

LEGAL THEORY AND CONSTITUTIONALISM

Course Objective:

The legal theory is linked to political ideology and philosophy. It is necessary therefore to understand legal theory in depth. Concept of constitutionalism is linked to political thought and action. Modern political thought draws a distinction between constitutionalism and a constitution. A state may have a constitution not necessarily based on constitutionalism. The objective of this course is to make students acquainted with the fundamentals of legal theory and constitutionalism.

Course Contents:

Module I: Meaning and Significance of Legal Theory

Legal Theory and contemporary international law, sovereignty and international law, law as an instrument of social change.

Module II: significant Legal theories

Natural law, historical school, Positive law, Sociological school, American Realism, Postmodern legal theory

Module III: Historical Perspective of Constitutionalism

Constitutionalism: Concept and Evolution with reference to People's Struggle against Monarchy in United Kingdom, Due Process of law in Magna Carta, Magna Carta and Common Law, Constitutionalism in the changing world: Role of Civil Society in Inculcating Constitutionalism in the World, Liberalism and Totalitarian Ideals, Government by Law

Module IV: Indian Constitution and Constitutionalism

Indian Constitution and Constitutionalism, Fundamental Rights as an expression of constitutionalism in India, Meaning of Affirmative Constitutionalism, Constitutionalism with reference to Political and Social Movement in India, Constitutionalism, Human Rights and the Judiciary

Text & References:

Text:

- Friedmann W. 2002, Legal Theory, Universal Law Publishing Co Pvt. Ltd, New Delhi
- McIlwain, Charles H, 1947, Constitutionalism: Ancient and Modern, Cornell University, Cornell

References:

- Dias R W M, 1994, Jurisprudence, Aditya Books Private limited, New Delhi
- Hart H L A, 1961, The Concept of Law, Oxford
- Hayman L Robert, Jr. Nancy Levit, Richard Delgado, 2002, Jurisprudence Classical and Contemporary: From Natural Law to Postmodernism, WEST Group
- McIlwain, Charles H, 1969, Constitutionalism and the Changing World: Collected Papers, C U P London
- Seligman Edwin R A, Alvin Johnson, 1969, Encyclopedia of the Social Sciences, Volume Three and Seven, The Macmillan Company & the Free Press
- Wacks, Raymond, 2005, Understanding Jurisprudence: An Introduction to Legal Theory, Oxford University Press, New York