

## CHAPTER-I

### INTRODUCTION

Everything that is printed becomes out of date.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

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

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

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

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

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

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

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

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

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

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

### ***Foundation courses***

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

## **Optional Groups**

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

A006 International Law and Organisation: Law, Practice and Future

A007 Disarmament and Peace Strategies

A008 International Humanitarian Law

A009 Law and Diplomacy

A010 Law of the Sea

A011 International Law and Contemporary Issues.

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

B012 Comparative Criminal Procedure

B013 Penology :Treatment of Offenders

B014 Privileged Class Deviance

B015 Drug Addiction, Criminal Justice and Human Rights

B016 Juvenile Delinquency

B017 Collective Violence

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

C018 Law of Industrial and Intellectual Property

C019 Legal Regulation of Economic Enterprises

C020 Law of Export - Import Regulation

C021 Banking Law

C022 Insurance Law

C023 Corporate Finance

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

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

**Group E : Environment and Legal Order**

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

**Group F : Jurisprudence**

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

**Group G : Constitution and Legal Order**

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

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

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

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

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

**Group J : Human Rights Law**

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

**Group K : Administrative Law**

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

**General norms for LL.M curriculum**

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

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

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

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

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

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

### ***Practical examination***

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

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

### **1. Research Methodology**

(i) Doctrinal research (25 marks)

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

(ii) Non-doctrinal research (25 marks)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## CHAPTER II

### LL.B. PROGRAMME

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

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

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

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

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

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

#### **1. Introduction**

**units 10**

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

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

## **2. Schools of Jurisprudence**

**units 15**

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

## **3. Purpose of Law**

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

## **4. Sources of Law**

**units 20**

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

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

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

**12. Obligation: Nature and kinds**

**units 2**

- 12.1. Sources of obligation

**13. Procedure**

**units 2**

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

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**BCI C 02 CONTRACT - I ( GENERAL PRINCIPLES OF CONTRACT AND SPECIFIC RELIEF)*****Objectives of the course***

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

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

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

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

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

***Syllabus***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***Objectives of the course***

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

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

***Syllabus***

- |  |                |
|--|----------------|
| <b>1. Indemnity</b>  | <b>units 3</b> |
| 1.1. The concept   |                |
| 1.2. Need for indemnity to facilitate commercial transactions. |                |
| 1.3. Methods of creating indemnity obligations.                |                |
| 1.4. Definition of Indemnity                                   |                |
| 1.5. Nature and extent of liability of the indemnifier         |                |
| 1.6. Commencement of liability of the indemnifier              |                |
| 1.7. Situations of various types of indemnity creations.       |                |
| 1.8. Documents/agreements of indemnity                         |                |
| 1.9. Nature of indemnity clauses.                              |                |
| 1.10. Indemnity in cases of International transactions         |                |
| 1.11. Indemnity by governments during interstate transactions. |                |

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

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

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

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

3.5. Duties of Bailor and Bailee towards each other

3.6. Rights of bailor and bailee

3.7. Finder of goods as a bailee.

3.7.1. Liability towards the true owner.

3.7.2. Obligation to keep the goods safe

3.7.3. Right to dispose off the goods.

#### **4. Pledge**

**units 4**

4.1. Pledge: comparison with bailment

4.2. Commercial utility of pledge transactions

4.3. Definition of pledge under the Indian contract Act

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

4.5. Rights of the pawner and pawnee.

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

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

#### **5. Agency**

**units 10**

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

5.2. Kinds of agents and agencies.

5.2.1. Distinction between agent and servant.

5.3. Essentials of a agency transaction

5.4. Various methods of creation of agency

5.5. Delegation

5.6. Duties and rights of agent

5.7. Scope and extent of agent's authority.

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

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

## **6. Sale of Goods**

**units 22**

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

## **7. Partnership**

**units 20**

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

7.7. Registration of Partnership

7.8. Dissolution of Partnership

## **8. Negotiable Instruments**

**units 12**

8.1. The concept

8.2. Various kinds

8.3. Essential requirements to make an instrument negotiable.

8.4. Competent parties for making and negotiation

8.5. Acceptance of the instrument.

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

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

8.8. Negotiation of the instrument.

8.9. Presentment of the instrument.

8.10. Cheques: rules regarding payment of cheque

8.10.1. Liability of the collecting banker and paying banker.

8.10.2. Dishonour of cheque and its effect.

8.10.3. Discharge from liability

8.11. Kinds of bills

8.12. Evidence

8.12.1. Special rules of evidence regarding negotiable instruments

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

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

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

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

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

***Syllabus***

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

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

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

**units 2**

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

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

**units 2**

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

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

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

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

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

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

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

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

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

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

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

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

- 14.1. Legal remedies:
  - 14.1.1. Award of damages- simple, special, punitive
  - 14.1.2. Remoteness of damage- foreseeability and directness
  - 14.1.3. Injunction
  - 14.1.4. Specific restitution of property
- 14.2. Extra-legal remedies- self-help, re-entry on land, re-capture of goods, distress damage feasant and abatement of nuisance.

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

- 15.1. Common law protection: contract and torts
- 15.2. Consumerism in India: food adulteration, drugs and cosmetics - essential Commodities
  - 15.2.1. Criminal sanction: Sale of noxious and adulterated substances, false weights and measures. Use of unsafe carriers

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

- 16.1. General Perspectives
- 16.2. Statutory and government services: to be included or not?
- 16.2. Definition and scope: the Consumer Protection Act 1986 (CPA)
- 16.3.1. Who is not a consumer?

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

- 17.1. Misleading and false advertising
- 17.2. Unsafe and hazardous products
- 17.3. Disparaging competitors
- 17.4. Business ethics and business self-regulation
- 17.5. Falsification of trade marks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ***Syllabus***

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

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

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

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

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

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

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

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

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

4.11. Matrilineal joint family

## **5. Inheritance**

**units 36**

5.1. Hindus

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

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

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

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

5.1.5. Disqualification relating to succession

5.1.6. General rules of succession

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

5.2. Muslims

5.2.1. General rules of succession and exclusion from succession.

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

5.3. Christians, Parsis and Jews

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

## **6. Matrimonial Remedies**

**units 20**

6.1. Non-judicial resolution of marital conflicts.

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

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

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

## **7. Alimony and maintenance**

**units 16**

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

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

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

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

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

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

***Syllabus***

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

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

### **3. Group liability**

**units 10**

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

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

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

**5. Factors negating guilty intention****units 10**

- 5.1. Mental incapacity
  - 5.1.1. Minority
  - 5.1.2. Insanity- impairment of cognitive faculties, emotional imbalance
  - 5.1.3. Medical and legal insanity
- 5.2. Intoxication - involuntary
- 5.3. Private defence- justification and limits
  - 5.3.1. When private defence extends to causing of death to protect body and property
  - 5.3.2. Necessity
  - 5.3.3. Mistake of fact

**6. Types of punishment****units 8**

- 6.1. Death:
  - 6.1.1. Social relevance of capital punishment
  - 6.1.2. Alternatives to capital punishment
- 6.2. Imprisonment - for life, with hard labour, simple imprisonment
- 6.3. Forfeiture of property
- 6.4. Fine
- 6.5. Discretion in awarding punishment:
  - 6.5.1. Minimum punishment in respect of certain offences

**7. Specific offences against human body****units 10**

- 7.1. Causing death of human beings
  - 7.1.1. Culpable homicide
  - 7.1.2. Murder
- 7.2. Distinction between culpable homicide and murder

