

CONSTITUTIONAL LAW – I

ABOUT THE COURSE

For long it has been established that the constitution of a country is not merely a political manifesto expressing the pious hopes and aspirations of the people of that country, but rather it is also the supreme law of the land to be obeyed and enforced like any other law. In the hierarchy of laws of the country it is the highest law to which all other laws must conform. Any law not in conformity with the constitution is invalid and can be so declared by the courts. Besides, the constitution is also the fundamental law of the country with an organic character giving birth or legitimacy to all other laws within the country. Therefore, unlike other laws, which are considered to be specific in terms of their scope and application, the constitution is considered to be a broad framework for laws to be made and other actions to be taken in an indefinite future and in infinite situations. For that reason the constitution must be read, interpreted and understood differently than the other laws. Such a reading and understanding of the Constitution of India will be our primary focus in this course.

In view of the importance and enormity of the course we have divided it into two parts: **Constitutional Law I** and **Constitutional Law II**. This division has roughly been done in line with the evolution of the constitutions. Initially the constitutions were concerned with the structure of the government including its various organs, their powers and functions and their relationship inter se. Later the constitutions were expanded to cover also the relationship of the state with the individual. Accordingly the two courses have been delineated. As the subject matter of each course is

vast and the time available at our disposal is limited, instead of going into every detail of every provision of the Constitution we shall restricted our focus to: (i) learning the technique of interpreting and understanding the Constitution at macro level or in a broad perspective and (ii) those areas which have been or are more likely to be the subject matter of litigation. The political theories and practices may be and are relevant for the understanding of constitutional law but we will not focus on them. We will concentrate on the lawyer's concerns about the Constitution as they are and are likely to be in future.

In this background the detailed course outlines and reading materials follow.

TEACHING PLAN

This course will be taught jointly by me and Professor M.P. Singh. We have decided that Professor Singh will deliver a one to one and a half hours lecture to the joint class of two sections twice a week while I will break the two sections into four and meet each of these four groups once a week to discuss in detail what has been covered in the lecture. If we notice any difficulties in running the course on these lines we will modify our teaching plan to suit class requirements.

As there will be approximately 15 weeks of classroom teaching in the monsoon semester, I have divided the course in terms of weeks. Every week, out of the four classes of Constitutional Law that we shall have, one will be devoted to the students making case presentations or debating on a subject of relevance to Constitutional Law. This will also take care of the component of 'Class Participation' that is worth 5 marks, and therefore needs to be taken extremely seriously.

The study material contains different modules containing required and recommended readings. The required readings must be read thoroughly before coming to the class while the recommended readings may be read before or after the class whenever you get the opportunity. Apart from the readings indicated for each topic, the following textbooks may be consulted for an overall view of the subject –

1. M.P. Jain, *Indian Constitutional Law* (6th Ed., 2010) Vols. 1 and 2 (revised by Samaraditya Pal and Justice Ruma Pal).
2. M.P. Singh, *VN Shukla's Constitution of India* (11th Ed., 2008, Reprint 2010).
3. HM Seervai, *Constitutional Law of India* (4th Ed 1994).
4. DD Basu, *Shorter Constitution of India* (14th Ed., 2008, Reprint 2010).
5. DD Basu, *An Introduction to the Constitution of India* (20th Ed., 2009)
6. Sujata v. Manohar, T.K. Tope's *Constitutional Law of India* (3rd ed., 2010)
7. G. Austin, *The Indian Constitution: Cornerstone of a Nation* (1966)
8. G. Austin, *Working a Democratic Constitution* (1999)

A week-wise break-up of the different modules to be covered is given below with the caveat that unforeseen contingencies may force changes that will be announced in the class and will be adjusted by mutual convenience of the teachers and the students.

1. Week one:

- a. constitutions, constitutionalism, kinds of constitutions and
- b. the Constitution of India: background and main features

2. Weeks two – four:

- a. Interpretation of the constitution.
- b. judiciary as interpreter of the constitution – its structure and position.
- c. judicial powers and judicial review

3. Weeks five – eight:

Legislative, administrative and financial relations between the Union and States.

- a. Legislative relations (weeks 5 & 7)
- b. Administrative relations
- c. Financial relations (b & c together in week 8)

4. Weeks nine & ten:

- a. Executive and its powers (form of government, position of the President/Governor vis a vis council of ministers, appointment and dismissal of Governors, clemency power of the executive)
- b. Legislature and its powers – qualifications and disqualifications for membership

5. Week eleven & twelve:

- a. Emergency (kinds of emergency, effect on legislative, executive and financial relations)
- b. Constitutional breakdown or Governor's rule in a state

6. Weeks thirteen & fourteen:

Amendment of the Constitution

7. Week fifteen:

Freedom of trade and commerce

For the first week, the students are required to come prepared with the following readings: -

MODULE ONE (INTRODUCING THE CONSTITUTION)

1. Nature and Scope of the subject: Constitutions in historical perspective and the modern constitutions, Constitutionalism

ESSENTIAL READING

- KC Wheare, *Modern Constitutions*, (3rd Ed., 1975) [The introductory part].

RECOMMENDED READINGS

- AW Bradley, Katza S. Ziegler, Dennis Baranger, *Constitutionalism and the role of Parliaments* 2007)(pp. 1-14).
- Sarbani Sen, *Developing the relationship between popular sovereignty and*

constitutionalism (from her book *The Constitution of India: popular sovereignty and democratic transformations* (2007), pp. 64-86).

2. The background, structure and salient features of the Constitution of India:

ESSENTIAL READING

- VN Shukla's Introduction.

RECOMMENDED READING

- Austin, *The Indian Constitution* [The Introductory part].