about 42 units of one hour duration each to be spread over a period of one semester.

***Syllabus***

- 1. Introductory units 4**
  - 1.1. A Geographical and economic survey of the forest resources of India over this century:
    - 1.1.1. Tree and plant resources
    - 1.1.2. Wild life resources
    - 1.1.3. Human Habits and cultures
- 2. Historical Background to the making of the forest laws in India units 4**
  - 2.1. The making of the Indian forest laws

2.1.1. The debates between the British administrators on the question of people's and the sovereign's rights in forests.

2.2. The acquisition of village and zamindari forests by the State legislation

**3. The modeling of the state Acts on the Central (1927) act, after independence, and its consequences** **units 7**

3.1. The details of the central forest Act, in terms of the rights of the state government to declare and reserve forest areas, set up the administration under the Act and enforce punitive measures for violation of the Act.

3.2. The constitutional arrangement for Center and State powers over forest land and forest resources.

3.3. Procedure of forest acquisition under forest laws and its relation to the Land Acquisition act; with special reference to:

3.3.1. fairness of the procedure, and whether the procedure has been satisfactorily implemented;

3.3.2. settlement of rights, and the powers of the forest;

3.3.3. occupancy and group rights of the local inhabitants.

**4. State monopoly and the degradation of India's forests** **units 7**

4.1. Forests as a source of state revenue under the Act, and the extent of exploitation of India's forests resources during the two world wars.

4.2. The commercialization forests and the forest laws and its exploitation by the Independent India governments.

4.3. The vesting of village forests in the panchayats under the Panchayat Acts: the reasons for the failure of regeneration of village forests.

4.4. Other reasons for the degradation of forests: agricultural policy, industrial policy, population growth, land use policy, etc.

4.5. Wild Life Protection

4.6. Conservation of biological diversity.

**5. Problems in conservation on forest** **units 7**

5.1. The history behind the Forest Conservation Act 1980 and its amendments.

- 5.2. The problem of balancing the industrial, commercial or tourism demands against conservation.
- 5.3. The problems of submergence of forests in big hydroelectric or irrigation projects.
- 5.4. The difficulties in implementing India's National Forest Policies.
- 5.5. International Conventions concerning conservation and protection of natural resources

## **6. Problems of Afforestation**

**units 11**

- 6.1. Afforestation programmes of the Central and State governments: national, regional and international mechanisms.
- 6.2. Afforestation programmes under rural development and poverty alleviation schemes, by the Central and State Governments.
- 6.3. Law reform required to make afforestation successful, in terms of:
  - 6.3.1. changes in the Panchayat Acts;
  - 6.3.2. people's participation;
  - 6.3.3. rural banking laws;
  - 6.3.4. rural credit laws;
  - 6.3.5. usufruct and patta rights;
  - 6.3.6. marketing and harvesting rules of trees on private lands;
  - 6.3.7. timber transit rules
  - 6.3.8. land use rules, under the ceiling Acts, Land reforms and Land Development Act.
  - 6.3.9. Forest offenses.

### ***Suggested readings***

R.N.Choudhory, *Forest Laws in India*(1992), Orient Publishing Company, N.Delhi.

Leelakrishnan.P., *The Environmental law in India* (1999), Ch.II.pp. 9-32, Butterworths - India, New Delhi.

B.R.Beotra, *Law of Forests (Central & State)* 6th Edition 1999, The Law Book Company.

A Krishnan, *Forest Laws in India*, 1998, Asia Law House

Srivastava, *Encyclopedia on forest* 1998. Asia Law House.

Padala rami Reddy, *Forest Laws*, 1989, Asia Law House

Baden Powel, *Manuel of Jurisprudence for Forests Officers* (1982)

Anil Agarwal, (ed.), *"The State of India's Environment: The Second Citizen's Report"* (1985).

Chhatrapati Singh, *Common Property and Common Poverty* (1985)

Chhatrapati Singh, *"Forestry and the law in India"*, in 29 Journal of India Law Institute (1987).

Karl Marx, *"The laws on the Theft of Woods"*, in Rhenisce Zeitung Werke 113-16, 145 ff. Vol.I (1956)

Ramchandra Guha, *"Forestry in Pre-British India"* in 18 Economic and Political Weekly 45, (1983).

**036 AGRARIAN REFORMS: SELECT PROBLEMS*****Objectives of the course***

Agrarian reforms, however, weakly implemented, occupy a pivotal place in the Independent India. Many of the developments in constitutional law owe their existence to the movement of land reforms. Although land reforms in their sweep include abolition of Zamindaris and intermediaries, the topics that need specific emphasis are tenancy reforms, ceilings on land holdings, and consolidation of holdings.

As a background, the course is expected to deal with the judicial response to land reforms. No doubt, the land reforms conform to the broad policies and guidelines formulated by the planning commission, the various task forces and conferences at the central level; but in view of the fact the agriculture is in the State List, the legislations, the critical aspects pertaining to implementation and the lag between the practice and the precept will have to be studied in the context of each State.

More importantly, tenancy reforms and land ceilings have brought in their wake certain developments like lease in arrangements, underground tenancies and capitalist farming, cutting at the root of some of the basic assumptions of land reforms. The experience of states varied according to their context. Thus, as pointed out by the National Commission on Agriculture, in the Punjab Lease-in arrangements have been resorted to, wherein West Bengal Lease-in arrangements by big landowners to small landowners still continue. The course should take note of these developments pertaining to the State where the course is being offered. Also, special emphasis should be laid on aspects like criteria that have been adopted in the State relating to the selection of beneficiaries for distribution of surplus land. Problems of the beneficiaries since getting the land and retaining it should also be considered.

Land consolidation and cooperative farming have been neglected in the study of Land Reforms. The course content should remedy this drawback.

The following syllabus prepared with the above objectives will comprise of 42 units each of one hour duration spread over a period of one semester.

**Syllabus**

- 1. Pre-Independence position** **units 4**
  - 1.1. Zamindari Settlement
  - 1.2. Ryotwari Settlement
  - 1.3. Mahalwari System
  - 1.4. Intermediaries
  - 1.5. Absentee Landlordism
  - 1.6. Large holdings
  
- 2. Constitutional Perspectives** **units 4**
  
- 3. Post-Independence Reforms**
  - 3.1. Abolition of Zamindaries
  - 3.2. Abolition of Intermediaries
  - 3.3. Tenancy Reforms
    - 3.3.1. Land to the tiller
    - 3.3.2. Personal Cultivation
    - 3.3.3. Voluntary Surrenders
  
- 4. Evaluation of Land Reforms** **units 10**
  - 4.1. Lack of Political will as an impediment to land reforms
  - 4.2. Role of Law
    - 4.2.1. Role of Law and Legal Profession in implementation
    - 4.2.2. Imposition of bars to the jurisdiction of civil courts
  - 4.3. Role of administrative agencies
  - 4.4. Lack of demand from beneficiaries
  - 4.5. Lack of organization of beneficiaries
  - 4.6. Other constraints
    - 4.6.1. Moral
  - 4.7. Results of Land reforms
    - 4.7.1. Leasing in and Leasing out

- 4.7.2. Underground tenancies
- 4.7.3. Green Revolution and development of capitalistic farming

**5. Socialistic Goals and Land Management** **units 6**

- 5.1. Co-operative Farming
  - 5.1.1. Foreign models
  - 5.1.2. Avadi Resolution
- 5.2. Ambedkar's views on Socialization of Land
- 5.3. State Farming in Mixed Economy
- 5.4. Problems and perspectives of Nationalization of Land

**6. Consolidation of Holdings** **units 10**

- 6.1. Socio-economic background of land consolidation
- 6.2. Experience in land consolidation
  - 6.2.1. Foreign experience
  - 6.2.2. Indian experience
- 6.3. Legislation relating to consolidation
- 6.4. Procedures relating to consolidation
- 6.5. Survey and recording of rights

***Suggested readings***

Upendra Baxi, *Towards a Sociology of Indian Law*, pp.25-65 (1986)

Atul Kohli, *The State and Poverty in India* (1987)

Francine R.Frankel, *India's Political Economy:1947-1977* (1988)

L.H.Rudolph and S.H.Rudolph, *The Political Economy of Lakshmi* (1987).

Mohamed Ghouse, "Nehru and Agrarian reform" in Rajeevan Dhaven and Thomas Paul (eds.), *Nehru and the constitution* (1992), Thripathi.

Walter C.Neale, *Developing Rural India Policies and Preogress* (1990) Allied

Alice Jacob, *Land Reform and Rural Change* 6-19 (1992), Land Reforms in India: A Review, IASSI, quarterly 1992, Vol.X, Numbers 3 and 4.

## **037 JUDICIAL POWER AND JUDICIAL PROCESS**

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

Prior to independence the nature of judicial process was viewed restrictively and narrowly as confined to interpretation of the laws. But after the advent of freedom, the founding fathers envisaged an important and wider role to the judiciary, namely, to protect the liberties of citizens and to declare invalid any law that abridges the Fundamental rights guaranteed under the constitution. Thus the nature of judicial process received a qualitative change under the constitution. The judges therefore in the discharge of their functions had to balance the social interests with individual interests.

In the sixties the conservative judges invalidated many land reform legislations as violative of fundamental rights and constitution had to be amended from time to time to save agrarian reforms from judicial onslaughts. Many legislations dealing with land reforms were included in the 9th schedule to protect them from judicial invalidation.

A great change occurred during the late seventies. Activist judges galvanized the judicial process by relaxing the rules of locus standi on matters involving public interest and in favour of groups who are too weak and oppressed to assert their rights. In the decades that followed, courts exercised power to summon the authorities of the State and giving them directions in a variety of matters of public interest.

At the same time, one notices mounting arrears of cases before the courts and inordinate delays experienced by the litigant public in the disposal of cases which resulted in the people losing faith in efficacy of the judicial process.

These developments in turn have given rise to tendencies to manipulate the appointment of judge at various levels. Since early seventies, views have been expressed that “Committed judges” or “activist” judges or “progressive” judges should be appointed. The executive’s role in the appointment of judges and in transferring judges came in for criticism. Of recent times is the significant of primary of judiciary in judicial appointments. Will this be above criticism? There is thus a need to study the contemporary judicial process in India.

The following syllabus is prepared with this perspective will comprise 42 units of one hour duration each to be spread over a period of one semester.

## **Syllabus**

- 1. The Need for conferment of Power** **units 3**
  - 1.1. Federal Structure
  - 1.2. Separation of powers under the Constitution
  - 1.3. Protection of the Rights of Individuals
- 2. Judicial Structures** **units 4**
  - 2.1. Hierarchy of Courts
  - 2.2. Civil Courts and Criminal Courts
  - 2.3. Administrative and other Tribunals
- 3. Appointment of Judges** **units 5**
  - 3.1. Method of appointment of judges
    - 3.1.1. Supreme Court
    - 3.1.2. High Courts
    - 3.1.3. District Courts
  - 3.2. Available alternatives to the existing modes of appointment of judges
    - 3.2.1. Collegium
    - 3.2.2. All India Judicial Service
  - 3.3. Removal and transfer
- 4. Who are Judges?** **units 3**
  - 4.1. Existing provisions and practices
  - 4.2. Who ought to be judges?
  - 4.3. Background of Judges
    - 4.3.1. Caste
    - 4.3.2. Class

- 4.3.3. Sex
- 4.3.4. Education
- 4.3.5. Reservation

## **5. Kinds of Power**

**units 27**

### 5.1. Constituent Power

- 5.1.1. Judicial review on constitutional amendments: Parliament's unlimited power
- 5.1.2. Fundamental rights as unamendable rights
- 5.1.3. Basic structure theory: new dimensions

### 5.2. Expansion of Interpretations and constitutional developments: life, liberty and equality

- 5.2.1. Due process
- 5.2.2. Death penalty
- 5.2.3. Right to livelihood
- 5.2.4. Speedy trial
- 5.2.5. Legal aid
- 5.2.6. Right to a health environment
- 5.2.7. Applying international norms and conventions

### 5.3. Affirmative use of Judicial power

### 5.4. Contempt power

### 5.5. Rule-making power - Article 145

### 5.6. Superintendence power - Article 227

### 5.7. Appellate, Original and Inherent powers and power to constitute Benches

### 5.8. Doing complete justice - Article 142

## **6. Limits of Judicial Power**

**units 6**

- 6.1. Self-imposed limitations
- 6.2. Res-judicata
- 6.3. Accountability: To whom? On what criteria?
  - 6.3.1 To the Profession
  - 6.3.2 To the Constituents
  - 6.3.3 To the people, Parliament and Press

- 7. Judicial power versus Legislative power** **units 2**
- 8. Judicial process - kinds of processes** **units 4**
  - 8.1. Adversary
  - 8.2. Inquisitorial
  - 8.3. Arbitration
  - 8.4. Public InterestLitigation
- 9. Judicial Process distinguished from other process** **units 2**
  - 9.1. Legislative Process
  - 9.2. Administrative Process
  - 9.3. Conciliation
  - 9.4. Mediation
- 10. Stage in Judicial Process** **units 2**
  - 10.1. Advisory
  - 10.2. Pre-trial
  - 10.3. Trial
  - 10.4. Appellate
  - 10.5. Appeal
  - 10.6. Revision
- 11 Elements of judicial proces** **units 5**
  - 11.1. Practice and Procedure
    - 11.1.1. Fact finding
    - 11.1.2. Issues
    - 11.1.3. Evidence
    - 11.1.4. Arguments
    - 11.1.5. Judicial reasoning and judicial techniques
    - 11.1.6. Reporting
    - 11.1.7. Attendance and management

- 12 Drawbacks of Judicial Process** **units 6**
- 12.1. Costs
  - 12.2. Delay
  - 12.3. Inadquate representation
  - 12.4. Class Structure
  - 12.5. Technicality
- 13 Judicial process and Legal profession** **units 6**
- 13.1. Class Character
  - 13.2. Educational background
  - 13.3. Legal profession and social justice in post-Independent India.
  - 13.4. Professional Ethics - Theory and Practice
- 14 Judicial Process and Class Structure** **units 6**
- 14.1. Property Relations
  - 14.2. Tribals, Slum Dweller, Socialist Principles
  - 14.3. Equal Pay for Equal Work
- 15 Access to justice - locus standi: PIL** **units 4**
- 15.1. Legal services authority

### ***Suggested readings***

UNESCO, Commission on Human Rights: The Administration of justice and the Human Rights of detainees: Study of the Independence and Impartiality of the Judiciary, Jurors and assessors and the Independence of Lawyers, 1985, 1987, 1988, 1991, 1992, 1993, 1995.

