LEGAL EDUCATION AND RESEARCH METHODOLOGY

Syllabus

1. Objectives of legal education
   1.2. Lecture Method of Teaching – Merits and demerits
   1.3. The Problem Method
   1.4. Discussion method and its suitability at postgraduate level teaching
   1.5. The Seminar method of teaching
   1.6. Examination system and problems in evaluation-external and internal assessment.
   1.7. Student participation in law school programs - Organization of seminars, publication of journal and assessment of teachers.

2. Research Methods

   2.1. Social Legal Research
   2.2 Doctrinal and non doctrinal
   2.3 relevance of empirical research
   2.4 Induction and deduction

3. Identification of Problem of research

   3.1. What is a research problem?
3.2 Survey of available literature and bibliographical research.

3.3 Legislative materials including subordinate legislation, notification and policy statements.

3.4 Decisional material including foreign decisions, method of discovering the “rule of the case” tracing the history of important case and ensuring that these have not been over-ruled, discovering judicial conflict in the area pertaining to the research problem and the reason thereof.

3.5 Juristic writings – a survey of juristic literature relevant to select problems in India and Foreign periodicals.

4 Preparation of the Research design

4.1 Formulation of the Research problem.

4.2 Devising tools and techniques for collection of date Methodology

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

4.4 Use of historical and comparative materials.

4.5 Use of observation studies.

4.6 Use of questionnaires/interview

4.7 Use of case studies.

4.8 Sampling procedures – design of sample, types of sampling to be adopted.
4.9 Use of scaling techniques.

4.10 Jurimetrics.

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


4.13 Analysis of data

3.6. Compilation of list of reports or special studies Conducted relevant to the problem.

**BIBLIOGRAPHY**

2. Agrawal (Ed.), Legal Education in India (1973), Tripathi, Bombay.
4. Price, H. Bitner and Bysiewiwt, Effective Legal Research (1978)
5. The V. Young, Scientific Social Survey and Research (1962)
8. Ne, The are of Asking Question (1965)

LAW AND SOCIAL TRANSFORMATION IN INDIA

Syllabus

1. Law and social change
   1.1 Law as an instrument of social change.
   1.2 Law as the product of traditions and culture. Criticism and evaluation in the light of colonization and the introduction of common law system and institute in India and its impact on further development of law and legal institution 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 and 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 matter 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 form.
6.3  Women’s Commission.

6.4  Empowerment of Women: Constitutional and other legal provisions.

7.  Children and the law

7.1  Child labor

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 Vs. State regulation, Industrialisation Vs. environmental protection.
8.3 Reform of court processes –

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

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

8.3.3 Prison reforms

8.4 Democratic decentralization and local self-government

9. Alternative approaches to law

9.1 The jurisprudence of Sarvodaya Gandhiji, Vinoba Bhave; Jayaprakash Narayan Surrender of dacoits; concept of grama Nyayalaya.

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


Duncan Derret, -The Slate, Religion and Law in India (1999), Oxford University press, New Delhi.


Savitri Gunasekhare, Childern, Law and Justice (1997), sage.


Agnes, Flavia, Law and Gender Inequality: The Politics of Women's Rights in India (1999), Oxford.
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 Center’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 center and State.
1.7 Special status of certain States.
17.1 Tribal Areas, Scheduled Areas

2 “State”: Need for widening the definition in the wake of Liberalization

3. Right to equality: Privatisation and its impact on
affirmative action.

4. Empowerment of women.

   5.1 Freedom of speech and right to broadcast and telecast.
   5.2 Right to strikes, hartal and bandh.

   6.11 Compensation Jurisprudence
   6.12 Right to education
      6.12.1 Commercialisation of education and its impact.
      6.12.2 Brain drain by foreign educational market.

7. Right of minorities to establish and administer educational institutions and state control.

8. Secularism and religious fanaticism.

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, corrupt practice

10.6 Grass root democracy

Select bibliography

No specific bibliography is suggested for this course since the course materials obviously depend 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.
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 adjudications.
   2.4 Varieties of judicial and juristic activism.
   2.5 Problems of accountability and judicial law making.

