

VEER NARMAD SOUTH GUJARAT UNIVERSITY, SURAT
Bachelor of Commerce Bachelor of Law (Honours) [B.Com.LL.B.(Hons.)]

Semester - V

BCL – 301 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 practice nor legal education 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. Consequently, teaching becomes fragmented and devoid of any motivation which inspires one to pursue justice. 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. Yet, by and large, traditional law teaching makes the learning of this subject very problematic for the student, whereas in truth, jurisprudence can be made into an easy and very exciting subject to teach and learn. There seem to be two major problems with the approach currently in practice. The first is that a great deal of time is spent on the historical development of various schools of thought. Now this is not bad in itself, but when in the first place, the students are neither aware nor clear as to what are the basic problems concerning law, such an approach in teaching is meaningless. In this rote method of memorizing schools and authors, the fundamental issues pertaining to the concept of law and how they relate to the creation of the just society, tend to get lost in the background. The answers that others have given concerning the nature of law are indeed important but not before one has grasped the nature of the problems concerning one's society. 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 driven to seek out answers for himself. It should in no case begin with burdening the students with answers.

The second problem with pedagogy currently in practice seems to emerge from the first one. Since the major part of the time is spent in reporting what answers others have given about the nature of law, and since invariable all such answers happen to be those of the western thinkers, the students are unable to see connections between these Western or alien answers and what is happening in their immediate environment. That is, they neither see the significance of these schools or theories for their own situation, nor are they able to relate it to what they themselves should be doing in their daily lives. The philosophy of legal action and ways of attaining justice ought to be learnt within the course. Teaching jurisprudence requires innovative changes.

The teaching ought to reorient to one which concerns itself with matters of national development in terms of human and natural resources utilization. There must be a paradigm shift from a historical pedagogy to an analytical pedagogy. An analytical approach is one in which analysis becomes more important than mere memorising of doctrines or facts. It is difficult to impart knowledge of doctrines about law and justice which have developed over 3000 years by mankind in various nations and historical situations within short span of one semester. However it is important to impart analytical skill to do jurisprudence, familiarising a student with basic types of problems concerning law and types of solutions sought, so that he is not only able to use this skill in practice but is also motivated to take up detailed

historical studies on their own after the course. The course intends to give prominence to basic questions and issues and to the development of analytical skill. The emphasis is on the types of problems and types of solutions along with specific doctrines.

The course is in this sense open ended. The suggested readings are illustrative in nature. The basic idea of the course is to bring jurisprudence closer to our own reality, hence the teacher and the taught ought to make more and more use of Indian cases and materials as far as possible.

Syllabus

1. Introduction
 - 1.1 Need to Study Legal theory - relationship of legal theory to the development of a just society - Use of the terms : legal theory, jurisprudence, concept of law, difference between theory, concept , hypothesis, conjectures, opinions, ideas, notions.
 - 1.2 Norm and Normative system : difference between maxims, rules, principles and customary principles - rules and facts - difference between primary rule and secondary rule - types and orders of rules concerning classification, interpretation etc., - what is normative system - different systems like games, languages, religion, unions clubs etc - in what way they differ from legal system
2. Law : Different senses - why are laws obligatory? Whom does law obligate?
 - 2.1 Concept of law in Natural Sciences - distinction between law in Natural Science and legal laws - similarities (eg. generality) and differences (eg. the way they bind an action).
 - 2.2 Concept of law in Social Sciences (statistical and historical laws) - How are legal laws different from such social laws.
 - 2.3 Different types of Orders of Systems - Physical order, Social order, Religious order - to which or in which laws are applicable - what type of order is legal order.
 - 2.4 Why are laws obligatory? - Liability - Obligations (types) - Sanctions - Coercion - Compulsion - Duty - Estoppel - Promise - Dharma - Autonomous theories of obligation - basis of obligation arising out of peoples own social (general) or individual will
 - 2.5 Contractarian Theories - Rousseau, Hobbes, Kant, Kelsen - General Will Theories - People's, Constitutional or Sovereign Power - Mitchell, Rousseau, Conrad, Keshavanand Bharti Case - Free Will Theories (basis of obligation arising from individual will) - Aquinas, Del Vecchio, Kant and others.
 - 2.6 Hindus and Buddhist Conceptions of Swadharma, Moksha, Nirvana - basis in individual's own free will to attain the ultimate in development.
 - 2.7 Heteronomous Theories of obligatoriness theories which derive the basis of obligation from some one other than individual or people
 - 2.8 Command (Will) of the Sovereign Theories (Dictatorial Legal Positivism) - Will of Sovereign different from will of the people - Austin, Bentham, Hart, Kautilya, Manu, ADM Jabalpur v Shivkant Shukla
 - 2.9 Liberal Legal Positivism - Will of People reflected in some generally accepted conventions - Principles which the average, common or rational man would apply, such as in case of grammar of languages - Dworkin, Rawls.

