

Comparative Constitutional Law¹

Course Objective

This course is designed to examine from a comparative perspective –legal structure and concepts that are found in Constitutions across the world, percepts such as basic rights, rule of law, systems of governance, judicial review, to name a few. Comparative Constitutional Law course is intended to make students familiar with the constitutional systems of a few countries, in particular the constitution of United States of America and few other emerging constitutions along with the Indian Constitution. Students will be benefitted from deeper understanding of the doctrines and values underlying the provisions and principles from various constitutional systems.

a. Comparative study of Constitutional Law – scope [Week I-II, 6 classes]

Essential readings

1. D.D.Basu, Comparative Constitutional Law, 2nd ed., Wadhwa Nagpur, 2008, pp 1-12.
2. Jan M Smits (ed), Elgar Encyclopedia of Comparative Law, Edward Elgar, Cheltenham, UK, 2006, pp 57-65, 187-199. (included in reading material)
3. Reimann, Mathuas and Zimmermann, Reinard, The Oxford Handbook of Comparative Law, OUP, Oxford, 2006, pp 1225-1257. (included)
4. Mark Tushnet, The Possibilities of Comparative Constitutional Law (1999) *108 Yale.L.J.* 1225. (included in reading material)

Further suggested readings

5. Vicki C. Jackson and Mark V. Tushnet, Comparative Constitutional Law, Foundation Press, pp 144-152.
6. Donald Kommers, The Value of Comparative Constitutional Law, 9 J. Marshall J. Prac. & Pro. 685 (1976).
7. Ernest A. Young, Foreign Law and the Denominator Problem (2005) 119 *Harv. L. Rev.* 148.
8. Roger P. Alford, In Search of a Theory for Constitutional Comparativism (2005) 52 *UCLA L. Rev.* 639.
9. Ran Hirschl, The Rise of Comparative Constitutional Law: Thoughts on Substance and Methods, *Indian Journal of Constitutional Law*, (2008).
10. Sujit Choudhry, Globalisation in Search of Justification: Toward a Theory of Comparative Constitutional Interpretation (1999) 74 *Ind. L. J.* 819.
11. Ursula Bentele, Mining for gold: The Constitutional Court of South Africa's Experience with Comparative Constitutional Law, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1169642

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b. Federalism [Week VII-XI, 12 Classes]

Essential readings

1. Michael Burgess, Comparative Federalism, Theory and Practice, Routledge, New York, 2006, pp 9-49. (included in reading material) and pp 50-75.
2. Mahendra P. Singh, V N Shukla, 11th ed., EBC, Lucknow, 2008, pp A28-A35.
3. DD Basu, Introduction to the Constitution of India, Lexis-Nexis-Butterworth-Wadhwa, 2008, pp 51-66, 327-334, 344-351, 357-367.
4. Mark Tushnet, The Constitution of the United States of America: A Contextual Analysis, Hart Publishing Ltd, 2009, pp 159-181. (included in reading material)
5. Charles Fried, Saying What the Law is: The Constitution in the Supreme Court, First Indian Reprint, Universal Publishing Co.Pvt Ltd., 2008, pp 13-48. (included in reading material)

Further suggested readings

6. Vicki C. Jackson and Mark V. Tushnet, Comparative Constitutional Law, Foundation Press, pp 791-803, 825-827, 843-858.
7. Nicholas Aroney, The Constitution of a Federal Commonwealth: The making and meaning of the Australian Constitution, Cambridge University Press, Cambridge, 2009, pp 17-39.
8. *Re Quebec Objection to a Resolution to Amend the Constitution* [1982] 2 S.C.R. 793.
9. Martha A. Field, "The Differing Federalisms of Canada and the United States" (1992) 55 *Law and Contemp. Probs.* 107.
10. Jan Erk, Explaining Federalism: State, Society and Congruence in Austria, Belgium, Canada, Germany and Switzerland, Routledge, New York, 2008, pp 1-13, 44-48.
11. Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford: OUP, 2008) at 156-163.
12. Tony Blackshield and George Williams, Australian Constitutional Law and Theory Commentary and Materials, 4th ed, The Federation Press, Sydney, 2006, pp 241-246. (Australian Federalism).
13. Donald P Kommers, The Constitutional Jurisprudence of the Federal Republic of Germany, 2nd edn, Duke University Press/ Durham and London, 1997, pp 61-107 (Federalism in Germany.)
14. M.P. Jain, Indian Constitutional Law, 5th ed., Wadhwa, Nagpur, 2003, pp 22-23, 553-555, 847-860.
15. *Kuldip Nayar v. UOI* AIR 2006 SC 3127, (2006) 7 SCC 1.