Upendra Baxi, *Towards a Sociology of India Law* 108-117 (1986)

Upendra Baxi, *Liberty and Corruption: Antulay Case and Beyond* (1990)

Rajeev Dhavan and Alice Jacob, *Selection and Appointment of Supreme Court Judge, A case study* (1978), Tripathi

K.L.Bhatia, et.al., *Delay - a riddle wrapped in mystery inside an enigma*, JILI (1995)

**038 LAW AND THE DISABLED*****Objectives of the course***

The disabled do need a very special attention. This has been so recognized in our Constitution. Within the limits of its economic capacity and development, under Article 41, the state is directed to make effective provisions for securing right to work, to education, to public assistance in cases of unemployment, old-age, sickness and disablement, and other cases of undeserved want, Again in Article 46, the State is directed to promote with “special care” the educational and economic interests of the “weaker sections” of society, obviously including within its ambit the disabled. The concern of the international community is reflected in the resolution of the general Assembly of the United Nations, proclaiming 1981 as the International year of the Disabled persons with the following objectives.

- (i) Helping disabled persons in their physical and psychological adjustment to society.
- (ii) Promoting all national and international efforts to provide disabled persons with proper assistance, training, care guidance, to make available opportunities for suitable work and to ensure their full integration in society.
- (iii) Encouraging study and research projects designed to facilitate the practical participation of disabled persons in daily life, by improving their access to public buildings and transportations system.
- (iv) Educating and informing the public of the rights of disabled persons to participate in and contribute to various of economic, social and political life.
- (v) Promoting effective measures for prevention of disability and for rehabilitation of disabled persons.

India is a signatory to this Resolution and is, hence, obliged to realize its objectives through a sustained national plan of action by integrating the whole range of efforts with the national development plans.

The purpose of evolving this course as an optional paper for the students of LL.B. (Hons.) is to provide to a body of motivated students a critical exposure in an area of social interest which has hitherto remained unexplored. In this course they would also gain insight into a multidisciplinary developing remedial jurisprudence.

The following syllabus prepared with this perspective will comprise 42 units of one hour duration each to be spread over a period of one semester.

### **Syllabus**

#### **1. Introductory units 2**

- 1.1. Why this course?
- 1.2. Magnitude of disablement

#### **2. Conceptions of Disability units 3**

- 2.1. Moral of religious disability

(resulting into excommunication or degradation as for example under Shastric law, where such disabilities were caused by irreligion or renunciation of religion: unchastity; addiction to vice: enmity to father or to propositus; adoption of religious order, which is tantamount to civil death).

- 2.2. Pathological disability: Physical and mental
- 2.3. Social disability

(Social conception of disability does not necessarily follow the logic of biological nature of reality, and vary from society to society, and even within the same society with the flux of time)

- 2.4. Legal disability as expounded under different laws
- 2.5. Kinds of disability:
  - 2.5.1. Temporary and permanent
  - 2.5.2. Partial and total

#### **3. Potential sources of disability units 3**

- 3.1. Congenital disability
- 3.2. Disability caused by natural calamity - Floods, drought, epidemics, etc.
- 3.3. Disability caused by accident
- 3.4. Disability as a result of working in high risk industrial establishments

- 3.4.1. Private undertakings - e.g. Bhopal case
- 3.4.2. Public undertakings - e.g. Atomic plants
- 3.5. Disability which is self-invited or self-inflicted (drinking, smoking, drug addiction)
- 3.6. Disabilities of agencies

**4. Basic approaches to Disability** **units 3**

- 4.1. Traditional approach of sympathy and charity
- 4.2. Modern approach of rationality, secularity and human dignity

**5. Determination of disability**

- 5.1. Varying criteria under different laws
- 5.2. Administrative process for determining disability:
  - 5.2.1. Issues of policy and law
  - 5.2.2. Reference to medical opinion for determining the nature and extent of disability
  - 5.2.3. Evaluation of the nature and extent of disability by the adjudicating authority
  - 5.2.4. Appeals against adjudication

**6. Concern for the Disabled: In Retrospect at the International level** **units 11**

- 6.1. Initiatives of I.L.O. through
  - 6.1.1. International Labour conference of 1925 (recognizing the vocational needs of the disabled by including a provision in the Workmen's compensation or the vocational re-education of injured workmen).
  - 6.1.2. International Labour Conference of 1944 (re-affirming in the Employment (Transition from War to peace) recommendation that disabled workers should be provided full opportunities for rehabilitation, specialized vocational guidance, training,. Retraining and employment on useful work).
  - 6.1.3. International Labour Conference of 1952(adopting the Vocational Rehabilitation (Disabled) Recommendation, articulating the essential elements of vocational rehabilitation and showing how to apply them in practice).
  - 6.1.4. International Labour Conference of 1975 (calling upon all public authorities and organizations of employers and workers to promote maximum opportunities for disabled persons to perform, secure and retain suitable employment).
- 6.2. U.N. Declaration of Human rights 1948 (proclaiming), inter alia, that every one has the right to an adequate standard of living and to security in the event of unemployment, sickness and disability).

- 6.3. U.N.General Assembly Declaration of the Year 1968 as the International year of Human Rights
- 6.4. U.N.General Assembly Declaration on the Rights of Mentally Retarded Persons (1971).
- 6.5. U.N.General Assembly Declaration on the Rights of Disabled person (1975)
- 6.6. U.N.General Assembly Resolution of 1976 declaring 1981 As the International year of Disabled persons with the objectives to ensure full “participation and equality” to the disabled and calling upon member nations and organizations concerned to adopt measures to implement those objectives.
- 6.7. U.N.General Assembly Resolution of 1998 declaring 1999 as the international year of older persons.

At the National Level

- 6.8. Disabilities removal Acts:

The Caste Disabilities Removal Act, 1850: Hindu Inheritance (Removal of Disabilities) Act, 1928; Hindu Succession Act, 1956.

(The crucial question to be asked here is: For whose benefit exclusion from inheritance of partition was sanctioned? For the benefit of the heir? Or, Disabled himself or herself?)

- 6.9. The persons with disabilities (Equal opportunities, protection of rights and full participation Act 1995)
- 6.10. Section 84 of the Indian Penal Code, 1960 (absolving a person of unsound mind from criminal liability for commission of certain offences).
- 6.11. Indian Contract Act, 1872: sections 11 and 12 (absolving a person of unsound mind from a contractual liability).
- 6.12. Compensation for injury for work-related accidents.
- 6.13. Indian Leprosy Act of 1989 and the Mental Health Act 1987
- 6.14. The Factories Act, 1948 (aiming at promotion of health, safety and welfare of workers).
- 6.15. Successive Five-Year Plans and the National Plan of Action (1980) reflecting the concern articulated in constitutional directives as well as the commitment made as a signatory to the U.N. Resolution on the Welfare of the Disabled).
- 6.16. National Policy on older persons (Government of India)

**7. Ameliorative Measures for the Disabled****units 10**

- 7.1. Reservation-Priority-Relaxation of rules - policy of the Central Government for the employment of the disabled in central services and Government of India public sector undertakings with a provision of interchangeability and carrying forward (Note: Study of a similar corresponding polity in respective States is recommended).
- 7.2. Reservation of seats in educational institutions
- 7.3. Relaxation of conditions for admission in Industrial Training Institutions (I.T.I.) for physically handicapped where they are otherwise suitable and fit for training
- 7.4. Special scholarships
  - 7.4.1. The Scheme of the Ministry of Social Welfare for granting scholarships for general education (From class IX onward) and for technical training at certificate, diploma and degree levels).
  - 7.4.2. Scholarships for the blind, deaf and orthopaedically handicapped, extending upto doctoral level under special schemes of the government.
  - 7.4.3. U.G..C. junior and senior doctoral and post-doctoral fellowships.
- 7.5. Grant-in-aid to voluntary social welfare agencies serving the handicapped.
- 7.6. Special financial assistance to organizations engaged in the promotion of education and training of the disabled.
- 7.7. Special facilities for improving qualifications, like the permission to appear as private candidate in various examinations; permission to type-write the answers: provision of amanuensis in the examination
- 7.8. Scheme of integrated education for placing the handicapped children along with normal ones with the help of special teachers, aids and other facilities
- 7.9. Incentives for self employment, such as soft credit loans from banks and other financing agencies for starting small business or a small scale industry.
- 7.10. Special exemptions in income tax (Section 80D of the Income-tax Act allows deduction in respect of medical treatment of the handicapped dependents; whereas under section 90U an individual who is totally blind or physically handicapped is entitled to a deduction of Rs.10,000 in computing taxable income)

**8. Some ponderable issues****units 10**

- 8.1. Whether a disabled person has such personal right as right to marry, irrespective of the nature of his disability, say, incurable insanity.

(Such a question is pertinent in the discussion of various conditions laid down for contracting or solemnizing marriage, the violation of which results in either treating the marriage void or declaring it annulled or permitting divorce).

- 8.2. If the answer to the above question is in the affirmative, than should be also have a right to procreate children? Can the State resort to compulsory sterilization in such a case in the interest of society?
- 8.3. The problem of euthanasia vis-à-vis disabled persons suffering from incurable and painful disease. What kind of life is worth preserving and who should decide that a life should be prolonged. Should it be decided by the doctors on the basis of some technological definitions of the quality of life? Or, should such matters be left to be handled by the patients, the families, or failing those, to the course, with doctors in advisory roles?
- 8.4. Is there a right not to be born and suffer from genetic disease? Will genetically afflicted persons sue their parents for not preventing their births? If a right not to right belong? Can society oblige couples by law to have children they do not want?
- 8.5. Institutionalization of the disabled: should it be a substitute for family shelter?
- 8.6. Shouldn't there be a compulsory comprehensive social insurance to cover all risks undeserved wants?

### ***Suggested readings***

The following articles in the special issues of the 34 Punjab University Law Review, (1982) may be usefully referred:

S.L.Sharma, "*Changing social structure and the status of the disabled*", at 114-21

J.K.Mittal, "*Conceptual Framework for the welfare of disabled persons*" at 42-60

Paras Diwan, "*Keynote paper*" on the disabled, at 1 - 14.

Bal Krishna, "*Disabled and the tax laws*", at 25 - 30

Balram K. Gupta, "*The Rights of the disabled: a foot note on the constitutional position*", at 61-63

I.P.S.Sidhu, "*Disabled and law of corporations*", at 31-53

R.K. Bangia, "*Compensation for pre-natal injuries to children born disabled*", at 38-41.

Virendra Kumar, *"Institutionalisation of the disabled: should it be a substitution for the family shelter"* At 15-24

Special issue of the 37 Indian Journal of Public Administration, (1981) consists of the following useful reports/articles.

Report of the Director-general to the International Labour Conference, Part-I (1981)

S.R.Mohsini, *"Emerging concept of welfare of the physically handicapped"*.

V. Ramalingaswami, *"Rehabilitation of the disabled"*

H.J.M. Desai, *"The need for radical change in the administrative structure of our services for the disabled"*.

Seeta Sinclair, *"A Future of the mentally handicapped"*

P. Trivedi, *"Is disability a handicap and need it be perpetuated"*

Bata K.Dey, *"Reservation for the handicapped: Constitutional and programmatic issues"*

S.K.Verma and Anil Chawla, *"The Disabled - their problems and solutions"*

Mikhavilli Seetharam, *"Legislation for rehabilitation services for the disabled in India"*

Ravindran Nair, *"Welfare of the handicapped - the role of voluntary organizations"*

Human Rights, A compilation of International instruments (1987).

Year Book on Human Rights for 1975-76 (1981)

For the textual law on exclusion from inheritance under Hindu law, see:

Golap Chandra Sarkar Sastri's Hindu Law, Ed. Rishindra Nath Sarkar, at 502 (Cal. 1940)

Mayne's Treatise on Hindu Law and Usage, at 713-17 and also the usefully collected judicial decisions in note (k) at 714 - 15 and note ® at 716.

National Plan of Action for the International year of Disabled Persons (1980).

Amita Djamda, Legal Order and Mental Disorder (1999) Sage

## **039 IMPLEMENTATION OF HUMAN RIGHTS STANDARDS**

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

This is essentially a seminar, rather than a course followed by examination. Apart from grounding in international Human Rights Instruments, the class would be expected to develop skills for:

- human rights advocacy by raising public consciousness
- building of campaigns for public education of the legislators
- styles of lawful protest against violations of rights
- devising official and popular means of investigation of human rights standards.

Non-governmental organizations in the region should be able to assist the class as well as judges, prosecutors and police officials.

The problems to be selected must be contemporary and widely discussed in the region. Students must be encouraged to devote half the course-time in seeking to develop the foregoing skills.

#### **1. Information Analysis**

Perhaps, the essential starting points will be provided by the local, regional daily newspaper or a periodical. The first skill students should develop is the skill of preparing a dossier on how violation of rights is actually brought to public notice, how it is followed up in mass media, how different priorities are assigned by it, the level of public response (from letters to editor, reports of meetings, processions and demonstrations).

#### **2. Legal Analysis**

The dossier should then be subjected to legal analysis. Are facts disclosed such as to constitute prima facie case for criminal, civil or other (social action litigation) proceedings? Briefs should be prepared for prosecution and defence.

#### **3. Verification**

Circumstances permitting, student must be encouraged to visit the scene of the happening and cull out relevant information.

**4. Campaigning**

Based on (2) and (3), students should be encouraged to outline scenarios for active campaigning to generate courage, interaction and official action. The kinds of briefing materials for the press, NGOs, Police, concerned public authorities should be prepared.

**5. Past Violations**

Wherever violations of reports by Amnesty, PUCL or PUDR are available, these must be examined in terms of their credibility, meticulousness and analysis and legitimacy of inference regarding violation .