- 2.10 Marxist Legal Positivism - basis of obligatoriness lies in the will of certain class of people - Marx, Pashukanis and others.
- 2.11 Transcendental Theories - Basis of obligation is located in transcendental will such as of God - Iben-Sen, Quran, Bible, Mahabharata (Shanti Parva), Vishnu Puran etc. - Judeo Catholic View - The Islamic view - the Brahmanical view.
- 2.12 Whom does the law obligate? Personality (types) - People - the State - Locus Standi - Mitchell, Conrad, Keshavanand Bharti Case and other cases - Can law obligate the State ex Directive Principles of State Policy - Does law obligate absolutely? eg. Trials of Socrates, Gandhi - justness and unjustness of trial.
- 2.13 Theories of Authority - who has the authority to legislate and obligate us Why? - Types of authorities : legislative, judicial, sovereign customary, academic (experts), religious, international.
- 2.14 The Functions of Law - law as upholder of the moral order of society - original meaning of Dharma - differences between Dharma (moral order) and Purushartha (ideals), the realization of ideals including utopia through law - law for bringing efficiency and social stability, utilitarian views - differences between ends of a legal order, a political order and a religious order - are they interchangeable - can one replace the other - issues concerning dialectics of law - are ends of law necessary for existence of a civil society - Can there be a civil society without legal order - Marxist view about withering away of State - Does it imply withering away of legal system? Is legal system necessary in heaven, swarga or utopia?

3. Schools of Jurisprudence

- 3.1 Analytical
- 3.2 Natural Law
- 3.3 Historical School
- 3.4 Sociological School
- 3.5 Economic Interpretation of Law
- 3.6 Critical Legal Studies
- 3.7 Feminist Jurisprudence
- 3.8 Indian Perspective - the concept of 'Dharma', Social justice, social action litigations, compensatory jurisprudence

4. Sources of Law

- 4.1 Legislation : Why does Parliament have authority to legislate - Positivist Theories - What are the limits of legislative authority? Positivist View : there are no limits (Austin, Kelsen)
 Natural Law View : the limits are defined by principles of morality or natural justice (Aquinas, Finnis)
 Rationalistic View : limits are set by rational principles of justice (Kant, Rawls)
 Basic Structure Doctrine : limits are set by the Basic structure of the Constitution or the law itself, any legislation contrary to the basic structure in non-law (Keshavanand Case) - basic legal concept of reasonableness - The reasons for the limits of legislative authority dependancy of law on justice, different senses of justice, people's perception of what is just, the pervasiveness of justice in law, the criteria for just law, just law as an expression of external (public) morality of society, connection between law and morality, Just law as an expression of human rationality - law as a rational

- ideology - distinction between law as an ideology and law as a system for generation of alternative (competing) ideologies - the Transgression of limits of legislative authority, lawful modalities to check such transgression, People's Revolution, difference between coercion and violence - limits of justified coercion, relation between coercive system (the Police) and legal system, the dependency of law on coercion and the limits of coercion, the question of 'law and order' - can a legal order be maintained through coercion?
- 4.2 Precedent : the Doctrine of Stare Decisis and its applicability - Why are the Supreme Court's judgments binding? Why do the Supreme Court and the High Courts have 'original' jurisdiction? What is meant by 'original'? - Why are Precedents binding? What if there is conflict of authorities, Does the judiciary have the final and absolute authority to determine what will obligate the people - the power of judicial review concerns the matters of State and also other types of conflicts of authority.
 - 4.3 Custom : Basis of the Common Law presumption that customs can be binding.
5. Right and Duty - Juristic Concepts
 - 5.1 Right and duty - acquisition, limited and lost
 - 5.2 Kinds
 - 5.3 Right in wider sense
 6. Person
 - 6.1 Nature of personality - theories, Status of unborn, minor, dead person, animal
 - 6.2 Corporate Personality
 - 6.3 Dimensions of modern legal personality
 7. Possession and Ownership
 - 7.1 Meaning - Kinds - theories - acquisition - loss
 - 7.2 Distinction
 8. Liability and Obligation
 - 8.1 Liability - meaning - conditions - kinds - remedial and penal liability - Strict or absolute liability - Vicarious liability
 - 8.2 Obligation - meaning - chose in action - moral and legal obligation - sources and kinds - breach.
 - 8.3 Mental elements - act - omission - mens rea, intention, malice, motive, knowledge, negligence and recklessness.
 9. Property and Titles
 - 9.1 Property - meaning - rights - theories - kinds - modes of acquisition and loss
 - 9.2 Titles - meaning - facts and kinds of facts - acts in law - acts of law - agreements and kinds.

