

# **Chanakya National Law University, Patna**

**Academic Session: 2022-23**

**LL. M.**

## **Semester- I**

### **Course Title: Constitutionalism: Pluralism & Federalism**

**Group A: Constitutional Law and Administrative Law – : Credits : 5**

#### **Course Overview**

Democracy is the social arrangement that fully respects the richness of human personality and by respecting it helps to unfold it. Democratic values is understanding the skills and attitudes of people which would be the primary responsibility of education. Education is not the only source for establishing a democratic culture; family, media and other institutions contribute to this process as well. Democracy values furnishes the political framework within which reason can thrive most generously and imaginatively on the widest scale, least hampered by the accident of personal antecedents and most regardful of the intrinsic qualities of men. At the same time, democracy involves hardship - the hardship of the unceasing responsibility of every citizen. Where there is an attitude of apathy and indifference to the issue affecting the welfare of the society, where the entire people do not take a continuous and considered part in public life, there can be no democracy in any meaningful sense of the term. Democratic Values is a beckoning goal and it cannot exist without freedom to dissent, without the right and opportunity to express a view different from the opposite to the view of those in power and thus make people aware of the pros and cons of vital issues affecting their welfare. Free trade in ideas and the absence of suppression of dissent which are so vital for the functioning of democracy, constitute basic traits of liberty. Mere knowledge of democratic values is not deemed sufficient for ensuring that the people will grow up to become an active participant in the democratic processes. What is important is that the people understand the meaning of democratic values in terms of social justice and equality. It is also important that they understand the real-world issues to meaningfully participate in discussions and decision making. But most importantly the students/researcher should learn to respect democratic values.

#### **Learning Outcomes**

1. To understand the concept of federalism such as creation of new states, allocation and share of resources, federal comity, etc. To understand the need for widening the definition in the wake of liberalization. To understand privatization and its impact on affirmative action. To critically analyze the law regarding empowerment of women. To understand the various challenges arising out of right to freedom.

| <b>Topic/<br/>Module</b> | <b>Contents/ Concepts</b>   | <b>Sessions /<br/>Lectures</b> |
|--------------------------|---|--------------------------------|
| <b>Module I:</b>         | <b>Constitutionalism</b><br><br>Authoritarianism - Dictatorship, Democracy-Communism, | <b>15 Lectures</b>             |

|                    |   |                    |
|--------------------|---|--------------------|
|                    | Limited Government-concept limitations on governmental power, what is a Constitution? Development of a democratic Government in England-Historical evolution of Constitutional government, Conventions of Constitutionalism-law and conventions, Written Constitutions: U.S.A., Canada, Australia, Sweden, South Africa and India, Separation of Powers: Montesquieu, Rule of Law: Concept and new horizons, Marxist concept of constitutionalism, Dictatorship of the proletariat, Communist State from Stalin to Gorbachov, Fundamental Rights : Human Rights, Judicial Review : European Court of Human Rights, Human Rights : International conventions, Limits & doctrine of domestic jurisdiction in international law. |                    |
| <b>Module II:</b>  | <b>Federalism</b><br>What is a federal government? Difference between confederation and federation, Conditions requisite for federalism, Patterns of federal government-USA, Australia, Canada, India, Judicial review-for federal umpiring, New trends in federalism: Co-operative federalism, India Central Control v. State Autonomy, Political factors influencing federalism, Plural aspects of Indian Federalism : Jammu & Kashmir, Punjab, Assam, Dynamics of federalism.  | <b>15 Lectures</b> |
| <b>Module III:</b> | <b>Pluralism</b><br>What is a pluralistic society? Ethnic, linguistic, cultural, political pluralism, Individual rights right to dissent, Freedom of speech and expression, Freedom of the Press, Freedom of association, Rights to separateness, Rights of the religious and linguistic minorities, Compensatory discrimination for backward classes, Scheduled Tribes, Distinct identity-protection against exploitation, Uniform Civil Code-Non-State Law(NSLS) and State Law Systems - Problem of a Uniform v. Personal laws - vertical federalism.   | <b>15 Lectures</b> |
| <b>Module IV:</b>  | <b>Equality in Plural Society</b><br>Right to equality and reasonable classification, Prohibition of discrimination on ground of religion, caste, sex, language, Abolition of untouchability, Secularism-Constitutional principles, Tribal Groups and Equality.<br>Pluralism and International Concerns: International Declaration of Human Rights, Conventions against genocide, Protection of religious, ethnic and linguistic minorities, State intervention for protection of human rights, Right of self-determination.<br>.   | <b>15 Lectures</b> |

### Evaluation Criteria

| Components     | Marks Allotted |
|----------------|----------------|
| Attendance     | 5              |
| Project Report | 20             |

|                                 |     |
|---------------------------------|-----|
| <b>Presentation</b>             | 5   |
| <b>End-Semester Examination</b> | 70  |
| <b>Total Marks</b>              | 100 |

**Select Bibliography:**

1. Upendra Baxi, Law, Democracy and Human Right, 5 Lokayan Bulletin 4 (1987).
2. V.M.Dandekar. Unitary Elements in a Federal Constitution, 22 E.P.W 1865, 1988
3. Rajeev Dhavan, The Press and the Constitutional Guarantee of Free Speech and Expression, 28 JILI 299 (1986)
4. M.A.Fazal, Drafting a British Bill of Rights, 27 JILI 423, 1985
5. M.P.Jain, Indian Constitutional Law (1994), Wadhwa
6. H.M.Seervai, Constitutional Law of India, (1993)
7. Constitutional Law By Uday Raj Roy
8. Constituent Assembly Debate
9. Democracy and Constitutionalism in India : A Study of the Basic Structure Doctrine By Sudhir Krishnaswamy
10. Constitutionalism & Constitution of India By S. Deka

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|--------------------------------|-----------------------------|
| <b>Name of the Instructor:</b> | <b>Prof. Dr. Ajay Kumar</b> |
| <b>Mobile No:</b>              | <b>9430470747</b>           |
| <b>WhatsApp Number:</b>        | <b>9430470747</b>           |
| <b>Email:</b>                  | <b>ajaykumar@cnlu.ac.in</b> |

Signature