South Asian University

Faculty of Legal Studies

LLM

Monsoon Semester 1 in 2019

Course Information

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PART-II
MODULE CONTENTS

WEEK-1: INTRODUCTION TO COMPARATIVE CONSTITUTIONAL OF SAARC NATIONS


Discussion Topics:

- What is Comparative Constitutional Law?
- Is there any definition of Comparative Constitutional Law?
- Why this paper? What is the rationale of this paper?
- What is Constitution and why do we have it?
- Is there any Renaissance of Comparative Constitutional Law in the world?
- Comparative Constitutional Law of SAARC Countries–Some Basic Issues
- Nation-state Constitution versus Global Constitution?
- What is comparativism? What are the dimensions and implications of comparativism?
- What is Comparative Constitutional Purposes?
- What are the controversies over the Court’s references to foreign law (for example, in death penalty cases) that raise important questions?
- Can courts (or other domestic constitutional decision-makers) really benefit from the constitutional experiences of other countries? Is it legitimate for them to do so?
- What is the utility of the Comparative Constitutional Law of SAARC Nations?
- How can governments be structured to both provide flexibility to respond to future needs and ensure appropriate degrees of on-going stability?
- How can law and government structures help organize or manage responses to the tensions between majoritarian democracy and basic human rights? Between the human needs and demands of competing minorities?
- Can one draw conclusions for one country based on comparing constitutional experiences in others?
- Is the possibility of drawing lessons from one polity to another always limited by the particularities of context and culture within which constitutions are formed and constitutional decision-making proceeds?
- What are the legal structures and concepts that are typically found in constitutions in a comparative perspective?
- How to evolve a Collective Identity with Regional Consciousness of Comparative Constitutional Law in South Asia?
- How to map the journey from comparative constitutional law to comparative constitutional studies?
- What separates constitutional law from other domestic law in South Asia?
- Some reflections on the forging of a new constitutional jurisprudence in South Asia?
How to locate the Principles of the Constitution which include checks and balances, individual rights, liberty, limited government, natural rights theory, republican government, and popular sovereignty in SAARC Nations.

What are the Transnational Constitutional Subjects like Regimes, Organizations (i.e. UNO), Networks and Global Structures?

What is Social Constitutionalization by the States (i.e. The UN Charter, Soft Law of the States, IPL & GAL)?

What are the Independent Constitutions of Global Institutions?

How does our study of comparative constitutional law adapt to a global society?

Should there be a Unitary, Cosmopolitan and Global Constitution?

**South Asian Constitutional Texts:**

1. The Constitution of Afghanistan (Preamble and Chapter One: State; Articles 1-21)
2. The Constitution of Bangladesh (Preamble and Articles 1-)
3. The Constitution of Bhutan (Preamble and Articles 1-5)
4. The Constitution of India (Preamble and Articles 1-5)
5. The Constitution of Maldives (Preamble and Articles 1-5)
6. The Constitution of Nepal (Preamble and Articles 1-5)
7. The Constitution of Pakistan (Preamble and Articles 1-5)
8. The Constitution of Sri Lanka (Preamble and Articles 1-5)

**RECCOMMENDED READINGS:**

4. Norman Dorsen; Michel Rosenfeld; András Sajó; Susanne Baer, *Comparative Constitutional Law in a Global Age-Comparative Constitutionalism: Cases and Materials*, (pp. 2570-2596)
ADVANCED READINGS:


CASE LAW: Note: One leading case law shall be discussed out of the following Case Digest:

3. Jacobson V. Massachusetts, 197 U.S. 11, 31-33 & n.1 (1905)
7. Muller V. Oregon, 208 U.S. 412, 419-20, n.1 (1908)
10. Roe V. Wade, 410 U.S. 113 (1973)
11. Roper V. Simons 543 US 551 (2005) (pay particular attention to Part IV of the majority opinion; Part II.D. of Justice O’Connor’s dissent; and Part III of Justice Scalia’s dissent).
16. United States V. County of Allegheny, 322 U.S. 174, 198 (1944)
17. Washington V. Glucksberg, 521 U.S. 702, 710 n.8, 718 n.16, 734 (1997)
19. Wickard V. Filburn, 317 U.S. 111, 125-126 & n.17 (1942)
20. Youngstown Sheet & Tube Co. V. Sawyer, 343 U.S. 579, 650-652 (1952)
WEEK-2: THE CONSTITUTION DESIGNING, DRAFTING AND MAIN FEATURES OF THE
MAJOR SAARC CONSTITUTIONS


Discussion Topics:

- Why make a Constitution? How Constitutions work? Why comply with the Constitution?
- Law, Politics, and Constitutional Design.
- What are the Theoretical Perspectives on Identity, Diversity and Legitimacy?
- How to devise Popular and Durable National Constitutions?
- The Constitutional Politics of Preference Formation.
- The Politics of Accommodation in Nationally-Divided Societies.
- The Constitutionalization of Politics in South Asia.
- The law and politics of constitutional change in South Asia.
- How Constitutions Influence Interests, Values, and Preferences?
- The Comparative Constitutional Change.
- The Influence of Experiences of Law and Legal Consciousness.
- Perspectives of Persons for the first and last time.
- Constitutional Standards and Jurisprudence.
- Migration of Constitutional Ideas and Problems of Communication.
- What to do when Constitutions Do Not Work?
- Common features of the SAARC Nations for Constitutional Integration.

