

LL.M
M.A. M.Sc. Exam May/June-2015
Second/Fourth Semester
Pages 204 to 206.A
Page - 1 to 8

FOR COLLEGE ONLY

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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

 2

FOR COLLEGE ONLY

SS 204
2
M-17

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. Chhabbra, 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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SS-206A
17-17

Paper – Corporate Finance

Objectives of the Course

Industrialisation has played, and has to play, a very vital role in the economic development of India. In the post independent era, industrial development is regarded, and hence employed, as principal means in the strategy for achieving the goal of economic the and social justice envisioned in the constitution. Corporation, both public and private, and are viewed as a powerful instrument for development. In a developing society like India enormous varieties of consumer goods are manufactured or produced. Obviously, the situation raises the issues of procuring utilising and managing the finances. For this purpose a science of financial management techniques has been evolved. The faculties of commerce, business and management studies have since last decades started to impart instruction so as to turn out sufficiently well equipped and adequately trained financial personnel. However, the legal and juristic aspects of corporate finance have been more or less not effectively taken care of.

In view of the above perspectives the broad objectives of this cause may be formulated as follows-

- (i) To understand the economic and legal dimensions of corporate finance in the process of industrial development in establishing social order in the context of constitutional values
- (ii) To acquaint the students with the normative philosophical and economic contours of various statutory rules relating to corporate finance.
- (iii) To acquaint the students with the organisation, functions, lending, and recovery procedures, conditions of lending and accountability of international national and state financing institutions and also of commercial banks; and

- (iv) To acquaint the students with the process of the flow and outflow of corporate finance. The following syllabus prepared with the above perspective comprise of 42 units to be spread over a period of one semester.



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SS-206A
2
17-17

Syllabus

1. Introduction

- 1.1. Meaning, importance and scope of corporation finance
- 1.2. Capital needs - capitalisation - working capital - securities-borrowings-deposits, debentures
- 1.3. Objectives of corporation finance - profit maximisation and wealth maximisation
- 1.4. Constitutional perspectives - see the following entries 37, 38, 43, 44, 45, 46, 47, 52, 82, 85, and 86 of List 1 - Union List; entry 24 of List 11 - State List 2

2. Equity finance

- 2.1. Share capital
 - 2.1.1. Prospectus - information disclosure
 - 2.1.2. Issue and allotment
 - 2.1.3. Shares without monetary consideration
 - 2.1.4. Non-opting equity shares

3. Debt finance

- 3.1. Debentures
 - 3.1.1. Nature, issue and class
 - 3.1.2. Deposits and acceptance
 - 3.1.3. Creation of charges
 - 3.1.4. Fixed and floating charges
 - 3.1.5. Mortgages
 - 3.1.6. Convertible debentures

4. Conservation of corporate finance

- 4.1. Regulation by disclosure
 - 4.1.1. Control on payment of dividends
- 4.2. Managerial remuneration
- 4.3. Payment of commissions and brokerage
- 4.4. Inter-corporate loans and investments
- 4.5. Pay-back of shares
- 4.6. Other corporate spending

5. Protection of creditors

- 5.1. Need for creditor protection
 - 5.1.1. Preference in payment
- 5.2. Rights in making company decisions affecting creditor interests
- 5.3. Creditor self-protection
 - 5.3.1. Incorporation of favourable terms in lending contracts
 - 5.3.2. Right to nominate directors
- 5.4. Control over corporate spending

6. Protection of investors

- 6.1. Individual share holder right
- 6.2. Corporate membership right
- 6.3. Derivative actions



SS 206: A
3
M-17

- 6.4. Qualified membership right
- 6.5. Conversion, Consolidation and re-organisation of shares
- 6.6. Transfer and transmission of securities
- 6.7. Dematerialisation of securities

7. Corporate fund rising

- 7.1. Depositories - IDR(Indian depository receipts), ADR(American depository receipts), GDR(Global depository receipts)
- 7.2. Public financing institutions - IDBI, ICICI, IFC and SFC
- 7.3. Mutual fund and other collective investment schemes
- 7.4. Institutional investments - LIC, UTI and banks
- 7.5. FDI and NRI investment - Foreign institutional investments (IMF and World bank

8. Administrative regulation on corporate Finance

- 8.1. Inspection of accounts
- 8.2. SEBI
- 8.3. Central government control
 - 8.3.1. Control by Registrar of companies
 - 8.3.2. RBI control

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SS-205
2
M17

5. Procedural Fairness.

- 5.1. Evolution and significance of natural justice.
- 5.2. England: judicial process: doctrine of fairness and doctrine of legitimate expectation - legislation.
- 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).

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FOR COLLEGE ONLY

SJ-206
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M-17
M-17

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

Paper – Science Technology and Human Rights

Objectives of the course

We live in an era of scientific development. The alarming rate of development in biotechnology calls for drastic change in the law. Many concepts and terms have to be re-defined. The development in information technology poses serious problems and challenges. The rapid changes made by science and technology will have to be reflected in law to make it meaningful and realistic in the modern era. This course is intended to make students conscious of various legal problems arising due to developments in such areas as biotechnology and information technology and to identify the changes needed in the law.

Syllabus

- 1. Interrelationship of Science, Technology and Human Rights**
- 2. Implication of Development of Science and Technology on Human Rights**
 - 2.1. Right to environment in the development of science and technology
 - 2.2. Right to development in the advancement of science and technology
 - 2.3. Right to human health and impact of developments in medical sciences
- 3. Medicine and the Law**
 - 3.1. Organ transplantation
 - 3.2. Experimentation on human beings
 - 3.3. Euthanasia (mercy killing)
 - 3.4. Gene therapy
- 4. Issue of Human Rights Ethics in Scientific and Technological Development**
 - 4.1. Sex determination test
 - 4.2. Induced abortion
 - 4.3. Reproductive technology
 - 4.4. Cloning
 - 4.5. Invitro fertilization
 - 4.6. Artificial insemination

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M-17

4.7. Surrogate motherhood

5. Development in Information Technology and Human Rights

6. Impact of Scientific and Technological Progress on Human Rights: Normative Response of the International Community

- 6.1. Right to life
- 6.2. Right to privacy
- 6.3. Right to physical integrity
- 6.4. Right to information
- 6.5. Right to benefit from scientific and technological progress
- 6.6. Right to adequate standard of living

Select bibliography

- Diane Rowland, Elizabeth Macdonald, Information Technology Law, (1997).
Suresh T. Viswanathan, The Indian Cyber Law, (2000).
The International Dimensions of Cyberspace Law (2000), UNESCO Publication.
D.P.Mittal, Law of Information Technology (Cyber Law), (2000).
Michael Chissick, Alistair Kelman, Electronic Commerce, Law and Practice, (1999).
Adwin W. Patterson, Law in a Scientific Age, (1963)
Steve Jones, Borin Van Leon, Genetics for Beginners, (1993).
Weeramantry, C.G., Human Rights and Scientific and Technology Development, 1990
Kamenka, E., Ideas and Ideologies Human Rights (1978)
Galtung, Human Rights in Another Key, (1994)
Akbar, M.J., Riots After Riots, (1988)
Baxi, U. (ed.), Rights to be Human, (1986)
Kazmi, F., Human Rights, (1987)