**6. Law Reform**

The class must be encouraged to study leading international human rights instruments to ascertain areas where law reform is needed.

**units 42**

***Suggested readings***

Paul Segart, *The Lawful Rights of Mankind* (1986)

## **040 DISARMAMENT AND PEACE STRATEGIES**

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

Disarmament has been a major issue in international relations for creating conditions of peace. Even the developing nations have found it essential to divert their meager resources for the acquisition of sophisticated arms and a significant proportion of national resources is pent on acquisition, production and upkeep of military hardware.

The ownership patterns for mass production of armaments need a close scrutiny and the methods used by giant manufacturers of sophisticated armaments to push sales have recently come under severe attack. These have a direct bearing on national policies for production and sale of armaments. The implications of transfer of technology are grave and need a thorough understanding of the issues involved.

The course will explore the alternative strategies for creating conditions of peace. This would involve a critical examination of dispute resolutions and crisis management techniques, presently in vague equitable allocation of world's resources and economic development of less developed countries.

The following syllabus prepared with this perspective will be spread over a period of one semester comprising 42 units of one hour duration.

### ***Syllabus***

- 1. The conceptions of Disarmament** **units 4**
  - 1.1. Disarmament and world security, Military alliances, Arms Trade.
  - 1.2. Changing conceptions of disarmament
  
- 2. The Dynamics of the Arms Race** **units 4**
  - 2.1. The reasons of arms race including nuclear weapons
  - 2.2. Consequences of arms race in terms of resources and economic development
  - 2.3. International implications of the arms race

- 3. Disarmament and the United Nations** **units 6**
  - 3.1. History of the Failure of disarmament efforts
  - 3.2. U.N. Disarmament Commission, its achievements and limitations
  - 3.3. U.N. Efforts towards Disarmament
  
- 4. Nuclear Disarmament, Problems and Perspectives** **units 6**
  - 4.1. Nuclear Non-Proliferation treaty and Intermediate Range Missile Treaty
    - 4.1.1. Nuclear Test Ban Treaty 1963, 1987
    - 4.1.2. Comprehensive Test Ban Treaty
  - 4.2. International regulation of nuclear weapons
    - 4.2.1. Nuclear Policy : India
  
- 5. International Regulation of Biological and Chemical Weapons of Mass Destruction** **units 6**
  
- 6. Sea, outer space and special regimes** **units 8**
  - 6.1. Law of the sea
  - 6.2. International Regulation and Control of Militarization of Outer Space
  - 6.3. Space Treaty 1967, Antarctica 1959,
  - 6.4. Moon Treaty 1979
  
- 7. Conceptions of peace and of conflict management in international order** **units 8**
  - 7.1. Conserving the world's resources
  - 7.2. Assisting the economic development of Less Developed Countries
  - 7.3. Harnessing science and technology for development
  - 7.4. Protection of Human Rights
  - 7.5. Peaceful Settlement of International Disputes
  - 7.6. Towards a Balanced World Trade
  - 7.7. Peace Research and its significance

**Suggested readings**

Burns H. Weston, *Towards Nuclear Disarmament and Global Security: A search for Alternatives* (1982)

J.School, *The Fate of the Earth* (1982)

J.N.Singh, *Use of Force Under International Law* (1984)

Julius Stone, *Legal Controls of International Law* (1954)

M.Walzer, *Just and Unjust Wars I*(1979)

Allen Gotlet, *Disarmament and International Law* (1985)

Bruce A Hurwitz, *The Legality of Space Militarization* (1986)

United Nations Commission on Environment and Development. *Our Common Future* (1987)

U.N.Common Security: A programme for Disarmament The Report of the Independent Commission on Disarmament and Security under the Chairmanship of Olef Palme (1982).

The Course must prescribe current readings from leading international law reviews; the most important source, among non-legal journals, is *Alternatives* - a quarterly published by Centre for the Study of Developing Societies, Delhi.

**041 EDUCATIONAL PROCESS, PLANNING AND THE LAW*****Objectives of the course***

Education is an important instrument of social control, which enriches human life materially as well as culturally. Education at the grassroots level means freedom from ignorance, which ultimately must also mean freedom from exploitation and oppression. Education epistemologically is liberating, modernizing, and humanizing also. In a way, education is a resource, which must be distributed equitably in terms of opportunities. Education as a resource is precious because its acquisition opens up opportunities for competing for other material resources such as wealth, status, power or excellence. Education and law, both are resources, and both are means to acquire other resources. Law as supreme regulator of political economy has to umpire, monitor as well as manipulate the distribution of education as a resource. This is what we mean by educational planning which has to be informed by social transformational aspirations. But educational planning does not mean regimented orchestrated performance of various factors of the educational process. Some autonomy of such factors is necessary to lent legitimacy to educational process. A delicate balance between autonomy and regulation has to be maintained this paper will deal with education as a resource, its planning by the law and legal regulation of various administrative, legislative, and quasi judicial processes of educational institutions or functionaries and interaction between such institutions and the government and the people .

The following syllabus prepared with this perspective will comprise about 42 units of one hour duration each to be spread over a period of one semester.

- |  |                |
|--|----------------|
| <b>1. Education: Constitutional Allocation of Power</b>                        | <b>units 6</b> |
| 1.1. Articles 246 read with the Seventh Schedule                               |                |
| 1.2. Concurrent List Entry 25.   |                |
| 1.3. Union List Entries 63, 64, 65, and 66.                                    |                |
| 1.4. <i>Gujarat University v. Srikrishna</i> A.IR. 1963 SC 703                 |                |
| 1.5. Why was education transferred from the State List to the Concurrent List? |                |
| 1.6. Areas of Central legislation over Education, the UGC Act, etc.            |                |

- 2. Constitutional Goals** **units 6**
  - 2.1. Right to Education
  - 2.2. Free and compulsory education for children below 14 years
- 3. Equality of opportunity to education** **units 6**
  - 3.1. Articles 14, 15, 16, 21, 29(2), 41 and 45
  - 3.2. Reasonable classification
  - 3.3. Affirmative action and the deprived
- 4. Minority and Education**
  - 4.1. Minority Rights - Right to conserve distinct script and culture
  - 4.2. Right to establish and administer educational institutions of their choice
  - 4.3. Minority Institutions - right to compensation
  - 4.4. No discrimination in grant-in-aid
- 5. Government Control and Educational Institutions** **units 5**
  - 5.1. Chancellor - Governor
  - 5.2. How are Vice-Chancellors appointed?
  - 5.3. Government power to nominate members on various university bodies and the role of these bodies
  - 5.4. Zilla Parishad and Primary-Secondary Schools Relationship
  - 5.5. Funding of Education
  - 5.6. Autonomy v. Social Control
- 6. Fair Hearing in Educational Matters** **units 4**
  - 6.1. Students - Discipline and Action, Mass copying, etc.
  - 6.2. Staff v. Management
  - 6.3. Grievances
  - 6.4. Rules of Natural Justice

- 7. Dispute settlement Mechanism for Educational Institution** **units 6**
- 7.1. Chancellor
  - 7.2. Educational Tribunals
  - 7.3. Judicial Review
- 8. Market economy, education and the law** **units 3**

### ***Suggested readings***

B.M. Sankhdher, *Encyclopaedia of Education System in India* 1999, Deep Publications.

P.L.Mehta, R.Poonga, *Free and Compulsory Education*, (1997), Deep & Deep Publications.

R.D.Agarwal, *Law of Education and Educational Institutions* (Higher, Secondary and Basic Institutions - Govt., aided, Public Private institutions and Universities), 1999, The Law Book Company.

D. Thakur & D.N.Thakur, *Studies in Educational development*, (1993), Asia Law House

R.D.Agarwal, *Law of Education and Educational Institutions in India*, (1983).

Upendra Baxi, "Mass copying : should Courts Act as Controllers of Examination?" 6& 7 Delhi Law Review 144-153 (1978-79)

Indian Law Institute, *Minorities and the Law* (1972)

S.P. Sathe, "Fundamental Rights and Directive Principles of State Policy" in Constitutional Developments since Independence (Indian Law Institute) (1974)

G.S.Sharma, (ed.), *Educational Planning: Its Legal and Constitutional Implications in India*, (1967)

Sreenivas Rao "Writs Against Educational Institutions" 26 Journal of the Indian Law Institute 40 (1984).

Cases reported in Education and Educational Institutions Cases, Malhotra and Company.

Students should consult relevant volumes of the Annual survey of India Law Published by the Indian Law Institute (Constitutional Law, I, II, Administrative Law and Education).

**042 LEGAL PROFESSION AND LEGAL ETHICS*****Objectives of the course***

Lawyers are supposed to perform an important function of helping people to abide by the law. They are officers of courts and supposed to help them arrive at the truth and just resolution of disputes. In the successful operation of the lawyers to the cause of Justice, various ethical questions arise. The purpose of this paper is to acquaint the student with:

- (a) Social background of the lawyers;
- (b) How far career opportunities in the profession are determined by their caste/class/sex context and public relations backgrounds?
- (c) How far legal profession is apprised of the law as an instrument of social change?
- (d) How far legal profession is apprised of the law as an instrument of social change?
- (e) How far it can participate meaningfully in the transformation effort?
- (f) What ethical standards are expected of the lawyers and how are such standards enforced ?

The following syllabus prepared with this perspective will comprise 42 units of one hour duration each to be spread over a period of one semester.

***Syllabus***

- |  |                |
|--|----------------|
| <b>1. Legal Profession - Historical Perspective</b>                  | <b>units 6</b> |
| 1.1. Were there lawyers in Ancient India?                            |                |
| 1.2. Role of the jurists in development of Hindu Law, Mahommedan Law |                |
| 1.3. Origin of common law lawyering in India.                        |                |
| 1.4. Barrister - vakils - high court pleaders, advocates etc.        |                |
| 1.5. Legal Practitioners Act   |                |
| 1.6. Origin of Legal education in India.                             |                |

- 2. Lawyers in Politics** **units 4**
- 2.1. Why were lawyers in the forefront in the national movement for independence?
  - 2.2. Lawyers in the Constituent Assembly - Successive Parliaments.
- 3. Role Allocation for the Legal Profession in Independent India** **units 6**
- 3.1. Judicial Review : Fundamental Rights, Directive Principles.
  - 3.2. Advocates Act - Uniform Bar, All India Bar
  - 3.3. Lawyer's Role in Accelerating and facilitating the social change visualized by the Indian Constitution
  - 3.4. Right to legal aid
  - 3.5. Monopoly of representation
  - 3.6. Exclusion of lawyers
  - 3.7. Self-representation by Litigants
- 4. Professional Ethics** **units 5**
- 4.1. Bar against soliciting work
  - 4.2. Under-cutting : An Unethical Practice
  - 4.3. Breif - Stealing
  - 4.4. Lawyer not to advertise
  - 4.5. Not to use touting
  - 4.6. Fee structure - Black Money and High Fees
  - 4.7. Is a lawyer bound to accept a brief?
  - 4.8. Accountability to the client
  - 4.9. Self Regulation/Legal Regulation
  - 4.10. Collusion with the opposite paprty
  - 4.11. Legal profession and strike
- 5. Social profile of the legal profession** **units 6**
- 5.1. Class/Caste/education/sex/composition of the Bar

- 5.2. Professional opportunities - Upward Mobility
- 5.3. How far have underprivileged groups such as SC/ST advanced in the profession
- 5.4. Women lawyers - opportunities and handicaps.

**6. Professional misconduct and control** **units 5**

- 6.1. Advocates Act
- 6.2. Function of the Bar Councils
- 6.3. Disciplinary committees - tribunals
- 6.4. Appeals to the Supreme Court, etc.
- 6.5. Contempt proceedings against lawyers

**7. Types and classes of Lawyers** **units 4**

- 7.1. Delhi - Supreme Court, Senior Advocates, Advocates on Record
- 7.2. Bombay, Calcutta, etc. - Advocates : Original side- Advocates: Appellate side - Solicitors
- 7.3. Mofussil - Advocates
- 7.4. Muktiars
- 7.5. Bare - Footed lawyers
- 7.6. Lawyers' collectives and firms
- 7.7. Senior - Junior relationship
- 7.8. Problems of retired high court judges

**8. Lawyers in Court** **units 2**

- 8.1. How to address the court?
- 8.2. Attitude towards opponent counsel
- 8.3. Duty to cite all relevant authorities
- 8.4. Arguments should be precise and brief
- 8.5. Selective use of precedents

**9. Accountability and role conflicts - the Bar Council of India and University Grants Commission** **units 5**

**Suggested readings**

Bhagavati, P.N., Challenges to the Legal Profession - Law and Investment in Developing Countries

J.B.Gandhi, Sociology of Legal Profession and Legal System (1987).

Sathe, Kunchur, Kashikar - "Legal Profession: Its Contribution to Social Change" in to 13 ICSSR Research Abstracts Quarterly 111-127 (1984) Also see 10 Ind. Bar Rev. 47-81 (1983).

K.L.Sharma "Sociology of Law and Legal Profession: Cross Cultural Theoretical perspective" 24 J.I.L.I. 528 (1982).

A.N.Veeraraghavan "Legal Profession and the Advocates Act, 1961" 14 J.I.L.I. 229 (1972)

Anil Nauriya, "Agitation by Advocates" 23 e.p.w. 623-25 (march 26, 1988)

Upendra Baxi, "*The Pathology of the India Legal Profession*", 13 Ind. Bar. Rev. 455 (1986)

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

K.L.Bhatia, *Socio-Legal Study of Occupational Status of Law Graduates*, (1994)

**043 PUBLIC HEALTH LAW**

Public health has not received due attention in legal studies. The course attempts to fill this lacuna.

The Course will be essentially a seminar course followed by evaluation. Association of Concerned medical practitioners in the area with the course should be encouraged.

The following syllabus prepared with this perspective will comprise of about 42 units of one hour duration spread over a period of one semester.