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 Jurisprudence**, (1994), Sweet & Maxwell
- Paton G.W. : **Jurisprudence** (1972) Oxford, ELBS
- H.L.A. Hart : **The Concepts of Law** (1972) 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.
- Indra Deva Shrirama : **Growth of Legal System in Indian Society** (1980)
- Chhatrapati Singh : **Law From Anarchy to Utopia** (1985). Pl. refer Preface Introduction Part-II
- Hans Kelsen : **Pure Theory of Law**
- : **The Communist Theory of Law**
- Del Vechhio : **General Principles of law**
- John Austin : **The Province of Jurisprudence Determined**
- C.K. Allen : **Law in the Making**
- Lon Fuller : **The Morality of Law**
- Geoffrey Sawer : **Law in Society** (1973)
- Carlos E. Alchouron : **Normative Systems** (1971)
- Karl Marx : **The Critique of Political Economy**
- Joseph Raz : **Authority of Law**
- Thomas Hobbes : **Leviathan**
- James Sterba : **Justice**
- J.S. Mill : **On Liberty**
- Austin B. Creel : **Dharma in Hindu Ethics**
- Immanuel Kant : **Perpetual Peace**
- Otto Von Gierke : **Natural Law and Theory of Society**

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Semester - V

BCL – 302 Family Law – I

Objectives of the Course

"Family and the Law" - The Course structure for the Core Compulsory Courses Family Law-I & II is designed mainly with three objectives in view. One, to provide adequate sociological perspective so that the basic concepts relating to family are expounded in their social setting Two, to give an overview of current problems arising out of the foundational inequities and inequalities writ in the various family concepts. Three, 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 fulfil the constitutional directive of uniform civil code. Such a restructuring, would make the study of familial relations more meaningful.

The Course contents primarily are law relating to marriage and kinship; customary practices and State Regulations; Conversion and effect of conversion on family; matrimonial remedies; alimony and maintenance; family and its changing patterns; matrimonial home and settlement of spousal property; Uniform Civil Code.

Syllabus

1. Marriage and Kinship
 - 1.1 Evolution of the institution of marriage and family
 - 1.2 Role of religion, rituals and practices in moulding the rules regulating marital relations
 - 1.3 Lineage - Patrilineal and matrilineal; Authority structure-patriarchal and matriarchal; Location - patrilocal and matrilocal; Number of conjugal units - nuclear, extended, joint and composite
 - 1.4 Emerging concepts - maitri sambandh, live-in relationships, divided home
2. Customary practices and State regulations
 - 2.1 Polygamy
 - 2.2 Concubinage
 - 2.3 Child marriage
 - 2.4 Sati
 - 2.5 Dowry
 - 2.6 State interventions through various legal measures
3. Conversion and its effect on family
 - 3.1 Marriage
 - 3.2 Adoption
 - 3.3 Guardianship
 - 3.4 Succession
4. Matrimonial Remedies
 - 4.1 Non-judicial resolution of marital conflict problems - customary dissolution of marriage

- 4.2 Judicial resolution of marital conflict problems - a general perspective of matrimonial fault theory and the principle of irretrievable breakdown of marriage
 - 4.3 Divorce and Divorce by mutual consent under Personal Laws and Secular Laws
 - 4.4 Nullity of marriage
 - 4.5 Restitution of conjugal rights
 - 4.6 Judicial separation
 - 4.7 Option of Puberty
 - 4.8 Grounds for matrimonial relief - cruelty, desertion, adultery etc.
 - 4.9 Bars to Matrimonial reliefs - doctrine of strict proof - accessory - connivance - collusion - condonation - improper or unnecessary delay - taking advantage of one's own wrong or disability - Residuary clause - no other ground exists for refusing the matrimonial relief
5. Alimony and Maintenance
 - 5.1 Maintenance under the personal laws of neglected wives, divorced wives, minor children, disabled children, parents
 - 5.2 Provisions under the Code of Criminal Procedure, 1973, for maintenance of those who are unable to support themselves
 - 5.3 Alimony and maintenance as an independent remedy; a review under different personal laws
 - 5.4 Alimony and maintenance as an ancillary relief, alimony pendente lite and permanent maintenance.
 - 5.5 Maintenance of divorced Muslim women and the Muslim Women (Protection of Rights on Divorce) Act, 1986 a critical review.
6. Family and its changing patterns
 - 6.1 Family ties - New emerging trends
 - 6.2 New property concepts - new skills
 - 6.3 Factors affecting family-demographic, environmental, cultural, legislative
 - 6.4 Processes of social change in India - Sanskritization, Westernization, Secularization, Universalization, Parochialization, Modernization, Industrialization and Urbanization
 - 6.5 Settlement of Spousal property - Need for development of law
7. Uniform Civil Code : Need
 - 7.1 Religious pluralism and its implications
 - 7.2 Connotations of the directive contained in Article-44 of the Constitution
 - 7.3 Impediments to formulation of the Uniform Civil Code
 - 7.4 The idea of optional Uniform Civil Code

