

# CONSTITUTIONAL AND ADMINISTRATIVE LAW

## 1. Fundamental Rights, Fundamental Duties and Directive Principles of State Policy

- Concept of Fundamental Rights and Relation with Natural Rights
- Enforcement of Fundamental Rights
  - Definition of -State- Rights against state
  - Rights against non-state actors
  - Is there need to enlarge the definition of State?
- Fundamental Rights: Limitations, Suspendability and Amendability
- Remedies against Violation/Threat of Violation of Fundamental Rights ó Effects of Indemnity Granted under Article 34.
- Significance and Importance of Fundamental Duties
- Significance of Directive Principles of State Policy and their Unenforceability
- Emerging Regime of New Rights and Remedies under the Garb of Fundamental Rights ó Use of DPSP and International Instruments in Interpreting FRs.
- Constitutional Torts
- FRs and Judicial Review
  - Reasonableness Test and Strict Scrutiny Test
  - Rights Test and Essence of Rights Test

## 2. Centre - State Relations

- Federal Features of the Indian Constitution
- Legislative Relations between Centre and States
- Administrative Relations and Cooperative Federalism
- Common Civil Service and Impact on Autonomy of States
- Financial Relations - Dependence of States on Centre
- Emergency and Division of Powers
- Judiciary and Division of Powers
- Article 356 and the Role of Governor

## 3. Media and Law

- The Concept of Freedom of Thought, Speech and Expression
- Role of Mass Media in Democratic Countries
- Media and Freedom of Expression under the Indian Constitution
- Ownership Pattern: Press, Film and other Electronic Media
- Pre-censorship
- Media and Rights of Others

- Media and Right to Privacy
- Media and Parliamentary Privileges
- Media and Contempt of Court
- Right to Advertisement
- Media Rights During Emergency
- Media and Accountability

#### **4. General Principles of Administrative Law**

- Administrative Law
  - Definition, Nature, Scope and Functions
  - Growth of Administrative Law in India
- Basic Constitutional Principles: Indian Perspectives
  - Rule of Law
  - Separation of Powers
  - Natural Justice
- Classification of Administrative Functions
- Administrative Discretion and Rules of Fairness
- Transparency and Accountability
  - *Lokpal* and *Lokayukt*
  - Right to Information
  - Vigilance Commission
  - Comptroller and Auditor - General of India
  - Commissions of Inquiry
- Delegated Legislation
  - Importance, Need and Constitutionality of Delegated Legislation
  - Conditional Legislation
- Controls on Delegated Legislation
  - Parliamentary Control
  - Procedural Control
  - Judicial Control
- Administrative Tribunals

#### **5. Judicial Review**

- The Concept of Judicial Review ó Origin and Its Democratic Legitimacy
- Judicial Review of Legislation
- Judicial Review of Administrative Actions
  - Grounds
  - Scope ó Permissibility of Merits Review
- Limits on Judicial Review
  - Doctrine of Political Questions
  - Judicially Manageable Standards
  - Policy Matters
- Constitutional Framework for Judicial Review of Administrative Actions in India
  - Power and Jurisdiction of the Supreme Court
  - Power and Jurisdiction of High Courts

- Subordinate Courts and Judicial Review of Administrative Actions ó Is there a need to invoke Article 32 (3)?
- Writs
  - Mandamus
  - *Certiorari*
  - *Quo warranto*
  - Prohibition
  - *Habeas Corpus*
- Judicial Activism as an Extension of Power of Judicial Review
- Exclusion of Judicial Review

## 6. Comparative and Global Administrative Law

- **Comparative Administrative Law**
  - French concept of Separation of Powers and Administrative Courts
    - *Droit Administratif*
    - Administrative courts in France
    - Council d'Etat
  - Scope of Judicial Review in UK
  - Scope of Judicial Review in US
  - Public Interest Litigation in India and US
- **Global Administrative Law**
  - Globalization and Global Governance
  - Players in Global Governance ó Public, Private and Hybrid
  - Emergence of Global Administrative Law: Bottom - up and Top - down approach
  - Global Administrative Law: Perspectives of Developing Countries

### Suggested Readings\*

#### BOOKS

1. B. Shiva Rao, *Framing of Indian Constitution*, (Universal Law, 2004).
2. Christopher Forsyth, Mark Elliott, Swati Jhaveri, *Effective Judicial Review: A Cornerstone of Good Governance* (Oxford University Press, 2010).
3. Christopher N. May and Allan Ides, *Constitutional Law: National Power and Federalism* (3<sup>rd</sup> Edition, Aspen Publishers, 2004).
4. D.D. Basu, *Comparative Constitutional Law* (2nd ed., Wadhwa Nagpur).
5. David Strauss, *The Living Constitution* (Oxford University Press, 2010)
6. Elizabeth Giussani, *Constitutional and Administrative Law* (Sweet and Maxwell, 2008).
7. Erwin Chemerinsky, *Constitutional Law, Principles and Policies* (3<sup>rd</sup> ed., Aspen, 2006)
8. H.M. Seervai, *Constitution of India* (Universal, 2004).
9. M.V. Pylee, *Constitution of the World*, (Universal Publishers, 2006)
10. Mahendra P. Singh, *Comparative Constitutional Law* (Eastern Book Company, 1989).

