

LL.M. SEMESTER-IV

Core

LMC401 Dissertation

LMC402 Seminar-II

Elective-

(i) Specialization Group I-Constitution and Legal
Order

LME401 National Security, Public Order and Rule of
Law

Or

LME402 Law and Diplomacy

(ii) Specialization Group II-Criminal Law

LME403 Collective Violence & Criminal Justice System

Or

LME404 Concepts of Justice

(iii) Specialization Group III-Human Rights Law

LME405 Science, Technology and Human Rights

Or

LME406 Law and Society

Skill

LMS401 Skill Development

LL.M. SEMESTER-IV

DISSERTATION

Core Course LMC401

**Credit 12
100 marks**

The topic of dissertation will be assigned at the beginning of the Semester and should be approved by the Head of the Department.

LL.M. SEMESTER-IV

SEMINAR-II

Core Course LMC402

**Credit 06
100 marks**

The students shall choose their seminar topic which should be based on current legal issues.

The topic should be approved by the Head of the Department.

LL.M. SEMESTER-IV

Specialization Group I- CONSTITUTION & LEGAL ORDER NATIONAL SECURITY, PUBLIC ORDER, AND RULE OF LAW

Elective Course LME401

Credit 06

Continuous Evaluation 40 marks

Term End Examination 60 marks

Objectives of the Course

In every written constitution, provision is required to be made to equip the state to face grave threats to its existence arising from extra-ordinary circumstances created by war or external aggression or armed rebellion. Although “amidst the clash of arms, the laws are not silent” they do not speak the same language in war as in peace. Extra-ordinary circumstances warrant the invocation of extra-ordinary laws and such laws are known as emergency laws. They put greater fetters on individual liberty and also eclipse certain aspects of the due process. But in such circumstances, the democratic force must assert that for survival of the State, the least possible liberty should be available. The students should be familiarized with different aspects of such emergency powers and scrutinizing intellectual attitude towards such powers.

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

Syllabus

UNIT-I

1. National Security, Public Orders and Rule of Law

Emergency Detention in England –Civil Liberties

Subjective satisfaction or objective assessment?

Pre-Independence law.

UNIT-II

2. Preventive Detention and Indian Constitution

Article 22 of the Constitution

Preventive Detention and Safeguards

Declaration of Emergencies

1962,1965 and 1970 Emergencies

1975 Emergency

UNIT-III

3. Exceptional Legislation

- 3.1 COFEPOSA and other legislation to curb economic offender
- 3.2 TADA: “ the draconian law” –comments of NHRC
- 3.3 Special courts and tribunals
- 3.4 Due process and special legislation

UNIT-IV

4. Civil Liberties and Emergency

- 4.1 Article 19
- 4.2 Meaning of “Security of State”
- 4.3 Meaning of “Public Order”
- 4.4 Suspension of Article 19 rights on declaration of emergency
- 4.5 President’s Right to suspend right to move any court
- 4.6 Article 21- special importanc
- 4.7 e – its non-suspendability
- 4.8 Suspendability –44th amendment

UNIT-V

5. Access to Courts and Emergency

- 5.1 Article 359: ups and downs of judicial review
- 5.2 Constitution (Forty-fourth), Amendment Act, 1978
- 5.3 Constitution (Fifty –ninth) Amendment Act,. 1988.

Martial Law

- 5.4.Provisions in English Law
- 5.5.Provisions in the Constitution

Select bibliography

- G.O.Kopell “ The Emergency, the Courts and Indian Democracy” 8 J.I.L.I. 287 (1966).
H.M. Seervai, The Emergency, Future Safeguards and the habeas Corpus: A Criticism (1978).
International Commission of Jurists, Status of Emergency and Human Rights (1984).
N.C. Chatterji and Parameshwar Rao, Emergency and the Law (1966).

LL.M. SEMESTER-IV
LAW AND DIPLOMACY

Elective Course LME402

Credit 06

Continuous Evaluation 40 marks

Term End Examination 60 marks

Objectives of the course

The importance of diplomacy in international relations cannot be underestimated. Even before and after the emergence of the modern state system and the generally agreed rules of international law, diplomacy has been the most outstanding means for influencing decisions relating to maintenance of international law.

