

*Swami Ramanand Teerth*  
*Marathwada University, Nanded*

*LL.M Syllabus for 2 Year P.G. Course*

*CBCS Pattern*

*From 2014-2015*

## **GENERAL NORMS FOR LL.M. REVISED COURSE**

### **1. OBJECTS**

The LL.M. Course, being intended to produce academicians and Lawyers of competence and expertise, it is imperative that the students should have an in depth knowledge not only of the concepts and basic principles of law, but also of social, political and economic aspects of law.

To develop the capacity of the students for coherent and reasoned understanding as well as expression in the matters of Legislative and Judicial Policy, Legal Process and Legal Institutions, methods of interpretation of laws and to suggest pragmatic solutions to the present institutional, Legal and Social problems.

### **2. ELIGIBILITY**

The minimum qualification for a candidate of general category making an application for admission to the LL.M. Degree course is a Second Class LL.B. Degree of this University or a Degree recognized as equivalent thereto. However candidates belonging to reserved category may make an application to the LL.M. Degree course will be given 5% relaxation.

### **3. ADMISSION PROCEDURE**

An application for admission to the LL.M. Degree course must be made in the prescribed form and be submitted to the Department of Law/concerned College within the prescribed time, immediately after the declaration of the results of the LL.B. Degree examination of this University held in first half of every year.

No Students will be permitted to pursue the LL.M. Degree course simultaneously with any other course of this or any other recognized University.

Admission of the students shall be made in accordance with the merits in the qualifying examination.



Admission to the LL.M. Degree course shall be made for the entire Academic year i.e. for both the First and Second Semesters at the beginning of the Academic Year at one time.

A candidate for being eligible for the Second Semester must have successfully kept terms for the First Semester, irrespective of the result of the First Semester Examination.

A candidate for being eligible for admission to the Third Semester must have either passed in the First and Second Semesters or must have got exemption in at least six papers of the First and Second Semesters.

#### **4. STRUCTURE OF THE COURSE**

LL.M. Course shall be Semester Course, consisting of Four Semesters spread over two years.

The LL.M. Course shall consist of Foundation Course of five papers and any one Optional Group of six papers from six Groups offered by the University. The Colleges/Department shall ensure that each paper is taught in at least 60 units of 60 minutes duration.

Optional Group will be permitted to be taken only if a minimum of 20 students is opting for the same group.

#### **FIRST SEMESTER**

The **First Semester** shall be of two Foundational Papers and two papers of an Optional Group. Each paper shall be of 100 marks.

#### **SECOND SEMESTER**

The **Second Semester** shall be of one Foundational Paper and two papers of an Optional Group opted by the student in the First Semester. Each paper shall be of 100 marks. In addition, there shall be a Practical Examination of 100 marks. Of these 100 marks, 25 marks shall be assigned to Class Room Teaching, 25 marks to Doctrinal Research, 25 marks to Non-Doctrinal Research, 15 marks for Class Room Seminars and 10 marks for attendance.

a) **CLASSROOM TEACHING**

A student will be required to engage two lectures, each of one-hour duration, in the classes of First and / or Second Semester. The topic of the lecture shall be a topic of either Doctrinal Research / Non-Doctrinal Research by the student or any other topic in consultation with the concerned teacher. The students shall be encouraged to use Power Point, Over Head Projector, LCD, and other modern techniques of teaching during this session.

b) **DOCTRINAL AND NON-DOCTRINAL RESEARCH**

- The research paper shall run into 4000 to 5000 words.
- The topic for the Doctrinal and Non-Doctrinal research shall be a current legal issue having social, economic or political implications.
- The list of the topics, to be assigned to the students, shall be prepared by the teachers of the concerned Group and shall be submitted to the University.
- The research work assigned to the students should be completed and submitted within a month from the date of the assignment of the topic / project.

c) **CLASS ROOM SEMINARS**

Every student of the Third Semester shall organise and conduct one Seminar on a topic, which shall be finalised in consultation with the concerned teacher.

**THIRD SEMESTER**

The Third Semester shall be of one Foundational Paper and two papers of the Optional Group. Each paper shall be of 100 marks.

**FOURTH SEMESTER**

The Fourth Semester shall be of Dissertation of 150 marks and Viva-  
presentation of 50 marks.



## **SCHEME OF EXAMINATION**

Each theory paper will carry 100 marks out of which 80 marks are for Written Examination and 20 marks for Internal Assessment. The question paper shall have eight questions carrying equal marks. The question paper shall include seven questions for writing long answers and one question for writing short notes. Writing short notes will be a compulsory question. The question for short notes shall have four bits and the students shall write at least two bits. The students will have to answer at least four questions including short notes.

## **CRITERIA FOR INTERNAL ASSESSMENT.**

- i) Class Test 10 Marks

(Teacher is expected to take at least two test papers at regular intervals and the average mark is to be taken)

- ii) Seminar on a topic relating to the Optional Subjects 05Marks

- iii) Active participation in Class 05 Marks

## **PASSING RULES**

- a) Passing Standards:

Distinction	70% and above
First Class	60 %to 69%
Second Class	50% to 59 %

- b) No LL.M. student will be allowed to appear for the examination unless he / she has attended 75 % of the total number of Lectures and Seminars conducted in each semester.
- c) No Class will be awarded to the students in the First, Second and Third Semester examination.
- d) Class will be awarded on the basis of the total performance of the student in all the Four Semesters.
- e) To pass LL.M. examination, a student must obtain a minimum of 45 % of the marks in each paper and 50 % in aggregate in each of the Semesters.