**Syllabus****1. Introductory**

- 1.1. The right to health as emergent from parts III and IV of the Constitution
- 1.2. National Health Policy
- 1.3. Indigenous and Allopathic Health Systems

**2. Duties of employer, community and state in**

- 2.1. Industrial Accidents (e.g. Bhopal)
- 2.2. Rail, Air, Eco Disasters (duties of carriers as well).
- 2.3. Flood - related epidemics
- 2.4. Other epidemic situations

**3. Organisation of public health care in India**

- 3.1. Legal organization of public hospitals
- 3.2. Medico-legal cases and duties of hospitals
- 3.3. Liability for medical negligence in public hospitals
- 3.4. Mental health care in public hospitals : duties and liabilities
- 3.5. Rural health care

**4. Organization of private health care**

- 4.1. Legal aspects of private medical practice
- 4.2. Medical negligence
- 4.3. Amniocentesis
- 4.4. Public service related situations - negligence of private doctors in eye camps, sterilization camps, etc.
- 4.5. The problem of disposal of medical and surgical wastes and liabilities of private and public health care units.
- 4.6. Side effects

**5. Cost and Insurance**

- 5.1. Types of Health Insurance in India
- 5.2. Employee's Health Insurance Corporation
- 5.3. Cost of Health Care and Weaker Sections of Society.

**6. Medical Jurisprudence****7. Market economy, public health and law*****Suggested readings***

Reading may be derived from the courses mentioned above and from the local studies of health care organizations

## **044 PROBLEMS OF ACCESS, GOVERNANCE, PUBLIC PARTICIPATION AND LEGAL INSTITUTIONS**

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

The governing institutions of any society constantly require feed back from society and have to respond to the urges and aspirations of such society. Such an interaction between the governing institutions and the people depends upon their accessibility to the people and the people's participation in decision-making of such institutions. Governance is best when it is consensual and such consensuality can be maximized in proportion as access of the people and their participation in the governing process increases. Consensuality also lends legitimacy to the governing processes and institutions. In this paper a student will be exposed to the existing facilities of access and public participation and made to reflect on the adequacy or inadequacy of such facilities and provoked to think of alternative to the system as well as reforms in the systems with a view to maximizing its responsiveness to the people.

The following syllabus prepared with this perspective will comprise of about 42 units of one hour duration each to be spread over a period of one semester.

### ***Syllabus***

- 1. Public participation, Access and Governance units 2**
  - 1.1. Conceptual Analysis - Meaning of Democracy - How democracy can be non participatory?
  - 1.2. Why should access and public participation be facilitated?
  
- 2. Mapping out the main governing decision-making institutions units 3**
  - 2.1. Parliament, Government of India
  - 2.2. State Legislatures - State Government
  - 2.3. Local self - governing authorities
  - 2.4. Statutory Authorities
  - 2.5. Administrative Authorities

2.6. Courts, Tribunals, Lok Adallaths

2.7. Ombudsman

**3. Public Participation and Access to Legislative Process**

**units 4**

3.1. Legislature - Membership - Qualifications

3.2. Functions of the Legislature

3.3. Elections of members - "Right to recall"

3.4. Privileges of the Legislature

3.5. Duties of a Member of the Legislature Serving the constituency

3.5.1. Pension of the members of the Legislature

3.6. Social profiles of M.Ps and M.L.As.

3.7. Role of Press

3.8. Provisions for publications of the laws

3.9. Committees of Parliament

**4. Public participation and access to administrative process**

**units 6**

4.1. Delegated legislation

4.1.1. Ultra virus doctrine

4.1.2. Publication

4.2. Publication of Delegated Legislation

4.3. Existing inaccessibility of Legislation and Delegated Legislation

4.4. Hearing in Administrative Decision-making - Audi Alteram Partem

4.5. Liberalisation of the rules of locus standi

4.6. Who can challenge an administrative action ?

4.6.1. Standing of a third person - standing of a social action group

4.6.2. Public Interest Litigation and Environmental Protection

- 5. Access to Information** **units 6**
- 5.1. Extent of literacy - Extent of legal illiteracy.
  - 5.2. Need to spread knowledge of laws
  - 5.3. Provisions for free and compulsory education for children below the age of 14 - Article 45 of the Constitution
  - 5.4. Right to information - Fundamental Right ?
  - 5.5. Official Secrets Act, Government Privilege to withhold Disclosure of Documents
  - 5.6. Public Inquiries: Commissions of Inquiry appointed by NGOs.
- 6. Access to Judicial Process** **units 4**
- 6.1. Rules of Locus Standi
  - 6.2. Requirement of Court fee-Provision for Proper Suits
  - 6.3. Delays, Expensiveness and hyper-technicality of the judicial process.
  - 6.4. Lack of public participation - Alienation of the people - liberal rules of locus standi to appeal in criminal cases.
  - 6.5. Representative suits under civil procedure code
  - 6.6. Media and Public participation
    - 6.6.1. Role of Media
    - 6.6.2. P.C.Joshi Committee Report
    - 6.6.3. The Prasad Bharti Act
- 7. Public interest Litigation** **units 4**
- 8. Alternative Models of Dispute Settlement** **units 4**
- 8.1. Tribunals - Articles 323A and 323B
  - 8.2. Family Courts, Consumer Councils and Fori
  - 8.3. Lok Nyayalayas
  - 8.4. Lokpal and Lokayukthas
  - 8.5. Judicial review of decision of alternative agencies

- 9. How to facilitate access and public participation** **units 6**
- 9.1. Procedural Reforms
  - 9.2. Alternative models of dispute resolution Lok Nyayalaya - Grassroots Justice
  - 9.3. Legal aid movement - legal literacy - Social Action Litigation - legal mobilization of the poor.
  - 9.4. Decentralisation of power - federalization of Panchayat Raj
  - 9.5. Suspension or Dismissal of Local Self Government: Experiment in West Bengal and Karnataka
  - 9.6. Growth of Mass movements for Social transformation
  - 9.7. Participatory movements
  - 9.8. Public participation in environmental decision-making
    - 9.8.1. Decision on environmental issues
- 10. Public participation in Law Reforms** **units 3**
- 10.1. Women's Groups, environmental groups
  - 10.2. Circulation of Draft legislation for public reaction
  - 10.3. Planning process and public participation

### ***Bibliography***

U. Baxi, *Crisis of the Indian Legal System* (1982)

U.Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" in Dhavan, Sudarshan and Kurshed (ed) *Judges and the Judicial Behaviour* at (1985)

V. Dhagamwar, "Problems of Implementing Agrarian Legislation in India" 23 J.I.L.I.P. 228-254 (1981).

R.Dhavan, *Litigation Explosion in India* (ILI 1986)

S.P. Sathe, "Legal Activism, Social Action and Government Lawlessness":

In Leelakrishnan (ed) *New Horizons of Law* (1988).

Law Commission of India, 114th Report on Gram Nyayalaya (1987).

U.Baxi, "Access, Development and Distributive Justice: Access Problem of the Rural Population" 18 J.I.L.I. 375 (1976).

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

S.P.Sathe, "Public Participation in Judicial Process: New Trends in Law of Locus Standi with special reference to Administrative Law" 26 J.I.L.I. (1984)

P. Leelakrishnan, "Public Participation in Environmental Decision-making" in P. Leelakrishnan, *The Environmental Law in India* (1999), Chapter XII.

Social Action Litigation, (1984) Cochin University Law Review, pp.433-546

T.S.Misra, "Alternatives to the Present System of Settling Village Disputes of Civil Nature" 22 J.I.L.I. 210 (1980)

S.N.Jain, "Law, Justice and Affirmative Action" 21 J.I.L.I. 262 (1979)

Rajeev Dhavan, "Engrafting the Ombudsman Idea on a Parliamentary Democracy" 19 J.I.L.I. 217 (1977)

Balram Gupta, "A Balance Sheet of State Lokayuktas" 26 J.I.L.I. 122 (1984)

S.S.Singh, "Constitutional Compulsion of Legal Aid: Role of Voluntary Organisation" 33 I.J.P.A. 643 (1987)

Jagar Narain, "Legal Aid - Litigation OR Educational: An Indian Experience" 28 J.I.L.I. 72 919860.

K.L.Bhatia, *Judicial Review and Judicial Activism* (1997)

K.L.Bhatia, et.al., *Delay a Riddle Wrapped in Mystery inside an Enigma*, JILI (1995)

Law Commission of India, 14th Report, 31st, 79th, 80th, 120th, 121st 124th Reports.

Government of India, The Arrears Committee Report (Justice V.S.Malimath), 1990.

**045 LAW AND PUBLIC SERVANTS*****Objectives of the course***

Civil service constitutes the backbone of the modern welfare state administration. This paper will examine at the threshold level, the historical and comparative growth of the civil service law during the colonial and post-independent era.

How far are the rights available to the general public applicable to the civil servants? Necessarily the constitutional concepts of equality and protective discrimination are to be examined in this respect. The constitutional bases for the regulation of services, the doctrine of pleasure and the limitations put on it are prominent areas.

Recruitment and promotion are two strong foundations of an efficient civil service. The dimensions and the power of the public service commissions in these areas are to be highlighted.

Human and fair conditions of service are other bases for an efficient system of administration. Machinery for fixation of pay and allowances and other conditions of service, social security benefits, civil and criminal immunities for "good faith" actions are all matters to be examined in this paper. The legislation and the rules relating to these areas available in the state where the course is offered should form part of the paper. *Pari pasu* a comparative analysis of the corresponding regulation relating to the employees of the Central government may also be made.

The neutrality-commitment dilemma, the principle of seniority-cum-merit basis for recruitment and promotion, the advantages and disadvantages of the spoils system and the areas like frequent transfer, housing, education of children, and politicization of service organizations present other segments of study.

Special categories of services such as the judicial service-the subordinate judiciary and higher judiciary-and the All India services should form a separate component of the paper.

Settlement of disputes over service matters is a litigation prone area. The remedies provided at departmental level, remedies before the administrative tribunal and the remedies by way of judicial review should be studied in depth with a comparative emphasis.

The following syllabus prepared with this perspective will comprise 42 units of one hour duration each to be spread over a period of one semester.

## **Syllabus**

- 1. Historical and comparative perspectives** **units 4**
  - 1.1. Civil service in Colonial India: origin, objectives and commitment.
  - 1.2. Changeover in the post independent era: neocolonial characteristics and problems.
- 2. Civil servants: Constitutional dimensions** **units 14**
  - 2.1. Are the civil servants a category different from other citizens vis-à-vis fundamental rights.
    - 2.1.1. Concept of equality and civil servants
    - 2.1.2. Right to form associations or unions-police and judicial officers-scheduled castes & backward classes.
    - 2.1.3. Right to strike and to collective bargaining.
  - 2.2. Heterogeneity of social, educational and communal backwardness and its impact on recruitment, promotion and work atmosphere.
  - 2.3. Serviceregulations: the Constitutional bases.
    - 2.3.1. Formulation of service rules
    - 2.3.2. Doctrine of pleasure
    - 2.3.3. Limitations on doctrine of pleasure
  - 2.4. Impact of Essential Service Maintenance Law
- 3. Recruitment and Promotion** **units 6**
  - 3.1. Union public service commission and state public service commissions.
    - 3.1.1. Jurisdiction and functions
    - 3.1.2. Membership; immunities
  - 3.2. Consultation with commission
- 4. Conditions of service** **units 6**
  - 4.1. Pay, dearness allowance and bonus: machinery for fixation and revision, pay commission.

- 4.2. Kinds of leave and conditions of eligibility
  - 4.3. Social security: provident fund, superannuation and retiral benefits, medicare, maternity benefits, and employment of children of those dying in harness, compulsory insurance.
  - 4.4. Comparative evaluation with private sector
  - 4.5. Comparative evaluation between the state government employees and the central government employees - the state laws and regulations in comparison with Central regulations.
- 5. Civil service: the dilemmas in operation units 6**
- 5.1. Neutrality, permanency and expertise.
  - 5.2. Spoils system, seniority-cum-merit for promotion, direct recruitment and promotion.
  - 5.3. Frequent transfers, education of children, housing and accommodation-the problem of central government employees.
  - 5.4. Civil service and politics, over politicization of government servants, organization and inter union rivalry.
- 6. Special categories of services units 6**
- 6.1. Judicial services: subordinate judiciary-judicial officers and servants: appointment and conditions of service
  - 6.2. Officers and servants of the Supreme Court and the High Courts: recruitment, promotion, conditions of service and disciplinary action.
  - 6.3. All India Services: object, regulation of recruitment and conditions of service, disciplinary proceedings.
- 7. Settlement of disputes opver service matters units 6**
- 7.1. Departmental remedies: representation, review, revision and appeal, role of service organizations
  - 7.2. Remedy before the Administrative Tribunal: jurisdiction, scope and procedure merits and demerits - exclusion of jurisdiction of courts.
  - 7.3. Judicial review of service matters - jurisdiction of the Supreme Court and High Courts.

**Suggested readings**

Malhotra, L.C., *Dismissal, Discharge, Termination of Service and Punishment* (1998), The University Book Agency, Allahabad

ILL (by Justice M. Ram Jois), *Services under the State* (1987)

Pal, S., *The Law relating to Public Service* (1998) Eastern

K. Goyal, *Administrative Tribunals Act 1985* (1987)

Seervai, *Constitutional Law of India*, 1.1.(1983); Chs.9 & 10 and Vol.II Ch.17 (1984).

Basu, *The Constitution of India* (1996), Prentice Hall, New Delhi.

Arjun. P. Aggarwal, "Strikes by Government Employees: Law and Public Policy", 14 J.I.L.I 358 (1972)

Mohammed Imam, "Power to initiate and conduct disciplinary proceeding", 12 J.I.L.I. 70 (1970)

Mohammed Imam, "Reviewability of compulsory retirement order", 12 J.I.L.I. 633 (1970)

Arjun P. Aggarwal, "Freedom of Association in Public Employment" 14 J.I.L.I. p.1(1972)

C.K.Kochukoshy, "All India Services-Their Role and Future", 1972 I.J.P.A. 67

Sharma and Nanda, *Bahri's Guide on Service Rules* (1997), Bahri Brothers, Delhi.

R.K.Mishra, *Rules and Orders Relating to Government Servants and their Dismissal* (1990), the University Book Agency, Allahabad.