The course will dwell on structural inequalities and geopolitical realities which shape national policies. The role of diplomacy from ancient to modern times will be assessed and salient features of the “new” diplomacy highlighted. Momentous developments in technology giving rise to arms race and military alliances have in no small measure been responsible for utilizing new strategies by powerful states to control foreign policies of nations.

In this connection it will be necessary to understand the conduct of diplomacy in the various forums of the United Nations. Inasmuch as delegations of all the members remain more or less present throughout the year at the United Nations Headquarters, it becomes relatively easy to handle some difficult situations. To provide an insight of the subject, the use of diplomacy in crisis management in contemporary international society will be discussed.

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

Syllabus

1. Contemporary International System

International stratification, neo-colonialism, dependence and domination, geopolitical considerations.

2. Beginning of Diplomacy: Various Diplomatic Traditions, Greek, Byzantine and Indian; Golden age of Classical Diplomacy of 18th and 19th Centuries in Europe.

3. Transition from "old" to "new" diplomacy, Impact of the First World War and the Russian Revolution.

4. Impact of Technology on the Conduct of Diplomacy, Impact of the Nuclear Weapons, Military Alliance.

5. Secret v. Open Diplomacy, Democratic Control of Foreign Policy

6. Diplomacy in contemporary world.

- 6.1. Cold war and its impact on diplomacy
- 6.2. Diplomacy of the Summit
- 6.3. Diplomacy in the United Nations
- 6.4. Development and diplomacy
- 6.5. Diplomacy through mass media and propaganda

7. Crisis Management

- 7.1. Nicaragua
- 7.2. Namibia
- 7.3. Palestine
- 7.4. Sri Lanka
- 7.5. Iran-Iraq conflict
- 7.6. Diplomacy in the Law of the Sea Convention
- 7.7. Diplomacy and new human rights conceptions
 - 7.7.1. Diplomacy and Right to Development Declaration
 - 7.7.2. The Stockholm Declaration on Environment.

8. Diplomacy and Resources

Select bibliography

- A. Ball, Modern Intentional Negotiations (1969)
- I. Clark, Reform and Resistance in International Order (1980)

I. Clark, "The Satisfied and' the Dissatisfied States Negotiate International Law: A Case Study," 18

World Politics 20-41 (1965)

H. Nicolson, Diplomacy (1969)

J. Stone, Law and Nations (1974)

L. Hanken, How Nations Behave (1968)

R.L. Friedheim, Parliamentary Diplomacy - A Survey (1976)

R.P. Anand, International Courts and Contemporary Conflict (1979).

LL.M. SEMESTER-IV

Specialization Group II-CRIMINAL LAW COLLECTIVE VIOLENCE & CRIMINAL JUSTICE SYSTEM

Elective Course LME403

Credit 06

Continuous Evaluation 40 marks

Term End Examination 60 marks

Objective of the course

This is a crucial area of India development with traditional, western, criminology is not overly preoccupied. Collective political violence (CPV) is the order of the day, whether it is agrarian (feudal) violence, or it is atrocities against untouchables, communal riots, electoral violence, police violence (encounters), political violence by militant and extremist groups, gender, gender-based violence or violence involved in mercenary terrorism and its containment.

It is not very helpful in such contexts, to mouth the generalities such as “criminalization” or “lumpenization” of Indian politics, Closer scientific investigation of these phenomena is crucial, which should help us understand both the etiology and the prognosis of CPV. Instead of political analysis the course should focus on broader social under –standing of the political economy of law in India. Each specific form of violence will be examined with a view to identifying the cause and rehabilitation of victims of violence, social and political costs. The growth of police and paramilitary forces will also, in this context, be an object of study. Primary materials here will be governmental and citizen investigative reports. The emphasis of the course will be on fashioning overall democratic understanding and response to meet this problem.

