COURSE MANUAL

Constitutional Law II

Fall 2020

(AY 2020-21)

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Course co-instructors: Swati Basen, Anurag Bhaskar, Arijeeet Ghosh, Rashmi Gupta, Surendra Kumar, Anmol Diwan, Bhavinee Singh, Abhinav Mehrotra
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PART I

General Information

General Information on, Constitutional Law II, offered by Jindal Global Law School
of the AY 2020-21

The information provided herein is by the Course Coordinator. The following information contains the official record of the details of the course.

This information shall form part of the University database and may be uploaded to the KOHA Library system and catalogued and may be distributed amongst B.A.LL.B. 2018, B.B.A.LL.B. 2018, LL.B. 2019 Law students.

<table>
<thead>
<tr>
<th>Course Title:</th>
<th>Constitutional Law II</th>
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<tbody>
<tr>
<td>Course Code:</td>
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<tr>
<td>Course Duration:</td>
<td>One Semester</td>
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<tr>
<td>No. of Credit Units:</td>
<td>4</td>
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<tr>
<td>Medium of Instruction:</td>
<td>English</td>
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PART II

a. Course Description

This course focuses on the governance dimension of the Indian constitutional scheme. Specifically, it explores the vertical and horizontal division of political labour. The first key theme of the course is the federal structure under the Constitution. The course places the important political and jurisprudential debates on Indian federalism in their theoretical context. The theme of federalism is developed across multiple modules, including the division of legislative powers, the constitutional constraints on states to inhibit inter-state commerce and trade, the power of the Parliament to alter state boundaries and status, and the power of the Union executive to impose emergencies and President’s rule. The second intersecting key theme is the horizontal division of constitutional labour among the institutions under the constitutional scheme. These institutions include the Parliament, the Executive, and the Judiciary, as well as the Election Commission of India. The court particularly focuses on the Executive and the Judiciary, especially from the theoretical prism of the separation of powers. It introduces the students to the system of political accountability and constitutional discretion of the Executive. Specifically, it devotes modules to the Executive’s ordinance making and pardoning powers. It also devotes a module to the important issue of the Executive’s power to impose emergencies. The question of justiciability has been an important facet of the constitutional debates in India. Therefore the course focuses on the various historically evolving standards of judicial review for executive discretion. The course also introduces the students to the debates on the appointment of judges, judicial independence and the jurisdiction of the higher judiciary. Other aspects of the debates around institutions has been left optional, to be covered in classroom conversations and student-led presentations. Finally, the course develops the third theme of sovereignty. In particular, the power of the Parliament to alter national borders and to amend the Constitution invite the students to take this question of sovereignty seriously.

b. Course Aims

- Introduce students to the key theoretical concepts of federalism, separation of powers, executive authority and accountability, emergency powers and constitutional amendment
- Explore the historical and political dimensions of the constitutional debates
- Get familiarized with the key Supreme Court decisions on the field

c. Intended Learning Outcomes

- Adequate familiarity with constitutional theoretical concepts
- Understanding of the role of the historical and political context in the development of constitutional practices and jurisprudence
- The role of the courts and judicial review – including its promise and limitations – in regulating the behaviour of constitutional institutions
• Thorough understanding of the Supreme Court’s key decisions in the areas of federalism, separation of powers, constitutional accountability, emergency and constitutional amendment

**d. Grading of Student Achievement**

To pass this course, students must obtain a minimum of 40% in the cumulative aspects of coursework, e.g. moot, and final examination. End of semester exam will carry 50 marks out of which students have to obtain a minimum of 15 marks to fulfil the requirement of passing the course.

The details of the grades as well as the criteria for awarding such grades are provided below.

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Percentage Of marks</th>
<th>Grade Definitions</th>
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<tr>
<td>O</td>
<td>80% and above</td>
<td>Outstanding</td>
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<td>Outstanding work</td>
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<td>subject matter,</td>
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<td>excellent</td>
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<td>organizational</td>
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<td>capacity, ability</td>
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<td>and originality in</td>
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<td>presentation.</td>
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<tr>
<td>A+</td>
<td>75 to 79.75%</td>
<td>Excellent</td>
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<td>Sound knowledge of</td>
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<td>thorough</td>
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<td>understanding of</td>
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<td>issues; ability to</td>
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<td>synthesize critically</td>
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<td>A</td>
<td>70 to 74.75%</td>
<td>Good</td>
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<td>Good understanding</td>
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<td>matter, ability to</td>
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<td>identify issues</td>
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<td>balanced solutions</td>
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<td>analytical skills.</td>
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<tr>
<td>A-</td>
<td>65 to 69.75%</td>
<td>Adequate</td>
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<td></td>
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<td>Adequate knowledge</td>
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<td>of the subject matter</td>
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</tbody>
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Under extraordinary circumstances, the JGU Academic Council or the JGU Deans’ Council can suspend Clause D or make it optional. If Clause D is suspended, the policy which will be framed by the School based on the decision of the said bodies will supersede Clause D. However, whether a situation is extraordinary or not will be decided by the said bodies only.
to go to the next level of study and reasonable critical and analytical skills.

