

COURSES OF STUDIES

3

I.L. B. First Year Second Semester Courses & Studies

Paper 5—Jurisprudence

The Paper consists of Jurisprudence.

~~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

~~units 10~~

1. Introduction

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

Law

17

- 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

29

18

5. Legal Rights: the Concept

~~units-6~~

5.1. Rights: kinds

5.2. Right duty correlation

6. Persons

~~units-3~~

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

7. Possession: the Concept

~~units-3~~

7.1. Kinds of possession

8. Ownership :the Concept

~~units-3~~

8.1. Kinds of ownership

8.2. Difference between possession and ownership

9. Title

~~units-2~~

10. Property: the concept

~~units-3~~

10.1. Kinds of property

11. Liability

~~units-15~~

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

Law

- 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
 - 12.1. Sources of obligation
- 13. Procedure
 - 13.1. Substantive and procedural laws: difference
 - 13.2. Evidence: Nature and kinds

~~units 2~~~~units 2~~**Select bibliography**

- Bodenheimer *Jurisprudence—The Philosophy and Method of Law* (1996), Universal, Delhi.
- Fitzgerald, (ed.) *Salmond on Jurisprudence* (1999) Tripathi, Bombay
- W. Friedmann, *Legal Theory* (1999) Universal, Delhi.
- V.D. Mahajan, *Jurisprudence and Legal Theory* (1996 re-print), Eastern, Lucknow
- M.D.A Freeman (ed.), *Lloyd's Introduction to Jurisprudence*, (1994), Sweet & Maxwell
- Paton G.W., *Jurisprudence* (1972) Oxford, ELBS
- H.L.A. Hart, *The Concepts of Law* (1970) Oxford, ELBS
- Roscoe Pond, *Introduction to the Philosophy of Law* (1998 Re-print) Universal, Delhi.
- Dias, *Jurisprudence* (1994 First Indian re-print), Adithya Books, New Delhi.
- Dhyani S.N., *Jurisprudence: A study of Indian Legal Theory* (1985), Metropolitan, New Delhi.

Paper 6—Constitutional Law of ~~India~~.

The paper consists of the Constitution of India 1950.

UGC Model Curriculum

~~BCI-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

Cases—

- (a) State of M. P. Vs. Ramashanker Raghuvanshi (AIR 1983 SC 374) (Equality in public Service).
- (b) State of U. P. Vs. Mohd. Shariff (AIR 1982 SC 937) (Reasonable opportunity in Department enquiry).
- (c) Frances coralie Mullan Vs. the Administration of Delhi (AIR 1981 SC 746) (Right to Equality & Life and Personal liberty).
- (d) A. K. Roy Vs. Union of India (AIR 1982 SC 710) (Ordinance Making power of President).
- (e) Bishamber Dayal Vs. State of U. P. (AIR 1982 SC 33) (Freedom of Movement of Goods).

units-8

nd spiritual influence.

LAW

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

~~units-15~~

2. Parliamentary Government

- 2.1. Westminster model - choice of parliamentary government at the Centre and States.
- 2.2. President of India
 - 2.2.1. Election, qualifications, salary and impeachment
 - 2.2.2. 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.

~~units-8~~

3. Federalism

- 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

~~units 5~~

4. Constitutional Processes of Adaptation and Alteration

- 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.

Law

- 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

35

60

- 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

~~units 3~~

13. Services under the Constitution

- 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

Select bibliography

- G. Austin, *History of Democratic Constitution: The Indian Expenditure* (2000) Oxford
- D.D.Basu, *Shorter Constitution of India*, (1996), Prentice Hall of India, Delhi
- Constituent Assembly Debates Vol. 1 to 12 (1989)
- H.M.Seervai, *Constitution of India*, Vol.1-3(1992), Tripathi, Bombay
- M.P.Singh(ed.), V.N.Shukla, *Constitutional Law of India* (2000) Oxford
- G. Austin, *Indian Constitution: Cornerstone of a Nation* (1972).
- M. Galanter, *Competing Equalities - Law and the Backward Classes in India* (1984) Oxford
- B. Sivaramayya, *Inequalities and the Law* (1984) Eastern, Lucknow.
- S.C.Kashyap, *Human Rights and Parliament* (1978) Metropolitan, New Delhi

2020 7 Faculty of Law

Paper 8: Family Law - II (Muslim Law).