- f) Two teachers of the concerned group, nominated by the University, shall evaluate Dissertation and the average of the same is to be taken. An Internal Examiner and External Examiner will conduct viva. The examiners shall submit the mark sheets directly to the Examination Department of the University.
- g) Students failing in Practical Examination in the Second Semester and / or in Dissertation and Viva Examination in the Fourth semester shall undergo the Practical Examination and/or Dissertation and Viva as the case may be.

### **IMPROVEMENT**

The students whose performance is not satisfactory will be permitted to improve their performance. The students can choose a maximum of 50% of the theory papers (i.e., excluding Practical and Dissertation) for improvement. The students shall have three attempts for improvement.

### **CURRICULAM**

#### **Foundation Courses**

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

#### **Optional Groups.**

- A Criminal Law and Criminal Administration.
- B Business Law.
- C Environment and Legal Order.
- D Constitutional Law and Human Rights Law.
- E Science, Technology and Law.
- F Jurisprudence.



## **FOUNDATION COURSES (COMPULSORY COURSES)**

### **PAPER – I : LAW AND SOCIAL TRANSFORMATION IN INDIA.**

#### **1. Law and social change**

- 1.1. Law as an instrument of social change.
- 1.2. Law as the product of traditions and culture. Criticism and evaluation in the light of colonisation and the introduction of common law system and institutions in India and its impact on further development of law and legal institutions in India.

#### **2. Religion and the law**

- 2.1. Religion as a divisive factor.
- 2.2. Secularism as a solution to the problem.
- 2.3. Reform of the law on secular lines: Problems.
- 2.4. Freedom of religion and non-discrimination on the basis of religion.
- 2.5. Religious minorities and the law.

#### **3. Language and the law**

- 3.1. Language as a divisive factor: formation of linguistic states.
- 3.2. Constitutional guarantees to linguistic minorities.
- 3.3. Language policy and the Constitution: Official language; multi-language system.
- 3.4. Non-discrimination on the ground of language.

#### **4. Community and the law**

- 4.1. Caste as a divisive factor
- 4.2. Non-discrimination on the ground of caste.
- 4.3. Acceptance of caste as a factor to undo past injustices.
- 4.4. Protective discrimination: Scheduled castes, tribes and backward classes.
- 4.5. Reservation; Statutory Commissions., Statutory provisions.

#### **5. Regionalism and the law**

- 5.1. Regionalism as a divisive factor.
- 5.2. Concept of India as one unit.

5.3. Right of movement, residence and business; impermissibility of state or regional barriers.

5.4. Equality in matters of employment: the slogan "Sons of the soil" and its practice.

5.5. Admission to educational institutions: preference to residents of a state.

**6. Women and the law**

6.1. Crimes against women.

6.2. Gender injustice and its various forms.

6.3. Women's Commission.

6.4. Empowerment of women: Constitutional and other legal provisions.

**7. Children and the law**

7.1. Child labour.

7.2. Sexual exploitation.

7.3. Adoption and related problems.

7.4. Children and education.

**8. Modernisation and the law**

8.1. Modernisation as a value: Constitutional perspectives reflected in the fundamental duties.

8.2. Modernisation of social institutions through law.

8.2.1. Reform of family law

8.2.2. Agrarian reform - Industrialisation of agriculture.

8.2.3. Industrial reform: Free enterprise v. State regulation - Industrialisation v. environmental protection.

8.3. Reform of court processes.

8.3.1. Criminal law: Plea bargaining; compounding and payment of compensation to victims.

8.3.2. Civil law: (ADR) Confrontation v. consensus; mediation and conciliation; Lok adalats.

8.3.3. Prison reforms.

8.4. Democratic decentralisation and local self-government.



## 9. Alternative approaches to law

- 9.1. The jurisprudence of Sarvodaya--- Gandhiji, Vinoba Bhave; Jayaprakash Narayan---Surrender of dacoits; concept of grama nyayalayas.
- 9.2. Socialist thought on law and justice: An enquiry through constitutional debates on the right to property.
- 9.3. Indian Marxist critique of law and justice.
- 9.4. Naxalite movement: causes and cure.

## Select Bibliography

- Marc Galanter (ed.), Law and Society in Modern India (1997) Oxford,  
Robert Lingat, The Classical Law of India (1998), Oxford  
U. Baxi, The Crisis of the Indian Legal System (1982). Vikas, New Delhi.  
U. Baxi (ed.), Law and Poverty Critical Essays (1988). Tripathi, Bombay.  
Manushi, A Journal About Women and Society.  
Duncan Derret, The State, Religion and Law in India (1999). Oxford  
University Press, New Delhi.  
H.M. Seervai, Constitutional Law of India (1996), Tripathi.  
D.D. Basu, Shorter Constitution of India (1996), Prentice - Hall of India (P)  
Ltd., New Delhi.  
Sunil Deshta and Kiran Deshta, Law and Menace of Child Labour (2000)  
Armol Publications, Delhi.  
Savitri Gunasekhare, Children, Law and Justice (1997), Sage  
Indian Law Institute, Law and Social Change : Indo-American Reflections,  
Tripathi (1988)  
J.B. Kripalani, Gandhi: His Life and Thought, (1970) Ministry of Information  
and Broadcasting, Government of India  
M.P. Jain, Outlines of Indian Legal History, (1993), Tripathi, Bombay.  
Agnes, Flavia, Law and Gender Inequality: The Politics of Women's Rights in  
India (1999), Oxford