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Percentage of Marks</th>
<th>Grade Points</th>
<th>Interpretation</th>
</tr>
</thead>
<tbody>
<tr>
<td>B+</td>
<td>60 to 64.75%</td>
<td>Marginal</td>
<td>Limited knowledge of the subject matter, irrelevant use of materials and poor critical and analytical skills.</td>
</tr>
<tr>
<td>B</td>
<td>55 to 59.75%</td>
<td>Poor</td>
<td>Poor comprehension of the subject matter; poor critical and analytical skills and marginal use of the relevant materials.</td>
</tr>
<tr>
<td>B-</td>
<td>50 to 54.75%</td>
<td>Pass</td>
<td>“Pass” in a pass-fail course. “P” indicative of at least the basic understanding of the subject matter.</td>
</tr>
</tbody>
</table>

**NEW COURSE LETTER GRADES AND THEIR INTERPRETATION**

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Percentage of Marks</th>
<th>Grade Points</th>
<th>Interpretation</th>
</tr>
</thead>
<tbody>
<tr>
<td>P1</td>
<td>45 - 49</td>
<td>2</td>
<td><strong>Pass 1</strong>: Pass with Basic understanding of the subject matter.</td>
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<tr>
<td>P2</td>
<td>40 - 44</td>
<td>1</td>
<td><strong>Pass 2</strong>: Pass with Rudimentary understanding of the subject matter.</td>
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<tr>
<td>F</td>
<td>Below 40</td>
<td>0</td>
<td><strong>Fail</strong>: Poor comprehension of the subject matter; poor critical and analytical skills and marginal use of the relevant materials. Will require repeating the course.</td>
</tr>
<tr>
<td>P</td>
<td>Pass</td>
<td></td>
<td>‘P’ represents the option of choosing between Pass/Fail grading system over the CGPA grading system in the COVID 19 semester in Spring 2020. The option is provided when students attain a minimum of 40 percentage marks under the current grading structure in a given subject.</td>
</tr>
<tr>
<td>I</td>
<td>Incomplete</td>
<td></td>
<td>Extenuating circumstances preventing the student from completing coursework assessment, or taking the examination; or where the Assessment Panel at its discretion assigns this grade. If an &quot;I&quot; grade is assigned, the Assessment Panel will suggest a schedule for the completion of work, or a supplementary examination.</td>
</tr>
</tbody>
</table>

**PART III**

*a. Keyword Syllabus*
Federalism, separation of powers, executive, parliament, emergency, constitutional amendment

**b. Course/Class Policies**

*Cell Phones, Laptops and Similar Gadgets*

To be provided by the individual instructors.

**Academic Integrity and Plagiarism**

Learning and knowledge production of any kind is a collaborative process. Collaboration demands an ethical responsibility to acknowledge who we have learnt from, what we have learned, and how reading and learning from others have helped us shape our own ideas. Even our own ideas demand an acknowledgement of the sources and processes through which those ideas have emerged. Thus, all ideas must be supported by citations. All ideas borrowed from articles, books, journals, magazines, case laws, statutes, photographs, films, paintings, etc., in print or online, must be credited with the original source. If the source or inspiration of your idea is a friend, a casual chat, something that you overheard, or heard being discussed at a conference or in class, even they must be duly credited. If you paraphrase or directly quote from a web source in the examination, presentation or essays, the source must be acknowledged. The university has a framework to deal with cases of plagiarism. All form of plagiarism will be taken seriously by the University and prescribed sanctions will be imposed on those who commit plagiarism.

**Disability Support and Accommodation Requirements**

JGU endeavors to make all its courses accessible to students. All students with any known disability needing academic accommodation are required to register with the Disability Support Committee dsc@jgu.edu.in. The Committee has so far identified the following conditions that could possibly hinder student’s overall well-being. These include: physical and mobility related difficulties; visual impairment; hearing impairment; medical conditions; specific learning difficulties e.g. dyslexia; mental health.