R.Deb, "Public services under the rules of law - right to disobey illegal order" 30 J.I.L.I. 574 (1978)

Douglas Vass, "The Public Service in modern society" 1983 I.J.P.A. 970.

Z.M.S.Siddiqi, "Sanctions for the breach of contracts of service" 25 J.I.L.I. 359 (1983).

O.P.Motiwal, "Compulsory Retirement", 1975 I.J.P.A. 247

D.S.Chopra, "Doctrine of Pleasure-its scope implications and limitations" 1975 I.J.P.A. 92.

G.C.V.Subba Rao, "The O.N.G.C. case and new horizons in public services law", 1975 S.C.J. 29.

**O46 PLAN AND POLICY-MAKING*****Objectives of the course***

The process of planning is critical to Indian development. Although not created by the Constitution, the Planning Commission of India is a nationally vital agency. The successive five-year plans have identified national development priorities and formulated the twin objectives of growth and social justice within which national development must move. The planning process, however, has to be appraised from distinct constitutional perspectives. This has not happened because law persons have taken the Plans as given totalities and the formulators of Plans - mainly economists and technocrats - are not endowed with legal and juristic literacy resources. Very often, then, there arises dislocation between the planning processes and constitutional visions, especially the fundamental rights and directive principles of state polity. This course assesses the relationship between law and planning.

This course will be offered for one semester only.

***Syllabus***

- |   |                |
|---|----------------|
| <b>1. Introductory</b>  | <b>units 4</b> |
| 1.1. Objectives of national development as reflected in:  |                |
| 1.1.1. Nationalist Struggle   |                |
| 1.1.2. Constitution making'   |                |
| 1.1.3. Constitution of India  |                |
| 1.2. Distinctive Objectives of plans under Nehruvian era.   |                |
| 1.3. Objectives of Five Year Plans  |                |
| 1.4. Assessment of the plan objectives with the understanding arising out of the constitutional objectives. |                |
| <b>2. The Planning Process</b>  | <b>units 5</b> |
| 2.1. Nature and Composition of Planning Commission  |                |

- 2.2. State planning process
- 2.3. Parliamentary processes and planning
- 2.4. Awareness of the Constitutional powers, procedures and of law in the planning process.
- 2.5. “Justifications” for regarding administration of justice, correctional services and law enforcement as non-plan expenditures.
- 3. Agrarian reforms units 4**
- 4. Concentration of economic wealth: Public Sector & restrictions on Private Sector units 3**
- 5. Poverty amelioration units 5**
  - 5.1. *Garibi Hatao* and planning
  - 5.2. Various schemes aimed at amelioration of poverty
  - 5.3. Integrated Rural Development Programme
  - 5.4. Minimum Needs Programme
- 6. Planning and Untouchability Eradication units 4**
- 7. State Capitalism and Mixed Economy units 6**
  - 7.1. Distinction between state Socialism, State regulated capitalism and private capitalism
  - 7.2. The dominant capitalist growth goals, and result of planning
  - 7.3. Nationalization
  - 7.4. Licensing
  - 7.5. Strategic areas of industrialization
  - 7.6. Taxation and related redistributive policies
  - 7.7. Structural readjustment programmes
- 8. Planning and Environment units 5**
  - 8.1. Natural Resources Planning
  - 8.2. Public protests, displacement and planning (cost-benefit analysis/human right costs)

- 8.3. Planning and Urbanization
- 8.4. Planning and Industrial Pollution
- 8.5. Irrigation Planning

**9. Planning and Indian federalism**

**units 6**

- 9.1. The Indian federal principles and Centralized planning
- 9.2. Areas of planning by national plans, otherwise within state power exclusively.
- 9.3. Grass root planning and local bodies
- 9.4. Neglected area, regions, states.
- 9.5. Problem of state planning process

***Suggested readings***

M. Galanter, *Competing Equalities* (1984).

U.Baxi (Ed.), *Law and Poverty* (1988)

Arun Ghosh, *Planning in India: the Challenge for the Nineties*, (1992), Sage

Adishesia (Ed.), *Seventh Plan Perspectives*, (1985), Lancer International.

Mahender reddy, *et.al. (Ed.) Seventh Five Year Plan: Performance and perspectives*, (1989), Sterling Publishers.

J.C.Agarwal, *Eight Five Year Plan: Planning and Development in India*, (1993), Shipra.

Various articles, relevant to the topics, published in *Economic and Political Weekly*.

## **047 LAW AND MASS DISASTERS**

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

The hazards of complex industrial society of our times are numerous. Apart from natural calamities which cause death, destruction and suffering on a vast scale, our civilization is increasingly getting exposed to hazards arising out of technological progress. The factories and industrial establishments involved in the manufacture, distribution and transportation of hazardous products are under legal obligation to comply with numerous provisions of law aimed to prevent mass disaster, and to provide information to persons likely to be exposed to the hazards regarding safety measures to be taken.

The legislative and administrative responses have been lacking with the result that such disasters are increasing in magnitude and frequency. Every time adhoc arrangements are made to face the disaster but not before incalculable damage is done and avoidable hardships suffered. What is needed is an integrated approach for prevention and mitigation of sufferings arising out of mass disasters. A policy oriented approach would need examination of duties and obligations of various persons connected with disaster management.

Victims of mass disaster, being amorphous body of individuals, look at the bounty of the state rather than the court process to vindicate their rights under the law. Inquiries and investigations are conducted only on public demand. There is no uniformity regarding the system of investigating authority, procedures to be followed and the obligatory force of recommendations made by the investigating agency. The existing court process is dilatory and cumbersome. Due to obvious reasons the victims do not wish to undergo another ordeal of initiating proceedings for legal redress. The mismanagement and corruption in administering relief has also reached alarming proportions.

The course is, therefore, designed to have an insight in to the problem arising out of mass disasters and inadequacies of the court process. The public law perspectives of this kind of litigation will open new vistas of remedial process including risk coverage through public liability insurance.

The following syllabus prepared with this perspective will comprise of about 42 units of one hour duration each to be spread over a period of one semester.

**Syllabus**

- 1. Introductory** **units 5**
  - 1.1. Meaning of Mass Disaster
    - 1.1.1. Distinction between natural and man-made disaster
  - 1.2. High Potential and Low Potential Disaster
  - 1.3. Escape of dangerous substances
  - 1.4. Explosions
  - 1.5. Nuclear Radiation, Poisoning
  - 1.6. Dam Bursts, Fires, Collapse of Structures, Earth quakes
  - 1.7. Accidental Disasters (rail, air, sea)
  - 1.8. Victims of Mass Disaster
- 2. Ad-hoc character and inadequacy of legislative Responses - Laws relating to atomic energy, explosives, air crafts, insecticides, factories, motor vehicles, railways and petroleum products.**
- 3. Disaster Management** **units 5**
  - 3.1. First aid
  - 3.2. State responsibility to provide short term relief
  - 3.3. Legal responsibilities of officials of the state
  - 3.4. Role of Voluntary Organisations
  - 3.5. Disbursement of relief grants and public accountability of official and other voluntary disbursement agencies
  - 3.6. Participative management by trade unions
  - 3.7. Right of certain classes of victim: children, women
- 4. Inquiries and investigations for mass disasters** **units 5**
  - 4.1. The duty to institute investigations and inquiries to determine causes of mass disaster
  - 4.2. The investigation process

- 4.3. Right to hearing to affected individual
- 4.4. Right to hearing to voluntary organisations and public spirited individuals
- 5. Liability for Mass Disaster units 5**
  - 5.1. Statutory liability
  - 5.2. Contractual liability
  - 5.3. Tortious liability
  - 5.4. Criminal liability
  - 5.5. Measure of damages
- 6. The Court Process units 6**
  - 6.1. Initiation of proceedings
  - 6.2. Representative suits
  - 6.3. Costs of litigation - court fee, counsel fee
  - 6.4. Rules of evidence
  - 6.5. Problems of execution
  - 6.6. Need for reform - dilatory and expensive character of court processes.
- 7. Towards an Integrated Rail Management units 6**
  - 7.1. Public liability insurance
    - 7.1.1. Mandatory insurance in certain cases
    - 7.1.2. Need for covering third party risks
  - 7.2. International
- 8. Case studies, Bhopal etc. units 4**

### ***Suggested readings***

Government of India, Department of Environment, Management of Hazardous Substances Control Act and Structure and Functions of Authority Created Thereunder.

Indian Chemical Manufacturers' Association & Loss Prevention Society of India, Proceedings of the National Seminar on Safety in Road Transportation of Hazardous Materials: (1986).

Industries Commissionerate Ahemadabad, Task Force Report: 9J.J.MeHTA), To Oversee Safety Measures in variuouys Industries dealing with Hazardous and Toxic Materials (1986)

Report of the Empowered Committee to Process Recommendations of the Task Force: To oversee safety Measures in various industries dealing with Hazardous and Toxic Materials (1986)

Organization for Economic Co-operation & Developoment, (Paries), Safety of Consumer Products: Policy & Legislation if OEOE Countries.

Indian law Institute (Upendra Baxi and Thomas Paul (ed.), *Mass Disasters and Multinational Liability: The Bhopal Case* (1986)

Indian Law Institute, Upendra Baxi (ed.), *Environment Protection Act: An Agenda for Implementation* (1987)

Asian Regional Exchange for Prof.Baxi., *Nothing to Lose But our Lives: Empowerment to Oppose Iondustrial Hazards in a Transnational world* (1989)

Gurudip Singh, *Emnvironmental Law: International and National Perspectives* (1995), Lawman (India) Pvt. Ltd.

Leelakrishnan, P, *The Environmental Law in India*, Chapters VIII, IX and X (1999), Butterworths, New Delhi.

Chaturvedi and Chaturvedi, *The Law on Protection of Environment and Prevention of Pollution* (1996)

**O48 LAW AND THE CHILD*****Objectives of the course***

Children constitute the weakest and most vulnerable, most helpless as well as the most precious segment of the human society. By law they are denied participation in decision making even indirectly and by nature they lack effective articulation and indication of their rights. Children are recognised as legal persons for many purposes if not for all legal rights are conferred by the legal system. The course should draw attention to the helpless condition of children and their exploitation and the sufferings of children in poverty. The legal limitation on their capacity in such cases as contracting as marriage and voting and legal rights conferred and legal protection provided in the constitution and in varieties of laws are to be studied critically with the understanding that either the parents or the society or state shall be held legally responsible for the survival, development of personality and happiness of the children

The following syllabus prepared with this perspective will comprise of about 42 units of one hour duration each to be spread over a period of one semester.

***Syllabus***

- 1. Social, Constitutional and International Legal Status of Child** **units 5**
  - 1.1. Introduction: Significance and scope and magnitude of the problem
  - 1.2. Social endeavour towards and recognition of the special status of child; and the need for the formulation of a comprehensive policy guidelines with regard to child for implementation at the national and state levels - various National policy declarations.
  - 1.3. Constitutional concern - protection of the special status of children and the endeavour of the for the welfare of the children: Article 15(3):
    - 1.3.1. Power of the state to make special provisions in favour of childred, Article 24;
    - 1.3.2. Fundamental right of the child against any hazardous employment, Article 39(e) & (f).

The endeavour of the state to protect children of tender ages in matters of conditions of work and employment and against exploitation and moral and material abandonment.

- 1.4. International concern and endeavor for the welfare of the children: the various conventions and declaration.

**2. Problems of conception, birth and nourishment and health of the child                      units 3**

- 2.1. Legal status of child in the work
- 2.2. Tortious liability against injuries to unborn children
- 2.3. Coparcenary and property rights of the unborn children
- 2.4. Law relating to maternity benefit and relief.
- 2.5. Lack of legal protection of children of impoverished parentage, viz., undernourishment and mal-nourishment. Proper health care and revision of basic medical facilities.

**3. State responsibility for the education of children    units 5**

- 3.1. Evaluation of the efforts of the state towards the provision of education to children.
- 3.2. Pre-primary and nursery education: elementary education
- 3.3. Contributions by international organizations for elementary education i.e. UNESCO, UNICEF and others.
- 3.4. Constitutional provision: Article 45 of the constitution of India:

**4. Legal Control of Child Labour    units 5**

- 4.1. Regulation of the employment of children in various occupations and the protection of the health and well-being of the children
- 4.2. International Conventions and recommendations of the ILO
- 4.3. Recommendations of the National Commission of Labour
- 4.4. The Constitutional and statutory protection

**5. Family Relations and Child    units 5**

- 5.1. The status of a child in matters of marriage, legitimacy, guardianship, adoption, maintenance and custody.

- 5.2. Statutory provisions regarding child marriage, guardianship and warship and adoption and maintenance
- 6. Child and Contractual Liability** **units 5**
- 7. Child and Criminal Liability** **units 5**
- 7.1. Crimes committed by child; crimes committed by others in relation to children;
- 7.2. Implementation of social policy through criminal sanctions in relation to child;
- 7.3. Variation of procedure in case of child offender
- 7.4. Judicial proceedings in criminal cases relating to children
- 8. Law and Offences Against Child** **units 5**
- 8.1. Provision for the protection of neglected children
- 8.2. Institutions for the protection of neglected children;
- 8.3. Procedure for child welfare boards and juvenile courts; institutional care for children;
- 8.4. Contribution by parents, licensing ;
- 8.5. Protection of girls from immoral traffic
- 8.6. Prevention of vagrancy and beggary;
- 8. Discrimination Against Female Children (amniocentesis, deferred infanticide through based nutritional discrimination)**

***Suggested readings:***

Awasthi, S.K., *Juvenile Justice Act 1986*, (1998), Law Vishon, Allahabad

Indian Law Institute, *Treatise on the Juvenile Justice Act* (1993)

Indian Law Institute, *Child and the Law* (1979, S.N.JAIN ED.)

Judith Timms, *Children's Rights and Representation* (1995), Sweet and Max Well Law Book Company.

P.L.Mehta and S.S.Jaswal, *Child Labour and the Law* 1996, Deep and deep Publications.

L.S.Sastri, *Child Marriage Restraint Act* 1996, The Law Book Company.

S.R.Bakshi and Kiran Bala, *Development of Women, Children and Weaker Sections* 1999), Deep &n Deep Publications.