South Asian Constitutional Texts:

1. The Constitution of Afghanistan, Preamble with Articles-1,2,3,5,6,7,8,13,14,18,19 & Chapter-Two
2. The Constitution of Bangladesh, Preamble with Articles-1,2,2A,3,4,4A,6,7 & Part-II
3. The Constitution of Bhutan, Preamble with Articles-1,2,3,4,5,8 & 10
4. The Constitution of India, Preamble with Articles-1,2,3,4, Parts-II & III
5. The Constitution of Maldives, Preamble with Articles-1,2,3,4,5,6,7,8,9 & Chapter-II
6. The Constitution of Nepal, Preamble with Articles-1,2,3,4,5,6,7 & Part-II
7. The Constitution of Pakistan, Preamble with Articles-1,2,2A,3,4,5,6, & Part-II
8. The Constitution of Sri Lanka, Preamble with Articles-1,2,3,4,5,6,7,8,9 & Chapter-III
- C/F: The Constitutions of USA, UK, CANADA & AUSTRALIA, Preamble with Articles

REQUIRED READINGS:


RECOMMENDED READINGS:

3. Tom Ginsburg (Editor), *Comparative Constitutional Design* (Comparative Constitutional Law and Policy) [Hardcover], Cambridge University Press, New York 2012

ADVANCED READINGS:


CASE LAW: Note: One leading case law shall be discussed out of the following Case Digest:

1. Goodyear India V. State of Haryana, AIR 1990 SC 781
2. Indira Nehru Gandhi V. Raj Narayan, AIR 1975 SC 2299
5. Minerva Mills Ltd. V. Union of India, AIR 1980 SC 1789
6. Nakara V. Union of India, AIR 1983 SC 130
9. Pradeep Jain (Dr.) V. Union of India V. Union of India, AIR 1984 SC 1420
10. State of Bihar V. Bal Mukund Sah, AIR 2000 SC 1296
WEEK-3: THE FUNDAMENTAL PRINCIPLES OF COMPARATIVE CONSTITUTIONALISM

- Constitutionalism; The Norms and Forms of Constitutionalism; Classical, Contemporary, Modern, Liberal, Political and New Constitutionalism, The Concept of State in the Third World and the Problematics of Constitutionalism, the Crisis in the Modern Constitutionalism, Pluralism and International Cosmopolitanism, Constitutionalism of the Global South, the Twilight of Comparative Liberal-Democratic Constitutionalism, Towards Juristocracy and Contemporary Constitutionalism as the Law of the Peoples: Paradigms of Reality and Challenges, Constitutionalism in a Polycentric Polity, Inter-Constitutional Collisions, Comparative Constitutionalism in South Asia, The Predicament of Constitutionalism in South Asia, Constitutionalism and the Rule of Law in the 21st Century, Alternative Secularism, Constitutionalization, Reflections on Constitutionalism; From Balanced Constitutionalism to Sustainable Constitutionalism, People & Societies in the SAARC & Beyond and Summation.

Discussion Topics:

- What is a new Constitutional Question?
- What is the relationship between a written constitution and constitutionalism?
- Can there be Constitutionalism without a Constitution?
- What is Constitutionalism and Extra-Constitutionalism?
- Comparative Constitutionalism: Universal or Particular?
- Is there Unstable Constitutionalism in South Asia?
- Does Constitutionalism necessarily entail pre-commitment through entrenched law?
- Does Constitutionalism necessarily require commitment to specific substantive norms?
- Is European Constitutionalism not merely an intra-European phenomenon that can also be compared to other major forms of Constitutionalism?
- What is the distinction between European Constitutionalism and US Constitutionalism?
- What are the Inter-regime Conflicts in Constitutional Law?
- What are the Intercultural Conflict norms and how to manage Intercultural Conflicts?
- What are the Guiding Principles in Various Constitutional Conflicts?
- What is Cultural polycentrism?
- What are the contours of Constitutional Law and Politics in South Asia?
- What are the Constitutional Challenges in SAARC Nations?
- How to map the Common Constitutional Problems in SAARC Nations?
- Tension between Constitutionalism and the Judicialization of Politics in South Asia?
- Competing Nationhood and Constitutional Instability in South Asia?
- Mapping the Plurinational Understanding of Constitutionalism in South Asia?
- What is the future of Constitutionalism in South Asia?
- Cooperation among the SAARC Nations on Constitutional Commonalities.

South Asian Constitutional Texts:

1. The Constitution of Afghanistan, Preamble with Articles 2, 3, 15,
2. The Constitution of Bangladesh, Preamble with Articles 8-25 (FPSP)
3. The Constitution of Bhutan, Preamble with Articles
4. The Constitution of India, Preamble with Articles, 36-51A
5. The Constitution of Maldives, Preamble with Articles 4, 8, 9, 10, 63, 66, 69
6. The Constitution of Nepal, Preamble with Articles
7. The Constitution of Pakistan, Preamble with Articles 29-40
8. The Constitution of Sri Lanka, Preamble with Articles, 9 (Religion), 27, 28 29 (DPSP)
- U.K. Constitutional Amendment & Governance Act, 2010
C/F: The Constitutions of USA, UK, CANADA & AUSTRALIA

REQUIRED READINGS:


RECOMMENDED READINGS:

4 Norman Dorsen, Michel Rosenfield, Andras Sajo, Susanne Baer, *Comparative Constitutionalism: Cases and Materials*, 2d (American Casebooks) [Hardcover]
6 W F Murphy, *Constitutions, Constitutionalism, and Democracy*, in *Constitutionalism and Democracy: Transitions in the Contemporary World* (D Greenberg et al. eds., 1993)

ADVANCED READINGS:


**CASE LAW:** Note: One leading case law shall be discussed out of the following Case Digest:

1. A. K. Gopalan V. State of Madras, AIR 1950 SC 27
3. Adkins V. Children’s Hospital of the District of Columbia, 261 U.S. 525 (1923)
4. Allgeyer V. Louisiana, 165 U.S. 578 (1897)
6. Babri Mosque-Ram Janam Bhumi Dispute
10. Bosnia V. Serbia,
16. Coppage V. Kansas, 236 U.S. 1 (1915)
18. Dred Scott V. Sandford, 60 U.S. 393 (1857)
22. Francis Coralie V. Union Territory of Delhi, AIR 1978 SC 597
23. Frontiero V. Richardson, 411 U.S. 677 (1973)
25. Government of Andhra Pradesh V. P. Laxmi Devi, 2008 (4) SCC 720
26. Griffin V. County School Board, Prince Edward County,
27. Griswold V. Connecticut, 381 U.S. 479
28. Hammer V. Dagenhart, 247 U.S. 251 (1918)
29. Holden V. Hardy, 169 U.S. 366 (1898)
31. I.R. Coelho (Dead) By Lrs V. State of Tamil Nadu & Others, (2007) 2 SCC 1
32. Keshavanand Bharati V. State of Kerala, AIR 1973 SC 1461
33. Kokkinakis V. Greece
34. Korematsu V. United States, 323 U.S. 214 (1944)
35. Lawrence V. Texas: The Right that Dare Not Speak Its Name, 117 Harv. L. Rev. 1893 (2004)
36. Leyla Sahin V. Turkey
37. Lochner V. New York, 198 U.S. 45 (1905)
38. Malloy V. Hogan, 378 U.S. 1(1964)
40. Marbury V. Madison, 5 U.S. 137 (1903)
41. Milk Board V. Clearview Dairy Farm Inc., 69 B.C.L.R. 220 (Sup. Ct. 1986)
43. Murrays Lessee V. Hoboken Land and Improvement Co.
44. Parents Involved in Community Schools V. Seattle School District # 1, 127 S.Ct. 2738 (2007)
45. Parkdale Hotel Ltd. V. Canada (Attorney General), 2 EC. 514 (Fed. Ct. Trial Div.1986)
46. Planned Parenthood Association V. Casey, U.S. 1992
47. Prosecutor V. Tadic
49. Raja Ram Pal V. Hon’ble Speaker, Lok Sabha & Others, (2007) 3 SCC 184
50. S.R. Bommai V. Union of India, (1994) 3 SCC 1
51. Sankari Prasad Singh Deo V. Union of India, AIR SC 458 (1951)
52. Sejdic and Finci V. Bosnia and Herzegovina, Judgment, Application Nos. 2799/06 and 3483/06 (European Court of Human Rights, 22 December, 2009): para 49
55. Velsamma Paul V. Cochin University, AIR 1996 SC 1011
56. West Coast Hotel Co. V. Parrish, 300 U.S. 379 (1937)
57. Wilson V. British Columbia (Medical Service Commission), 30 B.C.L.R. (2D) 1 (Ct. App. 1988)

WEEK-4: GENERAL PRINCIPLES OF FEDERALISM IN SOUTH ASIA

-General Principles of Federalism; Origins, Typologies & Uses, Federalism, Democracy and Ethno-national Conflict, Decentralization and Conflict Management in Multi-Cultural Societies, Constitutions, Federalism and Subsidiarity, Federalism; Feminism and Multi-Level Governance and Asymmetrical Federalism, The European Union as a Federal Model, Classical and Post-Conflict Federalism; Implications for Asia, Comparative Federalism; The Case of South Asia, The Influence of the Imperial Structure on the SAARC Countries and the American example in the case of Canada and Australia and Summation.

Discussion Topics:

- The Essence of Federalism.
- Federalism and the Tug of War Within?
- Forms and Norms of Federalism.
- Federalism, Nationalism and the National Identity.
- Federalism, Democracy and the State in an Age of Globalisation
- The Federalism and the Principle of Subsidiarity.
- The Federal Problems in South Asia.
- Comparative Federalism and Ethnic Conflict in South Asia.
- Federal Constraints and Regional Integration in South Asia.
- Federalism and Policy-making in Advanced Democracies.
- The Relationship between Church and State.
- Constitutional Peculiarities, Proclivities and Secularities among the SAARC Nations.
- The Status of Kashmir in the Constitutions of Pakistan and India

South Asian Constitutional Texts:

1. The Constitution of Afghanistan, Articles- 1 (1)
2. The Constitution of Bangladesh, Articles- 1
3. The Constitution of Bhutan, Articles-
4. The Constitution of India, Articles 245, 248, 250, 253, 256
5. The Constitution of Maldives, Articles- 230-235
6. The Constitution of Nepal, Articles-
7. The Constitution of Pakistan, Articles- 
8. The Constitution of Sri Lanka, Articles- 2, 
❖ C/F: The Constitutions of USA, UK, CANADA & AUSTRALIA

REQUIRED READINGS:


RECOMMENDED READINGS:

2. Baogang He, Brian Galligan and Takashi Inoguchi, Federalism in Asia, 2009.

ADVANCED READINGS:

6 Excerpts from 18th and 19th Amendments re Provincial Autonomy.
18 The Constitution of the United States of America (For Reference).

**CASE LAW:** Note: One leading case law shall be discussed out of the following Case Digest:

1. A.G. Canada V. A.G. Ontario, (1937) AC 326
2. A.G. for Commonwealth V. Colonial Sugar Refining Co.[1914] AC 237
6. Ashton V. Cameron County, (1936) 298 US 513
7. Asma Jilani V. Government of Punjab, PLD 1972SC 139
8. Atiabari Tea Co. V. State of Assam, (1961) 1 SCR 809
10. Bank of Toronto V. Lambe, (1887) 12 AC 575
11. Begum Nusrat Bhutto V. Chief of Army Staff, 29 PLD 657, 695 (1977)
12. Benazir Butto Case
15. Carmichael V. S. Coal Co., (1937) 301 US 495
16. Chandler V. Director of Public Prosecutions [1964] AC 763
23. Gonzales V. Raich, 545 US 1 (2005)
24. Haji Saifullah Case
27. Jamat-e-Islami V. Federation of Pakistan, PLD 2008 SC 30
32. Mahmood Khan Achakzai V. Pakistan, 49 PLD 426, 446-47 (1997) (Pak.)
33. Maritime Bank V. Receiver General, (1892) AC 437
34. McPherson v. Blacker, 146 U. S. 1, 27 (1892)
35. Minerva Mills V. Union of India, AIR 1980 SC 1789
38. Nadeem Ahmad Advocate V. Federation of Pakistan, Constitution Petition No. 08 of July 2009
40. Nawaz Sharif Case
42. Pulp & Power Co. V. Manitoba Free Press, (1923) AC 326
44. R V. Comptroller-General of Patents, ex parte Tomlinson [1899] 1 QB 909 at 913-4
47. R v. Secretary of State for Home Department, [2005] UKHL 69, 1 All ER 219 at 19, 28
49. R.M.D.C. V. Union of India, AIR 1957 SC 628
51. Secretary of State for the Home Department V. Rahman, [2002] UKHL 47, [2002] 1 All ER 122 at 139
52. Shamsher V. State of Punjab, AIR 1974 SC 2192
53. Singh v. United Kingdom, [1996] 22 EHRR 1
55. State of Karnataka V. Union of India, AIR 1978 SC 68
56. State of West Bengal V. Union of India, AIR 1963 SC 1241
57. State V. Zia-ur-Rahman, PLD 1973 SC 49
58. Steward V. Davis, (1938) 301 US 548
59. Stuart v. Laird, 1 Cranch 299 (1803)
60. Syed Zafar Ali Khan V. General Pervez Musharraf, Chief Executive of Pakistan, PLD 2000 SC 869
61. T.D. and Others V. the Minister of Education, [2001] 4 IR 259
62. Tariq Rahim Case
63. The Federation of Pakistan V. Maulvi Tazimuddin Khan, PLD 1955 FC 240
64. The Pocket Veto Case, 279 US (1929) 655-690.
65. The State V. Dosso, PLD 1958 SC 533
66. Tika Iqbal Muhammad Khan V. General Pervez Musharraf, Chief of Army Staff, Rawalpindi and Others, PLD 2008 SC 615
67. Union Colliery V. Bryden, (1899) AC 580
68. United States v. Mid-West Oil Co., 236 U. S. 459–474 (1915)
70. Wajihuddin Ahmad V. Chief Election Commissioner, PLD 2008 SC 25
71. Youngstown Sheet & Tube Co. v. Sawyer, 343 US 579–611 (1952)