The Disability Support Committee maintains strict confidentiality on the matters under its purview. Students should preferably register with the Committee during the month of June/January as disability accommodation requires early planning. DSC will coordinate all disability related services such as appointment of academic mentors, arranging infrastructural facilities, and course related requirements such as special lectures, tutorials and examinations.

All faculty members are requested to refer students with any of the above-mentioned conditions to the Disability Support Committee for getting them disability-related accommodation. Faculty members are also requested to be sensitive to the needs of such students and cooperate with Disability Support Committee and the School, extending students the necessary support by maintaining utmost confidentiality of the matter.
Safe Space Pledge

This course may discuss a range of issues and events that might result in distress for some students. Discussions in the course might also provoke strong emotional responses. To make sure that all students collectively benefit from the course, and do not feel disturbed due to either the content of the course or the conduct of the discussions. Therefore, it is incumbent upon all within the classroom to pledge to maintain respect towards our peers. This does not mean that you need to feel restrained about what you feel and what you want to say. Conversely, this is about creating a safe space where everyone can speak and learn without inhibitions and fear. This responsibility lies not only with students, but also with the instructor.

P.S. The course instructor, as part of introducing the course manual, will discuss the scope of the Safe Space Pledge with the class.
PART IV

Module I: Federalism
This module introduces the history and nuances of federalism under the Indian Constitution. It introduces the students to the theoretical contours of federalism. It offers them the various characteristics of India’s federal model. The Indian Constitution adopts a complex model of federalism that recognizes a diversity of political arrangements with various states. The module places the conversation in the following modules in the history, structure and politics of Indian federalism.

Readings:
R. C. Poudyal v. Union of India, AIR 1993 SC 1804
State of Karnataka v. Union of India, AIR 1977 SC 69
S. R. Bommai v. Union of India, AIR 1994 SC 1918
State of West Bengal v. Union of India, AIR 1963 SC 1241

Module II: Territory and reorganisation
This module focuses on the jurisprudence of articles 1 to 4 of the Constitution, which deals with the power of Parliament to acquire and cede
territory, and create states and alter their boundaries. These themes have important implications for the understanding of sovereignty and federalism under the Indian constitutional system. The module will also allow students to think carefully about the contemporary debates about federalism and the formation of states and Union Territories.

Readings:

Reorganisation

Babulal Parate v. State of Bombay, AIR 1960 SC 51
Mohd. Akbar Lone v. Union of India, Writ Petition (Civil), paras. Z-HH

Cession and acquisition of territory

In Re: Berubari Union and Exchange of Enclaves, AIR 1962 SC 845
N. Masthan Sahib v. Chief Commissioner, Pondicherry, AIR 1963 SC 533
Ram Kishore Sen v. Union of India, AIR 1966 SC 644
Maganbhai Ishwarbhai Patel v. Union of India, AIR 1967 SC 783
In Re Mangal Singh, AIR 1967 SC 944

Module III: Legislative competence

Legislative competence review is one of the most important facets of judicial review under the Indian Constitution. The Indian Constitution lays down a detailed subject-wise division of legislative powers between the Union and states. Despite this, numerous controversies have historically arisen about the interpretation of this division with major implications for federalism. This module focuses on these themes, primarily through Supreme Court’s decisions.

Territoriality Clause (article 245)
Wallace Brothers v. Comm’r of Income Tax, AIR 1948 PC 118
Poppatlal Shah v. State of Madras, AIR 1953 SC 274
State of Bihar v. Charusila Dasi, AIR 1959 SC 1002
GVK Industries v. Income Tax Officer, (2011) 4 SCC 36

Doctrine of Pith and Substance
Governor-General in Council v. Province of Madras, AIR 1945 PC 98
Prafulla Kumar Mukherjee v. Bank of Commerce, Khulna, AIR 1947 PC 60
Hoechst Pharmaceuticals v. State of Bihar, AIR 1983 SC 1019
Doctrine of Harmonious Construction
Calcutta Gas Company v. State of West Bengal, AIR 1962 SC 1044
ITC Ltd. v. Agricultural Produce Market Committee, AIR 2002 SC 852
Residuality Clause (Article 248)
Naga People’s Movement of Human Rights v. Union of India, AIR 1998 SC 465
Repugnancy Clause (Article 254)

Module IV: Trade and commerce Clauses*

The Indian Constitution seeks to create a common market in India. This imperative has run into interpretive with the federalism. This optional module focuses on the Supreme Court’s jurisprudence on articles 301-304.