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

## **8. Offences against women**

**units 10**

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

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

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

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

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

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

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

***Objective of the course***

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

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

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

**1. Introductory**

**units 5**

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

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

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

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

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

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

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

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

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

12.4. Revisional jurisdiction (Sections 397-405)

12.5. Transfer of cases (Section 406, 407)

**13. Juvenile delinquency**

**units 7**

13.1. Nature and magnitude of the problem

13.2. Causes

13.3. Juvenile court system

13.4. Treatment and rehabilitation of juveniles

13.5. Juveniles and adult crime

13.6. Legislative and judicial protection of juvenile offender

13.7. Juvenile Justice Act 1988

**14. Probation**

**units 7**

14.1. Probation of offenders law

14.2. The judicial attitude

14.3. Mechanism of probation : standards of probation services.

14.4. Problems and prospects of probation

14.5. The suspended sentence

**15. Reform of criminal procedure**

**units 2**

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

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

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

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

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

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

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

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

## **2. Parliamentary Government**

**units 15**

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

## **3. Federalism**

**units 8**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**units 3**

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

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**BCI C 10 PROPERTY LAW INCLUDING TRANSFER OF PROPERTY ACT AND EASEMENT ACT*****Objectives of the course***

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

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

***Syllabus***

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

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

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

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

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



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

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

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

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

***Syllabus***

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

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

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

**units 4**

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

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

**units 20**

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

### **5. Dying Declarations**

**units 4**

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

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

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

## **11. Burden of Proof**

**unit 8**

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

## **12. Estoppel**

**unit 8**

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

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

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

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

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

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

**1. Introduction units 5**

1.1. Concepts

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

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

**2. Jurisdiction units 7**

2.1. Kinds

2.1.1. Hierarchy of courts

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

### **3. Pleadings**

**units 7**

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

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

**units 8**

- 4.1. Appearance
- 4.2. Ex-parte procedure

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

**5. Execution units 12**

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

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

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

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

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

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

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

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

***Syllabus***

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

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

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

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

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

**6. Fundamental principles of Legal Writing**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**units 20**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ***Syllabus***

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

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

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

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

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

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

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

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

***Objectives of the course***

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

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

***Syllabus***

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

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

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

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

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

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

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

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

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

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

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

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

2.3. Free India - continuance of British influence

2.3.1. Old laws and new interpretations

### **3. Constitutional Perspectives**

**units 15**

3.1. Constitution making - development and property oriented approach

3.2. Directive principles

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

3.3. Fundamental Duty

3.3.1. contents

3.3.2. judicial approach

3.4. Fundamental Rights

3.4.1. Rights to clean and healthy environment

3.4.2. Right to education

3.4.3. Right to information

3.4.4. Environment v. Development

3.5. Enforcing agencies and remedies

3.5.1. Courts

3.5.2. Tribunal

3.5.3. Constitutional, statutory and judicial remedies

3.6. Emerging principles

3.6.1. Polluter pays: public liability insurance

3.6.2. Precautionary principle

3.6.3. Public trust doctrine

3.6.4. Sustainable development

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

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

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

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

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

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

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

***Syllabus***

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

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

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

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

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

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

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

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

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

## **5. Discipline in industry**

**units 8**

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

## **6. Remuneration for Labour**

**units 12**

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

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

**7. Health and Safety** **units 10**

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

**8. Labour Welfare** **units 9**

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

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

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

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

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

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

***Syllabus***

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

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

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

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

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

- 4.2.2. Eiusdem generis
- 4.2.3. Reddendo singula singulis

## **5. Presumptions in statutory interpretation**

**units 7**

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

## **6. Maxims of Statutory Interpretation**

**units 13**

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

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

**units 10**

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

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

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

**units 10**

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

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

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

***Syllabus***

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

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

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

## OPTIONAL COURSES

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

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

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

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

#### ***Syllabus***

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

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

### **3. Institutions**

**units 4**

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

### **4. WTO**

**units 15**

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

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

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

## **9. Dispute settlement**

**units 10**

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

## **10. International Monetary Fund**

**units 6**

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

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

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

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

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

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

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

***Syllabus***

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

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

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

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

### ***Select bibliography***

The Provincial Insolvency Act 1920

Insolvency Acts of various States

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

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

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

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

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

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

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

***Syllabus***

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

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

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

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

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

**Select bibliography**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.5. Types of Comparison

1.6. Problems of Method

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

**units 12**

2.1. Roman Law

2.2. Jewish Law

2.3. Islamic Law

2.4. Hindu Law

2.5. Chinese Law

2.6. African Law

2.7. Common Law

2.8. Civil Law

**3. Contemporary Traditions of Law**

**units 10**

3.1. Capitalist/bourgeois Law

3.2. Socialist Law

3.3. "Third World" Law

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

**units 16**

4.1. Principle unification agencies at work : a survey

4.2. The International Law Commission

4.3. UNICITRAL

4.4. The World Intellectual Property Organisation (WIPO)

4.5. The International Labour Organisation

4.6. The U.N. Human Rights Agencies

4.7. The World Trade Organization

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

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

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

**Select bibliography**

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

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

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

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

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

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

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

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

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

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

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

H.C. Gutteridge, *Comparative Law*

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

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

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

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

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

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

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

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

***Legal History of India***

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

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

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

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

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

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

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

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

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

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Courtney Ilbert, *Government of India* (1962)

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

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

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

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

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

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

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

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

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

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

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

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

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

**Syllabus**

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

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

### **3. Life Insurance**

**units 15**

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

### **4. Marine Insurance**

**units 14**

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

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

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

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

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

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

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

5.1.3. Conditions to be satisfied

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

5.1.5. Co-operative insurance (Motor Vehicles Rules)

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

6.1. Important elements in social insurance, its need

6.2. Commercial insurance and social insurance

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

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

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

6.6. Unemployment insurance

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

**7. Public Liability Insurance**

**units 5**

7.1. The scheme

7.2. Authorities

**8. The emerging legislative trends**

**units 2**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**6. Concept of Domicile****units 8**

- 6.1. General principles/fundamental Principles
- 6.2. Elements - intention and residence
- 6.3. Kinds
  - 6.3.1. Domicile of Origin
  - 6.3.2. Domicile of Choice
  - 6.3.3. Domicile of dependence: married women's position in English and Indian laws.
  - 6.3.4. Domicile of corporation.

**7. Status****units 4**

- 7.1. What is Status?
- 7.2. Incidents
- 7.3. What law governs status
- 7.4. Universality of status

**8. Marriage****units 8**

- 8.1. Marriage as a contract and also status how different from other contracts (social personal contract)
- 8.2. Kinds of Marriage
- 8.3. How in India, marriage as a concept moved from partially polygamous towards monogamous type and total sacrament to secularization to some extent.
- 8.4. Questions of format and essential validity:
  - 8.4.1. Formal validity by *lex loci celebrationis*
  - 8.4.2. Essential/material/intrinsic validity.
- 8.5. Capacity to marriage
  - 8.5.1. Consent
  - 8.5.2. Not within prohibited degrees.

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

## **9. Matrimonial Causes**

**units 3**

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

## **10. Legitimacy and Legitimation**

**units 3**

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

## **11. Adoption**

**units 3**

- 11.1. Purpose of adoption
  - 11.1.2. Common law

11.1.3. Indian Law

11.1.3.1. Hindu law

11.2. Recognition of foreign adoption

## **12. Custody and Guardianship**

**units 3**

12.1. Purpose

12.2. Adoption and succession.

## **13. Property**

**units 8**

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

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

13.3. Succession to immovable property - lex patrae.

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

13.4. Transfer of Tangible Movables (Particular Assignment).

13.5.1. Different theories

13.5.2. Assignment of Intangible Movables

13.5.3. Kinds of assignment-voluntary and involuntary

13.5.4. Formal and essential validity

## **14. Succession**

**units 3**

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

14.2. In testate succession

14.3. Wills- Formal and Essential Validity

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

14.5. In case of immovables, lex situs governs

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

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

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

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

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

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

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Cheshire, *Private International Law*

Strumberg, *Private International Law*

A.V.Dicey, *Conflict of Laws*

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

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

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

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

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

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

**units 10**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This paper is designed keeping in view the changes that are taking place in the Indian context and comprises of 84 units of one hour duration.