WEEK-5: THE DOCTRINE OF NEW SEPERATION OF POWERS IN THE CONSTITUTIONS OF THE SAARC NATIONS

- The General Principles of the Separation of Powers; the Normative Hierarchy of the Branches, the Sources, Traditions and Functions, the Westminster Model and its Impact on the SAARC Nations, The Separation of Powers in the Constitutions of the SAARC Nations; Problems of a Constitutional State, Equilibrium, Experience, Stability, Institutional Balances and Boundaries. A Comparative Model of Separation of Powers, The Three Branches Model and Beyond; The Doctrine of the New Separation of Powers; the Separation of Powers Beyond State; the Internationalization of Law and Governance in the Constitutionalized State, the Emergence of the New Branches; Central Banks, Vigilance Bodies, and Media. The Enumeration of the New Independent Organs of the State, Democratic Legitimacy, Functional Specialization, Fundamental Rights, The Diffusion of Accountability and the New Separationism and Summation.

Discussion Topics:

- What are the general principles of the separation of powers?
- Is there any normative hierarchy among the branches?

South Asian Constitutional Texts:

9. The Constitution of Afghanistan, Articles- 1 (1)
10. The Constitution of Bangladesh, Articles- 1
11. The Constitution of Bhutan, Articles-
12. The Constitution of India, Articles 245, 248, 250, 253, 256
13. The Constitution of Maldives, Articles- 230-235
14. The Constitution of Nepal, Articles-
15. The Constitution of Pakistan, Articles-
16. The Constitution of Sri Lanka, Articles- 2,

\[ \text{C/F: The Constitutions of USA, UK, CANADA & AUSTRALIA} \]

REQUIRED READINGS:


RECOMMENDED READINGS:

12 Baogang He, Brian Galligan and Takashi Inoguchi, Federalism in Asia, 2009.
17 Katherine Adeney, Federalism and Ethnic Conflict Regulation in India and Pakistan, 2006.
18 Mark Tushnet, Comparative Constitutional Federalism: Europe and America, 1990.

ADVANCED READINGS:

27 Excerpts from 18th and 19th Amendments re Provincial Autonomy.
32 Joy Chia and Sarah A. Seo, Battle of the Branches: The Separation of Powers Doctrine in State Education Funding Suits, Columbia Journal of Law and Social Problems,
39 The Constitution of the United States of America (For Reference).
41 Vicki C. Jackson and Mark V. Tushnet, Comparative Constitutional Law, Foundation Press, pp 791-803, 825-827, 843-858.

CASE LAW:  Note: One leading case law shall be discussed out of the following Case Digest:

72. A.G. Canada V. A.G. Ontario, (1937) AC 326
73. A.G. for Commonwealth V. Colonial Sugar Refining Co.[1914] AC 237
74. A.G. for Ontario V. A.G. for Canada, (1896) AC 348
75. A.G., Nova Scotia V. A.G., Canada, (1951) SCR 31
77. Ashton v. Cameron County, (1936) 298 US 513
78. Asma Jilani V. Government of Punjab, PLD 1972SC 139
79. Atiabari Tea Co. V. State of Assam, (1961) 1 SCR 809
80. Automobile Transport V. State of Rajasthan, AIR 1962 SC 1406
81. Bank of Toronto V. Lambe, (1887) 12 AC 575
82. Begum Nusrat Bhutto V. Chief of Army Staff, 29 PLD 657, 695 (1977)
83. Benazir Butto Case
86. Carmichael V. S. Coal Co., (1937) 301 US 495
87. Chandler V. Director of Public Prosecutions [1964] AC 763
94. Gonzales V. Raich, 545 US 1 (2005)
95. Haji Saifullah Case
97. Hopkins V. Cleary, (1935) 296 US 315
98. Jamat-e-Islami V. Federation of Pakistan, PLD 2008 SC 30
100. Kentucky V. Dennison, (1982) 456 US 742
103. Mahmood Khan Achakzai V. Pakistan, 49 PLD 426, 446-47 (1997) (Pak.)
104. Maritime Bank V. Receiver General, (1892) AC 437
105. McPherson v. Blacker, 146 U. S. 1, 27 (1892)
106. Minerva Mills V. Union of India, AIR 1980 SC 1789
109. Nadeem Ahmad Advocate V. Federation of Pakistan, Constitution Petition No. 08 of July 2009
111. Nawaz Sharif Case
115. R V. Comptroller-General of Patents, ex parte Tomlinson [1899] 1 QB 909 at 913-4
118. R v. Secretary of State for Home Department, [2005] UKHL 69, 1 All ER 219 at 19, 28
120. R.M.D.C. V. Union of India, AIR 1957 SC 628
122. Secretary of State for the Home Department V. Rahman, [2002] UKHL 47, [2002] 1 All ER 122 at 139
123. Shamsher V. State of Punjab, AIR 1974 SC 2192
124. Singh v. United Kingdom, [1996] 22 EHRR 1
125. Sinnott v. Minister of Education, [2001] 1 IR 545
126. State of Karnataka V. Union of India, AIR 1978 SC 68
127. State of West Bengal V. Union of India, AIR 1963 SC 1241
128. State V. Zia-ur-Rahman, PLD 1973 SC 49
129. Steward V. Davis, (1938) 301 US 548
130. Stuart v. Laird, 1 Cranch 299 (1803)
131. Syed Zafar Ali Khan V. General Pervez Musharraf, Chief Executive of Pakistan, PLD 2000 SC 869
132. T.D. and Others V. the Minister of Education, [2001] 4 IR 259
133. Tariq Rahim Case
134. The Federation of Pakistan V. Maulvi Tazimuddin Khan, PLD 1955 FC 240
136. The State V. Dosso, PLD 1958 SC 533
137. Tika Iqbal Muhammad Khan V. General Pervez Musharraf, Chief of Army Staff, Rawalpindi and Others, PLD 2008 SC 615
138. Union Colliery V. Bryden, (1899) AC 580
139. United States v. Mid-West Oil Co., 236 U. S. 459–474 (1915)
141. Wajihuddin Ahmad V. Chief Election Commissioner, PLD 2008 SC 25
142. Youngstown Sheet & Tube Co. v. Sawyer, 343 US 579–611 (1952)