Suggested Readings

- Paras Diwan : **Hindu Law** (1985)
- Paras Diwan : **Family Law : Law of Marriage and Divorce in India** (1985)
- Kusum : **Marriage and Divorce Law Manual** (2000) Universal
- Manchanda : **S.C. Law and Practice of Divorce in India** (2000) Universal
- P.V. Kane : **History of Dharmasastra** (1974)
- A. Kuppaswami (ed) : **Mayne's Hindu Law and Usage** (1986)

- B. Sivaramayya : **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**
- : **Death of Marriage Law**
- A.A.A. Fyzee : **Outlines of Mohammedan Law** (1998)
- J.D.M. Derrett : **A Critique of Modern Hindu Law** (1970)
- S.T. Desai (ed.) : **Mulla's Principles of Hindu Law** (1998, Butterworths)
- A.M. Bhattachargee : **Muslim Law and the Constitution** (1994) Eastern Law House, Calcutta
- : **Hindu Law and the Constitution** (1994) Eastern Law House, Calcutta
- Iravati Karve : **Kinship Organisation in India** (1953)
- K.M. Kapadia : **Marriage and Family in India**
- W.J. Goode : **The Family** (1964)
- F.B. Tyabji : **Muslim Law** (1968)
- N.R.M. Menon (ed.) : **National Convention on Uniform Civil Code for All Indians** (1986)
- I.F.G. Baxter : **Marital Property** (1973)
- Vasudha Dhagamwar : **Women and Divorce**
- : **Towards Uniform Civil Code** (1989) Tripati, ILI
- Tahir Mahommod : **Muslim Personal Law** (1977) Vikas

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Semester - V

BCL – 303 Company Law

Objectives of the Course

Industrialisation has played, and has to play, a very vital role in the economic development of India. In the post Independence era, industrial development is regarded and hence employed, as a principal means in the strategy for attaining the values of the constitution. Corporations, both public and private, are viewed as a powerful instrument for development, and thereby, for ameliorating the living conditions of masses, besides bringing returns and financial benefits to the capital and labour. In a developing society like India, vast varieties of consumer goods are manufactured or produced and different kinds of public utility services are generated both for general welfare and consumption purposes. Obviously, it is beyond the capacity of a one or a few entrepreneurs to engage into such activities. Because, besides the problem of raising large capital needed for such enterprises, there is a looming danger of market risks. Hence, taking recourse to the device of incorporation is the only efficacious way to surmount all such hurdles. Partnerships also have their legal and managerial limitations. As against these, corporation offers many advantages. Besides its separate and distinct existence, it has that unique virtue of limited liability. It attracts an entrepreneur to invest his capital in a new virgin field of manufacture or production. By adopting the device of incorporation for his new enterprise, not only he knows the extent of his risk, but all those who deal with the corporation, also know its privileges, immunities and liabilities. The device incorporation facilitates the operation of law of credit, labour laws and taxation laws.

The approach towards teaching of the company law has primarily analytical and historical also comparative and philosophical. Jurisprudence also includes problems of corporate personality and its various theories. The commercial aspects is emphasized primarily by company law teacher and the philosophical aspects of corporation are emphasized by jurisprudence teacher.

There is also the need to look at the functional operation of the corporation. Corporations also play developmental role in a mixed "socialist" Indian society. Corporation, indeed is a trading device which may bring good returns for the investors and the labourers. It also has social commitment arising out of its social existence. So the corporations is also subject to taxation laws, labour laws, law of credit, environmental protection laws and laws of remedies. It is also a subject of various governmental controls. It is necessary for focus attention on the position of corporation in such a developmental matrix.

The course aims to have integrated approach with functional operation of corporation with developmental perspective.

The objectives of the course may be formulated as follows -

- (i) to understand the economic and legal dimensions of corporations in the process of industrial development in establishing "just" social order in the context of constitutional values.
- (ii) to acquaint the students with the normative, interpretative, philosophical and economic contours of various statutory rules relating to corporations

- (iii) to evaluate the application and functioning of such statutory rules in their roles for establishment of "just" and "socialist" social order in India