**PAPER – II :     LEGAL EDUCATION AND RESEARCH**  
**METHODOLOGY**

1. Objectives of Legal Education-past, present and, future-new challenges
2. Lecture Method of Teaching - Merits and demerits
3. The Problem Method
4. Case Law and Discussion methods and its suitability at postgraduate level teaching
5. The Seminar Method of teaching
6. Examination system and problems in evaluation - external and internal-assessment.
7. Student participation in law school programmes - Organisation of Seminars, publication of journal and assessment of teachers
- 8.1 Clinical legal education - legal aid, legal literacy, legal survey and law reform
- 8.2 Use of computer and audio visual aids in legal education, utility of Internet and virtual classrooms
9. Research Methods
- 9.1. Socio Legal Research
- 9.2. Doctrinal and non-doctrinal
- 9.3. Relevance of empirical research
- 9.4. Induction and deduction
10. Identification of Problem of research
- 10.1. What is a research problem?
- 10.2. Survey of available literature and bibliographical research.
- 10.2.1. Legislative materials including subordinate legislation, notification and policy Statements.
- 10.2.2. Decisional materials including foreign decisions; methods of discovering the "rule of the case" tracing the history of important cases and ensuring that these have not been over-ruled; discovering judicial



conflict in the area pertaining to the research problem and the reasons thereof.

10.2.3. Juristic writings - a survey of juristic literature relevant to select problems in India and foreign periodicals.

10.2.4. Compilation of list of reports or special studies conducted relevant to the problem.

## **11. Preparation of the Research Design**

11.1. Formulation of the Research problem

11.2. Devising tools and techniques for collection of data : Methodology

11.2.1. Methods for the collection of statutory and case materials and juristic literature

11.2.2. Use of historical and comparative research materials

11.2.3. Use of observation studies

11.2.4. Use of questionnaires/interview

11.2.5. Use of case studies

11.2.6. Sampling procedures - design of sample, types of sampling to be adopted.

11.2.7. Use of scaling techniques

11.2.8. Jurimetrics

11.3. Computerized Research - A study of legal research programmes such as Lexis and West law coding

11.4. Classification and tabulation of data - use of cards for data collection - Rules for tabulation. Explanation of tabulated data.

11.5. Analysis of data

## **Select Bibliography**

High Brayal, Nigel Dunean and Richard Crimes, Clinical Legal Education: Active Learning in your Law School, (1998) Blackstone Press Limited, London

S.K.Agrawal (Ed.), Legal Education in India (1973), Tripathi, Bombay.

- N.R. Madhava Menon, (ed) A Handbook of Clinical Legal Education, (1998)  
Eastern Book Company, Lucknow.
- M.O. Price, H. Bitner and Bysiewicz, Effective Legal Research (1978)
- Pauline V. Young, Scientific Social Survey and Research, (1962)
- William J. Grade and Paul K. Hatt, Methods in Social Research, Mc Graw-Hill  
Book Company, London
- H.M. Hyman, Interviewing in Social Research (1965)
- Payne, The Art of Asking Questions (1965)
- Erwin C. Surrency, B. Fielf and J. Crea, A Guide to Legal Research (1959)
- Morris L. Cohan, Legal Research in Nutshell, (1996), West Publishing Co.
- Havard Law Review Association, Uniform System of Citations.
- ILI Publication, Legal Research and Methodology.
- www.aals.org

**PAPER – III : INDIAN CONSTITUTIONAL LAW : THE NEW CHALLENGES.**

- 1. Federalism**
  - 1.1. Creation of new states
  - 1.2. Allocation and share of resources - distribution of grants in aid
    - 1.2.1. The inter-state disputes on resources
  - 1.3. Rehabilitation of internally displaced persons.
  - 1.4. Centre's responsibility and internal disturbance within States.
  - 1.5. Directions of the Centre to the State under Article 356 and 365
  - 1.6. Federal Comity : Relationship of trust and faith between Centre and State.
  - 1.7. Special status of certain States.
    - 1.7.1. Tribal Areas, Scheduled Areas
- 2. "State" : Need for widening the definition in the wake of liberalisation.**
- 3. Right to equality: privatisation and its impact on affirmative action.**
- 4. Empowerment of women.**



5. **Freedom of press and challenges of new scientific development**
  - 5.1. Freedom of speech and right to broadcast and telecast.
  - 5.2. Right to strikes, hartal and bandh.
6. **Emerging regime of new rights and remedies**
  - 6.1. Reading Directive Principles and Fundamental Duties into Fundamental Rights
    - 6.1.1. Compensation jurisprudence
    - 6.1.2. Right to education
      - 6.1.2.1. Commercialisation of education and its impact.
      - 6.1.2.2. Brain drain by foreign education market.
7. **Right of minorities to establish and administer educational institutions and state control.**
8. **Secularism and religious fanaticism.**
9. **Separation of powers: stresses and strain**
  - 9.1. Judicial activism and judicial restraint.
  - 9.2. PIL: implementation.
  - 9.3. Judicial independence.
    - 9.3.1. Appointment, transfer and removal of judges.
  - 9.4. Accountability: executive and judiciary.
  - 9.5. Tribunals
10. **Democratic process**
  - 10.1. Nexus of politics with criminals and the business.
  - 10.2. Election
  - 10.3. Election commission: status.
  - 10.4. Electoral Reforms
  - 10.5. Coalition government, 'stability, durability, corrupt practice'
  - 10.6. Grass root democracy.