   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 Superme Court-the tools and techniques of creativity.
3.4 Judicial process in pursuit of constitutional goals and values-new dimensions of judicial of courts and 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 India thought.
4.3 The concept and various theories of justice in the western thought.
4.4 Various theoretical bases of justices: The liberal contractual tradition, the liberal utilitarian tradition and the liberal moral tradition.

5. Relation between Law and Justice
5.1 Equivalence Theories –Justice as nothing more than the positive law of the stronger class.
5.2 Dependency theories –For its realization justice depends on law, but justice is not the same as law.
5.3 The independence of justice theories-means to end relationship of law 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
5. W. Friedman, Legal Theory (1960), Stevens London.
CONTRACT-I

1. General Principles of Law of contract
   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 excepcations-adequency 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’-necessories 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 estoppels-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-suppresio 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 restrictions under the
Partnership Act, Trade combinations, exclusive
dealing agreements, and restraints on
employees under agreements of service.

1.7.3.4 Agreements in restraints of legal proceedings its
exceptions.

1.7.3.5 Uncertain Agreements

1.7.3.6 Wagering Agreements its exceptions.

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 lease theories of frustration – effect of
frustration – frustration and restitution.

1.8.4. By period of limitation.

1.9. Quasi- contract or creating relations resembling those created by contract.

1.10. Remedies in contractual relations.


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 -

Constitutional provisions – governments 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 –

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

2. Multinational Agreements
3. Strategies and constraints to enforce contractual obligation
   a. Judicial methods-redressal forum,remedies.
b. Other methods like arbitration, Lok adalat, Nyaya Panchayat and other such non-formal methods

c. Systemic constraints in settling contractual disputes
   Court fees, service of summons, injunctions, delay.

Select bibliography


R.K. Abichandani, (ed.) Pollock and Mulla Indian Contract and the Specific Relief Tripathi

Banerjee. S.C. Law of Specific Relief (1998), Universal

Anson, Law of Contract (1998), Universal

Dutt on Contract (2000), Universal

Anand and Aiyer, Law of Specific Relief (1999), Universal
ADMINISTRATIVE LAW

1. Evolution, Nature and scope of Administrative Law
   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 administrative as the fourth branch of government-necessity for delegation of powers on administrative.
   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’Etate
      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
   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
   3.1 Necessity for delegation of legislative power
   3.2 Constitutionality of delegated legislation - powers of exclusion 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
   4.1 Need for devolution of adjudicatory authority on administration
   4.2 Administrative tribunals and other adjudicating: 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 case
  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

5.1 Exhaustion of administrative remedies

5.2 Standing: standing for Public interest litigation (social action litigation) collusion, bias

5.3 Leches

5.4 Res judicata

5.5 Grounds

5.5.1 Jurisdictional error/ultra virus

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
6.1 Need for administrative discretion
6.2 Administrative discretion and rule of law
6.3 Limitations on exercise of discretion
6.3.1 Mala-fide exercise of discretion
6.3.2 Constitutional imperative and use of discretionary authority 6.3.3 Irrelevant considerations
6.3.4 Non-exercise of discretionary power
7. Liability for wrongs (tortuous and contractual)

7.1 Tortuous 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 Estoppal and waiver

8 Corporations and Public Undertaking

8.1 State monopoly-remedies against arbitrary action or for acting against public policy

8.2 Liability of public and private corporations-department 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
Grievance Redressal Procedures
9.1 Conciliation and mediation through social action groups.
9.2 Use of media, lobbying and public participation.
9.3 Public enquiries and commissions of inquiry.
9.4 Ombudsman: Lok-pal, Lok-Aayukt.
9.5 Vigilance Commission
9.6 Congressional and Parliamentary Committees

Select Bibliography

C.K.Allen, Law & Orders (1985)


M.A.Fazal, Judicial Control of Administrative Action in India

Franks, Report of the Committee on Administrative Tribunals and Inquiries, HMSO, 1959

Peter Cane, An Introduction to Administrative Law (1996) Oxford


J.C. Garner, Administrative Law (1989), Butterworths (ed.B.L.Jones)


B. Schwartz, An Introduction to American Administrative Law