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\* Suggested Readings are not exhaustive. Need to be supplemented with additional readings.



11. Neal Devins and Louis Fisher, *The Democratic Constitution* (Oxford University Press, 2010).
12. S.N Ray, *Judicial Review and Fundamental Rights* (Eastern Law House, 1974).
13. Sudhir Krishna Swamy, *Democracy and constitutionalism in India – A study of the Basic Structure Doctrine* (Oxford University Press, 2009).
14. Sunil Khilnani, Vikram Raghavan, Arun Thiruvengadam, *Comparative Constitutionalism in South Asia* (Oxford University Press, 2013).
15. Vikram David Amar, Mark Tushnet, *Global Perspectives on Constitutional Law* (Oxford University Press, 2009).
16. Zachery Elkins, Tom Ginsburg, James Melton, *The Endurance of National Constitutions* (Cambridge University Press, 2009).

## ARTICLES

1. Aman Ullah and Uzair Samee, "Basic Structure of Constitution: Impact of *Kesavananda Bharati* on Constitutional Status of Fundamental Rights", Vol. 26 (2) *South Asian Studies* 299-309 (July-December 2011).
2. Anne Smith, "Internationalization and Constitutional Borrowing in Drafting Bills of Rights", 60(4) *International and Comparative Law Quarterly* 867-894 (2011 October).
3. Bruce Ackerman, "The New Separation of Powers", 113 (3) *Harv. L. Rev.* 634-729 (2000)
4. Daryl Levinson and Richard H. Pildes "Separation of Parties, Not Powers", 119(8) *Harvard Law Review*. 2311-2386 (2006).
5. Daryl Levinson and Richard H. Pildes, "Separation of Parties, Not Powers", 119(8) *Harvard Law Review* 2311-2386 (2006).
6. David Annoussamy, "Who Governs India?", 14 (4) *South Asia Politics* 18-21 (August 2011).
7. David King, "Formalizing Local Constitutional Standards of Review and the Implications for Federalism", 97 (7) *Virginia Law Review* 1685-1726 (November 2011).
8. David Staruss, "Do we Have a Living Constitution?", 59 (4) *Drake Law Review* 973-984 (2011 Summer)
9. Devi Prasad Singh, "Sovereignty, Judicial Review and Separation of Power", 7(5) *Supreme Court Cases* J-13 (September 2012)
10. G.N. Ray, "Mass Media and Parliamentary Democracy", 31 (2) *Press Council of India Review* 1-10 (April 2010).
11. Geoff Holland, "Standing as a Barrier to Constitutional Justice: Can we create a New Public Law Paradigm?", 22 (3) *Bond Law Review* 78-81 (December 2010).
12. Glen Staszewski, "Political Reasons, Deliberative Democracy and Administrative Law", 97(3) *Iowa Law Review* 849-912 (March 2012).
13. Gustavo Fernandes de Andrade, "Comparative Constitutional Law: Judicial Review", 3 *U. Pa. J. Const. L.* 977
14. Jan-Erik Lane, "Models of Federalism", 1 *Indian Journal of Federal Studies* 30-50 (January 2011).
15. Jonathan Siegel, "Institutional case for Judicial Review", 97(4) *Iowa Law Review* 1147-1200 (2012 May).
16. K.K. Venugopal, "Separation of Power and the Supreme Court of India", Vol. 2 (2) *Journal of Law and Social Policy* 64-82 (July 2008).
17. Karthiga Sridhargopal, "Writ of Mandamus", 241 (4) *Madras Law Journal* 71-79 (2009).

18. L.N. Sharma, "Democracy and Development in South Asia: Experiences and Suggestions for Reforms" 55 (4) *Indian Journal of Public Administration* 867-881 (2009).
19. Linda Bosniak, "Persons and Citizens in Constitutional Thought" 8 (1) *International Journal of Constitutional Law* 9-29 (January 2010).
20. Mark Tushnet, "The Possibilities of Comparative Constitutional Law", 108 *Yale.L.J.* 1225. (1999).
21. Najma Akhtar, "Affirmative Action and Positive Discrimination for the Most Disadvantages in India" 2 *Indian Journal of Federal Studies* 93-97 (2010).
22. Quinn Rosenkranz, "Subjects of the Constitution" 62 (5) *Stanford Law Review* 1209-1292 (May 2010).
23. Rajvir Sharma, "Judiciary as Change Agent: Some insights into the Changing role of Judiciary in India", 58(2) *Indian Journal of Public Administration* 264-286 (April-June 2012).
24. Rebecca Brown, "Assisted Living for the Constitution" 59 (4) *Drake Law Review* 985-1000 (Summer 2011).
25. Schapiro., "Judicial Federalism and the Challenges of State Constitutional Contestation", 115(4) *Penn State Law Review* 983-1006 (Spring 2011).
26. Subhash Chandra Singh, "Redressing Socio-economic Exclusion: critical Look into Affirmative Action Policies in India" 37 (1-2) *Indian Bar Review* (Jan-June 2010).
27. Tom Ginsburg, Eric Posner, "Sub Constitutionalism" 62 (6) *Stanford Law Review* 1583-1628 (June 2010).

**Note: This is a draft syllabus, which is to be approved by the Competent Authority.**