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

Syllabus

UNIT-I

1. Introductory

Notions of “force”, “coercion”, “violence”

Distinctions: “symbolic” violence, “institutionalized” violence, “ structural violence”

Legal order as a coercive normative order

Force- monopoly of modern law

“Constitutional” and “criminal” speech: Speech as incitement to violence

“Collective political violence” and legal order

Notion of legal and extra-legal “repression”

UNIT-II

2. Approaches to Violence in India

Religiously sanctioned structural violence: Caste and gender based

Ahimsa in Hindu, Jain Buddhist, Christian, and Islamic traditions in India

Gandhiji’s approach to non-violence

Discourse on political violence and terrorism during colonial struggle

Attitudes towards legal order as possessed of legitimate monopoly over violence during the colonial period

UNIT-III

3. Agrarian Violence and Repression

The nature and scope of agrarian violence in the 18-19 centuries India

Colonial legal order as a causative factor of collective political (agrarian) violence

The Telangana struggle and the legal order

The Report of the Indian Human Rights Commission on Arwal Massacre

UNIT-IV

4. Violence against the Scheduled Castes

4.1 Notion of Atrocities

4.1.1. Incidence of Atrocities

4.1.2. Corrective labour

4.1.3. Fines

4.1.4. Collective fines

4.1.5. .Reparation by the offender/by the court

UNIT-V

5. Communal Violence

- 5.1 Incidence and course 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

NOTE: Choice of further areas will have to be made by the teacher and the taught

Select bibliography

U.Bax, “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)

A.R.Desal, (ed.) Peasant Struggles in India (1979)

A.R.Desai, Agrarian Struggles in India: After Independence (1986) A.R. Desai, Violation of democratic Rights in India (1986)

D.A.Dhangare, Peasant Movement in India: 1920-1950 (1983)

Ranjit Guha, Element any Aspects of Peasant Insurgency in Colonial India (1983) Ranjit Guha, (ed.) Subaltern Studies Vol. 1-6 (1983-1988)

LL.M. SEMESTER-IV

CONCEPTS OF JUSTICE

Elective Course LME404

Credit 06

Continuous Evaluation 40 marks

Term End Examination 60 marks

Objectives of the course

The legal enterprise is the pursuit of justice for individuals, groups and the nation. Legal education, therefore, should be one which makes a person capable of undertaking and pursuing such an enterprise. The deeper sensibility and feeling for justice or repulsion against injustice, cannot come unless one clearly comprehends and internalizes the values, principles and perspectives of justice. Justice, however, is not a simple phenomenon. Its dimensions are complex, and they evolve through various ramifications in society. There are also alternative ways of attaining justice.

These complexities can be better understood only by making a systematic study of various aspects of justice. The course outlined here attempts to provide not only the theoretical background necessary for the understanding of law, but through various case studies also strives to deepen the students' sensibility.

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

Syllabus

1. The Concepts of Justice.

1.1. The nature and varieties of justice.

1.1.1. Chhatrapathi Singh

1.1.2. Karl Mark

1.1.3. John Austin

1.1.4. Hans Kelson

1.1.5. C.K. Allen

1.1.6. Karl Renner

1.2. The meaning of justice

1.3. Justice as social norms

1.4. Justice as absolute moral principles

1.5. Justice as appropriative

1.6. Justice as obligatory

1.7. The objectivity of Justice

2. The Basis of Justice

2.1. The Liberal contractual tradition

2.2. The liberal utilitarian tradition

2.3. The liberal moral tradition

2.4. The socialist tradition

3. The Relation between Law and Justice

This section of the course should acquaint the students with the following problematics:

The dependence of the realization of justice on law

Can law be independent of justice?

The conformity of law to justice

The dependence of justice on social action and not law

The criteria of law (just law)

3.1. Equivalence Theories: Justice is nothing other than the positive law of the stronger classes.

3.2. Dependency theories. For its realization justice depends on law justice, however, is not the same as law

3.3. The Independence of justice theories

Select bibliography

M.D.A. Freeman (ed.), *Lloyd's Introduction to Jurisprudence* (1994), Sweet & Maxwell.

Bodenheimer, *Jurisprudence: The Philosophy & Method of Law* (1997) Universal, New Delhi.

Freedman, *Legal Theory* (1960) Stevens and Sons, London.