Syllabus

1. Meaning of Corporation
 - 1.1 Theories of Corporate Personality
 - 1.2 Creation and extinction of corporations
2. Forms of Corporate and Non-Corporate Organisations - Corporations - Partnerships and other associations of persons - State corporations - government companies public sector - small scale, co-operative, corporate and joint sectors - foreign collaborations, their role, functions and accountability, corporations and the rule of law, their civil and criminal liability, their essential characteristics. The relevant provisions of the Companies Act, 1956; the Indian Partnership Act, 1932; the Non-Trading Corporations Act and the Societies Registrations Act, 1882.
3. Law relating to Companies - Public and Private - Companies Act, 1956
 - 3.1 Need of company for development formation of a company registration and incorporation.
 - 3.2 Memorandum of association - various clauses - alteration therein - doctrine of ultra vires
 - 3.3 Articles of Association - binding force - alteration - its relation with memorandum of association - doctrine of constructive notice and indoor management - exceptions
 - 3.4 Prospectus - issue - contents - liability for misstatements - statement in lieu of prospectus.
 - 3.5 Promoters - position - duties and liabilities
 - 3.6 Shares - general principles of allotment, statutory restrictions - share certificate, its objects and effects - transfer of shares - restrictions on transfer - procedure for transfer - refusal of transfer - role of public finance institutions - relationship between transferor and transferee - issue of shares at premium and discount - depository receipts - dematerialised shares (DEMAT)
 - 3.7 Shareholder - who can be and cannot be a shareholder - modes of becoming shareholder - calls on shares - forfeiture and surrender of shares - lien on shares - rights and liabilities of shareholders.
 - 3.8 Share capital - kinds - alteration and reduction of share capital - further issue of share capital - further issue of share capital - conversion of loans and debentures into capital duties of court to protect the interests of creditors and shareholders.
 - 3.9 Directors - position - appointment qualifications - vacation of office - removal - resignations - powers and duties of directors - role of nominee directors - meetings, registers, loans - remuneration of directors - compensation for loss of office - managing directors and other managerial personnel.
 - 3.10 Meetings - kinds - procedure - voting
 - 3.11 Dividends - payment - capitalisation of bonus shares - profit
 - 3.12 Audit and accounts
 - 3.13 Borrowing - powers - effects of unauthorised borrowing - charges and mortgages - loans to other companies - investments - contracts by companies.
 - 3.14 Protection of minority rights

- 3.15 Debentures - meaning - fixed and floating charge - kinds of debentures - shareholder and debenture holder - remedies of debenture holders.
 - 3.16 Prevention of oppression and mismanagement - who can apply - when can he apply - powers of the company, of the court and of the Central Government.
 - 3.17 Investigation - powers
 - 3.18 Private companies - nature and advantages - government companies - holding and subsidiary companies - conversion into public company - foreign companies
 - 3.19 Reconstruction and amalgamation
 - 3.20 Defunct companies
 - 3.21 Winding up - types - by court - reasons - grounds - who can apply - procedure - powers of liquidator - powers of court - consequences of winding up order - voluntary winding up by members and creditors - winding up subject to supervision of court - liability of past members - payment of liabilities - preferential payments - unclaimed dividends - winding up of unregistered company
 - 3.22 Laws relating to certain kinds of corporations such as banking, universities, insurance (life and general), public corporations, non-trading corporations.
4. Government control of Corporate Activity - MRTP Act, Reports of Sachar Committee, Dutta Committee - FERA and FEMA - Conversion of foreign exchange and Prevention of Smuggling Act - Essential Services Maintenance Act - Control of Public Sector industries - Public Undertakings Committee reports - Nationalisation and taking over of sick Undertakings - Corporate Finance Institutions - Industrial Credit and Investment Corporation of India - IDBI Act - Industrial Reconstruction Corporation of India - LIC - UTI - RBI Rules and Rule of other commercial and co-operative banks - industrial state finance institutions - such as Gujarat Industrial co-operative Bank Ltd., GIIC Ltd., Gujarat Laghu Udhdyog Sahakari Society Ltd., GSFC, Gujarat Small Industries Corporation Ltd.
5. Corporate Taxation Laws and Corporate Labour Laws
- 5.1 Taxation as a means to establish a "just" social order namely Income Tax, Sales Tax, Wealth Tax, Law of Excise & Custom.
 - 5.2 Labour Laws as means to protect human rights and thereby establish "just" social order - important recommendations of ILO and National Labour Commission of India - Labour Laws like Factories Act, Maternity Benefit Act, Child labour, Payment of Wages, Minimum Wages, Gratuity; Trade Union; Equal Remuneration; Contract Labour; Workmen Compensation; Industrial Relations; Industrial Disputes etc - Labour and Management relations, history and problems, workers participation in management.
6. Law and Multinational Companies
- 6.1 Collaboration agreements for technology transfer - investment in India - repatriation of projects.
 - 6.2 Control and regulation of foreign companies, taxation of foreign companies, Share capital in such companies
 - 6.3 Corporations and Environment Protection - Common law rights and remedies - National laws eg. IPC, Easement Act, Labour legislations, Smoke, nuisance - statutes dealing with river schemes and canals - pollution prevention control and protection laws - Bhopal Tragedy legal liability and legal remedies.