### **Select Bibliography**

No specific bibliography is suggested for this course since the course materials obviously depends upon the latest developments. These

developments in the areas specified in the course can be gathered from the recent materials such as case law, changes and amendments of laws, critical comments, studies and reports, articles and research papers and lastly contemporary emerging ethos impacting on constitutional values.

#### **PAPER - IV : JUDICIAL PROCESS**

##### **1. Nature of judicial process**

- 1.1. Judicial process as an instrument of social ordering
- 1.2. Judicial process and creativity in law - common law model - Legal Reasoning and growth of law - change and stability.
- 1.3. The tools and techniques of judicial creativity and precedent.
- 1.4. Legal development and creativity through legal reasoning under statutory and codified systems.

##### **2. Special Dimensions of Judicial Process in Constitutional Adjudications.**

- 2.1. Notions of judicial review
- 2.2. 'Role' in constitutional adjudication - various theories of judicial role.
- 2.3. Tools and techniques in policy-making and creativity in constitutional adjudication.
- 2.4. Varieties of judicial and juristic activism
- 2.5. Problems of accountability and judicial law-making.

##### **3. Judicial Process in India**

- 3.1. Indian debate on the role of judges and on the notion of judicial review.
- 3.2. The "independence" of judiciary and the "political" nature of judicial process
- 3.3. Judicial activism and creativity of the Supreme Court - the tools and techniques of creativity.
- 3.4. Judicial process in pursuit of constitutional goals and values - new dimensions of judicial activism and structural challenges
- 3.5. Institutional liability of courts and judicial activism - scope and limits.



#### 4. The Concepts of Justice

- 4.1. The concept of justice or Dharma in Indian thought
- 4.2. Dharma as the foundation of legal ordering in Indian thought.
- 4.3. The concept and various theories of justice in the western thought.
- 4.4. Various theoretical bases of justice: the liberal contractual tradition, the liberal utilitarian tradition and the liberal moral tradition.

#### 5. Relation between Law and Justice

- 5.1. Equivalence Theories - Justice as nothing more than the positive law of the stronger class
- 5.2. Dependency theories - For its realisation justice depends on law, but justice is not the same as law.
- 5.3. The independence of justice theories - means to end relationship of law and justice - The relationship in the context of the Indian constitutional ordering.
- 5.4. Analysis of selected cases of the Supreme Court where the judicial process can be seen as influenced by theories of justice.

#### Select Bibliography

Julius Stone, The Province and Function of Law, Part II, Chs. 1. 8-16 (2000), Universal, New Delhi.

347.01 — Cardozo, The Nature of Judicial Process (1995) Universal, New Delhi

347.01 — Henry J. Abraham, The Judicial Process (1998), Oxford.

J. Stone, Precedent and the Law: Dynamics of Common Law Growth (1985) Butterworths.

W. Friedmann, Legal Theory (1960), Stevens, London.

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

340.05 — J. Stone, Legal System and Lawyers' Reasonings (1999), Universal, Delhi

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

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

340.11

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

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

## **PAPER – V : DISSERTATION**

The Dissertation shall be a mini research project and shall be in the form of a Research Thesis. (It must have Introduction, Statement of Aims and Objects of Research, Hypothesis, Methodology, Conclusion, Bibliography and Table of Cases. It must be properly footnoted). Thesis shall be of approximately 200 to 250 printed pages of A4 size with single space.

## **OPTIONAL GROUPS**

### **GROUP (A) : CRIMINAL LAW AND CRIMINAL ADMINISTRATION**

#### **PAPER – I : COMPARATIVE CRIMINAL PROCEDURE**

##### **1. Organisation of Courts and Prosecuting Agencies**

###### **1.1. Hierarchy of criminal courts and their jurisdiction**

###### **1.1.1. Nyaya Panchayats in India**

###### **1.1.1.1. Panchayats in tribal areas**

###### **1.2. Organisation of prosecuting agencies for prosecuting criminals**

###### **1.2.1. Prosecutors and the police**

###### **1.3. Withdrawal of prosecution.**

##### **2. Pre-trial Procedures**

###### **2.1. Arrest and questioning of the accused**

###### **2.2. The rights of the accused**

###### **2.3. The evidentiary value of statements / articles seized / collected by the police**

###### **2.4. Right to counsel**

###### **2.5. Roles of the prosecutor and the judicial officer in investigation.**



### **3. Trial Procedures**

- 3.1. The accusatory system of trial and the inquisitorial system
- 3.2. Role of the judge, the prosecutor and defence attorney in the trial
- 3.3. Admissibility and inadmissibility of evidence
  - 3.3.1. Expert evidence
- 3.4. Appeal of the court in awarding appropriate punishment.
- 3.5. Plea bargaining

### **4. Correction and Aftercare services**

- 4.1. Institutional correction of the offenders
- 4.2. General comparison - After - care services in India and France
- 4.3. The role of the court in correctional programmes in India.

### **5. Preventive Measures in India**

- 5.1. Provisions in the Criminal Procedure Code
- 5.2. Special enactments

### **6. Public Interest Litigation**

- 6.1. Directions for criminal prosecution.

### **Select Bibliography**

Celia Hamptom, Criminal Procedure

Wilkins and Cross, Outline of the Law of Evidence

Archbold, Pleading, Evidence and Practice in Criminal Cases

Sarkar, Law of Evidence

K.N.Chandrasekharan Pillai (ed.), R.V. Kelkar's Outlines of Criminal Procedure (2000), Eastern, Lucknow.

Patric Devlin, The Criminal Prosecution in England

American Series of Foreign Penal Codes Criminal Procedure Code of People's Republic of China.