- 1. Historical Background of securities and investment laws** **units 6**
  - 1.1. Securities : the concept
  - 1.2. England: Banking corporate finance and private financial services
  - 1.3. India: from usury laws to the modern system
  
- 2. Securities: Kinds** **units 7**
  - 2.1. Government Securities
  - 2.2. Securities issued by banks
  - 2.3. Securities issued by corporations
  - 2.4. Securities in mutual fund and collective investment scheme
  - 2.5. Depository receipts
  
- 3. Government Securities** **units 10**
  - 1.1. Bonds issued by government and semi government institutions
  - 3.1. Role of Central Bank (the RBI in India)
  - 3.2. Impact of issuance of bonds on economy
  - 3.3. Government loan from the general public

- 3.4. External borrowing
- 3.5.1. World Bank
- 3.5.2. I.M.F.
- 3.5.3. Assian Development Bank
- 3.5.4. Direct from foreign government.
- 3.5. Government loan: the constitutional dilemma and limitations
- 3.6. Can a state go for external loans?
- 3.7. Impact on economic sovereignty
- 3.8. Dilution of power of the Central Bank (RBI)
- 3.9. Treasury deposits

#### **4. Securities Issued by Banks**

**units 10**

- 4.1. Bank notes: is it the exclusive privilege of the central bank in the issue
- 4.2. Changing functions of banks from direct lending and borrowing to modern System
- 4.3. Bank draft, travellers' cheques, cheque cards, credit cards, cast cards
- 4.4. Deposits' nature: current, saving and fixed deposits, interest warrants

#### **5. Corporate Securities**

**units 25**

- 5.1. Shares
- 5.2. Debentures
- 5.3. Company deposits
- 5.4. Control over corporate securities
  - 5.4.1. Central government: Company Law Board
  - 5.4.2. SEBI : guide lines on capital issues
  - 5.4.3. RBI
- 5.5. Protection of investor
  - 5.5.1. Administrative regulation

5.5.2. Disclosure regulation

5.5.3. Protection by criminal sanction

**6. Collective Investment**

**units 12**

6.1. Unit Trust of India

6.2. Venture capital

6.3. Mutual fund

6.4. Control over issue and management of UTI, venture capital and mutual funds

6.5. Plantations and horti-culture farms

6.5.1. General control

6.5.2. Control by rating

6.5.3. Regulation on rating.

**7. Depositories**

**units 6**

7.1. Denationalized securities

7.2. Recognition of securities

7.3. Types of depository receipts: IDR, ADR, GDR and Euro receipts

7.4. SEBI guideline on depositories

**8. Investment in non-banking financial institutions**

**units 5**

8.1. Control by usury laws

8.2. Control by RBI

8.3. Regulation on non-banking financial and non-financial companies

8.3.1. Private-financial companies: registration and regulation

8.3.2. Chit funds

**9. Foreign Exchange Control Regime in India**

**units 3**

9.1. Concept of foreign exchange regulation

9.2. Administration of exchange control

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Farrar, John, H. and Hanniyan, Brenda, *Farr's Comopany Law*, (1998) Butterworths, London

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Ford, Haj A.M., et. al. *Ford's Principles of Corporations Law*, (1999) Butterworths, London.

**BCI 009 TRUSTS, EQUITY AND FIDUCIARY RELATIONSHIPS*****Objectives of the course***

Trust being an obligation connected with property, the law has to play a key role in protecting interests of persons for whose benefit trust is created and for balancing the rights and duties of persons connected with trust transactions. There are also instances where even in the absence of specific trust, law has to protect the beneficial interests of persons on equitable considerations. Trusts may also be created for public purposes of charitable and religions nature. The existing laws in respect of trusts, equitable and fiduciary relations connected with property are to be taught in detail. Students should also to be conscientized of the emerging public trust doctrine of common property resources.

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

***Syllabus***

- |   |                |
|---|----------------|
| <b>1. Introduction</b>  | <b>units 5</b> |
| 1.1 The concept of trust : distinction with agency and contract |                |
| 1.2 Development of law: common law and equity                   |                |
| 1.3 Trusts : classification                                     |                |
| <b>2. Definition and Nature of trusts under the Indian law</b>  | <b>units 3</b> |
| 2.1. Creation of trusts : rules                                 |                |
| <b>3. Duties of trustees</b>                                    | <b>units 8</b> |
| 3.1. Execution  |                |
| 3.2. Acquittance with the nature of property                    |                |
| 3.3. Duties in respect of title                                 |                |
| 3.4. Duty of care   |                |
| 3.5. Conversion   |                |
| 3.6. Impartiality   |                |

- 3.7. Prevention of waste
- 3.8. Keeping of accounts and giving of information
- 3.9. Investment
- 3.10. Sale
- 3.11. Liability for breach of trust

**4. Rights of Trustees** **units 8**

- 4.1. Title deed
- 4.2. Reimbursement
- 4.3. Indemnity
- 4.4. Seeking direction from court
- 4.5. Settlement of accounts
- 4.6. General authority

**5. Powers of trustees** **units 8**

- 5.1. Sale
- 5.2. Varying of investment
- 5.3. Property of minors
- 5.4. Giving receipts
- 5.5. Power to compound, compromise and settle
- 5.6. Exercising authority on death or disclaimer of one of the trustees
- 5.7. Suspension of trustee's power

**6. Disabilities of trustees** **units 2**

**7. Rights of beneficiaries** **units 8**

- 7.1. Rents and profits
- 7.2. Specific execution
- 7.3. Inspection and information

- 7.4. Transfer
  - 7.5. Suit for execution
  - 7.6. To have proper trustees
  - 7.7. Right to compel the trustee to do the duties
  - 7.8. Rights on wrongful purchase or acquisition by trustees
  - 7.9. Follow up of trust properties in the hands of third parties
  - 7.10. Blending of property by trustee
  - 7.11. Wrongful application of trust property by partner trustee for partnership purposes.
- 8. Liabilities of Beneficiaries** **units 2**
- 9. Discharge of Trustees** **units 3**
- 10. Appointment of New Trustees** **units 3**
- 11. Extinction of Trust** **units 3**
- 12. Constructive trusts : the equitable and fiduciary Relationship** **units 20**
- 12.1. Transfer without intent to dispose beneficial Interest
  - 12.2. Trust incapable of execution and trusts executed fully without exhausting property - the cypress doctrine
  - 12.3. Transfer and request for illegal purpose
  - 12.4. Transfer pursuant to rescindable contract
  - 12.5. Debtor becoming creditor's representative
  - 12.6. Advantage from undue influence
  - 12.7. Advantage by qualified owner
  - 12.8. Property acquired with notice of existing contract
  - 12.9. Purchase by person contracting to buy property to be held on trust
  - 12.10. Possession of property without whole beneficial interest
  - 12.11. Duties of constructive trustees
  - 12.12. Rights of bonafide purchasers

**13. Special legislation** **units 8**

13.1. Charitable and religious trust

**14. Common property resources and public trust doctrine** **units 3****Select bibliography**

S.Krishnamurthy Aiyar and Harbans Lal Swin, *Principles and Digest of Trusts Laws* (1998), University Book Agency, Allahabad.

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**BCI 010 CRIMINOLOGY AND PENOLOGY*****Objectives of the course***

The course is designed to acquaint students with advances made by sociology and psychiatry in understanding human behaviour, particularly, deviant behaviour. In the past criminality was confined to acts of violence or unlawful acts of commission or omission. Thus the purpose behind criminality in the past was to do acts of revenge or to commit it for personal gain. The concept of crime has changed considerably in recent years. Unscrupulous members of society to indulge in anti-social behaviour with impunity have devised sophisticated methods. The perpetrators of crime include persons in high places, public officials, public and private enterprise against whom it is difficult to procure conviction under the traditional criminal law process due to abuse of power or power of the purse. Criminal gangs have come on the scene and indulge in offences such as smuggling, illegal trafficking in drugs and bootlegging. Communal and cast warfare has been a recurring phenomenon in recent times and the enormity of suffering of innocent persons has necessitated re-examination of our pre-conceived notions regarding the causes of crime and the methods used for its prevention and control. In view of the magnitude of the problem the existing machinery for control of crime, namely the police and the courts have come under severe criticism.