7. Corporate Liability

- 7.1 Legal liability of corporations and remedies available against them - civil, criminal, tortious, specific relief, writs, liability under special statutes (like EPA, CPA) M.C. Mehta etc.
- 7.2 Unincorporated Associations - Law relating to unincorporated associations - Nature and extent of liability

Select Bibliography

- Avtar Singh : **Indian Company Law** (1999), Eastern, Lucknow
- L.C.B. Gower : **Principles of Modern Company Law** (1997) Sweet and Maxwell, London
- Palmer : **Palmer's Company Law** (1987), Stevens, London
- R.R. Pennington : **Company Law** (1990), Butterworths
- A. Ramaiya : **Guide to the Companies Act**, (1998), Wadha
- S.M. Shah : **Lectures on Company Law** (1988), Tripathi, Bombay
- Aiyar A.M. and Ramchandran T.A. : **Companies Act**
- Allsop Peler : **Company Law - Leading Cases in a Nutshell**, Sweet and Maxwell
- Bhargava V.K. and Bhargava B.P. : **Company Act, 1956**, Taxman
- Cain T.E. : **Private Companies**
- Topham and Ivamy : **Company Law**, Butterworth

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Semester - V

BCL – 304 Labour Law – I

Objectives of the Course

Protection of labour is a constitutional mandate. A Constitution inspired by the vision of social justice is committed to the cause of upliftment of labour. Well balanced industrial development leads to increased productivity which in turn is a factor of national progress. Labour makes significant contribution in this respect.

Is labour merely a commodity? Is it only a factor in production? There may be different approaches towards this question one fact is certain. Today's labour is engaged in a battle for position of honour and status equal with management. Shedding away old *laissez faire* attitudes, the modern welfare State plays an active role. The law and practice relating to labour is the story of this battle.

In this context the study of labour law is not confined to mastering of the rules and regulations relating to employment of the work force. The wings spread wider. It has its focus on the societal impulses on and state reactions to, the complex socio-economic, human and political problems arising out of the constant conflicts between different classes.

The student should get an insight into the mechanics of socio-legal control of labour relations. The student should be exposed to the history, the present norms, the emerging areas, and possible future techniques of labour jurisdiction.

The syllabus for both core compulsory courses on Labour and Industrial Law is prepared with this perspective in view.

University Examination Marks

Trade Union Act, 1926	10 Marks
Industrial Disputes Act, 1947	20 Marks
Bonded Labour (Abolition) Act, 1976	} 10 Marks
Contract Labour (Regulation and Abolition) Act, 1970	
Child Labour (Prohibition and Regulation) Act, 1986	_____
Maternity Benefit Act, 1961	20 Marks
Equal Remuneration Act, 1976	

Total.. 70 Marks

Statutory Materials

Trade Union Act, 1926
Industrial Disputes Act, 1947
Bonded Labour (Abolition) Act, 1976
Contract Labour (Regulation and Abolition) Act, 1970
Child Labour (Prohibition and Regulation) Act, 1986
Maternity Benefit Act, 1961
Equal Remuneration Act, 1976

Syllabus

1. Historical Perspectives on Labour
 - 1.1 Labour through the ages - slave labour - guild system - division of labour on caste basis - labour during fental days.
 - 1.2 Colonial labour law and policy
 - 1.3 Labour - Capital conflicts : exploitation of labour - profit motive, poor bargaining power, poor working conditions - unorganized labour - bonded labour - surplus labour - division of labour and super specialization - lack of alternative employment
 - 1.4 Theories of Labour and Surplus value
 - 1.5 From *Laissez - faire* to welfarism to globalisation : transition from exploitation to protection and from contract to status - changing perspectives on labour
2. Trade Unionism
 - 2.1 Labour movement as a counter measure to exploitation - history of trade union movement in India
 - 2.2 Right to trade union as part of human right - freedom of association - international norms and Indian Constitution
 - 2.3 Legal control and protection of trade union - registration - amalgamation - rights, liabilities and dissolution
 - 2.4 Problems : multiplicity of unions - over politicization - intra union and inter union rivalry - outside leadership - closed shop and union shop - recognition of unions
3. Collective Bargaining
 - 3.1 Concept of collective bargaining - international norms - conditions precedent - merits and demerits
 - 3.2 Bargaining process - negotiation, pressurization strike, lockout, go slow, work to rule, gherao, bandh and hartal
 - 3.3 Structure of bargaining : Plant, industry, national levels
 - 3.4 Durations and enforcement of bipartite agreement
 - 3.5 Reforms in law
4. State Regulation of Industrial Relations
 - 4.1 Theoretical foundations : Social justice, labour welfare, public interest, productivity, industrial peace and development, price control
 - 4.2 Method of regulation - recognition of mutual agreement - assistance to bipartite settlement, conciliation, voluntary arbitration, formulation of standing orders - State prescription of machinery, reference for adjudication (political overtones) the adjudicatory mechanisms (how do they differ from courts?) - award and its binding nature - judicial review of awards - State prescription of standards in layoff, strike, lockout, retrenchment, closure and transfer of undertakings.
 - 4.3 The Conceptual conundrum : industry, industrial dispute, workmen
 - 4.4 Unfair labour practices
5. Discipline in Industry : Restraints on managerial prerogative