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

C.K. Allen, *Law in the Making*, (1961)

St. Thomas, Aquinas, *Summa Theologica*, (1963)

Aristotle, *The Nicomachean Ethics*, (1966) Wordsworth Classics

W.C. Greene, (ed.), St. Augustine, *The City of God* (1960).

P.A. Freund, "Social Justice, and. The Law", in Brandt, Social Justice, 93-117 (1962)

E.N. Garlan, Legal Realism and Justice, (1941)

H. Grotius, De Jure Belli et Pacis (1925)

G.L Gurvitch, "Justice", in Encyclopædia of the Social Sciences, 509-514; Vol. 4.

I.Kant, "The Science of Right", in Great Books of the Western World Vol. 42 (1952)

H. Kelsen, What is Justice? (1957)

G.W. Leibniz, "On the Notions of Right and Justice", in L.E. Loemker (ed.), Philosophical Papers and Letters, (1956)

J. Maritan, The Rights of Man and Natural Law, (1943)

R.P. Mckeon, "The Meanings of Justice and the Relations among Traditions of Thought", 41 Revue Internationale de Philosophie, 253-267 (1957)

F. Olafson, (ed.), Justice and Social Policy, (1961)

C. Perelman, The Idea of Justice and the Problem of Argument (Translated by J. Petric, 1963)

C. Perelman, "Justice and Justification", 10 Natural Law Forum, 1-20 (1965)

J. Piaget, The Moral Judgment of the Child, (1932).

H. Potter, The Quest for Justice, (1951)

J. Rawls "The Sense of Justice" 72 The Philosophical Review, 281-305 (1963)

N. Rescher, Distributive Justice (1966)

G.H. Von Wright, The Varieties of Goodness, (1963)

Brian Barry, The Liberal Theory of Justice: A Critical Examination of the Principal Doctrine in a Theory of Justice by John Rawls, (1973)

Jonethan Harrison, Themes in Theory of Justice, (1983)

Rosolaind BrookeLaw, Justice and Social Policy, (1979)

Morris Ginsberg, On Justice in Society, (1965)

Edgar Bodenheimer, Treatise on Justice. (1967)

Torstein, Eckhoff, Justice Its Determinants in Social Interaction (1974), Rotterdam University Press.

Henry Stuart Private Justice, (1983)

Joel Feinbeing, Rights, Justice and the Bounds of Liberty, (1980).

Burton M. leiser, Liberty, Justice and Morals, (1979)

R.G. Chaturvedi, Natural and Social Justice, (1975)

Jeremy Bentham, An Introduction to the Principles of Morals and Legislation (1789).
Edmund Bergler and Noost Meerloo, Justice and Injustice, (1963)
Edmond Cahn, The Sense of Injustice, (1949)
Edmond Cahn, The Moral Decision (1956)
John Cohen, Chance, Skill and luck (1960)
H.L.A. Hart "Are there any Natural Rights", 56 The Philosophical Review, (1955)
Hans Reiss (ed.), Kant's Political Writings, (1970).

LL.M. SEMESTER-IV

Specialization Group III- HUMAN RIGHTS LAW

SCIENCE, TECHNOLOGY & HUMAN RIGHTS

Elective Course LME405

Credit 06

Continuous Evaluation 40 marks

Term End Examination 60 marks

Objective of the course

We live in an era of scientific development. The alarming rate of development in biotechnology calls for drastic in the law. Many concepts and terms have to be re-defined. The development in information technology poses serious problems and challenges the rapid changes made by science and technology will have to be reflected in law to make it meaningful and realistic in the modern era. This course is intended to make students

conscious of various legal problems arising due to developments in such areas as biotechnology and information technology and to identify the changes needed in the law.