U.Baxi (ed.) *Law and Poverty: Critical Essays* (1988) (Selected readings concerning the positions of children may be prescribed)

Judicial decisions, especially in social action litigation, should be carefully examined (e.g. *Sheela Barse*)

In particular, students should be encouraged to look at the distinctive legal problems of children in the area where instruction is imparted. The literature on children's plight is vast and varied. But it is important that the focus of the course be on understanding of the distinctively legal problems in the region and ways in which we can contribute to change.

**049 LEGISLATIVE DRAFTING****Objectives of the course**

Probably, no exercise initiates a student into the complexity of law than that of legislative drafting. Contrary to the prevalent belief, the draftsman is no more technicians transmuting some one else's policies into law: she is also a co-architect of policies. For how policies get written into law decides the career and fate of the policy; of course, how laws are drafted also affect the destiny of law.

With a minimum grounding in theory, students should be assigned drafting of whole statute. The following drafting exercises ought to be assigned;

- (a) definition of key words;
- (b) sections creating offences of various kind (strict, joint, vicarious liability)
- (c) a charging section (for fiscal laws)
- (d) a penal clause;
- (e) sections prescribing powers and functions of an authority under the Act.
- (f) an amending section;
- (g) a repealing section
- (h) a preamble and a long title

Basic theoretical grounding, with appropriate case material, should be, of course, provided in statutory interpretation. Without this grounding, drafting to laws turns out to be wholly countered productive.

The following syllabus prepared with this perspective will comprise of about 42 units of one hour duration each to be spread over a period of one semester.

**Syllabus**

- 1. Forms of Legislative Instrument** **units 2**
  - 1.1. Bills
  - 1.2. Acts
  - 1.3. Orders
  - 1.4. Rules
  - 1.5. Schedule
  
- 2. Ideals of Drafting** **units 2**
  - 2.1. Simplicity
  - 2.2. Preciseness
  - 2.3. Consistency
  - 2.4. Alignment with existing law
  - 2.5. Brevity
  
- 3. Part of a Statute** **units 2**
  - 3.1. Long Title
  - 3.2. Preamble
  - 3.3. Enacting Formula
  - 3.4. Short Title
  - 3.5. Extent and Application
  - 3.6. Definitions
  - 3.7. Principle Provisions
  - 3.8. Administrative Machinery, if any, contemplated by the Statute.
  - 3.9. Penal Provisions
  - 3.10. Rule and Regulation Making Power
  - 3.11. Temporary Provisions
  - 3.12. Repeal and Savings
  
- 4. Other Aspects of Acts** **units 4**
  - 4.1. Punctuation

4.2.	Marginal Notes	
4.3.	Provisions	
4.4.	Illustrations	
4.5.	Presumptions	
4.6.	Use of non-obstante clauses	
4.7.	Retrospective Effect	
4.8.	Henry VIII clause	
4.9.	Exceptions	
4.10.	Fictions	
4.11.	Explanations	
<b>5.</b>	<b>General Clauses Act, 1897</b>	<b>units 14</b>
<b>6.</b>	<b>Maxims of Interpretation; General Approaches</b>	<b>units 4</b>
<b>7.</b>	<b>Directive Principles as Principles providing rules for Constitutional and legal interpretation</b>	<b>units 4</b>
<b>8.</b>	<b>Penal and Remedial Statutes: Section 26 of the General Clauses Act, 1897 and the Rule of Strict Interpretation</b>	<b>units 2</b>
<b>9.</b>	<b>Legislation by reference; incorporation</b>	<b>units 2</b>
<b>10.</b>	<b>Amending, a Consolidating and Codifying Statutes</b>	<b>units 2</b>
<b>11.</b>	<b>General Rules of Interpretation, including a Constitutional Interpretation</b>	<b>units 4</b>

### ***Suggested readings***

Indian Law Institute, *The Drafting of Laws* (1980)

Vepa P. Sarathil, *Interpretation of Statutes* (1981) (Second ed. Or the latest edition).

Allen, *Law in the making*, Sweet and Max Well

Thomson. G.C., *Legislative Drafting*, Butterworths, London

Zander, M., *The Law Making Process*, Widenfeld & Icholson, England.

Renton C'Hee Report, *Preparation of Legislation*, Sweet and Max Well.

**050 LAW AND CREDIT*****Objectives of the course***

In a developing country like India the availability of credit for the developmental activities assumes great importance. The role of financial institutions in public sector in promoting goals of development is now well recognised.

A significant development in the last two decades has been the realization of the need to promote banking in rural areas. As pointed out by the Report of the Second Agricultural Labour Inquiry Committee, agriculturists whether landowners, tenants or labourers suffer from paucity of funds, the agricultural producers who are often marginal farmers require funds for purchasing of seeds and implements and the labour for family expenditure.

In the past and to some extent even now, the credit needs of rural population are met by private moneylenders. Now a days the IRDP envisages the uplift of select beneficiaries from the "Poorest of the Poor" by enabling them to purchase income - yielding asset. The purchase money is given partly as loan from a bank and partly as grant. The Regional Rural Banks have been established to meet the needs of the rural poor. Private money lending has been regulated by means of legislation.

As Banks utilise the monies of depositors drawn from all walks of life it is important for the protection of their rights and for recycling the funds that the loans are recovered.

For promotion of credit facilities for industries, banking system has been considerably expanded in recent times. A knowledge of these institutions and the legislation's establishing them is needed.

The following syllabus prepared with this perspective will comprise of about 42 units of one hour duration each to be spread over a period of one semester.

***Syllabus*****1. Rural Credit****units 1**

1.1. Major classification of rural credit

1.1.1. Crop loans - for financing current expenditure in connection with raising of crops and maintenance of plantations

- 1.1.2. Medium and long term loans to increase out put like irrigation facilities and agricultural implements
- 1.1.3. Long term loans e.g. purchase of tractors, for tube wells.
- 1.2. Non-institutional creditors **units 2**
- 1.2.1. Cause behind dependence on non-institutional credit.
- 1.2.2. Traders
- 1.3. Regulation of non-institutional credit **units 4**
- 1.3.1. Interest Act, 1839
- 1.3.2. Usurious Loans Act, 1918
- 1.3.3. Moneylender's Act (the relevant Act of the State should be studied).
- 1.4. Institutional credit **units 10**
- 1.4.1. Co-operative Banks: Law relating to co-operative credit societies
- 1.4.2. Land development Banks
- 1.4.3. Commercial banks
- 1.4.4. Regional Rural Banks
- 1.4.5. National Bank for Agricultural and Rural Development (NABARD)
- 1.5. Recovery of overdues: co-operative credit institutions **units 8**
- 1.5.1. Recovery through sale and restraint proceedings
- 1.5.2. Exemption from attachment and sale of produce under the provisions of the Civil Procedure Code
- 1.5.3. Problems of priority arising out of the existing law of fixtures when pump sets or agricultural machinery is purchased under the Hire-purchase agreements.
- 1.5.4. Is agricultural machinery "Implements of husbandry" under the C.P.C.?
- 1.5.5. Mortgage as declaratory charge for long term credit.
- 1.5.6. Co-operative loans as first charge under State Co-operative laws.
- 1.6. Commercial banks
- 1.6.1. Principles of good lending: working capital assessment
- 1.6.2. Types of securities usually insisted upon

- 1.6.3. Politicization of Banking and waiver of loans
- 1.6.4. Credit for consumption purposes
- 1.6.5. Debt recovery tribunal
- 1.7. Land Development Banks **units 2**
- 1.8. Regional Rural banks **units 2**
- 1.8.1. Credit needs of the rural poor
- 1.8.2. Sponsorship by a Nationalized Bank
- 1.9. National Bank for Agricultural and Rural Development (NABARD)
- 2. Institutional Finance for Industrial Development **units 9****
- 2.1. Industrial Finance Corporation of India (IFICI)
- 2.1.1. Functions
- 2.1.2. Performance
- 2.2. Industrial Credit and Investment Corporation of India (ICICI)
- 2.3. State Finance Corporation (SFC)
- 2.4. State Finance Corporation Bank of India (IDBI)
- 2.4.1. Functions: refinance against loans
- 2.4.2. Rediscounts of machinery bills
- 2.4.3. Industrial Reconstruction Bank of India

### ***Suggested readings***

Vasantha Desai and Joshi, *Managing Indian Banks* (1998), Sage, New Delhi.

Varma, J.C. *Venture Capital Financing in Indian* (1997), Indian Institute of Banking, New Delhi.

R.C.Sekhar, *Ethical Choices in Business* (1997), T.A. Pai Institute of Management, Manipal.

H.B. Shivaraggi, "Credit for Agriculture and Rural Development" in M.L. Dantwala (ed.) *Indian Agricultural Development Since Independence* 270 (1986).

*Report of the Study team on Overdues of Co-operative Credit Institutions* (1977)

Banking Law Committee, *Report on Real Property Security Law* (1977)

Varma, J.C., *Guide to Non-Banking Financial Companies*, (1997)

## **051 CORPORATE FINANCE**

### ***Statement of objectives***

Industrialisation has played, and has to play, a very vital role in the economic development of India. In the post independent era, industrial development is regarded, and hence employed, as principal means in the strategy for achieving the goal of economic and social justice envisioned in the constitution. Corporation, both public and private, are viewed as a powerful instrument for development, and a means for ameliorating the living standards of masses. In a developing society like India enormous varieties of consumer goods are manufactured or produced. Obviously, the situation raises the issues of procuring utilising and managing the finances. For this purpose a science of financial management techniques has been evolved. The faculties of commerce, business and management studies have since last decades started to impart instruction so as to turn out sufficiently well equipped and adequately trained financial personnel. However, the legal and juristic aspects of corporate finance have been more or less not effectively taken care of. The CDC recognised the importance of these aspects. A law person has to play noteworthy role in the developmental processes.

In view of the above perspectives the broad objectives of this course may be formulated as follows-

- (i) to understand the economic and legal dimensions of corporate finance in the process of industrial development in establishing social order in the context of constitutional values
- (ii) to acquaint the students with the normative philosophical and economic contours of various statutory rules relating to corporate finance
- (iii) to evaluate the application and functioning of such statutory rules in their role for the establishment of “just” order in India.
- (iv) to acquaint the students with the organisation, functions, lending, and recovery procedures, conditions of lending and accountability of international national and state financing institutions and also of commercial banks; and
- (v) to acquaint the students with the process of the flow and outflow of corporate finance.

The following syllabus prepared with the above perspective comprise of 42 units to be spread over a period of one semester.

## **Syllabus**

### **1. Introduction**

- 1.1. Meaning, importance and scope of corporation finance
- 1.2. Capital needs - capitalisation - working capital - securities-borrowings-deposits, debentures
- 1.3. Objectives of corporation finance - profit maximisation and wealth maximisation
- 1.4. Constitutional perspectives - see the following entries 37, 38, 43, 44, 45, 46, 47, 52, 82, 85, and 86 of List 1 - Union List; entry 24 of List 11 - State List 2.

### **2. Equity finance**

- 2.1. Share capital
  - 2.1.1. Prospectus - information disclosure
  - 2.1.2. Issue and allotment
  - 2.1.3. Shares without monetary consideration
  - 2.1.4. Non-opting equity shares

### **3. Debt finance**

- 3.1. Debentures
  - 3.1.1. Nature, issue and class
  - 3.1.2. Deposits and acceptance
  - 3.1.3. Creation of charges
  - 3.1.4. Fixed and floating charges
  - 3.1.5. Mortgages
  - 3.1.6. Convertible debentures

### **4. Conservation of corporate finance**

- 4.1. Regulation by disclosure
  - 4.1.1. Control on payment of dividends
- 4.2. Managerial remuneration
- 4.3. Payment of commissions and brokerage
- 4.4. Inter-corporate loans and investments

4.5. Pay-back of shares

4.6. Other corporate spending

## **5. Protection of creditors**

5.1. Need for creditor protection

5.1.1. Preference in payment

5.2. Rights in making company decisions affecting creditor interests

5.3. Creditor self-protection

5.3.1. Incorporation of favourable terms in lending contracts

5.3.2. Right to nominate directors

5.4. Control over corporate spending

## **6. Protection of investors**

6.1. Individual share holder right

6.2. Corporate membership right

6.3. Derivative actions

6.4. Qualified membership right

6.5. Conversion, Consolidation and re-organisation of shares

6.6. Transfer and transmission of securities

6.7. Dematerialisation of securities

## **7. Corporate fund raising**

7.1. Depositories - IDR(Indian depository receipts), ADR(American depository receipts), GDR(Global depository receipts)

7.2. Public financing institutions - IDBI, ICICI, IFC and SFC

7.3. Mutual fund and other collective investment schemes

7.4. Institutional investments - LIC, UTI and banks

7.5. FDI and NRI investment - Foreign institutional investments (IMF and World bank)

## **8. Administrative regulation on corporate Finance**

8.1. Inspection of accounts

8.2. SEBI

- 8.3. Central government control
- 8.3.1. Control by Registrar of companies
- 8.3.2. RBI control

### ***Suggested readings***

Alastair Hundson, *The Law on Financial Derivatives* (1998), Sweet & Maxwell

Eil's Ferran, *Company Law and Corporate Finance* (1999), Oxford.

Jonathan Charkham, *Fair shares : the Future of Shareholder Power and Responsibility* (1999), Oxford.

Ramaiya A, *Guide to the Companies Act* (1998), Vol. I, II and III.

H.A.J. Ford and A.P. Austen, *Fords' principle of Corporations Law* (1999) Butterworths.

J.H. Farrar and B.M. Hanniyan, *Farrar's company Law* (1998) Butterworths

Austen R.P., *The Law of Public Company Finance* (1986) LBC

R.M. Goode, *Legal Problems of Credit and Security* (1988) Sweet and Maxwell

Altman and Subrahmanyam, *Recent Advances in Corporate Finance* (1985) LBC

Gilbert Harold, *Corporation Finance* (2nd rev. ed. 1956)

Henry E. Hoagland, *Corporation Finance* (3rd ed. 1947) Maryin M. Kristein, *Corporate Finance* (2nd ed., 1975) R.C. Osborn, *Corporation Finance* (1959)

S.C. Kuchhal *Corporation finance : Principles and Problems* (6th ed. 1966)

V.G. Kulkarni, *Corporate Finance* (1961)

Y.D. Kulshreshta, *Government Regulation of Financial management of Private Corporate Sector in India* (1986)

Journals - Journal of Indian Law Institute, Journal of Business Law, Chartered Secretary, Company Law Journal, Law and Contemporary Problems.