Emphasis will be laid on understanding the weak and strong points of the existing system in order to determine whether it can meet the challenge and carry new burdens. Much has been said against capital punishment and imprisonment as methods of preventing and control of crime. Nevertheless these continue to be the backbone of the system in India. Several alternatives such as conditional release, parole and commutation of sentences have been suggested in this regard. The course shall dwell on these themes with a view to develop among students a greater understanding of social costs of crime and the effective ways of lessening them.

Rehabilitation process is undoubtedly an important component of criminal justice system. The advances made in this respect in developed countries will be discussed to create awareness among the students of the problems in the context of Indian conditions.

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

**Syllabus****1. Dimensions of Crime in India****units 14**

- 1.1. Nature and extent of crime in India
- 1.2. General approaches to crime control.
- 1.3. Crimes of the powerful
  - 1.3.1. Organised crime - smuggling, traffic in narcotics.
  - 1.3.2. White collar crime - corruption in public life
  - 1.3.3. Socio-economic crime: adulteration of foods and drugs; fraudulent trade practices.
  - 1.3.4. Crimes in the professions - medical, legal, engineering.
  - 1.3.5. Criminality by agencies of the state.
- 1.4. Perpetrators of ordinary crime
  - 1.4.1. The situational criminal.
  - 1.4.2. The chronic offender.
  - 1.4.3. Criminality of women
  - 1.4.4. Young offenders
  - 1.4.5. Criminal gangs.

**2. Causes of Criminal Behaviour****units 14**

- 2.1. Nature of the problem : some unscientific theories
- 2.2. The constitutional School of Criminology - Lombroso and others (heredity and mental retardation as causes of crime)
- 2.3. Sociological theories Anomies
- 2.4. Modern sociological theories - Sutherland's differential association theory: Reckless's social vulnerable theory.
- 2.5. Economic theories and their relevance.
- 2.6. Environment - home and community influences, urban and rural crimes.
- 2.7. The ghetto, broken homes, the effect of motion pictures, T.V. and video, press, narcotics and alcohol.

- 2.8. Caste and community tensions : caste wars and communal riots - their causes and demoralising effects; atrocities against scheduled cadres.
- 2.9. Emotional disturbance and other psychological factors.
- 2.10. Multiple causation approach to crime.

**3. Police and the criminal justice units 13**

- 3.1. The police system
- 3.2. Structural organisation of police at the centre and the states.
- 3.3. Mode of recruitment and training.
- 3.4. Powers and duties of police under the police acts, Criminal Procedure Code and other laws.
- 3.5. Arrest, search and seizure and constitutional imperatives.
- 3.6. Methods of police investigation
- 3.7. Third degree methods
- 3.8. Corruption in police
- 3.9. Relationship between police and prosecution.
- 3.10. Liability of police for custodial violence.
- 3.11. Police public relations
- 3.12. Select aspects of National Police Commission report.

**4. Punishment of Offenders units 15**

- 4.1. Some discarded modes of punishment
  - 4.1.1. Corporal punishment : whipping and flogging : mutilation and branding
  - 4.1.2. Transportation
  - 4.1.3. Public execution
- 4.2. Punishments under the Indian criminal law
  - 4.2.1. Capital punishment
  - 4.2.2. Imprisonment

- 4.2.3. Fine
- 4.2.4. Cancellation or withdrawal of licences
- 4.3. The prison system:
  - 4.3.1. Administrative organisation of prisons.
  - 4.3.2. Mode of recruitment and training
  - 4.3.3. The Jail Manual.
  - 4.3.4. Powers of prison officials.
  - 4.3.5. Prisoners classification - male, female : juvenile and adult : undertrial and convicted prisoners
  - 4.3.6. Constitutional imperatives and prison reforms
  - 4.3.7. Prison management: prisoners right and security compulsions.
  - 4.3.8. Open prisons
  - 4.3.9. Prison labour
  - 4.3.10. Violation of prison code and its consequences.
- 4.4. Appraisal of imprisonment as a mode of punishment.

## **5. Treatment of Correction of Offenders**

**units 15**

- 5.1. The need for reformation and rehabilitation of offenders undergoing punishment/ imprisonment.
- 5.2. Classification of offenders through modern diagnostic techniques.
- 5.3. The role of psychiatrists, psychoanalysts and social workers in the prison.
- 5.4. Vocational and religious education, and apprenticeship programmes for the offenders.
- 5.5. Group counselling and re-socialisation programmes.
- 5.6. Prisoners organisations for self-government.
- 5.7. Participation of inmates in community services.
- 5.8. An appraisal of reformatory techniques.

- 5.9. Efficacy of imprisonment as a measure to combat criminality and the search for substitutes

**6. Re-socialisation processes**

**units 13**

- 6.1. Parole:
- 6.1.1. Nature of parole.
  - 6.1.2. Authority for granting parole.
  - 6.1.3. Supervision of parolees.
  - 6.1.4. Parole and conditional release.
- 6.2. Release of the offender:
- 6.2.1. Problems of the released offender.
  - 6.2.2. Attitudes of the community towards released offender.
  - 6.2.3. Prisoner aid societies and other voluntary organisations.
  - 6.2.4. Governmental action.
  - 6.2.5. An appraisal.

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**BCI 011 AIR AND SPACE LAW*****Objectives of the course***

There were only a few regulations relating to air and space in the past. There are at present unprecedented activities both in air space and outer space. This leads to multiplicity of multilateral and bilateral conventions and agreements in international air transportation and in outer space exploration. Questions of safety of flights are not merely questions of municipal law but are challenges to the international norms of newly developing air and space law. As in other branches, globalisation and liberalisation had their impact on these branches too. Terrorism against aviation is a matter of serious concern with the escalation of international civil aviation. Advancement of science and technology has pushed man to have sway into the outer space. Thus sharing of geo-stationary orbits and control over experimentation in outer space have thrown new problems. This course deals with all these aspects which do bring in several conventions and treaties - multilateral, regional, bilateral - into focus.

This paper with the above mentioned perspectives will comprise of eighty four units of one hour duration.

***Syllabus***

- 1. Introduction units 5**
  - 1.1. Definition of Air law
  - 1.2. Nature, scope and source
  - 1.3. Development of air law ( Paris Convention 1910, Paris Convention 1919, Madrid Convention 1926, Havana Convention 1928, Warsaw Convention and Chicago Convention 1944 )
  
- 2. Regulation units 5**
  - 2.1. Freedom of the air and sovereignty in the air
  - 2.2. Membership and organs of ICAO
    - 2.2.1. Legislative, administrative and judicial functions
    - 2.2.2. Economic and technical regulations

- 3. Bilateralism and multi-lateralism** **units 5**
  - 3.1. Concept of bilaterlism
  - 3.2. Views on multi-lateralism
  - 3.3. Merits and demerits
  - 3.4. Regionalism in civil aviation
- 4. India and bilateral agreements** **units 5**
- 5. Safety and Security in civil aviation** **units 5**
  - 5.1. The concept
  - 5.2. Aviation terrorism
  - 5.3. International norms: conventions, protocols and regulations
  - 5.4. Regulations in India
    - 5.4.1. Air safety provisions
- 6. Air traffic management** **units 5**
  - 6.1. Legal regime of air space and outer space
    - 6.1.1. Problems of application of air, space and telecommunication laws
    - 6.1.2. State obligation to provide air navigation services
    - 6.1.3. Sovereign rights of States
- 7. New Development in India** **units 5**
  - 7.1. Technology development and problems in civil aviation
  - 7.2. Airports: leasing and privatization - legal issues
- 8. Liability in international civil aviation** **units 5**
  - 8.1. Manufacturers, operators, operators' agents and maintenance contractors
  - 8.2. Third party liability for surface damage
- 9. Changing Global trends** **units 5**
  - 9.1. Globalization, de-regulation and liberlisation in international civil aviation: infra structural problems of air port