WEEK-6: THE TREATY MAKING MECHANISMS AND FOREIGN POLICY DISCOURSE UNDER THE CONSTITUTIONS OF THE SAARC NATIONS

- The Role of International Law in Municipal Constitutional Law; The Treaty Making Mechanisms under the Constitutions of SAARC Nations, SAARC Constitutions and International Treaty Law, Multilateral Treaty-Making and National Constitutions, Relationship between Treaties and Soft Law, Implementation of Multilateral Treaties in National, Regional, and International Jurisdictions, Foreign Policy Discourse under the Constitutions of the SAARC Nations; Thematic and Analytical Perspectives on Foreign Policy, Patterns and Sources of Foreign Policy, and the Foreign Policy Imperatives in South Asia.

(Any one issue referred herein or otherwise shall be attended upon in detail)

Discussion Topics:

- Multilateral Treaties and the Common Good.
- The Place of Human Rights Treaties.
- Constitution and Harmonic Convergence.
- What is Soft Law?
- Challenges to the Relationship between Treaties and Soft Law
- What is Foreign Policy?
- The Core Principles of Foreign Policy
- Dimensions of Doing Foreign Policy in South Asia & Elsewhere.
- Does Pakistan Foreign Policy at loggerheads with Indian Foreign Policy? Reasons?
- The Phenomenon of Rogue States in Post-Cold War Era.
- Feasibility of Common Foreign Policy of SAARC Nations in International Matters?

South Asian Constitutional Texts:

1. The Constitution of Afghanistan, Articles- 7, 8 (Foreign Policy) 10, 11 (Trade),
2. The Constitution of Bangladesh, Articles-
3. The Constitution of Bhutan, Articles-
4. The Constitution of India, Articles- 253,301-304
5. The Constitution of Maldives, Articles-
6. The Constitution of Nepal, Articles-
7. The Constitution of Pakistan, Articles-
8. The Constitution of Sri Lanka, Articles-

REQUIRED READINGS:

1. Article 103 of the UN Charter (Harris, Annex 1).
2. Article 38 of the Statute of the International Court of Justice (Harris, Annex 1).
RECOMMENDED READINGS:


ADVANCED READINGS:


CASE LAW:  *Note: One leading case law shall be discussed out of the following Case Digest:*

1. Andhra Steel Corporation V. Commissioner of Commercial-Tax, AIR 1990 SC 1912
2. Andhra Sugars Ltd V. State of Andhra Pradesh, AIR 1968 SC 599
5. Automobile Transport (Rajasthan) Ltd. V. State of Rajasthan, AIR 1962 SC 1406
7. Jindal Stainless Steel Ltd. V. State of Haryana, AIR 2006 SC 2550
8. Maharaja Tourist Services V. State of Gujrat, AIR 1991 SC 1650
11. State of Tamil Nadu V. Sanjeetha, AIR 1993 SC 237

MID SEMESTER EXAMINATION
WEEK-7: THE COMPARATIVE CONSTITUTIONAL STRUCTURES AND THEIR EVOLUTION AND IMPLICATIONS FOR SUBSTANTATIVE CONSTITUTIONAL LAW IN THE SAARC NATIONS


(Any one issue referred herein or otherwise shall be attended upon in detail)

Discussion Topics:

- What are the Transnational Constitutional Norms and their reflection and implementation in the Constitutional Governance?
- What is Self-foundation of social systems and Self-constraint of growth pressures?
- Autochthonic Issues: Boundaries, Nationalities, Refugees and Migrants.
- The Distinction between legislative and executive authority?
- Should Executive and Legislative Power Be Divided?
- What is Professor Dietrich Conrad’s Theory of Unamendable Basic Structure of the Constitution?
- Is there any possibility of Constitutional Convergence in South Asia?

South Asian Constitutional Texts:

1. The Constitution of Afghanistan, Articles-
2. The Constitution of Bangladesh, Articles-
3. The Constitution of Bhutan, Articles-
4. The Constitution of India, Articles-
5. The Constitution of Maldives, Articles-
6. The Constitution of Nepal, Articles-
7. The Constitution of Pakistan, Articles-
8. The Constitution of Sri Lanka, Articles-
- C/F: The Constitutions of USA, UK, CANADA & AUSTRALIA

REQUIRED READINGS:

1. Ayesha Jalal, Democracy and Authoritarianism in South Asia: A Comparative and Historical Perspective (Contemporary South Asia)
4. Sujit Choudhry, Living Originalism in India? “Our Law” and Comparative Constitutional Law, Yale Journal of Law & the Humanities, Vol. 25 [2013], Iss. 1, Art. 2

RECOMMENDED READINGS:

1. Basil Fernando, Tragicomedy of Constitutional Autochthony,


**ADVANCED READINGS:**


**CASE LAW:** *Note: One leading case law shall be discussed out of the following Case Digest:*

1. Advocates-On Record Association v. Union of India (AIR 1994 SC 268)


5. I.C. Golak Nath and others v. State the Punjab and other (AIR 1967 SC 1643)


7. Indira Nehru Gandhi v. Shri Raj Narain (AIR 1975 SC 2299)


11. Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789

12. Mr. Fazlul Quader Chowdhry and others v. Mr. Muhammad Abdul Haque (PLD 1963 SC 486)


15. State v. Makwanyane,

19. Zia-ur-Rehman Case [(PLD 1973 SC 49)]
22. Raghonathrao Ganpatrao v. Union of India (AIR 1993 SC 1267)
23. Mahmood Khan Achakzai
24. Zafar Ali Shah
25. Wukla Muhaz