Syllabus

UNIT-I

1. Interrelationship of Science, Technology and Human Rights

1.1 Implication of Development of Science and Technology on Human Rights

1.2 Right to environment in the development of science and technology

1.3 Right to development in the advancement of science and technology

1.4 Right to human health and impact of development in medical science

UNIT-II

2.1 **2. Medical and the law** Organ transplantation

2.2 Experimentation on human beings

2.3 Euthanasia (mercy killing)

2.4 Gene therapy

UNIT-III

3. Issue of Human Rights Ethics in Scientific and Technological Development

3.1 Sex determination test

3.2 Induced abortion

3.3 Reproductive technology

3.4 Cloning

3.5 In vitro fertilization

3.6 Artificial insemination

3.7 Surrogate motherhood

UNIT-IV

4 Development in Information Technology and Human Rights

UNIT-V

5 Impact of Scientific and Technological Progress on Human Rights: Normative Response of the International Community

5.1 Right to life

5.2 Right to privacy

5.3 Right to physical integrity

5.4 Right to information

5.5 Right to benefit from scientific and technology progress

5.6 Right to adequate standard of living

Select bibliography

Diane Rowland, Elizabeth Macdonald, Information Technology Law, (1997)

Suresh T. Viswanathan, The Indian Cyber Law, (2000)

The International Dimensions of Cyberspace Law (2000), UNESCO Publication

D.P.Mittal, Law of Information of Technology (Cyber Law), (2000)

Michael Chissick, Alistair Kelman, Electronic Commerce, Law and Practice, (1999)

Adwin W. Patterson, Law in a Scientific Age, (1963)

Steve Jones, Borin Van Leon, Genetics for Beginners, (1993).

Weeramantry, C. G. Human Rights and Scientific and Technology Development, 1990

Kamenka , E., Ideas and Ideologies Human Rights (1978)

Galtung, Human Rights in Another Key, (1994)

Akbar, M.J. , Roits After Riots (1988)

Baxi, U. (ed.) , Rights to be Human, (1986)

Kazmi, F., Human Rights,(1987)

Levin L., Human Rights (1982)

Gromley W.P., Human Rights and Environment, (1976)

Madhavtirtha, Human Rights, (1953)

Beddard, H. Human Rights and Europe, (1980)

Swarup J., Human Rights and Fundamental Freedoms. (1975)

Nagendra Singh, Human Rights and International Cooperation

Kashyap, S.C. Human Rights and United Nations, (1977)

Moskowitz, Human Rights and World Order, (1958)

Drost, Human Rights as Legal Rights, (1979)

Garling M., Human Rights Handbook, (1979)

Andrews, J.A. Human Rights in Criminal Procedure, (1982)

Kalaiah A. B., Human Rights in International Law, (1985)
Robertson, A.B.(ed.), Human Rights in National and International Law (1973)
Lauterpacht, E. International Law and Human Rights (1973)
Roberston, E., Human Rights in the World, (1972)
Sohn, Lonis & Burgenthal, International Protection of Human Rights (1973)
Baxi, U., “Human Rights, Accountability and Development”. Indian Journal of International Law, 279, (1978)
Basu, D.D., Human Rights in Constitution Law, (1994)
Macfarlane, L.J., The Theory and Practice of Human Rights, (1985)
Krishna Iyer, V.R., Human Rights – A Judge’s Miscellany, (1995)
Rama Jois, M., Human Rights: Bharatiya Values, (1998)

LL.M. SEMESTER-IV

LAW AND SOCIETY

Elective Course LME406

Credit 06

Continuous Evaluation 40 marks

Term End Examination 60 marks

Objectives of the course

This course focuses on law as a sub-system of legal system. This would necessarily require a study of institutional dimensions of law as against the normative dimensions of law which have been virtually the exclusive concern of law teaching in the country. It assumes that social science provides a framework for the evolution and development of law and those sociological inputs are necessary to keep law in adjustment with other aspects of social order. It is not possible to make a meaningful study without an

understanding of the sociology of law. The emphasis would, however, be on the study of functions of law in the society, specially the study of law as an instrument of social control. The contemporary problems of the Indian society should be used to illustrate the role of law in dealing with the problems. The select bibliography suggests a whole variety of materials which can be used for this purpose.