c. Rule of Law [Week III- VI, 12 Classes]

Essential readings

1. Richard H. Fallon Jr., The Rule of Law as a Concept in Constitutional Discourse, *Columbia Law Review*, vol.97 (1997) 1. (included in reading material)

2. B Z Tamanaha, Rule of Law in United States in Randall Peerenboom (ed.), Asian Discourses of Rule of Law, Routledge, London, 2004, pp 56-78. (included in reading material)
3. Jeffrey Jowell, The rule of law today, in Jeffrey Jowell and Dawn Oliver (ed.), The Changing Constitution, OUP, 4th ed., 2000, pp 3-22 (Rule of law in England)
4. DD Basu, Comparative Constitution Law, 2nd (ed.), Wadhwa, 2008, pp 324-350.
5. U Baxi, Rule of Law in India: Theory and Practice in Randall Peerenboom (ed.), Asian Discourses of Rule of Law, Routledge, London, 2004, pp 324-345. (included in reading material)

Further suggested readings

6. Jeremy Waldron, Rule of Law and Concept of Law, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1273005.
7. Vicki C. Jackson and Mark V. Tushnet, Comparative Constitutional Law, Foundation Press, pp 213-222, 337-342.
8. M.P. Jain, Indian Constitutional Law, 5th ed., , Wadhwa, Nagpur, 2003, pp 7-10
9. Anata Kumar Giri, The Rule of Law and Indian Society: From Colonialism to Post Colonialism in P Costa and D Zolo (ed.), The Rule of Law: History, Theory and Criticism, Springer, The Netherlands, 2007, pp 587-614.
10. Joseph Raz, The Rule of Law and Its Virtue, *The Law Quarterly Review*, vol 93 (1977) 196.
11. Goolam E Vahanvati, Rule of Law: The Sieges Within, in Constitutionalism, Human Rights and the Rule of Law: Essays in Honour of Soli J Sorabjee, Universal Book Punlishing Co., New Delhi, 2005, pp 165-173.

d. Judicial Review [Week XII-XV, 12 Classes]

Essential readings

1. M.P. Singh, V.N Shukla's Constitutional Law, (11th ed.) Eastern Book Company, pp A 52 – A 56, 482-536, 614-677
2. Vicki C. Jackson and Mark V. Tushnet, Comparative Constitutional Law, Foundation Press, pp 456 – 491, 640 – 650. (included in reading material)
3. DD Basu, Comparative Constitution Law, 2nd (ed.), Wadhwa, 2008, pp 403-416.
4. Douglas V. Verney, The Struggle over Judicial Review: Supreme Court and Limited Government in M.P.Singh *et al* (eds.), Indian Judiciary and Politics: The Changing Landscape, Manohar Book, 2007 pp 41-67. (included in reading material)

Further suggested Readings

5. S.P Sathe, Judicial Activism in India: Transgressing Borders and Enforcing Limits, OUP, pp 63- 99, 249- 311
6. Tom Ginsburg, Judicial Review in New Democracies: Constitutional Courts in Asian Cases, Cambridge University Press, pp 34 – 64, 64- 89

7. Alexander M. Bickel, *The Least Dangerous Branch: The SC at the Bar of Politics*, Yale University Press.
8. Jack Wade Nowlin, *The Constitutional Limits of Judicial Review: A Structural Interpretative Approach*, *Oklahoma Law Review*, 1999
9. Gustavo Fernades De Andrade, *Comparative Constitutional Law: Judicial Review*, *University of Pennsylvania Journal of Constitutional Law*, vol.3, n.3, 2001, pp. 989-997
10. Seervai, *Constitutional Law*, pp. Vol.1, 260-275, Vol.3, 2613-2986
11. Charles L. Black, *The People and the Court: Judicial Review in a Democracy*, The Macmillan Company, 1960
12. Archibald Cox, *Court and the Constitution*, Houghton Mifflin, pp 341 -378