

**School of Undergraduate Studies**

**Ambedkar University Delhi**

**Course Outline**

**Time Slot-**\_\_\_\_\_

**Course Code:** SLG2LPFC006

**Title:** Law, State and Politics

**Type of Course:** Core

**Cohort for which it is compulsory:** MA Law Politics and Society

**Cohort for which it is elective:**

**No of Credits:** 4

**Semester and Year Offered:** 2<sup>nd</sup> semester, 1<sup>st</sup> year students

**Course Coordinator and Team:** Dr. Anushka Singh

**Email of course coordinator:** [anushkasingh2987@gmail.com](mailto:anushkasingh2987@gmail.com)

**Pre-requisites:** none

**Aim:** The course aims at familiarizing the students with key political concepts like political obligation, sovereignty, Rule of Law, etc. which interlace the idea and the institution of state. Knowledge of such concepts become imperative for any student of law and politics as some of these political concepts are constitutive of the idea of law. Those coming from a legal background would particularly find this course a useful pedagogic exercise in understanding law as a political and social category while students of politics interested in theory and history of ideas will find it engaging to study the dialectics between law and state as it unfolds within the politico-legal institutional framework and processes.

**Brief description of modules/ Main modules with readings:**

The present course seeks to explore the relationship between law and politics mediated by the institution of state. This exploration would be sought in the study of certain key political concepts that emerge from the intersection between law, state and politics. The theoretical and the historical evolution of political concepts would be juxtaposed with their existence within the political-legal context in India. The course would proceed by way of establishing a conversation between theoretical concepts and their politico-legal realizations. It would involve a study of political thought along with jurisprudence through a detailed analysis of constitutional provisions, statutes, judgments, civil society reports, etc. In terms of its spatial location, the course aims to study aspects of the liberal constitutional democracy in India, however, it traverses wide historical contexts globally particularly drawing from the Western political thought where most of the key political concepts being addressed here, were first conceptualized. Within this meta-theoretical frame, specific cases from the Indian context would be examined.

<p><b>Module 1:</b></p> <p><b>Week 1</b></p>	<p><b>Theorizing the State</b></p> <p>Essential readings:</p> <ul style="list-style-type: none"> <li>• David Held, The Development of the Modern State, in <i>Formations of Modernity</i>, Gieben and Hall (eds), Wiley, 1993</li> <li>• Quinten Skinner, State, in Political Innovation and Conceptual Change, Ball <i>et al</i>, CUP, 1989</li> <li>• Manoranjan Mohanty, <i>Contemporary Indian Political Theory</i></li> </ul>
<p><b>Module 2</b></p>	<p><b>Political Obligation and Sovereignty (5 weeks)</b></p>
<p><b>Week 2, 3 and 4</b></p>	<p><b>Topics to be Covered:</b></p> <p><b>1. Political obligation:</b></p> <ol style="list-style-type: none"> <li>a. Obedience to state or state made laws, the contradiction within</li> <li>b. Theoretical frames of consent/benefit/fairness/duty</li> <li>c. Reading resistance within the framework of political obligation</li> <li>d. Obligation versus Offence: A case study of Chapter VI of the Indian Penal Code</li> <li>e. Analysing the Supreme Court’s order in India on directives to be followed to respect the National Anthem 2016</li> </ol> <p>Readings:</p> <ul style="list-style-type: none"> <li>• Bijoe Emmanuel &amp; Orsvs State Of Kerala &amp; Ors, 1987 AIR 748, 1986 SCR (3) 518</li> <li>• Jean Hampton, The Nature of Political Authority, in <i>Political Philosophy</i>, Westview Press, 1988,</li> <li>• John Dunn, <i>Political Obligation in its Historical Context</i>, CUP, 1980</li> <li>• John Horton, Anarchism, Political and Philosophical, in <i>Political Obligation</i>, Macmillan, 1992</li> <li>• K G Kannabiran, Conspiracies of Associations: Associational Offences, Associational Freedoms and the Rule of Law, in Kannabiran and Singh (ed), <i>Challenging the Rule(s) of Law</i>, Sage, 2008.</li> <li>• Michael Head, <i>Crime Against the State</i>. Sydney, Ashgate, 2011.</li> <li>• Nandini Sundar &amp; Orsvs State Of Chhattisgarh on 5 July, 2011, Civil</li> </ul>