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

Syllabus

1. Introductory

- 1.1. The idea of social sciences
- 1.2. Law as a social science
- 1.3. Sociology of law as a relatively autonomous discipline
- 1.4. Place of law in the history of development of social science theory: Durkheim, Weber, Marx.
- 1.5. The Idea of legal system
 - 1.5.1. Normative
 - 1.5.2. Behavioural
 - 1.5.3. Institutional
 - 1.5.4. Cultural
- 1.6. The idea of social system: The problems of societal integration
 - 1.6.1. Consensus approach
 - 1.6.2. Conflict approach

2. Functions of Law

- 2.1. Conception of “functions”: (Latent and manifest)
- 2.2. The law maintains legitimate monopoly of force in society.
- 2.3. The law articulates authoritatively the directions of social transformation by postulating ideals and values towards which public power should be amended.
- 2.4. The law provides resources for orderly and pacific handling of disputes and conflicts.
- 2.5. The law plays important role in resource allocation in society
- 2.6. The law allocates authority and power rendering accountable
- 2.7. The, law is an important instrumentality of social control

3. The impact of Society on Law

- 3.1. The law as volksgiest (Savigny)
- 3.2. The impact of public opinion on the making, unmaking, and implementation of laws.
- 3.3. Pluralism: Control by elite, class domination and the law.
- 3.4. Pressure groups, lobbying and legal policies
- 3.5. Lobbying for the poor

4. Law as Instrument of Social Control - Impact of Law in Society

- 4.1. Notions of social control
- 4.2. Religion, education and law as key instrumentalities of social control.
- 4.3. Distinctive features of law as a means of social control.
 - 4.3.1. Imposition of obligation to obey the law
 - 4.3.2. Incentives to compliance: Bentham's conception of relevance of the law to social expectations.
 - 4.3.3. Varieties of sanctions
 - 4.3.4. Legal administration as an aspect of social control
 - 4.3.5. Control over competing/rival ideologies and belief systems
 - 4.3.6. Limits of effective legal action

5. Law, Culture, History

- 5.1. Notions of culture, (material and non-material)
- 5.2. Ogburn's hypothesis of cultural lag of law.
- 5.3. Evolutionary theories of law
 - 5.3.1. Durkheim progression from repressive to restitutive sanctions
 - 5.3.2. Sir Henry Maine: stages of growth of law
 - 5.3.3. Et. Adamson Hoebel's the law of the primitive man.
- 5.4. Materialism and legal institutions: A Marxist view of legal development.

6. Non-State Legal Systems (NSLS)

- 6.1. Conceptions of NSLS
- 6.2. Types of NSLS
- 6.3. Interaction between NSLS and SLS.

Select bibliography

The following general works should be consulted for helpful materials.

U. Baxi, Towards Sociology of the Indian Law, (1987)

J. Bentham, Theory of Legislation, (1985)

Yash Ghai et al., The Political Economy of the Law: A Third World Reader, (1987)

Lawrence M. Friedman & Stewart Macoulay (eds.), Law, and Behavioural Sciences, (1977)

Charles E. Reardon & Robert M. Rich, The Sociology of Law. A Conflict Perspective, (1978)

Julius Stone, Social Dimensions of Law and Justice (1999) Universal.

Upendra Baxi, "Durkheim and Legal Evolution: Some Problems of Disproof", 8 Law & Society

Review, 645 (1974)

Katherine S. Newman, Law and Economic Organization: A Comparative Study of Preindustrial

Societies (1983)

B.M. Shukla, Law and Social Justice (1998) Rawat Pub., Nagpur

Max Weber on Law in Economy and Society, E.Shils & M. Rheinstein (Tr.) Cambridge (Pub.)

W. Friedman, Law in a Changing Society (1996), Universal

Leopold Possil, Anthropology of Law: A Comparative Theory Ch. 5 (1971)

Richara S. Schwartz, "Legal Evolution and Societal Complexity: A Reply to Professor Baxi" in 8

Law and Society Review 53 (1974)

Markanday Katju, Law in the Scientific Era (2000), Universal

Upendra Baxi, The Crisis of the Indian Legal System (1982) Vikas, New Delhi.

Upendra Baxi, Towards a Sociology of Indian Law. (1986).

LL. M. Semester-IV

SKILL DEVELOPMENT MODULE

Skill Course LMS401

**Credit 02
100 Marks**

Comprehensive *Viva-Voce***Credit 04**

Comprehensive *viva-voce* of 4 virtual credits will be conducted at the end of each semester of the programme by a board of examiners. The grades awarded in the *viva-voce* shall be shown separately in the grade-sheet.