Statutory materials - Companies Act and laws relating SEBI, depositories, industrial financing and information technology.

## **052 LAW AND THE UNORGANIZED LABOUR**

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

The unorganized labour constitute among the most vulnerable sections of the poor in the country. The organized sectors constitute vote-banks and some sections of them belong to high wage islands. The most significant proportion of those living below the poverty line are drawn from the unorganized sector and their problems are hitherto largely unattended.

Notable among these groups are bonded labour, agricultural labour, contract labour, migrant labour the brought prone areas. In the urban sector domestic servants, daily-wage earners and self-employed persons like rickshaw-pullers, shoeshine boys, dhobis, etc. The protective umbrella of protective labour legislation wages does not reach them and regulations relating to minimum wages and minimum hours of work are observed more in beach with respect to them.

There are two special categories among unorganized labour who deserve particular attention, viz., women and children. They are victims of special types of discrimination and exploitation.

These aspects relating to problems of unorganized labour are to be studied not only with respect to statutory provisions like Bonded Labour System (Abolition) Act, 1976, the Contract Labour (Regulation) Act, the Inter-state Migrant Labour Act, the Minimum wages Act but also with respects to aspects relating to enforcement and organising the vulnerable sections.

The following syllabus prepared with this perspective will comprise of about 42 units of one hour duration each to be spread over a period of one semester.

### ***Syllabus***

- |  |                |
|--|----------------|
| <b>1. Bonded Labour</b>  | <b>units 6</b> |
| 1.1. Dimensions of the Problem   |                |
| 1.2. Constitutional and Legislative Prohibition  |                |
| 1.3. Administrative and enforcement machineries under the Bonded Labour System (Abolition Act, 1976) |                |
| 1.4. Role of P.I.L. and Social Activists as instruments of enforcement of the Act.                   |                |

- 2. Contract Labour** **units 8**
- 2.1. Constitutional prohibition
  - 2.2. Contract Labour (Regulation and Abolition) Act, 1970
  - 2.3. Supreme Court on Abolition of Contract Labour
- 3. Migrant Labour** **units 4**
- 3.1. Drought Prone areas and Migrant Labour
  - 3.2. Role of Middlemen of agents and Migrant Labour
  - 3.3. Aspects relating to applicability of Inter-state Migrant Workmen (Regulation of Employment and conditions of Service) Act, 1959 and its implementation.
- 4. Women Labour** **units 6**
- 4.1. Patriarchal views of state and male workers with reference to Minimum Wages Act, 1948 and Equal Remuneration Act, 1976.
  - 4.2. Special provision for regulation of employment of women under various labour legislation
  - 4.3. Sexual harassment of women at work place.
- 5. Child Labour**
- 5.1. Eradication or Regulation under various legislation
  - 5.2. Special Problems of Enforcement of Child Labour Legislations
    - 5.2.1. Administrative Machinery
    - 5.2.2. Voluntary Organizations
    - 5.2.3. Courts as parens patriae
- 6. Legal Problems of Unorganized Labour in Urban Areas** **units 8**
- 6.1. Domestic Servants, Workers in restaurants etc.
  - 6.2. Daily-wage earners
  - 6.3. Self-employed persons like cobblers, washer men etc.
- 7. Aspects Relating to Enforcement of protective Legislations and Law Reform**
- 7.1. Enforcement
  - 7.2. Law Reform

**Suggested Readings**

S.C.Srivastava, *Labour Law in factories, Mines, Plantations, Transport, Shops and Other Industrial Establishments*, Prince Hall of India Ltd., New Delhi (1992).

Agricultural Labour : *Report of the National Commission on Agriculture* Ch.29, (1969).

Report of the National Commission on Labour (1991)

D and A. Thorner, *Land and Labour in India* (1969), Report of the Commission on Unorganized labour forth coming.

B.N.Jugal, *Child Labour and exploitation in Carpet Industry*\_(1978)

K.C.Seal "Children in Employment" in profile of the Child in India : Policies and Programmes 166 (1978).

Women labour, Maria Mies, *Indian Women in Subsistence and Agricultural Labour* (1987)

Walter Fernandes, Geeta Menon and Philip Viegas *\_Forests Environment and Tribal Economy : Deforestation Impoverishment and Marginalization in Orissa\_* (1988)

Joann Vanek " Household Work, Wage work and Sexual Equality" in F.Sarah Berk (ed.) *\_Women and Household Labour* (1980)

Government of India, *Towards Equality : Report of the Committee on the Status of Women in India* (1974)

N.K.Adyanthnay, "Women's Employment in India" to *International Labour Review* 44, (1954)

N.K.Adyanthnay , "Public Policy and Sex Discrimination in Employment in India" 14 *Indian Journal of Industrial Relations* 393, (1979).

N.K.Adyanthnay, "Discrimination against Women Workers in India" 20 *\_Southern Economics\_* 16, (1981)

Prabha Rai, "Unorganized Labour Force" 22 *Social Welfare* 10, (1975)

Nirmala Banerjee, *Women Workers and development* 6 *Social Scientist* 3, (1978)

Gita Sen and Chiranjit Sen, "Women's Domestic Work and Economic Activity, results from NSS" 20 *Economic and Political Weekly* 49, 56(1985).

Kalpna Bardhan, "Women's Welfare and Status : Forces of Tradition and Change in India" 20 *Economic and Political Weekly* 2207 and 2261(1985).

Upendra Baxi et al; Report of the Study Group on Labour Law, 11 Report of the National Commission on Rural Labour (Part II) Government of India, Ministry of Labour, New Delhi (1991).

S.C.Srivastava, "Unorganised Rural Labour and the Law" in Upendra Baxi (ed.), *Law and Poverty*, Tripathi (1988).

Banerjee Biswajit, *Rural to urban migration Labour Market* 1986.

I.L.O., *Why Labour leave the Land : A Comparative Study of Movement of Labour Out of Agriculture*.

I.L.O., *International Migration for Employment*, 1986.

Joshi, Vidyut, *Migrant Labour and Related Issued*, 1987.

Government of India, Report of National Commission on Rural Labour 1991.

**053 SOCIAL SECURITY LEGISLATION*****Statement of objectives***

Social security is an important fact of the multipronged legal measures to bring about upliftment of labour providing a measure of stability and a sense of protection.

The physical, economic and psychological repercussions of industrial accident vis-à-vis the workman and his family and the adequacy of the legislative attempts to contain or neutralize them will form an important part of this course. The conditions of eligibility to compensation under the Workmen's Compensation Act, the development of the concept of "accident arising out of and in the course of employment" and the notional extension of the time and space or the purpose, and evaluation principles of employer liability and a probe into the defects in the mechanics of workmen's compensation system as the employer's role liability gives way to the concept of insurance, the burden being borne not only by the employer but also by the employees and the state. The variety of benefits of the E.S.I. Scheme, conditions of eligibility, its comparative evaluation with workmen's compensation and study of the defects in law and lapses in practice will be another component.

Maternity benefit is an integral part of social security. In the background of the norms evolved by the ILO the paper should concentrate on an evaluation of the extent of maternity benefits provided by legislative measures in India.

The efficacy of provident fund, family pension, gratuity and other retrieval benefits has to be examined in this paper to assess how far they provide a satisfactory system.

While discussing judicial decisions in the areas of social security the students should be given insight into the role played by the judiciary in extending social security benefits to the workmen in full measure and the juridical techniques employed for that purpose.

Social security for labour is only a part of the general system of social security against want and distress, which should be available to each and every citizen. Students should be in a position to see the adequacy of the measures from this perspective. They should be enabled to think of an assess the relative merits of the possible alternatives to the existing system and measures of social security.

The following syllabus prepared with this perspective will comprise of 42 units of one hour duration each to be spread over a period of one semester.

## **Syllabus**

- 1. Introductory** **units 2**
  - 1.1. Concept of social security
  - 1.2. Classification of social security
  
- 2. Industrial accident and compensation** **units 8**
  - 2.1. Modification of common law by Fatal Accidents Act and Employer's Liability Act
  - 2.2. Workmen's Compensation Law
    - 2.2.1. Conditions for eligibility
    - 2.2.2. Concepts of 'accidents arising out of' and 'in the course of employment'.
    - 2.2.3. Doctrine of notional extension
  - 2.3. Quantum and method of Compensation
  
- 3. Employee's State Insurance** **units 8**
  - 3.1. E.S.I. Scheme: Salient Features
  - 3.2. Benefits and Conditions for eligibility
  - 3.3. Comparison with workmen's compensation scheme: Change in approach from compensation to insurance with tripartite bearing of the burden.
  - 3.4. Defects in workmen's compensation law and merits of E.S.I. Scheme
  - 3.5. Defects of E.S.I. in practice - workmen's apathy, lack of good medical facilities.
  
- 4. Maternity Benefits** **units 8**
  - 4.1. Importance of maternity benefit: ILO norms
  - 4.2. Maternity benefit under the Maternity Benefits Act 1961 and the Employees' State Insurance Act 1948
  
- 5. Retrial and service termination benefits** **units 8**

- 5.1. Provident fund and family pension - salient features and the scope of social security
- 5.2. Compensation for retrenchment, closure and transfer of industrial
- 5.3. Gratuity - conditions of eligibility - quantum and basis of calculation

## **6. Futuristic Approach**

- 6.1. Gaps in law and need for comprehensive scheme to cover all aspects of human misery
- 6.2. Integrated social security : problems and perspectives

### ***Suggested readings***

S.C. Srivastava, *Commentaries on the payment of Gratuity Act* (1999), Universal Book Co., New Delhi.

S.C.Srivastava, *Social Security and Labour Laws* (1985), Eastern Harry Calvert, *Social Security Laws* (1978)

*Report of the National Commission on Labour* (relevant portions)

Relevant portions of legislation on social security in India

Neeru Sehagal, "Employment of women and Reproductive Hazards in Workplace" 29 J.I.L.I 201 (1987)

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

Mallik Jyostana Nath, "Workmen's Compensation Act and some problems of procedure", 3 J.I.L.I. 131 (1961)

P.G.Krishnan "Law of Gratuity for Industrial Workers in India", (1978) *Cochin University Law Review* 279.

K.L.Bhatia, *Administration of Workmen's Compensation law: A Socio-Legal Study*, 1987.

### **Public Regulation of business**

This course 054 is dropped as per the suggestion of the law panel

**055 LABOUR ADJUDICATION; SELECT ASPECTS*****Statement of objectives***

Industrial peace is the main concern of industrial jurisprudence in India. Labour adjudication occupies a pivotal position in this respect.

The historical background in which adjudication has developed as a tool of maintaining industrial peace, the difference agencies of adjudication such as labour courts, industrial tribunals and national industrial tribunals, their functions, jurisdiction and tenure, the binding nature of their awards and the scope of judicial review of the awards form important parts of the syllabus.

Arbitration is on the other hand an effective weapon. The international norms relating to arbitration and the amenability of arbitral awards to judicial review are questions which the students have to examine in this paper.

The discretion of the government in referring a dispute for adjudication is a complex problem with political overtones. The extent of this discretion and the way in which it should be structured are important areas to be examined.

The procedural norms, formulated by courts in respect of domestic enquiry, the powers and jurisdiction of the arbitrator and other adjudicatory agencies in deciding matters relating to punishment on the workman and the restrictions placed on the management's prerogatives during tendency of conciliation, arbitration and adjudication proceedings should be components of this paper. Lastly, a probe can be made into the possible alternatives like the Industrial Relations Commission suggested by the National Commission on Labour.

The conceptual conundrums and the judicial contributions in the development of the law in the following areas can be included: (I) Industry, (ii) Industrial Dispute, (iii) Retrenchment and (iv) Closure of Industrial Enterprises.

The following syllabus prepared with this perspective will comprise of 42 units of one hour duration each to be spread over a period of one semester

**Syllabus**

- 1. Introductory** **units 2**
  - 1.1. Industrial adjudication - the concept
  - 1.2. Pre-adjudicatory process : negotiation and conciliation
- 2. Adjudication: the Role of Government** **units 6**
  - 2.1. Reference of the dispute
    - 2.1.1. Delimitation of areas of adjudication
    - 2.1.2. Criteria for exercise of discretion - subjective or objective
    - 2.1.3. Political overtones in reference - party in power and favouritism to unions
  - 2.2. Post-natal control - the power to modify awards
- 3. Adjudicatory agencies: Jurisdiction, functions and structure** **units 6**
  - 3.1. Labour court
  - 3.2. Industrial tribunal
  - 3.3. National industrial tribunal
  - 3.4. Industrial Relations Commission and other new trends
- 4. Voluntary arbitration** **units 6**
  - 4.1. Procedure for appointing arbitrator
  - 4.2. Arbitrator: Whether tribunal or not?
  - 4.3. Problems and prospects
- 5. Process of adjudication** **units 6**
  - 5.1. Industrial jurisprudence: formation and determination of rights - the criteria of industrial harmony.
  - 5.2. Absence of statutory criteria: evolution of law through judicial decisions based on equity and social justice
- 6. Awards: commencement, binding Nature and enforceability** **units 6**
  - 6.1. Industrial adjudication and judicial review

- 6.1.1. Bar or jurisdiction of courts and finality of awards
- 6.1.2. Judicial review by High Courts and Supreme Court

**7. Judicial contributions to the development of concepts units 10**

- 7.1. Industry
- 7.2. Industrial and Industrial Disputes
- 7.3. Retrenchment
- 7.4. Closure

***Suggested readings***

Malhotra, *The Law of Industrial Disputes*, Vol.I and II (1998), Universal, Delhi.

D.D.Seth, *Commentaries on Industrial Disputes Act, 1947* (1996), Law Publishing House, Allahabad.