Readings –
Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan, AIR 1962 SC 1406
Jindal Stainless v. State of Haryana, AIR 2006 SC 2550

Module V: Union and State Executive

This module introduces the students to some key themes and debates on the Executive under the Indian Constitution. What is the relationship between the Executive and Parliament? How should we think about parliamentary accountability under the Indian constitutional scheme? What are some of the limits of executive discretion? This module engages with these questions with a particular focus on the ordinance making power and pardoning power.

Executive and separation of powers
Jenny S. Martinez, Horizontal Structuring, in The Oxford Handbook of Comparative Constitutional Law (Edited by Michel Rosenfeld and András Sajó)
Gubernatorial Aid and Advice Clause

Gubernatorial Ordinance Making Clause
Dr. D. C. Wadhwa v. State of Bihar, AIR 1987 SC 579
Krishan Kumar Singh v. State of Bihar, (2017) 3 SCC 1
A. K. Roy v. Union of India, AIR 1982 SC 710

Pardoning Clause*
(optional)
Kehar Singh v. Union of India, AIR 1989 SC 653
Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1

Prime Minister and the Council of Ministers*
(optional)
Ram Jawaya Kapoor v. State of Punjab, AIR 1955 SC 549
Har Sharan Verma v. Tribhuvan Narain Singh, AIR 1971 SC 1331
S. P. Anand v. H. D. Deve Gowda, AIR 1997 SC 272
S. R. Chadhuri v. State of Bihar, AIR 2001 SC 2707

Module VI: Union and State Judiciary
This module addressed the two themes of judicial appointments in higher judiciary, and the the different types of jurisdictions that India’s higher judiciary exercises (viz. original, appellate (civil and criminal), appeal by special leave, advisory, and writ jurisdictions) under the constitutional scheme.

Readings:
The First Judges Appointments Case, (1981) Supp. SCC 87 (selected Excerpts from the opinion of Justice Bhagwati only)

The Second Judges Appointments Case, (1993) 4 SCC 441 (selected excerpts from the majority opinion)

The Third Judges Appointments Case, (1998) 7 SCC 739 (selected excerpts)

The Fourth Judges Appointments Case, (2016) 5 SCC 1 (selected excerpts from the four concurring opinions)


Module VII: National and regional emergency

This important module brings together the themes of federalism and limits of executive discretion developed in the previous sections of the course. It focuses on the constitutional aspects of national and regional emergency. The Constitution allows the Union executive to declare national emergencies that restrain the implementation of certain fundamental rights. It also permits the Union executive in certain cases to suspend state legislature. This topic has thrown up some key political controversies of serious historical import. Can the executive be subject to judicial review in the imposition of emergencies? What are the boundaries of the power of the Union executive to impose national emergencies or its rule in the state? What are the implications of federalism and fundamental rights?

State of Rajasthan v. Union of India, AIR 1977 SC 1361
S. R. Bommai v. Union of India, AIR 1994 SC 1918
Rameshwar Prasad v. Union of India, AIR 2006 SC 980
Makhan Singh Tarsikka v. State Of Punjab 1964 AIR 1120
Additional District Magistrate, Jabalpur v. S. S. Shukla, 1976 AIR 1207
Sarbananda Sonowal v. Union of India, A.I.R. 2005 S.C. 2920

Module VIII: Constitutional amendment

This module is devoted to the study of the Parliament’s power to amend the Constitution. In the famous 1973 case of Kesavananda Bharti v. Union of India, the Supreme Court introduced substantive limits to this power by articulating the doctrine of basic structure. This module focuses on the historical, conceptual and institutional aspects of the doctrine. It also introduces the students to the latest decision in the area.

Readings:
Shankari Prasad v. Union of India, AIR 1951 SC 458
Kesavananda Bharti v. Union of India, AIR 1973 SC 1461 (Justice Khanna and Justice Matthew only)
Indira Gandhi v. Raj Narain, AIR 1975 SC 2299 (Justice Matthew, Justice Khanna and Justice Chandrachud only)
M. Nagaraj v. Union of India, AIR 2007 SC 71
I. R. Cohelo v. Union of India, (2007) 2 SCC 1
Ashoka Kumar Thakur v. Union of India , (2008) 6 SCC 1
Nani Palkhiwala, Fundamental Right Case – Comment, (1973) 4 SCC (J) 57

Additional areas to be covered at the discretion of the instructors

Xth Schedule, Constitution of India
The Election Commission of India and the electoral process
GST Council and fiscal federalism
Parliamentary process and privileges