



HIMACHAL PRADESH NATIONAL LAW UNIVERSITY, SHIMLA

Semester: I

LL.M. (One Year Programme)

Paper Code: LM-104

Constitutional Governance and Federalism

Credit – 02

Introduction:

This course, as part of the specialization in 'Constitutional Law and Administrative Law', aims at developing deep understanding in students of fundamental aspects of Constitutional Law, federalism, and underlying principles/theories. The course focuses on governance system and structure of the Indian Constitution in a comparative setting. The topics of the syllabus are set with the aim to develop in-depth insights into three functions/powers of the state, their bases and practice. Constitutions often go through adaptations and transformations. Reasons and causes of changes may originate in different fields of national and constitutional life: economy, politics etc., or in some instances occasioned through changes occurring beyond the national territorial limits. Internally, study of responses, to the everyday working of the constitution, from other branches of the state, including courts, are also important.

Course Objectives:

1. To know the necessity of federal provisions in India and learn how they are adopted into Indian constitution.
2. To know how they are in other federal constitution and how they are working Indian and observe judicial decisions etc.
3. To understand the concept of federalism and undertake a study of legislative and executive working of centre-state relationship in smooth functioning of federal constitution.
4. To analyze emerging trends in financial relationship between centre and states and to understand the importance of third tier government in governance.

Learning Outcomes:

On the successful completion of course, students will be able to:

1. Understand the nature and scope of federalism; explain why India adopted a federal form of government's recognize the federal features of the Indian Constitution; recall the unitary features of the Indian federation;
2. Justify the reason for a strong center; list the process of the central government and those of the governments of the states; analyses that India is federal in character and unitary in spirit;
3. Recognize the legislative, administrative (executive) and the financial relations between the centre and the units; examine how the central government has an edge over the State governments;
4. Recognize demand for autonomy by various state governments; assess the recommendation of the Sarkaria Commission and the need for co-operation between the Centre and the States.

Module - I**The Concept of Federalism: Indian Perspective**

- 1.1. Meaning and Idea of Constitution, Constitutional Law and Constitutionalism;
- 1.2. Conditions requisite for federalism;
- 1.3. Patterns of Federal government - U.S.A., Australia, Canada, India;
- 1.4. India - Central Control v. State Autonomy;
- 1.5. Dynamics and Trends of federalism in India.

Module - II**The Executive (Governments)**

- 2.1. The Form of Government in Indian Constitution;
- 2.2. Nature and extent of executive powers of Union and States;
- 2.3. Parliament v. Presidential form of Government;
- 2.4. Parliament: Structural and Functional Dimensions;
- 2.5. Comparative study, nature, extent and scope of federalism.

Module - III**Legislative Relations and Doctrines to Interpret Constitutional Provisions**

- 3.1. Territorial Nexus/ jurisdiction;
- 3.2. Distribution of legislative power;
- 3.3. Comparative study of distributions of power in other Federations, Canada, USA, Australia;
- 3.4. Principles of Interpretations/ Delegated Legislation-permissible limits of delegation;
- 3.5. Parliamentary Legislation in the State field.

Module - IV

Emergency Provisions with Special Reference to Article 356

- 4.1. Responsible government in States;
- 4.2. Role of Governor;
- 4.3. Failure of Constitutional Machinery;
- 4.4. Judicial interpretation of Article 356;
- 4.5. Constitutional democracy.

Prescribed Books:

1. D. D. Basu, COMPARATIVE FEDERALISM, (LexisNexis, 2007).
2. D. D. Basu, INTRODUCTION TO THE CONSTITUTION OF INDIA, (LexisNexis, 2008).
3. M. P. JAIN, *Indian Federalism: A Background Paper* in Alice Jacob ed., CONSTITUTIONAL DEVELOPMENT SINCE INDEPENDENCE 205-54, (1975).
4. Granville Austin, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION, (2008).
5. Peter Hogg, CONSTITUTIONAL LAW OF CANADA, (2010).
6. Geoffrey R. Stone *et. al.*, CONSTITUTIONAL LAW, (7th ed. 2013).
7. M. P. Jain, INDIAN CONSTITUTIONAL LAW, (LexisNexis, 2018).
8. Vikram David Amar and Mark Tushnet, GLOBAL PERSPECTIVES ON CONSTITUTIONAL LAW, (2009).
9. Zachery Elkins *et. al.*, THE ENDURANCE OF NATIONAL CONSTITUTIONS, (Cambridge University Press, 2009).
10. Erwin Chemerinsky, CONSTITUTIONAL LAW, PRINCIPLES AND POLICIES, (Aspen 2006).

Suggested Readings:

1. H. M. Seervai, CONSTITUTIONAL LAW OF INDIA, (4th ed., 2015).
2. K. C. Wheare, FEDERAL GOVERNMENTS, (1963).
3. Douglas V. Verney, *Federalism, Federative Systems, and Federation: The United States, Canada, and India*, 25 PUBLIUS: THE JOURNAL OF FEDERALISM 81- 97, (1995).
4. K. L. Bhatia, FEDERALISM AND FRICTIONS IN CENTRE-STATE RELATIONS: A COMPARATIVE REVIEW OF INDIAN AND GERMAN CONSTITUTION, (2001).
5. Report of the SARKARIA COMMISSION, (1987).
6. Report of the NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION, (2003).

7. Gopal Subramaniam, *Emergency Provisions under the Indian Constitution* in B. N. Kripal ed. SUPREME, BUT NOT INFALLIBLE, (OUP, 2000).
8. Report of the National Commission to Review the WORKING OF THE CONSTITUTION, (2002).

Case Laws:

1. *State of West Bengal v. Union of India*, 1963 AIR 1241, 1964 SCR (1) 371
2. *S. R. Bommai v. Union of India*, AIR 1994 SC 1918.
3. *Rameshwar Prasad v. Union of India*, AIR 2006 SC 980.
4. *Ram Jawaya Kapur v. State of Punjab*, AIR 1955 SC 549.
5. *Samsher Singh v. State of Punjab*, AIR 1974 SC 212.
6. *Government of NCT of Delhi v. Union of India* (2018) 8 SCC 501
7. *State of Bihar v. Charusila Dasi*, AIR 1959 SC 1002.
8. *State of Bombay v. R. M. D. C.*, AIR 1957 SC 699.
9. *G.V.K. Industries v. Income Tax Officer*, (2011) 4 SCC 36.
10. *Gujarat University v. Krishna Ranganath Mudholkar*, AIR 1963 SC 703.
11. *Prafulla Kumar v. Bank of Commerce, Khulna*, AIR 1947 PC 60.
12. *K.C. Gajapati Narayan Deo v. State of Orissa*, AIR 1953 SC 375.
13. *Union of India v. H. S. Dhillon*, AIR 1972 SC 1061.
14. *Hoechst Pharmaceuticals Ltd. v. State of Bihar*, AIR 1983 SC 1019.
15. *Vijay Kr Sharma v. State of Karnataka*, (1990) 2 SCC 562.
16. *Nabam Rebia v. Deputy Speaker*, (2017) 13 SCC 332.
17. *Harish Chandra Singh Rawat v. Union of India* 2016 SCC Utt. 654.

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