- 9.2. Private involvement in ownership, operation and management of air ports
- 9.3. International regulatory framework
- 10. Rights and Privileges of air passengers** **units 5**
  - 10.1. Consumer protection in civil aviation
    - 10.1.1. Liability for death, injury and delay
      - 10.1.1.1. Global trends
      - 10.1.1.2. Indian law
- 11. Air Cargo** **units 5**
  - 11.1. International Conventions and Regulations
  - 11.2. India: regulations
- 12. Aviation related Environmental Problems** **units 5**
- 13. Aircraft financing and leasing** **units 2**
- 14. Aviation Insurance** **units 2**
- 15. Settlement of Aviation Related Disputes** **units 2**
  - 15.1. General Principles
  - 15.2. Role of ICAO and ICJ
  - 15.3. Arbitration
  - 15.4. Settlement under municipal law
- 16. Space Law** **Units 3**
  - 16.1. Definition, nature, scope and development
  - 16.2. Sources
- 17. UN and Outer Space** **units 3**
  - 17.1. Space technology: establishment of COPUOS
  - 17.2. International co-operation for peaceful use

17.3. Development by General Assembly resolutions

17.4. UN space treaties: strengths and needs

**18. Development of law by treaties**

**units 3**

18.1. The space treaty 1967

18.2. The rescue Agreement 1968

18.3. The Liability Convention 1972

18.4. The Registration Convention 1975

18.5. The Moon Treaty 1979

18.6. Partial Test Ban Treaty 1963

18.7. Weather Modification Convention 1977

**19. International and Intergovernmental Organizations**

**units 2**

**20. Non-governmental Organizations and Space Activities**

**units 2**

**21 Bilateral Agreements in Space Activity**

**units 2**

21.1. Liability

21.2. Satellite Broadcasting and Telecommunications

21.3. Space based Observation, monitoring remote sensing, tracking telemetry and communications

**22 Use of Space technology**

**units 2**

22.1. Peaceful and non-peaceful

22.2. Remote sensing

22.3. Environmental protection

22.4. Disaster prediction, warning and mitigation

22.5. Management of earth resources

22.6. Satellite navigation and location

22.7. Space communication

- 23. Commercialization of Space Activities** **units 2**
- 23.1. Public and private sector activities
  - 23.2. Industry-government partnership
  - 23.3. IPR rights
- 24. Dispute Settlement** **units 2**
- 25. India and Space Law** **units 2**
- 25.1. Contribution to development of international law
  - 25.2. Organisation of Space activities: DOS, ISRO
  - 25.3. Space policy
  - 25.4. Need for the law in the country

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**BCI 012 LAW AND MEDICINE****Objective of the course**

The Constitution of India has certain norms to be operative in the field of health care. Coupled with these constitutional norms, there have been many legislative measures. The judiciary had a leap forward and contributed significantly in the area. But there are gaps to be filled. While law aims at just society by adjusting and balancing the rights and duties of individuals, medicine aims at creating a healthy society by concentrating on the health of individuals. Law and medicine are thus areas of high social concern. The law in its relation to medicines is significant as justice and fairness in health care.

This course is designed to expose the students to the various problems of medicine and law and to acquaint them with the existing law and its missing links. Those taking up this optional course should acquire the capability to evaluate the adequacy of law in solving the problems with comparative perspectives.

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

**Syllabus**

- |   |                 |
|---|-----------------|
| <b>1. Introduction</b>                            | <b>units 10</b> |
| 1.1. General background                           |                 |
| 1.1.1. Interrelationship between law and medicine |                 |
| 1.1.1.1. Issues involved                          |                 |
| 1.1.1.2. Need of legal control                    |                 |
| 1.2. Constitutional perspectives                  |                 |
| 1.2.1. Rights to life : Fundamental right         |                 |
| 1.2.1.1. Right to health                          |                 |
| 1.2.1.2. Right to emergency medical care          |                 |
| 1.2.2. Directive principles                       |                 |
| 1.2.2.1. Health of workers                        |                 |

- 1.2.2.2. Public assistance in sickness and disability
- 1.2.2.3. Raising the level of nutrition and public health
- 1.3. Power to make law

**2. Regulation of medical and paramedical profession** **units 7**

- 2.1. Regulatory authorities
- 2.2. Disciplinary controls
- 2.3. Doctors and Para-medical professionals
- 2.4. Controls on institutions
  - 2.4.1. Hospitals
  - 2.4.2. Testing laboratories
  - 2.4.3. Institutions for research and experiments

**3. Regulation on manufacture, storage and sale of medicines** **units 10**

- 3.1. Production, transport and storage
- 3.2. Sale
- 3.3. Advertisement

**4. Liability for professional negligence** **units 10**

- 4.1. Tort
  - 4.1.1. Standard of care
  - 4.1.2. problems of evidence
- 4.2. Contractual liability
- 4.3. Criminal liability
- 4.4. Liability of doctors and hospitals under the consumer protection law

**5. Science and Technology** **units 4**

- 5.1. Transplantations of organs
- 5.2. Test tube basics

5.3. Artificial insemination

5.4. Genetic engineering

**6. Population control**

**units 4**

6.1. Law, practice and society

6.2. Family planning : legality of coercive methods

6.3. Sterilisation of unfit.

6.4. Social Response

**7. Medical wastes**

**units 4**

7.1 Controls on handling and disposal of bio- medical wastes

**8. Experiments on human beings**

**units 6**

8.1. The concept

8.2. Kinds

8.3. Subjects of experimentation

8.4. Controls

**9. Surrogate Motherhood**

**units 10**

9.1. Historical background

9.2. The contractual aspect and enforceability

9.3. Parent-hood - who is the legal parent?

9.3.1. Problems of consent in caesarean surgery

9.4. Rights of husband against the right of the wife for surrogate motherhood

9.5. Rights and duties of surrogate mother when genetic parents refuse to accept the child.

**10. Aids Law**

**units 10**

10.1. Nature and scope

10.1.1. Regulation of blood and blood products

- 10.1.2. Regulation of sexual activity
- 10.2. Rights and freedom
  - 10.2.1. Privacy and liability to report
  - 10.2.2. Liberty and security
  - 10.2.3. Movement
  - 10.2.4. Marriage and setting up of a family
  - 10.2.5. Work
  - 10.2.6. Education
  - 10.2.7. Social security
  - 10.2.8. Right against degrading treatment
  - 10.2.9. Equality before law

## **11. The unborn**

**units 5**

- 11.1. Has the unborn constitutional or other legal rights?
- 11.2. Causing miscarriage and injuries to the unborn - liability
- 11.3. Amniocentesis
- 11.4. Medical termination of pregnancy

## **12. International norms**

- 12.1 Council of Europe Convention on Human rights and Bio medicine 1997
  - 12.1.1. Health care
  - 12.1.2. Professional standards
  - 12.1.3. Consent
  - 12.1.4. Privacy and right to information
  - 12.1.5. Non-discrimination
  - 12.1.6. Genetic texts
  - 12.1.7. Organ transplantation
  - 12.1.8. Scientific research

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**BCI 013A WOMEN AND LAW AND LAW RELATING TO CHILD*****Objectives of the course***

The need to study gender and juvenile justice as special subjects are to be emphasised as the constitutional guarantees have not achieved the desired results. The fundamental rights did not preclude having special provisions.

The planners and the policy makers therefore treated women only as beneficiaries of welfare measures. The hope was the benefits of development would percolate below to all including women and therefore there was no need for special efforts to bring them into the mainstream. This trickle down theory of development is still to be materialised in spite of the positive action of woman's representation in local bodies. Women are discriminated in almost all sectors.

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

The course will study the above mentioned problems and comprises of about 84 units one-hour duration.