John N. Ferdico, Criminal Procedure (1996), West

Sanders & Young, Criminal Justice (1994)

Christina Van Den Wyngart, Criminal Procedure Systems in European Community Joel Samaha, Criminal Procedure (1997), West

Criminal Procedure Code, 1973

The French Code of Criminal Procedure,

14th and 41st Reports of Indian Law Commission.

The Paper will be taught with reference, wherever necessary, to the procedures  
in India, England, US, France, Russia and China

## **PAPER – II : PENOLOGY : TREATMENT OF OFFENDERS**

### **1. Introductory**

#### **1.1. Definition of Penology**

### **2. Theories of Punishment**

#### **2.1. Retribution**

#### **2.2. Utilitarian prevention: Deterrence**

#### **2.3. Utilitarian: Intimidation**

#### **2.4. Behavioural prevention: Incapacitation**

#### **2.5. Behavioural prevention: Rehabilitation - Expiation**

#### **2.6. Classical Hindu and Islamic approaches to punishment.**

### **3. The Problematic of Capital Punishment**

#### **3.1. Constitutionality of Capital Punishment**

#### **3.2. Judicial Attitudes Towards Capital Punishment in India - An inquiry through the statute law and case law.**

#### **3.3. Law Reform Proposals**

### **4. Approaches to Sentencing**

#### **4.1. Alternatives to Imprisonment**

##### **4.1.1. Probation**

##### **4.1.2. Corrective labour**

##### **4.1.3. Fines**

##### **4.1.4. Collective fines**

##### **4.1.5. Reparation by the offender/by the court**

### **5. Sentencing**

#### **5.1. Principal types of sentences in the Penal Code and special laws**

#### **5.2. Sentencing in white collar crime**



- 5.3. Pre-sentence hearing
- 5.4. Sentencing for habitual offender
- 5.5. Summary punishment
- 5.6. Plea-bargaining
- 6. Imprisonment**
  - 6.1. The state of India's jails today
  - 6.2. The disciplinary regime of Indian prisons
  - 6.3. Classification of prisoners
  - 6.4. Rights of prisoner and duties of custodial staff.
  - 6.5. Deviance by custodial staff
  - 6.6. Open prisons
  - 6.7. Judicial surveillance - basis - development reforms

#### **Select Bibliography**

- S. Chhabbra, The Quantum of Punishment in Criminal Law (1970),  
H.L.A. Hart, Punishment and Responsibility (1968)  
Herbert L. Packer, The Limits of Criminal Sanction (1968)  
Alf Ross, On Guilt, Responsibility and Punishment (1975)  
A. Siddique, Criminology (1984) Eastern, Lucknow.  
Law Commission of India, Forty-Second Report Ch. 3 (1971)  
K.S. Shukla, "Sociology of Deviant Behaviour" in 3 ICSSR Survey of  
Sociology and Social Anthropology 1969-179 (1986)  
Tapas Kumar Banerjee, Background to Indian Criminal Law (1990),  
R. Campray & Co., Calcutta.

#### **PAPER - III : PRIVILEGED CLASS DEVIANCE**

- 1. Introduction**
  - 1.1. Conceptions of white collar crimes
  - 1.2. Indian approaches to socio-economic offences
  - 1.3. Notions of privileged class deviance as providing a wider categorization of understanding Indian development

#### 1.4. Typical forms of such deviance

- 1.4.1. Official deviance (deviance by legislators, judges, bureaucrats)
- 1.4.2. Professional deviance: journalists, teachers, doctors, lawyers, engineers, architects and publishers
- 1.4.3. Trade union deviance (including teachers, lawyers/urban property owners)
- 1.4.4. Landlord deviance (class/caste based deviance)
- 1.4.5. Police deviance
- 1.4.6. Deviance on electoral process (rigging, booth capturing, impersonation, corrupt practices)
- 1.4.7. Gender-based aggression by socially, economically and politically powerful

NOTE: Depending on specialist interest by the teacher and the taught any three areas of deviance of privileged class may be explored. What follows is only illustrative of one model of doing the course.

### 2. Official Deviance

- 2.1. Conception of official deviance - permissible limit of discretionary powers.
- 2.2. The Chambal valley dacoit Vinoba Mission and Jai Prakash Narain Mission - in 1959 and 1971
- 2.3. The Chagla Commission Report on LIC-Mundhra Affair
- 2.4. The Das Commission Report on Pratap Singh Kairon
- 2.5. The Grover Commission Report on Dev Raj Urs
- 2.6. The Maruti Commission Report
- 2.7. The Ibakkar-Natarajan Commission Report on Fairfax.

### 3. Police Deviance

- 3.1. Structures of legal restraint on police powers in India
- 3.2. Unconstitutionality of "third-degree" methods and use of fatal force by police
- 3.3. "Encounter" killings
- 3.4. Police atrocities



- 3.5. The plea of superior orders
- 3.6. Rape and related forms of gender-based aggression by police and para-military forces
- 3.7. Reform suggestions especially by the National Police Commissions
- 4. Professional Deviance**
  - 4.1. Unethical practices at the Indian bar
  - 4.2. The Lentin Commission Report
  - 4.3. The Press Council on unprofessional and unethical journalism
  - 4.4. Medical malpractice
- 5. Response of Indian Legal Order to the Deviance of Privileged Classes**
  - 5.1. Vigilance Commission
  - 5.2. Public Accounts Committee
  - 5.3. Ombudsman
  - 5.4. Commissions of Enquiry
  - 5.5. Prevention of Corruption Act, 1947  
The Antulay Case