ILL, *Labour Law and Labour Relations* Pts. 3, 4, 6, 7, 9 and 11, (1987)

6 *Cochin University Law Review* (1982), Special Number on Industrial Relations Legislation.

Relevant portions of *The Report of the National Commission on Labour*

Arjun P. Aggarwal, "Conciliation and Arbitration of Labour Disputes in Australia", 8 J.I.L.I. 30 (1966)

D.C.Jain, "*Meaning of Industry: Widerness of Conjectural Justice*", (1986 3 S.C.C. (Journal) 15.

T.N.Singh, "*Futuristic Industrial Jurisprudence Poser*", (1986) 3 S.C.C. (Journal) 15.

S.C.Srivastava, *Industrial Relations and Labour Law*, (1999), Vikas.

**056 TAX POLICIES PLANNING AND TAX EVASION*****Objectives of the course***

The direct taxation is a powerful incentive or disincentive to economic growth, a lever which can raise or depress savings and capital formation, and instrument or reducing income disparities. A student of taxation will have to make a detailed study of tax policy and tax in India. Our tax laws are said to be the most complicated ones in the world. An analysis of this aspect will have to be made so that the reasons of such complications can be known.

The following course content has been designed to provide a comprehensive picture of direct taxation in India.

The following syllabus prepared with this perspective will comprise of 42 units of one hour duration each to be spread over a period of one semester.

***Syllabus***

- |   |                 |
|---|-----------------|
| <b>1. History and Development of Taxation in India</b>              | <b>units 8</b>  |
| 1.1. Tax Planning and Tax Evasion: Meaning and concept.             |                 |
| 1.2. Acts on Direct taxation: substantive and procedural provisions |                 |
| 1.3. Critical analysis of taxation policy in India                  |                 |
| <b>2. Constitution and Tax Laws</b>                                 | <b>units 16</b> |
| 2.1. Taxing power and constitutional limitations                    |                 |
| 2.2. Centre-State Fiscal Relations                                  |                 |
| 2.3. Directive Principles and tax policy objective in India         |                 |
| <b>3. Tax Plan and Judicial Process</b>                             | <b>units 10</b> |
| 3.1. Tax evasion  |                 |
| 3.2. Tax avoidance  |                 |
| 3.3. Black Money  |                 |

3.4. Taxation of Agricultural Income and Wealth

3.5. Family as a unit for tax

**4. Principles of Accountancy**

**units 8**

4.1. General Principles of Accountancy

4.2. Methods of Accountancy

***Suggested readings***

Taxman, *Tax Planning and Management*, (1998), Taxman

Agarwal. A.N., *Indian Economics* (Selected Chapters (1997), Wishwa Prakashini, N. Delhi.

N.K.Palkhivala & B.A.Palkhivala (eds.), *Kanga and Palkhivalas's Income Tax Law and Practice* (7th ed. 1976)

Agarwal.V.S., *Taxation of Salaries with Tax Planning* (1990), Professional Book Publishers, New Delhi.

V.S.Sunderam, *Law of Income Tax in India* (11th ed. 1978)

A.C.Sampat Iyengar, *Three Taxes* (6th ed. 1987)

K.Chaturvedi and S.M. Pithisaria, *Income Tax Law* (3rd ed. 1981)

V.P.Gandhi, *Some Aspects of Indian Tax Structure: An Economic Analysis* (1970)

T. Mathew, *Tax Policy* (1975)

H.M.Seervai, *Constitutional law of India* (3rd ed, 1984)

I.P.S. Siddhu, *Company Taxation Cases*

M.P. Jain, *Indian Constitutional Law* (4th ed. 1994)

Bhagwati Prasad, *Direct Taxes: Law and Practice* (1996) Wishva Prakasan, New Delhi.

## **REPORTS**

Chelliah, Dr.Raj, *Tax Reforms Committee Report* (1991 & 1993)

*Report of the Taxation Enquiry Commission/ 1953-1954.*

Report of the Direct Taxes Administration Enquiry Committee 1958-59.

*Final Report on Rationalisation and Simplification of the Tax Structure* (Bhoothalingam's report, 1967)

*Administrative Reforms Commission's Report on Direct taxes Administration* 1964

*Report of the Committee on Taxation of Agricultural Wealth and Income* (Raj Committee report, 1972)

Final Report of Direct Taxes Enquiry Committee

*Interim Report of the Direct Tax Law Committee* (Choksi Committee Report, 1977).

*Final Report of the Direct Tax Laws Committee* (Choksi Committee Report, 1978).

**057 SOCIO-ECONOMIC OFFENCES*****Objectives of the course***

This course deals with a special category of offences known as “White collar crimes” or socioeconomic offences. These offences have to be understood in terms of the nature of development of Indian state and society. Their causes partly lie in the ways in which economic and political development occurs. The costs of such offences is, often, exorbitant and is borne most acutely by the most vulnerable segments of society. Combating socio-economic offences is a vital part of achievement of justice in society.

The course should be divided in 42 units of teaching we provide sufficient

flexibility in the syllabus; areas marked by an asterisk may be taken up only if

there is time as well as class interest.

***Syllabus*****1. Conceptions**

- 1.1. Nations of “White Collar Crimes” - Southerland’s analysis, critique of it, and applicability to Indian conditions.
- 1.2. From Santhanam Committee Report to the Twenty Ninth and Forty Law Commission of India Report; The Career of the conception of “Socio-economic offences” (hereafter SEO) “Socio-economic offences” (hereafter SEO)
- 1.3. Distinction between ‘Social’ and ‘Economic’ Crimes

**2. Corruption**

- 2.1. General conceptions of ‘corruption’, ‘nepotism’, ‘favouritism’ and ‘bribery’
- 2.2. Concept of ‘corruption’ under the Indian penal Code (161-165) and the Prevention of Corruption Act.
- 2.3. Santhanam Committee Analysis.
- 2.4. The Special legal regime;
  - 2.4.1. Investigation (Under Criminal laws Amendment Act, 1952)

- 2.4.2. Sanction for prosecution (under 197 Cr.P.C., prevention of corruption Act).
- 2.4.3. The category of 'Public Servants' liable for prosecution for corruption offences.
- 2.4.4. Relevant aspects of the Antulay Case
- 2.4.5. Central Vigilance Commissioner
- 2.5. "Causes of corruption"
- 2.6. Sentencing Policies and Patterns.

### **3. Black Money**

- 3.1. Conception of black money
- 3.2. Legal Provisions for investigating into black money
- 3.3. Disproportionate Assets
- 3.4. The Role of the Central Vigilance Commission
- 3.5. Sentencing Policies and Patterns
- 3.6. Amnesty - retroactive legalization of black money (through voluntary disclosure schemes, bearer bonds etc.)

### **4. Organized Crime**

- 4.1. Drug Trafficking addiction and abuse
- 4.2. Smuggling
- 4.3. Chit Fund swindles
- 4.4. Prostitution
- 4.5. Begging
- 4.6. Buying and selling of women across state borders

### **5. Crimes Against Consumers of Goods and Services**

- 5.1. Food Adulteration
- 5.2. Drug Adulteration
- 5.3. Offences relating to weights and measures
- 5.4. Pollution offences
- 5.5. Medical Malpractice

**6. Crimes against Disadvantaged and Vulnerable Groups**

- 6.1. Dowry Murders
- 6.2. Offences and atrocities against Untouchables
- 6.3. Offences against bonded labour
- 6.4. Offences against children

**7. Legal Regimes of Investigation and Enforcement**

- 7.1. Differentiation in onus of proof through presumptions of guilt and due process problems
- 7.2. The regime of special court
- 7.3. Group Liability (associational, corporate)
- 7.4. Strict and vicarious liability
- 7.5. The quantum of punishment
- 7.6. Problems of recidivism
- 7.7. The variety of enforcement mechanisms; specialized and general
- 7.8. Withdrawal from prosecution

**8. Alternative/Additional Strategies**

- 8.1. Ombudsman
- 8.2. Tax reforms
- 8.3. Electoral reform
- 8.4. Reform of Prosecutorial Structures
- 8.5. Alternate Sanctioning Policies

***Suggested readings***

Upendra Baxi (ed.) *Law & Poverty: Critical Essays* (1988)

Upendra Baxi, *Liberty and Corruption Antulay case and Beyond* (forthcoming 1989)

P.R.Rajagopool, *Violence and Response: A critique of Indian Criminal Justice System* (1988)

Law Commission of India, (i) *One Hundred and Fifty Fourth report on Code of Criminal Procedure 1973*, (1996); (ii) *One Hundred and Fifty Fifth Report on then Indian Penal Code, 1860* (1997)

**058 LAW OF MONOPOLIES*****Objectives of the course***

Monopolies tend to lessen free competition. All democratic societies have found it essential to regulate monopolies and restrictive trade practices which give rise to situations detrimental to the public interest. In the United States comprehensive legislation was enacted towards the end of the 19<sup>th</sup> century, and since then it has been sustaining an effort to curb monopolistic power through the instrumentality of the law. In the United Kingdom regulation of monopolies started toward the end of the Second World War. The approach was to curb abuse rather than consider monopoly contrary to public interest. India has, more or less, followed the British pattern.

Vital decisions regarding monopolies in India are taken by the Central Government even without reference to the M.R.T.P. Commission. The Monopolies and Restrictive Trade Practices Act contains detailed rules for regulation of expansion and setting up of new undertakings. Procedures are also laid down for mergers and take-overs. Neither the business community nor the consumers seem to be satisfied with the existing state of law and practice.

In India giant monopolistic concerns are owned by the state. However privatization is setting in. Under the existing law, state undertakings, financial institutions such as banks and co-operative societies are exempt from the provisions of the MRTP Act.

The course is designed to develop among the students the ability to grasp issues relating to economic power and to understand the different ways in which laws tend to regulate and control economic power. The subsidiary object is to create awareness among them of the close connection between law and economics.

The following syllabus prepared with this perspective will comprise about units of one hour duration each to be spread over a period of one semester.

**Syllabus**

- 1. The Concept of Monopoly: Advantages and Disadvantages** **units 5**
  - 1.1. The Role of monopoly in Indian economy
  - 1.2. Constitutional directives regarding concentration of economic power.
  - 1.3. The Right of the state to set up a monopoly in trade or business,
  - 1.4. Monopolies in the Private and Public Sectors
  - 1.5. Monopolization of certain trades and services - Magnitude and trends.
- 2. Historical Introduction to Monopolies and Antitrust Legislation in U.S.A. and U.K.** **units 5**
  - 2.1. The Sherman Act, the Clayton Act and the Monopolies and Mergers Act.
  - 2.2. Monopolies Inquiry Commission ?Recommendations: Constitutional directive
  - 2.3. The per se and “abuse” approaches towards monopolies.
  - 2.4. Decision-making authority of the Central Government and Advisory character of MRTTP Commission: Policy and Law.
  - 2.5. Mandatory reference to commission in certain cases.
  - 2.6. Exemption of certain undertakings and institutions from the purview of MRTTP Act, justification thereof.
- 3. “Undertaking”** **units 5**
  - 3.1. Meaning
  - 3.2. Kinds of undertakings: interconnected, dominant and monopolistic
  - 3.3. The status of investment companies.
- 4. Anti-Concentration objectives: Law and Policy** **units 3**
  - 4.1. Nature and scope of anti-concentration Policy envisaged in MRTTP Act.
  - 4.2. C riterion of Public Interest
- 5. Regulation of Expansion and of New Undertakings** **units 5**
  - 5.1. Procedure for securing approval; conditional approval
  - 5.2. Establishment of new undertakings

- 5.3. Substantial expansion of existing undertakings
- 5.4. Diversification Proposal and their legal character
- 5.5. Power to exempt certain class of expansion and new unit proposals from anti concentration controls.

**6. Regulation of Mergers and Take-Over** **units 7**

- 6.1. Meaning of Merger
- 6.2. Procedure for obtaining approval
- 6.3. Meaning of take-over
- 6.4. Intercorporate investment
- 6.5. Deconcentration of single or interconnected enterprise

**7. Control of Monopolies and Monopolistic Trade Practices by MRTP Commission** **units 5**

- 7.1. Definitions and meaning of “Monopolistic Undertakings” and “Monopolistic Trade Practice”.
- 7.2. Public interest in relation to Monopolistic Practice
- 7.3. Sacchar Committee Recommendations regarding control of Monopolies
- 7.4. Powers of the Commission regarding monopolistic Trade Practices.
- 7.5. The New Economic Policy of 1991.

**8. Control of Restrictive Trade Practice by the MRTP Commission** **units 7**

- 8.1. Definition and meaning of Restrictive Trade Practice
- 8.2. Agreements which come within the purview of RTP
- 8.3. Public interest in relation to RTP
- 8.4. Prohibition of resale price maintenance
- 8.5. Powers of the MRTP Commission in relation of RTP

**Suggested readings**

Taxman, *Corporate Laws* (1994)

P.Asch, *Economic Theory and Anti-trust Dilemma* (1970)

J.M.Blair, *Economic Concentration - Structure, Behaviour and Piublic Policy* (1972)

S.M.Duggar, *Law of Restrictive trade Practices* (1976)

S.Sankaran, *Indian Economy* (1995)

Rowley, *International Mergers Anti-trust Process* (1996)

Evel and Little: *Concentration in British Industry* (1960)

J.B.health, (ed.) *International Conference on Monopolies - Mergers and Restrictive Practices* (1972)

C.Kaysen and Turner, *Anti-Trust Policy* (1959)

W.F.Muller, A. *Primer on Monopoly and Competition* (1970)

A.D.Neal, *Anti-Trust Law of U.S.A.* (1983)

A.Sutherland, *The Monopolies Commission in Action* (1969)

B.S.Yamay, *The Economics of Resale Price Maintenance Roman*

Government of India, *Report of the Industrial Licensing Policy Inquiry Committee* (1969)

Government of India, *Report of the High Powered expert Committee on the Companies Act the MRTP Act (Sachar Committee)* (1978)

V.K.Singania, *Economic Concentration Through Intercorporate* (1980)

S.M.JhALA, *Monopolies and Restrictive Trade Practices in India* (1984)