

**PAPER 4: SPECIALISATION PAPER 1:**  
**CONSTITUTIONAL THEORY & PRACTICE**

**Objectives:**

Constitution of a State is considered to be politico-legal document which reflects the major policy choices and aspirations of the people of the State. The object is to study the nature and importance of Constitution, requisites of an ideal Constitution, and constitutionalism. The concept of State and its functions is of greater importance in view of modern political thoughts. The course is intended to impart the fact that Constitution of Indian is a value based documents.

The constitutional policies and practices relating to pluralism, multiculturalism, religious and ethnic challenges and constitutional responses are the areas for study in the context constitutional ideologies and experiences of India, USA, UK & Canada.

What constitutional values and approaches influence the interpretation of Constitution of India? Whether the Constitution is interpreted as a value document has to be analyzed with the help of case laws. The incongruity amongst the theoretical provisions and the working models of the Constitution has to be studied. What are the theoretical foundations and practical difficulties created by the judicial decisions? A student of Constitutional law specialization is expected to have strong theoretical foundation as well as its reality in Society.

**Course Outcome:**

On successful completion of the course the student will be able to –

1. understand the meaning and nature of constitution and constitutionalism
2. analyse the philosophical thoughts of the scholars on the concept of ‘State’
3. critically analyse the challenges posed by multiculturalism and religious, linguistic & ethnic challenges
4. interpret the constitutional provisions with the help of tools of statutory interpretation.

**Course content:**

**Unit I:**

Nature & importance of constitution, Evolution of constitutional values, Requisites of Ideal constitution; Concept of Constitutionalism-its development & role in the Legal system; Nature & limitations of constituent & amending power; Basic structure theory, Transformative Constitutionalism, Constitutional Morality.

**Unit II:**

State-concept; Social contract theories; theories of Karl Marx, Bosanquet & T.H.Green ; Saptanga theory of state in Ancient India; Obligation of ruler; Modern Indian political thoughts of Raja Ram Mohan Roy, Gandhi, Nehru & Ambedkar about functions of state. Model of Indian constitution

**Unit III:**

Constitutional policies & practices relating to pluralism; Concept of Multiculturalism, Religious, Linguistic & ethnic challenges & constitutional responses; Secularism, Language rights, Protection of ethnic minorities (V & VI Schedules under the Indian constitution), Relation between society, state & Individual. The study is with reference to the constitutional ideologies & experiences of INDIA, U.S.A., U.K., & CANADA

**Unit IV:**

Role of Internal & External Aids in the Interpretation of constitution, Preamble; Headings, Marginal Notes, Non Abrogation & Non Derogation provisions, Inclusive & Exclusive definitions, Use of Drafts, Constituent Assembly debated, Legislative History, International Law, Text Books, Commentaries, & dictionaries. Original intention theory, Values & approaches that influence constitutional Interpretation; Interpreting the Constitution as a value document: purposive interpretation, Living organism; Approach, reading down & reading up & reading in.

**Unit V:**

Interrelationship of fundamental rights, interpreting the constitution as legal document, Presumption of constitutionality, Literal interpretation & its limitations; Interpretation of federal scheme: Doctrine of Inconsistency, Doctrine of Pith & substance & colourable legislation, Doctrine of occupied field: Doctrine of Eclipse & severability, Harmonious construction-Avoiding the fallacies of Hyper-Integration & Disintegration, Ejus Dem generis.,

**Select Bibliography:**

1. Karl Lowenstein. Political power & Governmental process.
2. Gettel, Readings in Political Science
3. K.C. Wheare, Modern Constitutions
4. H.J. Laski, The state in theory & Practice (chapter-1)
5. B.A. Masodkar, society state & Law.
6. R.M. Mc Ivane, The Modern state
7. Nomos, Constitutionalism
8. P.V. Kane, History of Dharmastra. Vol III
9. Rama Jois, Constitutional & Legal History, Vol I & II
10. Carl J Friedrich, Constitutional Government & Politics
11. Appadorai, Modern Indian political thought
12. M Hidayatulla- Fifth & Sixth Schedule to the constitution
13. H.M. Seervai, Constitutional Law of India, Vol I
14. Lawrence Tribe & Michel Douf- On Reading the constitution,
15. Ely, J.H. Democracy & Distrust
16. Rotunda & Nowak, Treatise on American Constitution Vol IV
17. P.K. Tripathi, Spotlights on constitutional Interpretation

18. Peter W.Hogg, Constitutional law of Canada.
19. Joseph E. Magnet, Constitutional Law of Canada; cases & materials, Vol II
20. M.P Jain, Constitutional Law of India.
21. Hidayatulla (ed) Constitutional Law of India Vol-I (relevant chapters )
22. G.P.Singh, Interpretation of statutes
23. Vepa P sarathi, Interpretation of statutes.
24. Laurence H.Tribe, American constitutional Law.