### **Select Bibliography**

- Upendra Baxi, The Crisis of the Indian Legal System (1982) Vikas Publishing House, New Delhi.
- Upendra Baxi (ed.), Law and Poverty: Essays (1988)
- Upendra Baxi, Liberty and Corruption: The Antulay Case and Beyond (1989)
- Surendranath Dwevedi and G.S. Bbargava, Political Corruption in India (1967)
- A.R. Desai (ed.) Violation of democratic Rights in India (1986)
- A.G. Noorani, Minister's Misconduct (1974)
- B.B. Pande, 'The Nature and Dimensions of Privileged Class Deviance' in The Other Side of Development 136 (1987; K.S. Shukla ed.).
- Indira Rothermund, "Patterns of Trade Union Leadership in Dhanbad Coal fields" 23 J.I.L.I 522(1981)

**PAPER - IV :     DRUG ADDICTION, CRIMINAL JUSTICE AND**  
**HUMAN RIGHTS**

**1.     Introductory**

- 1.1.   Basic conceptions
  - 1.1.1. Drugs ' narcotics" "psychotropic substances"
  - 1.1.2. 'Dependence," "addiction"
  - 1.1.3. "Crimes without victims
  - 1.1.4. "Trafficking" in "drugs"
  - 1.1.5. "Primary drug abuse"

**2.     How Does One Study the Incidence of Drug Addiction and Abuse?**

- 2.1.   Self-reporting
- 2.2.   Victim-studies
- 2.3.   Problems of comparative studies

**3.     Anagraphic and Social Characteristics of Drug Users**

- 3.1.   Gender
- 3.2.   Age
- 3.3.   Religiousness
- 3.4.   Single individuals/cohabitation
- 3.5.   Socio-economic level of family
- 3.6.   Residence patterns (urban/rural/urban)
- 3.7.   Educational levels
- 3.8.   Occupation
- 3.9.   Age at first use
- 3.10.   Type of drug use
- 3. 11.   Reasons given as cause of first use
- 3.12.   Method of Intake
- 3.13.   Pattern of the -Use
- 3.14.   Average Quantity and Cost
- 3.15.   Consequences on addict's health (physical/psychic)

NOTE: Since no detailed empirical studies exist in India, the class should be in this topic sensitised by comparative studies. The principal objective of



this discussion is to orient the class to a whole variety of factors which interact in the 'making' of a drug addict.

#### **4. The International Legal Regime**

- 4.1. Analysis of the background, text and operation of the Single Convention on Narcotic Drugs, 1961, 1972
- 4.2. Analysis of the Convention on Psychotropic Substances, 1972
- 4.3. International collaboration in combating drug addiction
- 4.4. The SARC, and South-South Cooperation
- 4.5. Profile of international market for psychotropic substances

#### **5. The Indian Regulatory System**

- 5.1. Approaches to narcotic trafficking during colonial India
- 5.2. Nationalist thought towards regulation of drug trafficking and usage
- 5.3. The penal provisions (under the IPC and the Customs Act)
- 5.4. India's role in the evolution of the two international conventions
- 5.5. Judicial approaches to sentencing in drug trafficking and abuse
- 5.6. The Narcotic Drugs and Psychotropic Substances Act, 1985
- 5.7. Patterns of resource investment in India: policing adjudication, treatment, aftercare and rehabilitation

#### **6. Human Rights Aspects**

- 6.1. Deployment of marginalized people as carrier of narcotics
- 6.2. The problem of juvenile drug use and legal approaches
- 6.3. Possibilities of misuse and abuse of investigative prosecutory powers
- 6.4. Bail
- 6.5. The Problem of differential application of the Ugal Regimes, especially in relation to the resource less

#### **7. The Role of Community In Combating Drug Addiction**

- 7.1. Profile of Community initiatives in inhibition of dependence and addiction (e.g. de addiction and aftercare)
- 7.2. The role of educational systems
- 7.3. The role of medical profession
- 7.4. The role of mass media

- 7.5. Initiatives for compliance with regulatory systems
- 7.6. Law reform initiatives

### Select Bibliography

- H.S. Becker, *Outsiders : The Studies in Sociology of Deviance* (1966)
- J.A. Incard, C.D. Chambers, (eds.), *Drugs and the Criminal Justice System* (1974)
- R. Cocken, *Drug Abuse and personality in Young Offenders* (1971)
- G. Edwards Busch, (ed.) *Drug Problems in Britain : A Review of Ten Years* (1981)
- P. Kondanram and Y.N. Murthy, "Drug Abuse and Crime" : A Preliminary Study" 7 *Indian Journal of Criminology*, 65-68 (1979)
- P.R. Rajgopat *Violence and Response: A Critque of the Indian Criminal System* (1988)
- United Nations, *Economic and Social Reports of the Commission on Narcotic Drugs*, United Nations Social Defence, Research Institute (UNSDRI) *Combating Drug Abuse and Related Crimes* (Rome, July 1984, Publication No. 21).
- Lok Sabha and Rajya Sabha Debates on 1986 Bill on Psychotropic Substances.
- Useful Journals in this area are:
- (i) The Law and Society Review (USA)
  - (ii) Journal of Drug Issues (Tallahassee Florida)
  - (iii) International Journal of Addictions (New York)
  - (iv) British Journal of Criminology
  - (v) Journal of Criminal Law, Criminology and Police Science (Baltimore , Md.)
  - (vi) Journal of Criminal Law and Criminology (Chicago, III)
  - (vii) International Journal of Offender Therapy and Comparative Criminology (London)
  - (viii) Bulletin on Narcotics (United Nations)