- 5.1 Doctrine of hire and fire - history of management's prerogative
 - 5.2 Fairness in disciplinary process - punishment for misconduct - meaning of misconduct - the right to know - chargesheet
 - 5.3 The right to defend : domestic inquiry, notice, evidence, cross examination, representation, unbiased inquiry officer and reasoned decision
 - 5.4 Pre-natal (permission) and postnatal (approval) control during pendency of proceedings (section-33 of the I.D.Act)
6. Protection of the Weaker Sectors of Labour
 - 6.1 Constitutional dimensions of labour standards
 - 6.2 Tribal Labour : need for regulation
 - 6.3 Bonded Labour : Socio-economic programmes for rehabilitation
 - 6.4 Contract Labour : regulation
 - 6.5 Child Labour : Prohibition & Regulation
 - 6.6 Women Labour : Maternity Benefit - equal remuneration - protective provisions for women

Select bibliography

- Seth D.D. : **Commentaries on Industrial Disputes Act 1947** (1998), Law Publishing House, Allahabad.
- Srivastava K.D. : **Disciplinary Action against Industrial Employees and its Remedies** (1990), eastern, Lucknow.
- V.V. Giri : **Labour Problems in Indian Industry** Chs. 1 and 15, (1972)
- Indian Law Institute : **Labour Law and Labour Relations** (1987)
- (1982) Cochin University Law Review, Vol. 6 pp. 153-210.
- **Report of the National Commission on Labour**
- O.P. Malhotra : **The Law of Industrial Dispute** (1998), Universal, Delhi.
- J.G. Riddal : **The Law of Industrial Relations**
- R.R. Singh : **Labour Economics**
- ILO **Conventions and Recommendations**
- ILO **Collective Bargaining**
- Gillian S. Morris and Timothy J. Archer : **Collective Labour Law** (2000) Oxford
- Nick Humphrey : **Trade Union Law** (1997) Blackstone
- John Bowers and Simon Hentyball : **Text book on Labour Law** (1998), Blackstone
- Stephen Dery and Richard Mitchell : **Employment Relations Individualisation and Union Exclusion** (1999), Blackstone
- Roger Blanpain, Chris Engels (eds.) : **Comparative Labour Law and Industrial Relations in Industrialised Market Economies** (1999), Kluver
- ILO **Collective Bargaining in Industrialised Market Economies**
- Mary Sur : **Collective Bargaining**
- R.W. Rideout : **Principles of Labour Law**
- Ottokahn Freund : **Labour and the Law**
- Russel A. Smithetal : **Collective Bargaining and Labour Arbitration** (1970)
- Robert A. Goman : **Basic Text on Labour Law**
- Chaturvedi R.G. : **Law and Procedure of Departmental Enquiries and Disciplinary Actions** (1997)

- Government of India : **Agricultural Labour Enquiry**
- Government of India : **Report on the Second Agricultural Enquiry**
- : **Report on the Third Agricultural Enquiry**
- **Report of the National Commission on Rural Labour** (1991) Govt. of India,
Ministry of Labour
- P.L. Malik : **Labour and Industrial Law, Vol-I and II**
- ILO **Conventions and Recommendations**

The students should consult relevant volumes of Indian Journal of Industrial Relations, Journal of Indian Law Institute and Annual Survey of Indian Law; relevant Journal Sections of the Supreme Court Cases (SCC), Economic and Political Weekly (EPW).

VEER NARMAD SOUTH GUJARAT UNIVERSITY, SURAT
Bachelor of Commerce Bachelor of Law (Honours) [B.Com.LL.B.(Hons.)]

Semester - V

BCL – 305 Principles of Taxation Law

Objectives of the Course

The direct taxation is a powerful incentive or disincentive to economic growth, a lever which can raise or depress savings and capital formation, an instrument for reducing income disparities. A student of taxation will have to make a detailed study of tax policy and tax in India. An analysis of this aspect will have to be made so that the reasons of such complications can be known. Also the power to tax is described as the power to destroy. The idea is being floated often whenever that state introduces a new tax. Is this true? It is not necessary that in order to raise revenue and place the economy on solid foundation, the taxing power should not be conferred on the State. The power to tax shall not go unregulated. In the context of federal structure, the distribution of taxing powers assumes added significance. Obviously, a study of constitutional framework on taxation becomes important. Along with this, an analysis of different laws enacted in exercise of these powers with their safeguards and remedies sheds light on the mechanics of the taxation by the Union and the States.