***Syllabus***

- |  |                |
|--|----------------|
| <b>1. International concerns and conventions</b> | <b>Units 2</b> |
| <b>2. Women in India</b>                         | <b>units 5</b> |
| 2.1. Pre-independence period                     |                |
| 2.1.1. Social and legal inequality               |                |

2.1.2. Social Reform Movement in India

2.1.3. Karachi Congress - Fundamental Rights Resolution, Equality of Sexes

**3. Women in post independence India** **units 5**

3.1. Preamble of the Constitution: equality provisions in Fundamental Rights and Directive Principles of State Policy

3.2. Personal laws - unequal position of women

3.3. Uniform Civil Code towards gender justice.

**4. Sex Inequality in Inheritance Rights** **units 5**

4.1. Feudal institution of joint family - women's inheritance position

4.2. Hindu Law

4.3. Muslim Law

4.4. Matrimonial property

4.5. Movement Towards Uniform Civil Code

**5. Guardianship** **units 5**

5.1. Right of women to adopt a child

5.2. Problems of women guardianing

**6. Divorce** **units 5**

6.1 Indian Divorce Act

6.2 Christian Law

6.3 Muslim Law

**7. Criminal Law** **units 2**

7.1. Adultery

7.2. Rape

- 8. Social Legislation** **units 2**
- 8.1. Dowry Prohibition
  - 8.2. Prevention of immoral traffic
- 9. Woman participation in democratic government** **units 2**
- 9.1. Parliament
  - 9.2. State Legislation
  - 9.3. Local bodies
- 10. Women and Employment** **units 4**
- 10.1. Labour force
  - 10.2. Protective Laws
  - 10.3. Exploitation and harassment in workplaces
- 11. Protection and enforcement agencies** **units 6**
- 11.1. Courts
  - 11.2. Family courts
  - 11.3. Commission for women
  - 11.4. NGOs.
- 12. Social Constitutional and International Legal Status of Child** **units 6**
- 12.1. Magnitude of the problem
  - 12.2. Special status of child - national policis
  - 12.3. Constitutional concern - Article 15(3), Article 24 and Article 45
  - 12.4. International concern and endeavour for the welfare of the children:
    - 12.4.1. Minimum Age conventions
    - 12.4.2. Child rights conventions
    - 12.4.3. U.N. Declaration of the rights of the child, 1924, 1959.

- 13. Problems of conception, birth and nuourishment and health of the child      Units 5**
- 13.1.    Legal status of child in work
  - 13.2.    Tortious liability against injuries to unborn children.
  - 13.3.    Coparcenary and property rights of the unborn children.
  - 13.5.    Law relating to maternity benefit and relief
  - 13.6.    Lack of legal protection of children of impoverished parentage
- 14. State responsibility for the education of children      units 2**
- 14.1.    Evaluation of the efforts of the State towards the provision of education to children.
  - 14.2.    Pre-primary and nursery education - elementary education.
  - 14.3.    Contributions by International Organizations for elementary education - UNESCO, UNICEF.
- 15. Legal Control of Child Labour      units 7**
- 15.1.    Regulation of the employment: protection of the health and well-being
  - 15.2.    International conventions and recommendations of the ILO.
  - 15.3.    Recommendations of the National Commission of Labour.
  - 15.4.    Legislation relating to factories, plantation labour, mines, merchant shipping, motor transport workers, apprentices, shop & establishments and child labour
- 16. Family Relations and Child      units 3**
- 16.1.    The status of a child in matters of marriage, legitimacy, guardianship, adoption, maintenance and custody.
  - 16.2.    Provisions in the statutes relaing to hindu marriages, restraint on child marriage, guardians and wards, hindu minority and guardianship, hindu adoptions and maintenance and in the Indian Evidence Act 1872;
- 17. Child and Contractual Liability      units 2**
- 17.1.    Minors Agreements

- 17.2. Testimony of children
- 17.3. Suits by and against minors.

**18. Child and Criminal Liability****units 5**

- 18.1. Crimes committed by child; crimes committed by others in relation to children;
- 18.2. Implementation of social policy through criminal sanctions in relation to child;
- 18.3. Variation of procedure in case of child offender
- 18.4. Judicial proceedings in criminal cases relating to children
- 18.5. Statutory provisions - Sections 82 , 83, 299 Exp.3, 363A, 372 and 376 of IPC - Suppression of Immoral Traffic Act 1956 (SITA) - penal provisions contained in Child Marriage Restraint Act 1929 as amended in 1978 - Young Persons Harmful Publications Act 1956 - The Children Act 1960 - Section
- 18.6. 27 of the Cr. P.C. - Reformatory Schools Act 1897 - Juvenile Delinquency Act, 1986.

**19. Law and Offences Against Child****units 8**

- 19.1. Protection of neglected children
- 19.2. Institutions for the protection of neglected children;
- 19.3. Juvenile Justice Act
- 19.4. Juvenile delinquency : law and offences against child
- 19.5. Contribution by parents; licensing;
- 19.6. Protection of girls from immoral traffic;
- 19.7. Prevention of vagrancy and beggary;

**20. Discrimination Against Female Children****units 4**

- 20.1. Amniocentesis,
- 20.2. Deferred infanticide through based nutritional discrimination)
- 20.3. Termination of pregnancy.

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Gandhi to the Women (ed. Hingorani) 1941, Position of Women .12 Tear Down the Purdah p. 213, Young India 1918.

Jawaharlal Nehru thoughts on women-economic bondage of Indian women (Produced Memorial and Library)

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Relevant case Law

Revasia & Revasia, Women Social Justice & Human Right (1998) PP.H. Publishing, New Delhi

Ajnes, Flavia, Law as Gender inequality, N.Delhi, Oxford (1999)

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

Balram - Women workers the labour legislation in India 1984(2) I.L.J.1527.

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

Indian Law Institute, Child and the Law (1979, S.N. Jain ed.)

U.Baxi, Law and Poverty: Critical Essays(1988), Eastern, Luknow

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

**BCI 013B LAW, POVERTY AND DEVELOPMENT*****Objectives of the course***

The State of India's poor does not feature much in Indian law Curricula. Only a few law schools offer an optional course. The Constitution of India - especially Article 39-A since 1976 commands innovation of legal system in such ways that no one, especially because of economic condition, is denied access to the law and its benefits. In so far as legal education is a state-funded or sponsored action and even otherwise, this Directive Principle must apply to renovation of legal education.

The constitutional programme of social justice displays a dramatic concern for the "weaker sections of society". Steadily, legislation protecting their entitlements has grown to impressive proportion in the last forty years. They would be advocates, counsellors, judges, teachers, scientists in law ought to have a complete grounding in these legal processes of "development". The burgeoning "poverty law" involves: (a) constitutional provisions' (b) legislation; (c) administrative anti-poverty programmes aimed at improving economic condition f the poor; (d) legal services programmes; (e) adjudication on the entitlement of the poor through social action litigation. All these need careful study in this compulsory course.

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

***Syllabus***

- |   |                 |
|---|-----------------|
| <b>1. The concept of poverty</b>                        | <b>units 10</b> |
| 1.1. Economical   |                 |
| 1.2. Cultural   |                 |
| 1.3. Situational  |                 |
| 1.4. Distinction between "natural" and "social" poverty |                 |
| 1.5. Absolute and relative poverty                      |                 |
| 1.6. Sociological                                       |                 |
| 1.7. Religion and poverty                               |                 |

**2. Identification and Measurement****units 12**

- 2.1. The struggle over conceptualisation of Improverishment.
- 2.2. Poverty line as a way of identifying the improverished.
- 2.3. Problems of data and India-wide generalization.
- 2.4. Nutritional norm of poverty line (Debate between Dandeker and Sukhatme)
- 2.5. "Income" and "consumption" criteria
- 2.6. The PQIL (the Quality of Life) indices of poverty
- 2.7. The problems of heterogeneity of the poor and poverty line conceptions.
- 2.8. The debate on "Crossing of the Poverty Line"
- 2.9. Constitutionality of criteria of poverty line as a basis of state action.

