LB:3033 – Legal Philosophy Including Theory of Justice

# UNIT -1 - LAW AND MORALITY

This unit examines the concept of law and explore the relation between law and morality. It further examines how this relationship has been framed in the Indian context.

READINGS:

1. H.L.A. Hart, The Concept of Law (2nd ed., 1994)

1. Lon L. Fuller, Positivism and Fidelity to Law: A Reply to Professor Hart,

Harvard Law Review Vol.71, No.4 (Feb.,1958), pp.630 -672

1. Lon L. Fuller, The Morality of Law (1969, Indian reprint 2006)

1. Lon L. Fuller, The Case of the Speluncean Explorers, Harvard Law Review

616-664 (1949)

1. Roscoe Pound, The Call for a Realist Jurisprudence, Harvard Law Review, Vol. 44, No. 5 (Mar., 1931), pp. 697

1. Richard F. Bernstein, Legal Utilitarianism, Ethics, Vol. 89, No. 2 (Jan., 1979), pp. 127-146

1. V.S Hegde ‘Relationship Between Law and Morality: A Philosophical Appraisal of Gandhi’s Views’ Indian Philosophical Quarterly Vol. X, No. 3 April 1983

1. William C. Starr, Law and Morality in H.L.A. Hart’s Legal Philosophy, 67 MARQ. L. REV. 673 (1984). Available at:

<http://scholarship.law.marquette.edu/mulr/vol67/iss4/8>

# UNIT -2 – LAW, EQUALITY AND LIBERTY

The focus of this unit is to understand the concepts of equality and liberty and their relevance in the study of law. The concept of equality can be employed for achieving substantive equality or equality of results to create a more equal society. The student will have required to evaluate the moral and philosophical justification for according preferential treatment to historically or socially disadvantaged groups. The paper will also examine the different conception of liberty and the importance of liberty for democracy and individual fulfilment.

READINDS:

1. Ronald Dworkin, ‘What is Equality? Part 1: Equality of Welfare’ Philosophy & Public Affairs Vol. 10, No. 3 pp. 185246 (1981)

1. B. Sivaramayya, Inequalities and the Law, 1531, (1984)

1. Sandra Fredman, Discrimination Law, Ch. 1 Equality: Concepts and

Controversies p. 126 (2002)

1. Marc Galanter, Competing Equalities: Law and the Backward Classes in India (1984)

1. Andre Beteille, Caste Today, available at <http://www.kolkataporttrust.gov.in/showfile.php?layout=1&lid=522>

1. B.R. Ambedkar, ‘Caste in India’, in Ghanshyam Shah (ed.) Caste and Democratic Politics in India, pp. 83-107 (2002)

1. Isaiah Berlin, ‘Two Concepts of Liberty’ in Isaiah Berlin, Four Essays on Liberty, (1969), pp 118-171

1. Amartya Sen , On The Status Of Equality, Political Theory Vol.24 No. 3 Aug (1996) 394-400

1. Christopher Caudwell, The Concept of Freedom (1977), pp. 51- AMARTYA SEN on The Status of Equality, Harvard University 75

1. Amartya Sen, Development as Freedom, New Delhi, Oxford University Press, 2000, pp. 1334,5486

1. Upendra Baxi, ‘Rule of Law in India: Theory and Practice’ in Randall

Peerenboom (ed.) Asian Discourse of Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian Countries, pp. 324345 (2004)

1. Marc Galanter Equality and Protective Discrimination in India, 1961

Rutgers Law Review Vol. XVI 42-74

# UNIT-3 – THEORY OF JUSTICE

The purpose of this unit is to understand the various approaches to the concept of justice. It also seeks to discuss Constitutional and Gandhian concept of justice in the Indian context.

READINGS:

1. Johan Rawls, A Theory Edition, (1999of Justice, Revised)

1. Johan Rawls, A Theory Edition, (1999of Justice, Revised)

1. Haroon Rashid, ‘Making Sense of Marxian Concept of Justice’ Philosophical Quarterly XXIX No. 4, Oct. 2002

1. M.K. Gandhi, ‘Speech at Dandi, April 5, 1930, from Collected Works of Gandhi, Vol49, pp 1519 available at

<http://www.gandhiserve.org/cwmg/VOL049.PDF>

1. Martha C. Nussbaum, Beyond the Social Contract: Capabilities and

Global Justice

An Olaf Palme Lecture, Oxford Development Studies, Vol. 32, No.1,

March 2004, pp. 3-18

1. Robert Nozick, Anarchy, State and Utopia Chapter 1 (1974)