WEEK-8: THE PHILOSOPHY OF CONSTITUTIONAL RIGHTS IN THE COMPARATIVE CONSTITUTIONAL LAW OF SAARC NATIONS


(Any one part referred herein or otherwise shall be attended upon in detail)

Discussion Topics:

- What are the Transnational Fundamental Rights and their Horizontal Effect?
- Are there Fundamental Rights Beyond the Nation State
- What is an extraterritorial effect of national constitutional rights?
- What is the significance of Regime-specific standards of fundamental rights?
- Are Fundamental Rights Binding upon the Private Transnational Actors?
- What are the Inclusionary and Exclusionary Effects of Fundamental Rights?
- Is there any Anonymous Matrix of Fundamental Rights and Justiciability?

Let’s Explore:

- Being a South Asian
- South Asian Bill of Rights
- South Asian Heroes and Villains
- Liberty and Security in South Asia
- South Asian Experiment with Religious Liberty

Freedom of Speech Part I: A Comparative Look at the Regulation of Hate Speech

Freedom of Speech Part II: Defamation, Free Press, and Privacy

- Haynes v. Alfred A. Knopf, Inc., 8 F.3d 1222 (7th Cir. 1993)
- The Boll Case, German Constitutional Court, 54 BVerfGe 308 (1980) (excerpted in Vicki C. Jackson and Mark Tushnet, Comparative Constitutional Law 1631 (2d Ed. 2006)

Social Welfare Rights


South Asian Constitutional Texts:

1. The Constitution of Afghanistan, Preamble with Articles 6, 7, 8, 22-59
2. The Constitution of Bangladesh, Preamble with Article 26-47A
3. The Constitution of Bhutan, Preamble with Articles
4. The Constitution of India, Preamble with Articles 12-32
5. The Constitution of Maldives, Preamble with Articles 16-69(FR), 189 (HRC)
6. The Constitution of Nepal, Preamble with Articles
7. The Constitution of Pakistan, Preamble with Articles 8-28
8. The Constitution of Sri Lanka, Preamble with Articles 10-17

REQUIRED READINGS:


RECOMMENDED READINGS:


ADVANCED READINGS:

CASE LAW: Note: One leading case law shall be discussed out of the following Case Digest:

1. A.P. Pollution Control Boards v. Prof. MV Nayudu, AIR 1999 SC 822
3. Aruna Ramchandra Shanbaug v. Union of India and Others, JT 2011 (3) SC 300
8. Center for PIL v. Union of India, 1995 Supp. (3) SCC 382
15. Fadeyeva v. Russia, [2005] ECHR 376
17. Haynes v. Alfred A. Knopf Inc., 8 F.3d 1222 (7th Cir. 1993)
21. Indian Express Newspaper (Bombay) v. Union of India, AIR 1986 SC 515
22. Indira Sawhney v. Union of India, AIR 2000 SC 498
34. Minister of Health v. Treatment Action Campaign(TAC), (2002) 5 SA 721 (SA)
37. Ocalan V. Turkey, (2003) 37 EHRR 10
38. Oliga Tellis V. Bombay Municipal Corporation, AIR 1986 SC 180
39. Oneryildiz V. Turkey, [2004] ECHR 657
40. ONGC V. Collector of Central Excise, 1995 Sppl. (3) SCC 176
42. People Union for Civil Liberties V. Union of India, 1997 3 SCC 433
43. Peoples Union for Civil Liberties V. Union of India, (2003) 4 SCC 399
44. Police Commissioner, Delhi V. Registrar, Delhi High Court, AIR 1999 SC 95
45. Prabha Dutt V. Union of India, AIR 1986 SC 6
46. Pradeep Kumar Jain V. State of Punjab, AIR 1984 SC 1420
47. R. Rajgopal V. State of Tamil Nadu, (1994) 6 SCC 632
48. R.A.V. V. City of Paul, 505 US 377 (1992)
49. Ramana V. International Airport Authority, (1979) 3 SCC 479
50. Romana V. State of Madras, AIR 1950 SC 124
51. S.K. Mastan Bee V. GM South Central Railway, (2003) 1 SCC 184
52. S.P. Gupta V. Union of India, AIR 1982 SC 149
53. S.R. Bommai V. Union of India, (1994) 3 SCC 1
57. Simon, Julio Hector y otros, 328 Fallos 2056 (2005)
59. Soobramoney V. Minister of Health KwaZulu Natal, 1997 (12) BCLR 1696
60. State of Arunachal Pradesh V. Khudiram Chakma, AIR 1994 SC 1461
61. State of Gujrat V. Hon’ble High Court of Gujrat, (1998) 3 SCC 392
62. State of M.P. V. Shobharam, AIR 1966 SC 2193
63. State of Rajasthan V. Union of India, AIR 1977 SC 1361
64. Sunil Batra V. Delhi Admin., (1978) 4 SCC 498
65. Supreme Court Advocates on Record V. Union of India, (1993) 4 SCC 441
66. Taskin V. Turkey, [2004] ECHR Paras 113-9
68. Unni Krishnan V. State of Andhra Pradesh, (1993), 1 SCC 645
70. Vineet Narain V. Union of India, 1998 Cri. L.J. 1208
72. Vishakha V. State of Rajasthan, 1997, 6 SCC 241

WEEK-9: THE COMPARATIVE CONSTITUTIONAL LAW INTERPRETATION

Discussion Topics:

- What are Theories of Constitutional Interpretation?
- What is Comparative Constitutional Interpretation?
- What is the Contemporary Theoretical Debate?
- What is the Living Constitution and it’s Discontents?
- How to appreciate the Emergence of the “Doctrine of Necessity” in South Asia?
- What is the “Doctrine of Revolutionary Legality”?
- What are the tensions between constitutional interpretation and constitutional purpose?
- What is the Relationship between Democracy and Theories of Interpretation?
- Approaches and Ideologies to Constitutional Interpretation.
- Why there is a Problem of History in Constitutional Interpretation?
- The constitutional argument and its politics in South Asia.
- What are the Problems of Constitutional Adjudication in South Asia?
- Legal Comparability and Cultural Identity Dimensions in Constitutional Interpretation.
- What is the role, if any, of comparative constitutional law in domestic constitutional law adjudication?