## **PAPER – V : JUVENILE DELINQUENCY**

### **1. The Basic Concepts**

- 1.1. The conception of 'child' in Indian Constitution and Penal Code.
- 1.2. Delinquent juvenile
- 1.3. "Neglected" juvenile
- 1.4. The overall situation of children/young persons in India, also with reference to crime statistics (of crimes by and against children)

### **2. Determining Factors of Juvenile Delinquency**

- 2.1. Differential association
- 2.2. Anomie
- 2.3. Economic pressure
- 2.4. Peer group influence
- 2.5. Gang sub-culture
- 2.6. Class differentials

### **3. Legislative Approaches**

- 3.1. Legislative approaches during the late colonial era.
- 3.2. Children's Act
- 3.3. Legislative position in various States
- 3.4. The Juvenile Justice Act
  - 3.4.1. Constitutional aspects.
  - 3.4.2. Distinction between "Neglected" and "delinquent" juveniles.
  - 3.4.3. Competent authorities
  - 3.4.4. Processual safeguards for juveniles
  - 3.4.5. Powers given to government
  - 3.4.6. Community participation as envisaged under the Act

### **4. Indian Context of Juvenile Delinquency**

- 4.1. The child population percentage to total sex-ratio, urban/rural/rural-urban
- 4.2. Neglected - below poverty line, physically and mentally disabled, orphans, destitutes, vagrants.
- 4.3. Labourers

- 4.3.1. In organised industries like zari, carpet, bidi, glass
- 4.3.2. In unorganised sector like domestic servant, shops and establishments, rag-pickers family trade.
- 4.4. Delinquent - number, sex-ratio, ratio to adult crime, types of offences committed, recidivism, rate of increase background
- 4.5. Drug addicts
- 4.6. Victims
  - 4.6.1. Of violence - sexual abuse, battered, killed by parents
  - 4.6.2. Of criminal activities like bootlegging, drug pollution as a response of protective approach

## **5. Judicial Contribution**

- 5.1. Social action litigation concerning juvenile justice
- 5.2. Salient judicial decisions
- 5.3. Role of legal profession in juvenile justice system.

## **6. Implementation**

- 6.1. Institutions, bodies, personnel
- 6.2. Recruiting and funding agencies
- 6.3. Recruitment qualifications and salaries or fund
- 6.4. Other responsibilities of each agency/person
- 6.5. Coordination among related agencies
- 6.6. Accountability-annual reports and accessibility of public to juvenile justice institution.

## **7. Preventive Strategies**

- 7.1. State Welfare programmes health, nutrition, ICWS, grants-in-aid
- 7.2. Compulsory education
- 7.3. Role of community, family, voluntary, bodies, individuals.

## **Select Bibliography**

National institute of Social Defence, Model Rules under the Juvenile Justice Act, 1986, (1986)

K.S. Shukla, Adolescent Offender (1985)



United Nations, Beijing Rules on Treatment of Young Offenders (1985)

Myron Weiner, The Child and State in India (1990)

The United Nations Declaration on the Rights of Children UNICEF periodic materials

**PAPER – VI : COLLECTIVE VIOLENCE AND CRIMINAL JUSTICE SYSTEM**

**1. Introductory**

- 1.1. Notions of "force", "coercion", "violence"
- 1.2. Distinctions: "symbolic" violence, "institutionalised" violence, "structural violence"
- 1.3. Legal order as a coercive normative order
- 1.4. Force-monopoly of modern law
- 1.5. "Constitutional" and "criminal" speech: Speech as incitement to violence
- 1.6. "Collective political violence" and legal order
- 1.7. Notion of legal and extra-legal "repression"

**2. Approaches to Violence in India**

- 2.1. Religiously sanctioned structural violence: Caste and gender based
- 2.2. Ahimsa in Hindu, Jain, Buddhist, Christian, and Islamic traditions in India
- 2.3. Gandhiji's approach to non-violence
- 2.4. Discourse on political violence and terrorism during colonial struggle
- 2.5. Attitudes towards legal order as possessed of legitimate monopoly over violence during the colonial period

**3. Agrarian Violence and Repression**

- 3.1. The nature and scope of agrarian violence in the 18-19 centuries India
- 3.2. Colonial legal order as a causative factor of collective political (agrarian) violence
- 3.3. The Telangana struggle and the legal order

- 3.4. The Report of the Indian Human Rights Commission on Arwal Massacre
4. Violence against the Scheduled Castes
  - 4.1. Notion of Atrocities
  - 4.2. Incidence of Atrocities
  - 4.3. Uses of Criminal Law to combat Atrocities or contain aftermath of Atrocities
  - 4.4. Violence Against Women
5. **Communal Violence**
  - 5.1. Incidence and courses of "communal" violence
  - 5.2. Findings of various commissions of enquiry
  - 5.3. The role of police and para-military systems in dealing with communal violence
  - 5.4. Operation of criminal justice system tiring, and in relation to, communal violence

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- U. Baxi, "Dissent, Development and Violence" in R. Meagher (ed.) *Law and Social Change: Indo-American Reflections* 92 (1988)
- U. Baxi (ed.), *Law and Poverty: Critical Essays*, (1988)
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- D.A. Dhangare, *Peasant Movement in India: 1920-1950* (1983)
- Ranjit Guha, *Element any Aspects of Peasant Insurgency in Colonial India* (1983) Ranjit Guba, (ed, ) *Subaltern Studies Vol. 1-6* (1983-1988)
- T. Honderich, *Violence for Equality* (1980)
- Mark Juergensmeyer, "The Logic of Religious Violence: The Case of Punjab" *22 Contributions to Indian Sociology* 65 (1988)
- Rajni Kothari, *State Against Democracy* (1987)
- G. Shah, *Ethnic Minorities and Nation Building: Indian Experience* (1984)



