



HIMACHAL PRADESH NATIONAL LAW UNIVERSITY, SHIMLA

SEMESTER II

LL.M. Optional Course

PAPER CODE: LM 203

CREDITS-02

Constitutional Rights and Theory

Module-1

GENERAL DISCUSSIONS ON CONSTITUTIONAL RIGHTS & CIVIL LIBERTIES, AND EQUALITY: GENERAL PRINCIPLES

- 1.1 Meaning, Scope and Historical Evolution Constitutional Rights
- 1.2 Conceptions of Constitutional Rights in Contemporary World
- 1.3 Constitutional Rights and Civil Liberties
- 1.4 Equality before the Law and Equal Protection of Laws: The Constitution of India
- 1.5 Right to Equality, Social Equality, Non-Discrimination & Non-discrimination based on gender & Reasonable Classification; Protective discrimination

Module-2

RIGHT TO FREEDOM WITH SPECIAL REFERENCE TO FREEDOM OF SPEECH AND EXPRESSION

- 2.1 Free speech rights, a feature of liberalism within Constitutional rights
- 2.2 Justifications of Freedom of Speech
- 2.3 Freedom of Speech and Expression, and the extent of restrictions
- 2.4 Modern access to information and constitutional governance
- 2.5 Freedom of speech & Technological Developments, Privacy and RTI

Module-3

RIGHT TO LIFE & PERSONAL LIBERTY AND RIGHTS OF MINORITIES

- 3.1 Concepts of 'Right to Life' & Personal Liberty'
- 3.2 Due Process and Procedure Established by Law
- 3.3 Right to Die and Rights of Animals
- 3.4 Minoriry Rights under Indian Constitution and Justificatations
- 3.5 Emerging Issues with respect to Constitutional Provisions Related to Minority Rights

Module-4

CONSTITUTIONAL RIGHTS AND CONSTITUTIONAL REMEDIES

- 4.1 Constitution, Principle of Democracy and Judicial Review of State action & Constitutional Rights
- 4.2 Basic Principles of Judicial Review (right context)
- 4.3 Nature and Scope of Articles 32, and 226
- 4.4 Primary (Strict Scrutiny) and Secondary Review
- 4.5 Emerging Developments and Trends in Judicial Remedies

Prescribed Readings:

1. Christopher W. Schmidt, *The Civil Rights-Civil Liberties Divide*, (2014), Available at: http://scholarship.kentlaw.iit.edu/fac_schol/807
2. Waldron, Jeremy, 1993, "A Rights-Based Critique of Constitutional Rights", *Oxford Journal of Legal Studies*, 13(18): 18-51.
3. B. Sivaramayya, *Inequalities and the Law*, Lucknow, Eastern Book Company, 1984, pp. 15-31.
4. P.K. Tripathi, *Some Insights into Fundamental Rights*, 1972, pp. 50-60.
5. Thomas Weisskopf, *Affirmative Action in the United States and India: A Comparative Perspective*, Routledge, 2004.