South Asian Constitutional Texts:

1. The Constitution of Afghanistan, Articles-
2. The Constitution of Bangladesh, Articles- 94, 96(3) (SJC), 127-132 (C & G)
3. The Constitution of Bhutan, Articles-
4. The Constitution of India, Articles- 148-151 (C & G)
5. The Constitution of Maldives, Articles- 157 (JSC), 209 (AG)
6. The Constitution of Nepal, Articles-
7. The Constitution of Pakistan, Articles-
8. The Constitution of Sri Lanka, Articles-

REQUIRED READINGS:


RECOMMENDED READINGS:

7. Saunders, Cheryl (2006) The Use and Misuse of Comparative Constitutional Law (The George P. Smith Lecture in International Law), Indiana Journal of Global Legal Studies: Vol. 13: Iss. 1, Article 2. Available at: [http://www.repository.law.indiana.edu/ijgls/vol13/iss1/2](http://www.repository.law.indiana.edu/ijgls/vol13/iss1/2)

ADVANCED READINGS:

5. Giovanni Sartori, Pompeu Aasanovas, Mariangela Biasiotti and Meritxell Fernandez-Barrera, Approaches to Legal Ontologies: Theories, Domains, Methodologies, 2013

CASE LAW: Note: One leading case law shall be discussed out of the following Case Digest:

7. Federation of Pakistan v. Tamizuddin Khan (1955)
10. Tariq Rahim v. Federation of Pakistan (1992)
11. The State v. Dosso (1958)
WEEK-10: MISCELLANY OF FUNDAMENTAL CONSTITUTIONAL FEATURES, QUESTIONS & VALUES IN THE CONSTITUTIONS OF THE SAARC NATIONS


(Any one issue referred herein or otherwise shall be attended upon in detail)

Discussion Topics:

- Comparative Forms of Judicial Review.
- Judicial Review and Democracy in the Modern State.
- The Nature and Scope of Judicial Review.
- The Origins of Judicial Review and the Early Challenges
- The Legacy of Marbury v Madison and Continuing Controversy.
- International Rule of Law and Good Governance.
- Law and Justice in the Globalized World.
- Judicial Minimalism or Judicial Activism? The On-going Debate.
- The Establishment of Judicial Independence.
- The Judicialization of Politics in South Asia
- The Contemporary Debate and the Role of the Supreme Courts in South Asia.

South Asian Constitutional Texts:

1. The Constitution of Afghanistan, Articles- 81, 107, 110 & [Articles- 5, 34]
2. The Constitution of Bangladesh, Articles- 65, 68, 73A, 75, 80, 93 & [Articles-]
3. The Constitution of Bhutan, Articles- & [Articles-]
4. The Constitution of India, Articles- 105, 106, 107 & [Articles-]
5. The Constitution of Maldives, Articles 70, 83, 90 & [Articles-]
6. The Constitution of Nepal, Articles- & [Articles-]
7. The Constitution of Pakistan, Articles- 50, 57, 66, 67, 70 & [Articles-184 (3), 199]
8. The Constitution of Sri Lanka, Articles- 62, 67, 75 & [Articles-]

C/F: The Constitutions of USA, UK, CANADA & AUSTRALIA

REQUIRED READINGS:

4. Meghna Sabharwal and Evan M. Berman, Public Administration in South Asia: India, Bangladesh and Pakistan, 2013
RECOMMENDED READINGS:


ADVANCED READINGS:

3. Archibald Cox, Court and the Constitution, Houghton Mifflin, pp 341-378

**CASE LAW:** *Note: One leading case law shall be discussed out of the following Case Digest:*

1. Union of India V. Gopal, AIR 1978 SC 684
2. State of Karnataka V. Union of India, (1977) 4 SCC 608
3. M.S.M. Sharma V. Sri Krishna Sinha, AIR 1959 SC 395
4. Jatish Chandra Ghose V. Harisadhan Mukherjee, AIR 1961 SC 613
5. Tej Kiran V. Sajiva, AIR 1970 SC 1573

**WEEK-11: THE LAW MAKING, PARLIAMENTARY PRIVILEGES, IMMUNITIES AND THE GOVERNANCE INSTITUTIONS AND THE FUTURE OF DEMOCRACY IN SOUTH ASIA**

- The Law-Making, Parliamentary Privileges and Immunities in South Asia and Constitutional Conundrums, Parliamentary Crisis in South Asia, Political Practices & Party Systems, the Electoral Systems, Governance Institutions in South Asia; The Institution of the Ombudsmen in South Asia, The Civil & Military Services and the Police. The Paradigm of Democratic Transition and Consolidation; Constitutions in Action, Future of Democratic Governance in South Asia, the Militarism in South Asia, the Constitutionalism of Democratization in South Asia, the Contradictions in the Transition to Democracy and Strengthening of Democracy and Rule of Law in SAARC region and Summation.

**Discussion Topics:**

- SAARC Nations Helping each other in Law-Making?
- What are the frontier areas among SAARC Nations for Law-Making?
- Do contemporary levels of parliamentary debates and behaviour in SAARC Nations serve the constitutional purposes?
- Limits to Privileges and Immunities?
- Quality of Debates, Discourse and Discussion in Parliaments, National Assemblies & Legislative Bodies in South Asia and Elsewhere.
- Centrality of Good Governance, Justice and Equity in Democracy.
- Significance of Norms of Public Life: Accountability and Transparency
- Role of Military Establishments in Democratic Governance in South Asia.
- Dynamics of Electoral Politics in SAARC Nations.
- Towards Reconstructing Political Space in South Asian Democracies.
- The Status of Postulating the Common Defence & South Asian Constitutions on Armed Forces.
- Constitutional Mandate and Electoral Systems in SAARC Nations.
- Failure of Transcendental Institutionalism in SAARC Nations.