K.S. Shukla, "Sociology of Deviant Behaviour," in 3 ICSSR Survey of  
Sociology and Social Anthropology 1969-1979 (1986)

## **GROUP (B) : BUSINESS LAW**

### **PAPER – I : FUNDAMENTAL PRINCIPLES OF LAW OF CONTRACT AND SPECIFIC CONTRACTS**

#### **Fundamental Principles of Law of Contract**

1. Natures, object and multi-dimensional scope.
2. Foundation theories of Law of Contract

#### **Individualism:**

Freedom of Contract.

Sanctity of Contract.

- 2.2 Encroachment on Freedom of Contract.

- 2.2.1 Legislative intervention.

- 2.2.2 Socio-Economic factors.

- 2.3 Limitations on sanctity of contract

3. Conceptual Analysis:

- 3.1 Contract

- 3.2 Essentials of Contract

4. Specific Contracts

- 4.1 Standard – form contract, Exemption Clauses, Protective Measures.

- 4.2 Quasi – Contract:

Doctrine of Unjust Enrichment, Law of Restitution.

5. Doctrine of Frustration; Grounds and Effects of Frustration.

6. Breach of Contract and Remedies.

7. U.N. Convention on sales.

8. Law relating to Indemnity and Guarantee

9. Law relating to Bailment

10. Law of Agency

11. New Challenges-Internet contract and e-commerce

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- P.S Atiyah, Essays on contract, Clarendon Press, Oxford
- Anson on Law of Contract
- Cheshire and Fifoot, Law of Contract
- Venkiteswara Iyer, Treatise on Law of Contract
- Jogarao, SV, On Computer Contract and Information Technology Law
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- Chitty, On Contract, 28th Ed (1999) Sweet and Maxwell, London
- Dutt. AC, Saharey HK (Ed) Contract-The Indian Contract Act, 1872, 9<sup>th</sup> Ed (2000) Eastern Law House, Calcutta.
- Pollock and Mulla, Indian Contract and Specific Relief Acts.

### **PAPER – II : LAW OF INDUSTRIAL AND INTELLECTUAL PROPERTY**

1. **IPR and International Perspectives**
2. **Trademarks and Consumer Protection (Study of UNCTAD report on the subject)**
3. **The Legal Regime of Unfair Trade Practices and of Intellectual Industrial Property**
  - 3.1. United Nations approaches (UNCTAD, UNCITRAL)
  - 3.2. EEC approaches
  - 3.3. Position in U.S.
  - 3.4. The Indian situation.
4. **Special Problems of the Status of Computer Software in Copyright and Patent Law: A Comparative Study.**
5. **Biotechnology Patents:**
  - 5.1. Nature and types of biotechnology patents
  - 5.2. Patent over new forms of life : TRIPS obligations



- 5.3. Plant patenting
- 5.4. Sui generis protection for plant varieties
- 5.5. Multinational ownership
- 5.6. Regulation of environment and health hazards in biotechnology patents
- 5.7. Indian policy and position.
- 6. Patent Search, Examination and Records:**
  - 6.1. International and global patent information retrieval systems (European Patent Treaty).
  - 6.2. Patent Co-operation Treaty( PCT )
  - 6.3. Differences in resources for patent examination between developed and developing societies
  - 6.4. The Indian situation
- 7. Special Problems of Proof of Infringement:**
  - 7.1. Status of intellectual property in transit - TRIPS obligation - Indian position.
  - 7.2. The evidentiary problems in action of passing off.
  - 7.3. The proof of non-anticipation, novelty of inventions protected by patent law.
  - 7.4. Evidentiary problems in piracy : TRIPS obligation - reversal of burden of proof in process patent
  - 7.5. Need and Scope of Law Reforms.
- 8. Intellectual Property and Human Right**
  - 8.1. Freedom of speech and expression as the basis of the regime of intellectual property right - copyright protection on internet - WCT (WIPO Copyright Treaty, 1996).
  - 8.2. Legal status of hazardous research protected by the regime of intellectual property law.
  - 8.3. Human right of the impoverished masses intellectual property protection of new products for healthcare and food security

- 8.4. Traditional knowledge - protection- biodiversity convention- right of indigenous people.

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Special attention should be given to literature of the U.N. System, WIPO and the UNESCO.

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

Iver P. Cooper, *Biotechnology and Law* (1998), Clerk Boardman Callaghan, New York.

David Bainbridge, *Software Copyright Law* (1999), Butterworths

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*Patent Co-operation Treaty Hand Book* (1998), Sweet and Maxwell

Christopher Wadlow, *The Law Of Passing-Off* (1998), Sweet and Maxwell

W.R.Cornish, *Intellectual Property Law* (1999), Sweet and Maxwell

## **PAPER – III : LEGAL REGULATION OF ECONOMIC ENTERPRISES**

### **1. The Rationale of Government Regulation**

- 1.1. Constitutional perspectives
- 1.2. The new economic policy - Industrial policy resolutions, declarations and statements
- 1.3. The place of public, small scale, co-operative, corporate, private and joint sectors - in the changing context
- 1.4. Regulation of economic activities
  - 1.4.1. Disclosure of information
  - 1.4.2. Fairness in competition
  - 1.4.3. Emphasis on consumerism