

## **PAPER 10: SPECIALISATION PAPER 4:**

### **CONSTITUTIONALISM, PLURALISM AND FEDERALISM**

#### **Objectives:**

Constitutionalism essentially means a limited government. Where government functions according to certain principles, it is said to be abiding by constitutionalism. Must it be a democracy or can it be an autocracy also. In ancient India, the king was supposed to act according to dharma. He was not absolute in the sense in which John Austin defined sovereignty. Constitutionalism may therefore be determined by a written constitution or by religion or tradition or by mere practice or convention as in England. In a plural society, where different religious as well as linguistic groups have to live together, various rules of accommodation and mutual recognition are incorporated in the Constitution. Usually these are contained in the bills of rights which contain guarantees of individual liberty and equality against majoritarian rule. Constitutionalism does not merely imply majoritarian rule, it has to be a consensual rule. However, where there is not only such vertical pluralism but also horizontal pluralism reflected by sub nations/regional loyalties, power is not only required to be restrained but it has to be shared. This calls for a federal government. The purpose of this paper is to provide exposure to the students to various models of pluralism and forms of constitutional governments and federal structures. The following syllabus prepared with this perspective will be spread over a period of one semester.

#### **Course Outcomes:**

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

1. analyse the functioning of the government and its guiding principles to understand the concept of Constitutionalism
2. examine the functioning of Constitutionalism which does not merely imply majoritarian rule but has to be a consensual rule.
3. evaluate the nature and meaning of pluralism and federalism.
4. describe the various models of pluralism and forms of constitutional governments and federal structures.
5. explore the concept of plural society and various rules of accommodation and mutual recognition

#### **Course content:**

##### **Unit I**

Constitutionalism; Authoritarianism – Dictatorship; Democracy – Communism; Limited Government - concept - Limitations on government power; What is a Constitution? Development of a democratic government in England - Historical evolution of constitutional government; Conventions of constitutionalism - law and conventions; Written Constitutions: U.S.A. Canada Australia Sweden South Africa and India; Separation of powers: Montesquieu; Rule of Law: Concept and new horizons; Marxist concept of constitutionalism; Dictatorship of the proletariat.; Communist State from Stalin to Gorbachov; Fundamental Rights: Human rights; Judicial Review: European Court of Human Rights; Human Rights: International conventions; Limits & doctrine of domestic jurisdiction in international law.

## **Unit II**

Federalism: What is a federal government? Difference, between confederation and federation; Conditions requisite for federalism; Patterns of federal government - U.S.A., Australia, Canada, India; Judicial review - for federal umpiring; New trends in federalism: Co-operative federalism; India - Central Control v. State Autonomy; Political factors influencing federalism; Plural aspects of Indian Federalism: Jammu & Kashmir, Punjab, Assam; Dynamic of federalism.

## **Unit III**

Pluralism: What is a pluralistic society? Ethnic, linguistic, cultural, political pluralism; Individual rights - right to dissent; Freedom of speech and expression; Freedom of the press; Freedom of association; Rights to separateness; Freedom of religion; Rights of the religious and linguistic minorities; Compensatory discrimination for backward classes; Women - rights to equality and right to special protection; Scheduled Tribes, Distinct Identity - protection against exploitation - NSLS - Exclusion from Hindu Law.

## **Unit IV**

Uniform Civil Code; Non-State Law Systems(NSLS) and State Law Systems - Problem of a Uniform Code v personal laws: vertical federalism; Equality in Plural Society: Right to equality and reasonable classification; Prohibition of discrimination on ground of religion, caste, sex, language; Abolition of untouchability; Secularism - constitutional principles; Tribal Groups and Equality.

## **Unit V**

Pluralism and International Concerns: International Declaration of Human Rights; Conventions against genocide; Protection of religious, ethnic and linguistic minorities; State Intervention for protection of human rights; Right of self-determination.

### **Select Bibliography:**

1. Upendra Baxi, "Law, Democracy and Human Rights"- 5 Lokayan Bulletin 4 (1987)
2. V.M. Dandekar, "Unitary Elements in a Federal Constitution" 22 E.P.W. 1865 (1988)
3. Rajeev Dhavan, "The Press and the Constitutional Guarantee of Free Speech and Expression" 28 J.I.L.I. 299 (1986)
4. M.A. Fazal, "Drafting A British Bill of Rights" 27 J.I.L.I. 423 (1985)
5. M.P. Jain, Indian Constitutional Law (1994), Wadhwa
6. Jagat Narain, "Judicial Law Making and the Place of the Directive Principles in the Indian Constitution," J.I.L.I. 198 (1985).
7. Rhett Ludwikowski, "Judicial Review in the Socialist Legal Systems: Current Development" 37 I.C.L.D. 89-108 (1988)
8. S.P. Sathe, Fundamental Rights and Amendment of the Indian Constitution, (1968)
9. H.M. Seervai, Constitutional Law of India (1993), Tripathi, Bombay.

Students should consult relevant volumes of the Annual Survey of Indian Law published by the Indian Law Institute.