	<p>Original Jurisdiction, Writ Petition (Civil) No. 250 of 2007</p> <ul style="list-style-type: none"> <li>• PUDR <i>et al</i>, <i>When State Makes War on its Own People</i>, A Report on Violation of People’s Rights During the Salwa Judum Campaign in Dantewada, Chhattisgarh, Delhi, 2006.</li> <li>• Richard Dagger, What Is Political Obligation?, <i>American Political Science Review</i>, Vol. 71, No. 1, 1977</li> <li>• Gandhi’s speech on disaffection and sedition, in Noorani, A.G., <i>Indian Political Trails 1775-1947</i>, New Delhi, Oxford University Press, 2005</li> <li>• The State of Bihar vs Shailabala Devi on 26 May, 1952 AIR 329, 1952 SCR 654</li> </ul>
<p><b>Weeks : 5 and 6</b></p>	<p><b>2. Sovereignty:</b></p> <ol style="list-style-type: none"> <li>a. Legal sovereignty and political sovereignty, the theoretical debates</li> <li>b. ‘Paradox of sovereignty’: Constitution? State? People?</li> <li>c. Popular sovereignty and constitutionalism; citizen’s interpretation of the Indian constitution</li> <li>d. State’s right to kill versus state’s right to not let you die; reading death penalty together with hunger fast</li> </ol> <p>Readings:</p> <ul style="list-style-type: none"> <li>• A. V. Dicey, Part I, The Sovereignty of Parliament, in <i>Introduction to the Study of the Law of the Constitution</i>, Liberty Classics, 1885.</li> <li>• Alan James, The Practice of Sovereign Statehood in Contemporary International Society, <i>Political Studies</i>, XLVII, 1999</li> <li>• AnupSurendranath, Life and Personal Liberty, in Sujit Choudhry <i>et al</i>, <i>The Oxford Handbook of the Indian Constitution</i>, New Delhi: OUP, 2016</li> <li>• David Held, Law Of States, Law Of Peoples: Three Models of Sovereignty, <i>Legal Theory</i>, 8, 2002</li> <li>• Georges Dumezil, <i>Mitra-Varuna, An Essay on Two Indo-European, Representations of Sovereignty</i>, Zone Books, 1988</li> <li>• Jeanne Morefield, States Are Not People: Harold Laski on Unsettling Sovereignty, <i>Rediscovering Democracy</i>, <i>Political Research Quarterly</i>, Vol. 58, No. 4, 2005</li> <li>• John Austin, Final Definition of Positive Law (Ch VI, Part I), in <i>Lectures on Jurisprudence, the Philosophy of Positive Law</i>, (ed by Robert Cambbell), Henry Holt and Comp, New York, 1875</li> <li>• Jagmohan Singh v State of Uttar Pradesh, 1973, 1 SCC 20.</li> <li>• UpendraBaxi, Law Politics and Constitutional Hegemony, <i>The Supreme Court, Jurisprudence and Demosprudence</i>, in Sujit Choudhry</li> </ul>

	<p><i>et al, The Oxford Handbook of the Indian Constitution</i>, New Delhi: OUP, 2016</p> <ul style="list-style-type: none"> <li>• Upendra Baxi, The (Im)possibility of Constitutional Justice, Seismographic Notes on Indian Constitutionalism, in Hasan <i>et al, India's Living Constitution</i>, Permanent Black, 2002.</li> </ul>
<b>Module 3:</b>	<b>Rule of Law, Exception and Impunity (5 weeks)</b>
<b>Weeks 7 &amp; 8:</b>	<p><b>Topics to be Covered:</b></p> <p><b>1. Rule of Law</b></p> <ol style="list-style-type: none"> <li>a. The liberal idea of the Rule of Law and challenges to it</li> <li>b. State's obligation to ROL</li> <li>c. A conversation between 'Rule of law' and 'Procedure established by law'</li> <li>d. Article 22 of the Indian Constitution and its overriding powers</li> </ol> <p>Readings:</p> <ul style="list-style-type: none"> <li>• A. Andrew, 'Arbitrary Government and the Rule of Law', in <i>Arguing About the Law, An Introduction to Legal Philosophy</i>, Wordsworth, Boston, 1996.</li> <li>• A. V. Dicey, The Rule of Law, its Nature and General Applications, in <i>Introduction to the Study of the Law of the Constitution</i>, Liberty Classics, 1885, pp. 107-122.</li> <li>• Abhinav Chandrachud, Due Process, in Sujit Choudhry <i>et al, The Oxford Handbook of the Indian Constitution</i>, New Delhi: OUP, 2016</li> <li>• Constituent Assembly Debate on Article 15-A (Article 22 in the Constitution of India), September 15 and 16, 1949, CAD, Volume IX</li> <li>• Daniel Cole, An Unqualified Human Good': E.P. Thompson and the Rule of Law, <i>Journal Of Law And Society</i>, Volume 28, Number 2, 2001</li> <li>• Ola Tunander, Democratic State vs. Deep State: Approaching the Dual State of the West, in Eric Wilson (ed) <i>Government Of The Shadows, Parapolitics and Criminal Sovereignty</i>, Pluto Press, 2009.</li> <li>• Upendra Baxi, Rule of Law</li> </ul>
<b>Weeks: 9, 10, 11</b>	<p><b>2. Exception</b></p> <ol style="list-style-type: none"> <li>a. Liberal political theory and the basis of exception</li> <li>b. Threshold of law and prerogative</li> <li>c. Constitutional Exception, a paradox?</li> </ol>

d. Extraordinary laws in India

Readings:

- Clement Fatovic, Constitutionalism and Presidential Prerogative: Jeffersonian and Hamiltonian Perspectives, *American Journal of Political Science*, Vol. 48, No. 3, 2004
- David Dyzenhaus, Schmitt V. Dicey: Are States of Emergency Inside Or Outside The Legal Order? *Cardozo Law Review*, Vol 27:5, 2006
- Giorgio Agamben, State of Exception as a Paradigm of Government, in *State of Exception*, University of Chicago Press, 2005
- Nasser Hussain, The Historical and Theoretical Background, in *The Jurisprudence of Emergency, Colonialism and the Rule of Law*, University of Michigan Press, 2003
- Nasser Hussain, A Postcolonial Postscript, in *The Jurisprudence of Emergency, Colonialism and the Rule of Law*, University of Michigan Press, 2003
- Oren Gross, Chaos and Rules: Should Responses to Violent Crises Always Be Constitutional?, *Yale Law Journal*, Vol. 112, No. 5, 2003
- Oren Gross, The Normless and Exceptionless Exception: Carl Schmitt's Theory of Emergency Powers and the Norm-Exception Dichotomy, 21 *Cardozo Law Review* 1825, 2000.
- Ujjwal Kumar Singh, *State Democracy and Anti-Terror Laws in India*, New Delhi, Sage Publications, 2007.
- Victor Ramraj, *Emergencies and the Limits of Legality*, CUP, 2008.

**3. Impunity**

- a. Impunity as a norm
- b. Impunity and its legitimations
- c. Doctrine of Sovereign Immunity

Readings:

- Extra Judl. Exec. Victim Families. vs Union Of India &Anr, 2016, Criminal Original Jurisdiction, Writ Petition (Criminal) No.129 Of 2012
- International Peoples' Tribunal on Human Rights and Justice in Indian-Administered Kashmir, *Alleged Perpetrators - Stories of Impunity in Jammu and Kashmir*, 2012.
- Julia Eckert, The Trimurti of the State: State Violence and the Promises of Order and Destruction, Max Planck Inst. for Social Anthropology, 2005
- K G Kannabiran, The Saga of Impunity, in *Wages of Impunity, Power, Justice and Human Rights*, Orient Longman, 2004
- Neelanjan Maitra, Sovereign Immunity, in Sujit Choudhry *et al*, *The*

	<i>Oxford Handbook of the Indian Constitution</i> , New Delhi: OUP, 2016
<b>Module 4:</b>	<p><b>Application of concepts (2 weeks)</b></p> <p><b>Theorizing the actually existing state in India</b></p> <p>The last module would be largely based on applying the key political concepts that germinate at the intersection of law and politics to examine the nature of state in India. Having studied the conceptual origins and their approximation in the Indian context, the last two weeks would require the students to engage themselves in analyzing how the nature of state in India is informed by these key concepts. This module would also cater to the requirements of internal assessment inviting students to make group presentations and individual papers on any of the above discussed themes. The presentation/paper should aim at identifying cases/debates/provisions/developments from Indian politics (both historical and contemporary) that relate to the unfolding of the specific concepts on ground. Some of the examples that would be discussed and on which the students would be required to participate are the following: (This list is not exhaustive and the students would have the liberty to add to the list as the discussions in classes unfold)</p> <ol style="list-style-type: none"> <li>a. Civil society draft legislation ‘Manav Suraksha Kanoon’ 2017</li> <li>b. Eminent Domain and laws related to land acquisition</li> <li>c. Order of the Armed Forces Tribunal on Machil Encounter case 2017</li> <li>d. Rule of Law and Due Process: Naz Foundation vs Government Of Nct Of Delhi, WP(C) No.7455/2001, 2009</li> <li>e. Santhara judgment, Nikhil Soni vs Union of India 2015</li> </ol>

**Assessment Details with weights:**

Book review	10
Mid term	30
Class presentation and written submission	20
End term	30

Class participation	10
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