**3. The "Determinants" of Impoverishment****units 10**

- 3.1. Population growth as determinant.
- 3.2. Legal system as a determinant of Impoverishment.
- 3.3. Planning as a determinant of poverty:
  - 3.3.1. The Nehru Phase : 1950-1964
  - 3.3.2. The Green Revolution and basic needs strategies: 1964-1977
  - 3.3.3. The anti-poverty Programme strategy : 1977-1988
  - 3.3.4. The Lackadaisical agrarian reforms programme.

**4. Poverty of Planning and Anti-poverty Programmes****units 10**

- 4.1. SFDA (Small Former Development Programme)
- 4.2. MFAL (Project for Marginal Farmers and Agricultural Labourers)
- 4.3. DPAP (The Drought - Prone Areas Programme)
- 4.4. IRDP (Integrated Rural Development Programme0
- 4.5. NREP (National Rural Employment Programme)
- 4.6. RLEGP (Rural Landless Labour Employment Guarantee Programme).

- 4.7. "Food For Work", "Anti-Poverty Programme, "with special reference for IRDP:
- 4.8.1. Identification of beneficiaries
- 4.8.2. Arbitrariness and application of "Poverty line" measures.
- 4.8.3. Lack of differentiation among the impoverished constituencies (age, gender, health).
- 4.8.4. Administrative structure weaknesses.
- 4.8.5. Bribery, corruption, leakages, maladministration, (the problem of the IRDP cow").
- 4.8.6. Bank financing of IRDP.
- 4.8.7. Bank loans for poor and landless
- 4.9. Constitutional Aspects of the Anti-poverty Programmes:
- 4.9.1. Non-legislative character.
- 4.9.2. Right to access to information
- 4.9.3. Problem of legal accountability
- 4.9.4. Judicial remedies for maladministration
- 4.9.5. Constitutionality of measures such as identification of beneficiaries and bank financing
- 4.9.6. Federal autonomy questions in centrally sponsored anti-poverty programmes.

## **5. Criminal Law and the Poor**

**units 5**

- 5.1. Anti-poor biases of the criminal justice system
- 5.2. Poor and right to die: prosecution of the poor for attempt to suicide.
- 5.3. The right to bail
- 5.4. The problem of undertrials.
- 5.5. Compensation to victims of crime, especially to the impoverished in communal riots or civil disturbances.
- 5.6. Corruption laws, effective prosecution and their impact on poverty.
- 5.7. Sentences: Is imprisonment in default of fine constitutional in relation to the "poorest of the poor"?

- 6. The Bonded Labour Abolition** **units 5**
- 6.1. Conceptions of bonded labour
  - 6.2. Administrative processes under the Act of 1976
  - 6.3. Awareness of the act and legal services.
  - 6.4. Bandhua Mukti Morcha : Problems of judicial effectiveness
  - 6.5. Effective law reform.
- 7. The Scheduled Casters and the Law** **units 5**
- 1.1.0. The Protection of Civil Rights Act: Problems of definition, pitfalls in implementation.
  - 1.2.0. The Problems of scavengers and sweepers.
  - 1.3.0. Atrocities against Scheduled Casters and the legal process.
  - 1.4.0. Access to drinking water : special problems in rural India.
  - 1.5.0. Violation women : need for an appropriate legal framework including compensatory rehabilitatory arrangement.
- 8. The Scheduled Tribes and the Legal Order** **units 5**
- 8.1. Notions of "Scheduled Tribes"
  - 8.2. Deforestation and tribals.
  - 8.3. Public project, especially dams, and displacement.
  - 8.4. The regime of the Forest Act.
- 9. Unorganized Rural Labour and the legal response** **units 5**
- 9.1. Conceptions of "unorganised labour"
  - 9.2. Causes of "unorganization" and "disorganization".
  - 9.3. Social security legislation for rural labour.
  - 9.4. Minimum wages.
  - 9.5. Migrant and contract labour
  - 9.6. Child labour.

**10. Marginalized Communities****units 5**

- 10.1. Beggars and the law
- 10.2. Ex-Criminal tribes
- 10.3. Vagrants
- 10.4. Physically and psychologically
- 10.5. Aged
- 10.6. Juveniles.

**11. Women, Poverty and the Law****units 10**

- 11.1. Special features of impact of gender discrimination on the Impoverished Women
- 11.2. Specific domains
  - 11.2.1. Bidi workers
  - 11.2.2. Wage discrimination by public financial institutions
- 11.3. Atrocities against women
  - 11.3.1. Rape, sexual assault including custodial rape.
  - 11.3.2. Institutionalised abuse
  - 11.3.3. Trafficing in women
  - 11.3.4. Devadasi system
  - 11.3.5. Sati
  - 11.3.6. Dowry

**12. Legal services of the poor****units 7**

- 12.1. Concept of legal aid
- 12.2. Growth of legal aid movement in India
- 12.3. Krishna Iyer report
- 12.4. Bhagwati report.
- 12.5. The Tamil Nadu legal services programmes

- 12.6. Case law on legal services
- 12.7. The Legal Services and Lok Adalat Act, 1986.
- 12.8. Role of students and teachers

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**BCI 014 INTELLECTUAL PROPERTY LAW*****Objectives of the course***

The importance of this branch of the law is to be sufficiently realised in the Indian legal education. Compendious courses on the law of copyright, trademarks and patents are offered in few law schools as optional courses, but these do not either integrate the significance of these subject matters under any comprehensive aspect of 'modernisation' or 'development' nor do they spread even emphasis between and among the subject areas represented by these three interconnected bodies of the law.

The three areas are now internationally conceptualised as representing intellectual property. It is often the case that while the law of patents and trademarks is referred to as industrial property, the law relating to copyright is named intellectual property. While both these terms could be suitably invoked, we here speak of intellectual property as signifying all the three bodies of the law as well as the law on industrial designs.

Unlike other forms of property, intellectual property refers to regimes of legal recognition of, primarily, the products of the mind or imagination. The subject matter of property relations is here pre-eminently based on mental labour. The law relating to intellectual property protects the right to mental labour.

The law confers rights of proprietary nature on relative intellectual labour primarily on the basis that it is in the interests of society and state to promote creativeness and inventiveness. Limited monopoly provides incentive for greater inventive and innovative efforts in society. An important aspect of the exploration in this course would be the ways in which the laws strike a fair balance between the interests and rights of the intellectual labourers on the one hand and organized industrial enterprises on the other. Another dimension is a study of the ways in which this regime of laws militates against, or favours, community property in national cultures.

As concerns 'modernization' crucial questions arise in the field of copyright protection in computer software and hardware, internet, electronic music and scientific research. Both copyright, trademarks, design and patent law here relate basically to the law of unfair competition and constitute an aspect of consumer protection and welfare not only in the context of national perspectives but

also in view of the waves of globalisation already set in. Both from the standpoint of human resources development, modernisation and justice it is important that the curricular change takes serious notice of these areas.

The following syllabus prepared with the above objectives will comprise of 84 units each of one hour duration.

### **Syllabus**

#### **1. Introductory units 20**

- 1.1. The meaning of Intellectual property
- 1.2. Competing rationales of the legal regimes for the protection of intellectual property
- 1.3. The main forms of intellectual property : copyright trademarks, patents, designs
- 1.4. The competing rationales for protection of rights in
  - 1.4.1. Copyright
  - 1.4.2. Trade marks
  - 1.4.3. Patents
  - 1.4.4. Designs
  - 1.4.5. Trade secrets
  - 1.4.6. Other new forms such as plant varieties and geographical Indians
- 1.5. Introduction to the leading international instruments concerning intellectual property rights: the Berne Convention, Universal Copyright Convention, the Paris Union TRIPS the World Intellectual Property Rights Organisation (WIPO) and the UNESCO.

