

For college and 5th students (BPH)

LL.M. (IV) SEMESTER

MA M.Sc. Exam May/June-2016 (2016)

Second/Fourth Semester

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**Jiwaji University, Gwalior (M.P.)
LL.M. IVth Semester**

Paper – Penology : Treatment of Offenders

Objectives of the course

This course offers a specialist understanding of criminal policies including theories of punishment, their supposed philosophical and sociological justifications and the problematic of discretion in the sentencing experience of the 'developing' societies, a focus normally absent in law curricula so far.

The expert work of the U.N. Committee on Crime Prevention and Treatment of Offenders will be availed of in this course. Especially, at each stage, the three 'D's will be explored as offering a range of alternatives: decriminalisation, dependization, deinstitutionalization. Broadly, the course will concern itself with:

- (a) Theories of Punishment
- (b) Approaches to Sentencing
- (c) Alternatives to Imprisonment
- (d) The State of Institutional Incarceration in India: Jails and other custodial institutions
- (e) The problematic of Capital Punishment
- (f) Penology in relation to privileged class deviance
- (g) Penology in relation to marginalized deviance or criminality
- (h) The distinctive Indian (historical and contemporary) approaches to penology

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

Syllabus

1. Introductory

1.1. Definition of Penology

2. Theories of Punishment

Retribution, Utilitarian prevention: Deterrence, Utilitarian: Intimidation, Behavioural prevention: Incapacitation, 2.5. Behavioural prevention: Rehabilitation – Expiation, Classical Hindu and Islamic approaches to punishment.

3. The Problematic of Capital Punishment

Constitutionality of Capital Punishment, Judicial Attitudes Towards Capital Punishment in India - An inquiry through the statute law and case law., Law Reform Proposals

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4. Approaches to Sentencing

Alternatives to Imprisonment, Probation, Corrective labour, Fines, Collective fines
Reparation by the offender/by the court

5. Sentencing

Principal types of sentences in the Penal Code and special laws, Sentencing in
white collar crime, Pre-sentence hearing, Sentencing for habitual offender,
Summary punishment, Plea-bargaining.

6. Imprisonment

The state of India's jails today, The disciplinary regime of Indian prisons,
Classification of prisoners, Rights of prisoner and duties of custodial staff, Deviance by
custodial staff, Open prisons, Judicial surveillance - basis - development reforms,

Select bibliography

- S. Chhabra, The Quantum of Punishment in Criminal Law (1970),
H.L.A. Hart, Punishment and Responsibility (1968)
Herbert L. Packer, The Limits of Criminal Sanction (1968)
Alf Ross, On Guilt, Responsibility and Punishment (1975)
A. Siddique, Criminology (1984) Eastern, Lucknow.
Law Commission of India, Forty-Second Report Ch. 3 (1971)
K.S. Shukla, "Sociology of Deviant Behaviour" in 3 ICSSR Survey of Sociology and
Social Anthropology 1969-179 (1986)
Tapas Kumar Banerjee, Background to Indian Criminal Law (1990), R. Campray & Co.,
Calcutta.

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Jiwaji University, Gwalior (M.P.)
LL.M. IVth Semester

Paper – Comparative Administrative Law

Objective of the course

Specialists in Administrative Law have to be in the position to assess the developments in Indian administrative law from a comparative angle. That the administrative law jurisprudence in the Country owed major its growth from the English and American development is a recognised fact. However, India is still to go for general legislation of the English and U.S. type laying down administrative norms. From a comparative angle, the course focuses on the doctrine of separation of powers, the scope of delegated legislation, the exercise of discretion, the doctrine of fairness struck by judicial process for administrative decision-making and the liabilities of the administration.

This paper shall comprise of about 42 units of one-hour duration to be spread out to a period of one semester.

Syllabus

1. Evolution and Significance of Administrative Law in Various Systems of Governance- From Ancient to Modern.

- 1.1. French system
- 1.2. England and US
- 1.3. Other systems

2. Doctrine of Separation of Powers

- 2.1. Comparative survey - common law and continental systems : English, US, French, German and Indian.

3. Delegated Legislation

- 3.1. Comparative approaches: widening contours: classification, controls over delegated legislation.

4. Administrative Discretion

- 4.1. Need for discretionary powers.
- 4.2. Nature, scope and limits.

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5. Processual Fairness.

- 5.1. Evolution and significance of natural justice.
- 5.2. England: judicial process: doctrine of fairness and doctrine of legitimate expectation - legislation. 5.1.2
- 5.3 US: due process and judicial decisions - legislation India: through judicial process - doctrine of fairness : Articles 14,19 and 21 - doctrine of legitimate expectation.
- 5.4. Access to information.

6. Liability of Administration - England, US and Indian Practices.

- 6.1. Contractual liability
- 6.2. Tortious liability
- 6.3. Federal Tort Claims Act, 1946
- 6.4. Crown Proceedings Act 1947.
- 6.5. Indian attempts at legislation.

Select bibliography

- Peter H. Schuck, Foundations of Administrative Law (1994), Oxford, New York.
Friedman, The State and the Rule of Law in a Mixed Economy
Neville L. Brown and J.F. Garner, French Administrative Law
Ivor Jennings, Law and the Constitution
Schwartz & Wade, Legal Control of Government
Davis, Discretionary Justice
De Smith, Judicial Review of Administrative Action (1995)
Neil Hawke and Neil Papworth, Introduction to Administrative Law (1996), Lawman, New Delhi.
D.D.Basu, Comparative Administrative Law, (1998).