~~Family Law (excluding succession relating to immovable property)~~

38

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

Cases—

- (a) Arunachal Mudalier Vs. Murugnath. (AIR 1953 S. C. 495)
- (b) Ammahanyee o Permunalakee & others Vs. Kumareshan o Balkrishna & others. (AIR 1967 S. C. 495)
- (c) Sawanram Vs. Mrs. Kalawati. (AIR 1967 S. C. 1761)
- (d) Baiva Appa Vs. Smt. Gopikabai. (AIR 1978 S. C. 793)
- (e) Dharmendra Kumar Vs. Usha. (AIR 1977 S. C. 2218)

Family Law

~~units 6~~

es regulating to marital

Cases—

- (a) Nawazish Ali Khan V/s Ali Raza Khan. (AIR 1941 P. C. 134).
- (b) Rashid Ahmad Vs. Anisa Khatoon. (AIR P. C. 23).
- (c) Zain Yar Jung Vs. Director of Endowments. (AIR 1963 S. C. 985).
- (d) Habibur Rehman Vs. Altaf Ali. (AIR 1922 P. C. 159).
- (e) Kapoorchand Vs. Kidar Nissa. (AIR 1953 S. C. 412).

Muslim Law

composite.

40

~~units-8~~

2. Customary practices and State regulation

- 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. Davabhaga 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

मौलिक अधिकार :

~~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.

Select bibliography

Paras Diwan, *Law of Intestate and Testamentary Succession* (1998), Universal

Basu, N.D., *Law of Succession* (2000), Universal

Kusem, *Marriage and Divorce Law Manual* (2000) Universal

Machanda.S.C., *Law and Practice of Divorce in India* (2000) Universal

P.V.Kane, *History of Dharmasastras* Vol.2 pt.1 at 624-632 (1974)

A.Kuppuswami (ed.) *Mayne's Hindu Law and Usage* Ch.4(1986)

B.Sivaramayys, *Inequalities and the Law*, (1985)

K.C.Daiya, "Population control through family planning in India," *Indian Journal of Legal Studies*, 85 (1979)

J.D.M. Derrett, *Hindu Law: Past and Present*

J.D.M. Derrett, *Death of Marriage Law*

A.A.A.Fyzee, *Outline of Muhammadan Law*, (1998)

Alladi Kuppuswami,(ed.) *Mayne's Hindu Law and Usage*, (1986)

J.D.M.Derret, *A Critique of Modern Hindu Law*, (1970)

Paras Diwan, *Hindu Law* (1985)

S.T.Desai (ed.) *Mulla's Principles of Hindu Law*, (1980) Butterorths-India.

Paras Diwan, *Family Law: Law of Marriage and Divorce in India*, (1984).

A.M.Bhattachargee, *Muslim Law and the Constitution* (1994) Eastern Law House, Calcutta.

A.M.Bhattachargee, *Hindu Law and the Constitution* (1994) Eastern Law House, Calcutta.

Paras Diwan, *Law of Adoption, Ministry, Guardianship and Custody* (2000), Universal

Paper 9—Public Interest Lawyering, Legal Aid and Para-Legal Services. (Internal Assessment)

41

The Paper Consists of public Interest Lawyering, Legal Aid and Para-Legal Services.

The performance of the candidate will be assessed through the practical performance by process of internal assessment

Topics Prescribed :

The following topics are prescribed under the public Interest Lawyering, Legal Aid and Para-Legal Services.

- 1 Legal Aid :—History, Provisioning of Legal Aid under the Constitution of India, Civil Procedure code 1908 and Criminal Procedure Code 1973. Rights of Accused.
- 2 National Legal Services Tribunal, Supreme Court Legal services committee, State Legal Services Tribunal High Court Legal Service Committee. District Legal Service Tribunal. Persons entitled for obtaining Legal Services.
- 3 Public Courts, Public Interest Litigation,
- 4 Para-Legal Services.

Acts and Books Recommended :

The following Acts and books are recommended for study :

- 1 Constitution of India, 1950.
- 2 Code of Civil Procedure, 1908.
- 3 Code of Criminal Procedure, 1973.
- 4 The Legal Services Authorities Act, 1987.
- 5 The State Legal Services Authority Rules, 1994.
- 6 भारतीय संविधान, 1950 ।
- 7 सिविल प्रक्रिया संहिता, 1908 ।
- 8 दण्ड प्रक्रिया संहिता, 1973 ।
- 9 लीगल एड, पब्लिक इन्स्ट्रस्ट लॉयरींग एण्ड पैरा-लीगल सर्विसेस—
डॉ. बसन्तीलाल बाबेल (सी. एल. ए.) ।