#### **2. Select aspects of the law of copyright in India units 20**

- 2.1. Historical evolution of the law
- 2.2. Meaning of copyright
- 2.3. Copyright in literary, dramatic and musical works
- 2.4. Copyright in sound records and cinematograph films
- 2.5. Copyright in computer programme

- 2.6. Ownership of copyright
- 2.7. Assignment of copyright
- 2.8. Author's special rights
- 2.9. Notion of infringement
- 2.10. Criteria of infringement
- 2.11. Infringement of copyright by films of literary and dramatic works.
- 2.12. Importation and infringement
- 2.13. Fair use provisions
- 2.14. Piracy in internet
- 2.15. Aspects of copyright justice
- 2.16. Remedies, especially, the possibility of Anton pillar injunctive relief in India.

### **3. Intellectual Property in Trademarks**

**units 20**

- 3.1. The rationale of protection of trademarks as (a) an aspect of commercial and (b) of consumer rights.
- 3.2. Definition and concept of trademarks
- 3.3. Registration
- 3.4. Distinction between trademark and property mark
- 3.5. The doctrine of honest Current User
- 3.6. The doctrine of deceptive similarity
- 3.7. Protection of well-known marks
- 3.8. Passing off and infringement
- 3.9. Criteria of infringement
- 3.10. Standards of proof in passing off action
- 3.11. Remedies

### **4. The law of intellectual property : patents**

**units 24**

- 4.1. Concept of patent

- 4.2. Historical view of the patents law in India
- 4.3. Patentable inventions with special reference to biotechnology products entailing creation of new forms of life.
- 4.4. Patent protection for computer programme
- 4.5. Process of obtaining a patent : application, examination, opposition and sealing of patents : general introduction
- 4.6. Procedure for filing patents. Patent co-operation treaty
- 4.7. Some grounds for opposition
  - 4.7.1. The problem of limited locus standi to oppose, specially in relation to inventions having potential of ecological and mass disasters
  - 4.7.2. Wrongfully obtaining the invention
  - 4.7.3. Prior publication or anticipation
  - 4.7.4. Obviousness and the lack of inventive step
  - 4.7.5. Insufficient description
- 4.8. Rights and obligations of a patentee
  - 4.8.1. Patents as chose in action
  - 4.8.2. Duration of patents : law and policy considerations
  - 4.8.3. Use and exercise rights
  - 4.8.4. Right to secrecy
  - 4.8.5. The notion of "abuse" of patent rights
  - 4.8.6. Compulsory licenses
- 4.9. Special Categories
  - 4.9.1. Employee Invention : Law and Policy Consideration
  - 4.9.2. International Patents, Transfer of Technology, Know-How and problems of self reliant development
- 4.10. Infringement

- 4.10.1. Criteria of infringement
- 4.10.2. Onus of Proof
- 4.10.3. Modes of Infringement : the Doctrine of Colourable Variation
- 4.10.4. Defences in suits of infringement
- 4.10.5. Injunctions and related remedies.

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W.R. Cornish, *Intellectual Property*(3rd ed.) (1996) Sweet and Maxwell

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**BCI 015 MARITIME LAW*****Objective of the course***

There is a sea change and conceptual revolution in maritime law. With more interactions between nations and nations as well as between persons, natural and legal, in one country to others in another country led to evolution of new norms of behaviour in maritime scenario. Changes in the extent of territorial waters, exploration into and exploitation of, zonal and deep sea living and non living resources, the need for liberal approach to transit and innocent passage of ships and the all important demand for elimination of marine pollution from any source have thrown new challenges. This course is intended to look at the problems more from a public law point of view than from private law perspectives and to provide a basic knowledge that helps one to study more about the widening frontiers of maritime law in the years to come.

The paper comprise of about 84 units of one-hour duration.

***Syllabus***

- |  |                |
|--|----------------|
| <b>1. Maritime law: sources</b>  | <b>units 6</b> |
| 1.1. Custom  |                |
| 1.1.1. Binding nature  |                |
| 1.2. International conventions   |                |
| 1.2.1. Law-making treaties   |                |
| 1.2.2. Multi-lateral and bilateral   |                |
| 1.3. Resolution and recommendation of international organisations such as IMO(International Maritime Organisation), International Sea Bed Authority and UNEP (United National Environmental Programme) |                |
| 1.4. Decisions of courts: ICJ, international arbitration and national courts   |                |
| 1.5. State practices   |                |
| 1.6. Juristic writings   |                |

- 2. Internal waters** **units 8**
- 2.1. Meaning
  - 2.2. Maritime boundary
    - 2.2.1. Baseline concept : determination of baseline
  - 2.3. Innocent passage: scope of coastal state interference
  - 2.4. Regime of maritime ports
    - 2.4.1. Port state jurisdiction : civil and criminal
    - 2.4.2. Attachment of ships: arrest of ships
    - 2.4.3. Access of foreign ships to ports
      - 2.4.3.1. Ships in distress
      - 2.4.3.2. Quarantine regulations
- 3. Territorial waters** **units 8**
- 3.1. Territorial sea : concept and development
  - 3.2. Width, conflicting claims of coastal states
    - 3.2.1. Coastal state jurisdiction
    - 3.2.2. Access of ships to the territorial sea
    - 3.2.3. Scientific research: jurisdiction on
- 4. Contiguous Zone** **units 2**
- 4.1. Concept and relevance in present times
  - 4.2. Coastal state jurisdiction over customs and law and order confined to contiguous or not
- 5. Exclusive Economic zone** **unit 10**
- 5.1. Definition
  - 5.2. Jurisdiction

**6. Delimitation of Maritime Boundary****units 4**

- 6.1. Opposite state
- 6.2. Adjacent state
- 6.3. Equitable doctrine
- 6.4. Regional agreement

**7. Continental shelf****units 10**

- 7.1. Development of the concept
- 7.2. Coastal state claim: legal basis
  - 7.2.1. Submerged territory theory
  - 7.2.2. Contiguous area theory
  - 7.2.3. Recognition of the state claim over sea bed and subsoil
- 7.3. Nature of the state rights
- 7.4. Width and limits
- 7.5. Jurisdiction over foreign ships
  - 7.5.1. Protection of equipment and installations
- 7.6. Scientific research

**8. International straits and archipelagos****units 8**

- 8.1. Regime of international straits
  - 8.1.1. Transit passage
  - 8.1.2. Jurisdiction of coastal states
- 8.2. Archipelagos: Meaning
  - 8.2.1. Distinction from islands
  - 8.2.2. Archipelago waters
  - 8.2.3. Innocent passage
  - 8.2.4. Resource jurisdiction

**9. International fisheries****units 8**

- 9.1. Conflicting state claims
- 9.2. Migratory species
- 9.3. Marine mammals
- 9.4. Sedentary species
- 9.5. Protection of endangered species
- 9.6. International co-operation for conservation
- 9.7. Optimum utilization and surplus sharing
- 9.8. Fisheries in high seas
  - 9.8.1. Special protection:
  - 9.8.2. Atlantic ocean
  - 9.8.3. Pacific ocean

**10. High Seas****units 10**

- 10.1. Concept of patrimonial sea and common heritage of mankind
- 10.2. Access to high seas : conflict between maritime states and land locked states
- 10.3. Piracy
- 10.4. Hot pursuit
- 10.5. International sea bed authority : constitution, power and jurisdiction
- 10.6. Exploration and exploitation of sea bed
- 10.7. Pioneer investors

**11. Conservation and Exploitation of Maritime Resources****units 10**

- 11.1. Living and Non-living resources: Importance, kinds
- 11.2. Conservation and management of the resources
  - 11.2.1. Jurisdiction
  - 11.2.2. Problems

- 11.2.3. Dispute settlement mechanism
- 11.3. Exploitation of the resources
  - 11.3.1. Transfer of technology as a tool for exploitation
  - 11.3.2. Right to development and sustainable development
  - 11.3.3. Jurisdiction
  - 11.3.4. Limitations
- 11.4. Marine pollution
  - 11.4.1. Meaning and its impact
  - 11.4.2. Kinds
  - 11.4.3. Pollution
  - 11.4.4. Accidents at sea
  - 11.4.5. Tests
  - 11.4.6. Control and enforcement

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