6. Virender Kumar, Dynamics of Reservation Policy: Towards a More Inclusive Social Order' Vol. 50, No. 4 JILI (OCTOBER-DECEMBER 2008), pp. 478-517
7. Geoffrey R. Stone at el., Constitutional Law pp1027-1037 (Aspen Casebook Series 7th edn., 2013) .
8. P.K. Tripathi, 'Free Speech in the Indian Constitution: Background and Prospects' in *Spotlights on Constitutional Interpretation*, (1971).
9. Upendra Baxi (ed.) *K.K. Mathew on Democracy, Equality and Freedom* (EBC 1978) pp. 95-158.
10. Kent Greenwalt, 'Free Speech Justifications' in M.P. Singh (ed.) *Comparative Constitutional Law*, Lucknow, Eastern Book Co. pp.158-192, 1989.
11. *Shreya Singhal v. Union of India* (2013)12 SCC 73.
12. *K.S.Puttaswamy v. Union of India* (2017) 10 SCC 1.
13. The Report of Justice BN Srikrishna Committee on "A Free and Fair Digital Economy Protecting Privacy, Empowering Indians" (2018), and *The Personal Data Protection Bill*, (2018).
14. *The EU General Data Protection Regulation* GDPR, (REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016).
15. Manoj Mate, *The Origins of Due Process in India: The Role of Borrowing in Personal Liberty and Preventive Detention Cases*, Berkeley Journal of International Law, Vol. 28, Issue 1, 2010.
16. H.M. Seervai, Constitutional Law of India 4th ed. 1991, Reprinted 2002, Vol 1, pp. 435-551.
17. *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.
18. *K. S. Puttuswamy v. Union of India* (2017) 10 SCC 1.
19. M.P. Singh, *The Constitutional Principle of Reasonableness*, (1987) 3 S.C.C. (Jour.) 31
20. *Common Cause v. Union of India* (SC Judgement delivered on 29th Jan., 2018).
21. Rochana Bajpai, Minority Rights in the Indian Constituent Assembly Debates, 1946-1950, QEH Working Paper Series – QEHWPS30 .
22. *Adi Saiva Sivachariyargal Nala Sangam v. The Government of Tamil Nadu* (2016) 2 SCC 725.
23. *Shayara Bano v. Union of India* (2017) 9 SCC 1.
24. *State of Gujarat v. Mirzapur Moti Qureshi Kasab Jamat*, AIR 2006 SC 212 (Cow slaughter).
25. S.N. Ray, *Judicial Review and Fundamental Rights* (Eastern Law House, 1974), pp.235-244.
26. Sudhir Krishna Swamy, *Democracy and Constitutionalism in India – A Study of the Basic Structure Doctrine*, Chapter 1, (OUP, 2011).

27. Vikram David Amar, Mark Tushnet, Global Perspectives on Constitutional Law, Chapter 1, (OUP, 2009).
28. John M. Greabe, Constitutional Remedies and Public Interest Balancing, 21 Wm. & Mary Bill Rts. J. 857 (2013), <http://scholarship.law.wm.edu/wmborj/vol21/iss3/5>

GENERAL READINGS:

1. H.M. Seervai, Constitutional Law of India [4th Edition, Vol. 1 (1991), Vol. 2 (1993), Vol. 3 (1996)].
2. D. D. Basu, Shorter Constitution of India (15th Edition, 2018).
3. Geoffrey R. Stone at el., Constitutional Law (Aspen Casebook Series 7th Edition, 2013), pp1027-1037.
4. Peter W. Hogg, Constitutional Law of Canada, (2017 Student Edition).
5. Robert Alexy, A Theory of Constitutional Rights (Oxford 1986).
6. Upendra Baxi, The Crisis of Indian Legal System (Vikas, 1982).

SUGGESTED READINGS:

1. H.M. Seervai, *Constitutional Law of India* 4th ed. 1991, Reprinted 2002, Vol 1, pp. 435-551.
2. Marc Galanter, *Competing Equalities: Law and the Backward Classes in India*, Delhi, Oxford University Press, 1984.
3. Law Commission of India, *101st Report on Freedom of Speech and Expression*, (1984) *under Seshammal v. State of Tamil Nadu, Article 19 of the Constitution*,.
4. Ujjwal Kumar Singh, *The State, Democracy and Anti-Terror Laws in India*, New Delhi, Sage, 2007, pp.13-101, 287-329.
5. Neera Chandoke, 'Individual and Group Rights: A View from India' in Zoya Hasan, at. el. (eds.) *India's Living Constitution: Ideas Practices, Controversies* Delhi, Permanent Black, 2002, pp. 207- 241.
6. *Seshammal v. State of Tamil Nadu* (1972) 2 SCC 1.
7. *Ashok Kumar Thakur v. Union of India* (2008) 6 SCC 499.


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