**South Asian Constitutional Texts:**

1. The Constitution of Afghanistan, Articles- 81, 107, 110
2. The Constitution of Bangladesh, Articles- 65, 68, 73A, 75, 80, 93 Articles- 118 (Elections), 133 (Services)
3. The Constitution of Bhutan, Articles-
4. The Constitution of India, Articles- 105, 106, 107 & Articles- 309, 315 (UPSC), 324 (Elections)
5. The Constitution of Maldives, Articles 70, 83, 90 & Articles- 179 (Civil Service), 236 (Services), 244 (Police), 167-170, 276 (Elections), 199 (Anti-CC)
6. The Constitution of Nepal, Articles-
7. The Constitution of Pakistan, Articles- 50, 57, 66, 67, 70 & Articles- 103, 104 (Elections)
8. The Constitution of Sri Lanka, Articles- 62, 67, 75
C/F: The Constitutions of USA, UK, CANADA & AUSTRALIA
❖ U.K. Public Services Code, 2010

REQUIRED READINGS:

1. Allen Hicken and Yuko Kasuya, A Guide To The Constitutional Structures And Electoral Systems Of East, South And Southeast Asia, University of Michigan-USA & University of California, San Diego, CA, USA.
3. David Arnold and Peter Robb, Institutions and Ideologies: A SOAS South Asia Reader (Studies in Asian Topics).

RECOMMENDED READINGS:

1 Alina Rocha Menocal, Why Electoral Systems Matter: An Analysis Of Their Incentives And Effects On Key Areas Of Governance.
5 Christopher J. Kam, Party Discipline and Parliamentary Politics, 2011.
ADVANCED READINGS:

27 Scott Mainwaring, *Politicians, Parties And Electoral Systems: Brazil In Comparative Perspective*, 1990
30 Swati Mehta, *Feudal Forces: Democratic Nations-Police Accountability in Commonwealth South Asia*, 2007 (The report was researched and authored by Swati Mehta and Daniel Woods edited the report with editorial inputs from Devika Prasad.)

CASE LAW: Note: One leading case law shall be discussed out of the following Case Digest:

2. Anderson v. Celebrezze, 460 US 780 No.9
4. Crawford v. Marion County Election Bd. (Nos.07-21 and 07-25) 472 F. 3d 949
6. Jatish Chandra Ghose V. Harisadhan Mukherjee, AIR 1961 SC 613
7. M.S.M. Sharma V. Sri Krishna Sinha, AIR 1959 SC 395
10. S.S. Dhanoa V. Union of India, AIR 1991 SC 1745
12. Tej Kiran V. Sajiva, AIR 1970 SC 1573
13. Union of India V. Gopal, AIR 1978 SC 684
15. Workers Party v. Federation of Pakistan (PLD 2012 SC 87)

WEEK-12: THE PREROGATIVES, EXECUTIVE POWERS & EMERGENCIES AND CONSTITUTIONAL AMENDMENTS IN THE SAARC CONSTITUTIONS

- The SAARC Constitutions, Constitutionalism of Emergency Powers and Emergency Regimes, the Constitutional Amendments in a Comparative Perspective; Rules, Practices, and Functions of the Amendment; Beware of Amendment; the Comparative Conundrum of Amendment, Repeal and Secession and Summation.

Discussion Topics:

- Use and Misuse of Emergency Powers in SAARC Nations
- State Emergency and Legal Challenges
- Searching for a Judicial Response to the Threat of State Internal Security Power
- Responding to Imperfections or Subverting the Constitutions

South Asian Constitutional Texts:

1. The Constitution of Afghanistan, Articles- 143-148 (Emergency), 90, 149, 150 (Amendment)
2. The Constitution of Bangladesh, Articles- 141 (Emergency), 142 (Amendment)
3. The Constitution of Bhutan, Articles-
4. The Constitution of India, Articles- 352, 355, 356 (Emergency), 368 (Amendment)
5. The Constitution of Maldives, Articles- 261 (Amendment), 253-260 (Emergency),
6. The Constitution of Nepal, Articles-
7. The Constitution of Pakistan, Articles-
8. The Constitution of Sri Lanka, Articles- 82, 84,

REQUIRED READINGS:

1. Rosalind Dixon, Constitutional Amendment Rules: A Comparative Perspective,

RECOMMENDED READINGS:


ADVANCED READINGS:

38 Mansbridge, Jane J. (1986), Why We Lost the ERA, Chicago: University of Chicago Press.

**CASE LAW:** *Note: One leading case law shall be discussed out of the following Case Digest:*

1. A.K. Roy V. Union of India, AIR 1982 SC 710
2. Adkins V. Children’s Hospital, 261 US 525 (1923)
3. Aldridge V. Booth, (1988) 80 ALR 1
4. Arun V. Union of India, AIR 1992 SC All 1
5. Bhim Singhji V. Union of India, AIR 1981 SC 234
6. Chisolm V. Georgia, 2 US 419 (1793)
7. Dred Scott V. Sanford, 60 US (19 How.) 393 (1857)
9. Hammer V. Dagenhart, 247 US 251 (1918)
10. Hans V. Louisiana, 134 US 1 (1890)
12. Kihota Hollohon V. Zachilhu, AIR 1993 SC 412
13. NLRB V. Jones Laughlin Steel Corp., 301 US 1 (1937)
15. Sampath Kumar V. Union of India, AIR 1987 SC 386
16. State of Rajasthan V. Union of India, AIR 1977 SC 1361
17. United States V. Darby Lumber Co., 312 US 100 (1941)
18. Waman Rao V. Union of India, AIR 1987 SC 386
19. West Coast Hotel Co. V. Parish, 300 US 379 (1937)

**COURSE WRAP-UP AND THANKSGIVING**

- Rethinking Comparative Constitutional Law of SAARC Nations: Revision And Interactions
- Term Papers Presentations/Simulation Exercises on Problems
- Online Feedback

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THE SYLLABUS OF COMPARATIVE CONSTITUIONAL LAW OF SAARC NATIONS IS SUBJECT TO PERENNIAL CHANGES KEEPING IN VIEW THE NEW CONSTITUIONAL DEVELOEMENTS OR MATTERS INCIDENTAL THERETO OR CONNECTED THEREWITH IN THE REGION AND ELSEWHERE OR OTHERWISE

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