The following syllabus is prepared with this perspective in view.

	<u>University Examination Marks</u>
Income Tax Act	40 Marks
Gujarat VAT	15 Marks
Central Sales Tax Act	<u>15 Marks</u>
	Total.. 70 Marks

Statutory Materials

- (1) Income Tax Act and Rules
- (2) Central Sales Tax Act
- (3) Gujarat VAT

Syllabus

1. General Perspective
 - 1.1 History and Development of Taxation in India
 - 1.2 Fundamental principles relating to tax laws
 - 1.3 Government financial policy, tax structure and their role in the national economy - critical analysis of taxation policy in India
 - 1.4 Concept of tax - nature and characteristics of tax - distinction between tax and fee, tax and cess, direct and indirect tax, tax evasion and tax avoidance - meaning and concept.
 - 1.5 Taxing power and constitutional limitations in India - Centre State fiscal relations - Directive Principles and tax policy objective in India - Tax plan and judicial processes - Scope of taxing powers of Parliament, State legislatures and local bodies.

2. Income Tax
 - 2.1 Basic concepts - income - total income, income not included in total income deemed income - clubbing of income
 - 2.2 Assesses - person - family as a Unit for tax
 - 2.3 Tax planning and tax avoidance Black money - taxation of agricultural income and wealth.
 - 2.4 Chargeable income - heads of income - salaries - income from the house property - income from business or profession - capital gains - income from other sources - deductions, relief, exemptions - rate of income tax
 - 2.5 Income tax authorities - power and functions
 - 2.6 Offences and Penal Sanctions
 - 2.7 Settlement of grievances

3. Central Sales Tax
 - 3.1 Central Sales Tax - Sale and purchase of goods - meaning of Sale
 - 3.2 Sale in course of Inter-state trade and commerce
 - 3.3 Charge of tax - exemption and rebate
 - 3.4 Sales tax authorities
 - 3.5 Offences and penalties

4. State Sales Tax
 - 4.1 Meaning of Sale - Sale or purchase of goods
 - 4.2 Sale to take place outside a State
 - 4.3 Sale in course of export or import
 - 4.4 Charge of tax - exemption and rebate
 - 4.5 Sales tax authorities
 - 4.6 Offences and penalties

5. Service Tax
 - 5.1 Taxable Service
 - 5.2 Meaning and importance of Service tax
 - 5.3 Constitutional perspective
 - 5.4 Salient provisions of the service tax law
 - 5.5 Valuation of taxable service
 - 5.6 Offences and penalties

6. Other Tax Laws
 - 6.1 Wealth Tax - meaning
 - 6.2 Taxable wealth - determination of value of assesses - exemption and rate of wealth tax
 - 6.3 Wealth Tax authorities
 - 6.4 Offences and Penalties

Select bibliography :

- Remesh Sharma : **Supreme Court on Direct Taxes** (1998), Bharath Law House, New Delhi.
- A.C. Sampath Iyenger : **Law of Income Tax** (1998), Bharath Law House, New Delhi

- Diwan B.K. and Sanjay Mehtani : **Formation, Taxation and Assessment Charitable and Religious Trusts** (1999), Bharath Law House, New Delhi.
- Kanga and Palkiwala : **The Law and Practice of Income Tax** (1999), Wadhwa, Nagpur
- K. Parameswaran : **Power of Taxation under the Constitution** (1987), Eastern, Lucknow
- V. Ramachandran & T.A. Ramakrishnan (eds.) **A.N. Aiver's Indian Tax Laws** (2000) Company Law Institute of India Pvt.Ltd. Chennai.
- S. Bhattacharya and H.R. Garg : **Handbook of Direct Taxes** (1990), Eastern Law House, Calcutta.
- C.A. Gularickar : **Law and Practice of Wealth Tax and Valuation** (1998), Gularikar, Mumbai.
- Walter R. Mahler : **Sales and Excise Taxation in India** (1970), Orient Longmen, Delhi.
- R.V. Pattel : **The Central Sales Tax Act** (1966), Tripathi, Bombay.
- S.D. Singh : **Principles of Law of Sales Tax** (1973), Eastern, Lucknow.
- R.V. Patel : **Central Sales Tax Act** (1966) Tripathi, Bombay
- Law and Practice relation to Central Sales Tax Act : Govt. Publication
- Singhanian : **Direct Taxes Law and Practice**
- Sundaram : **Law of Income Tax in India**
- R.R. Gupta : **Income Tax Act and Practice**
- K. Chaturvedi and S.M. Pithisaria : **Income Tax Law**
- V.P. Gandhi : **Some Aspects of Income Tax Structure : An Economy Analysis**
- T. Mathew : **The Tax Policy**
- H.M. Seervai : **Constitutional Law of India**
- M.P. Jain : **Indian Constitutional Law**