

COMPARATIVE CONSTITUTIONAL LAW

LL.M. – SEMESTER I

Course Outline

Course Instructor: Dr. Subhradipta Sarkar, Associate Professor, Faculty of Law, JMI

I. Introduction: Aims and Purposes

A country is run by the government, judicial bodies, its people, and most importantly by the Constitution. The constitution serves as the backbone of the country. After the World War II, many countries became independent and wanted to establish a robust legal system on the pillars of certain basic values and principles entrenched in some of the developed systems of the time. They are namely, Democracy, Rule of Law, Human rights, and Constitutional governance. Those incorporated basic values and principles were universally accepted and supported by international principles. India was one such nation which started its journey with a new written constitution.

Besides teaching the students about the drafting of our new constitution, this course is intended to inform them as to how did we incorporate and structure those basic values through comparative constitutional approach. Students will be expected to engage with and critique the basic questions which concern comparative constitutional law scholarship across the world. Why compare? What or whom to compare? How to determine relevant comparators? Does comparison of legal systems serve any practical purpose?

For sake of comparison, instead of the traditionally popular United States and Europe, I believe that it would be also be fruitful to engage with jurisdictions in the developing world, especially in India's neighbourhood, given its closer affinities with their experiences. It will also allow us to engage with the idea that whether constitutional law concepts are cultural/societal specific or are general across the societies.

As the course is being offered at LL.M. level, therefore, the students are expected to critically engage with the course. It is expected that students would read the materials and engage in classroom discussions rather than only be passive listeners in monologues.

II. Structure of the Course

UNIT – I

CONSTITUTION & CONSTITUTIONALISM

1. Constitution: Concept, Nature and Importance of Constitution-Evolution of Constitutional Values-Requisites of Ideal Constitution-Historical Evolution of Constitutional Government
2. Constitutionalism: Concept-Evolution-Limitations on Government Power
3. Constitutional Supremacy-Separation of Power

UNIT – II

COMPARATIVE CONSTITUTIONS

1. Scope of Comparative Constitutional Law: Need for Comparative Study of Constitutional Law in Constitution Making
2. Types of Constitutions: Written Constitutions-U.S.A, Canada, Switzerland and India; Unwritten Constitutions-England

UNIT – III

JUDICIAL REVIEW & CIVIL RIGHTS

1. Judicial Review-Fundamental Rights; Writ Jurisdiction-A Comparative Study
2. Civil Liberties/Rights: Structure-Enforcement-Individual Rights-Group Rights-National Security

UNIT – IV

FEDERALISM

1. Federalism: Concepts of Federalism and Federal Government-Conditions Essential for Federalism; Patterns of Federal Government: U.S.A, Australia, Canada and India

2. New Trends in Federalism: Cooperative Federalism-Political factors Influencing Federalism, Central Control v. State Autonomy-Dynamics of Federalism

III. Suggested Readings

BOOKS

1. Mark V. Tushnet, *Advanced Introduction to Comparative Constitutional Law* (Edward Elgar Publishing Limited, 2014)
2. Michel Rosenfeld and András Sajó, *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press, 2012)
3. D. D. Basu, *Comparative Constitution Law* (LexisNexis India, 2014)
4. Vishnoo Bhagwan, Vidya Bhushan and Vandana Mohla, *World Constitutions: A Comparative Study* (Sterling Publications Private Limited, 2020)
5. Mark Tushnet and Madhav Khosla (eds.), *Unstable constitutionalism Law and Politics in South Asia* (Oxford University Press, 2015)
6. Vikram David Amar and Mark Tushnet (eds.), *Global Perspectives on Constitutional Law* (Oxford University Press, 2009)
7. S. Choudhry, M. Khosla and P.B. Mehta (ed.), *The Oxford Handbook of Indian Constitution* (Oxford University Press, 2016)
8. Nuzhat Parveen Khan, *Comparative Constitutional Law* (Satyam Law International, 2015)
9. M. P. Jain, *Indian Constitutional Law* (LexisNexis India, 2018)
10. Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1999)
11. Granville Austin, *Working in a Democratic Constitution: A History of the Indian Experience* (Oxford University Press, 2003)

RESEARCH METHODOLOGY

LL.M. – SEMESTER III

Course Outline

Course Instructor: Dr. Subhradipta Sarkar, Associate Professor, Faculty of Law, JMI

I. Introduction: Aims and Purposes

The main objective of this course is to acquaint the student of law with the scientific method of social science research. This course is expected to provide the knowledge of the technique of selection, collection, and interpretation of primary and secondary data in socio legal research.

Emphasis would be laid on practical training in conducting research in this course. By the end of the course the students are expected to develop a scientific approach to socio legal problems. They should be able to design and execute their proposed dissertation in the final semester. The practical skill in conducting research will be evaluated on their performance in framing their synopsis.

II. Structure of the Course

UNIT – I

INTRODUCTION

1. Meaning of Research; Research in Social Sciences; Difficulties and Limitations-Difference between natural science and social science research; Objectives and Kind/Types-Legal Research: Meaning-Scope-Current Trends
2. Socio-Legal Research: Methods and Techniques of Research
3. Research Process: Review of Literature Identification and Formulation of a Research Problem/Defining the Research Problem; Hypothesis- Types, Functions, and Testing; Research Questions-Research Design-Preparation of Synopsis-Methodology

UNIT – II

DOCTRINAL RESEARCH

1. Primary and Secondary Sources: Role of Judges in and Jurists in Legal Research-How to Use Precedents
2. Use of Technology in Research – Artificial Intelligence, Open Access and Other New Developments
3. Use of Journals, Periodicals and Other Legal Materials-Methods of Citation

UNIT – III

NON-DOCTRINAL RESEARCH/EMPIRICAL RESEARCH

1. Empirical Methods as Tools of Research: Survey Research-Use of Sociological and Behavioural Science Methods
2. Universe and Selection of the Sample - Case Study-Observation Methods
3. Questionnaires and Schedules – Interview Methods

UNIT – IV

DATA INTERPRETATION, REPORT WRITING AND RESEARCH ETHICS

1. Processing, Interpreting and Analysing Data-Use of Statistical Tools in Research
2. Dissertation/Article Writing: Importance, Rules and Techniques: Important Steps – Selection of Journals – Predatory Journals and UGC-CARE
3. Research Ethics & Plagiarism – Academic Misconduct – Legal Consequences – Publication Ethics – UGC Guidelines

III. Suggested Readings

BOOKS

1. William J. Goode and Paul K. Hatt, Methods in Social Research, Surjeet Publications (2017).
2. P. Saravanel, Research Methodology, Kitab Mahal (2018)

3. Pauline V. Young, *Scientific Social Surveys and Research*, PHI Learning Pvt. Ltd. (2012).
4. Manoj Kumar Sinha & Deepa Kharb (eds.), *Legal Research Methodology*, LexisNexis & The Indian Law Institute (2017).
5. Rattan Singh, *Legal Research Methodology*, LexisNexis (2015).
6. V.K. Ahuja & Debasis Poddar (eds.), *Legal Pedagogy and Research Methodology*, National Law University and Judicial Academy, Assam (2023).
7. National Law University Delhi, *Handbook for Research Project Writing*.
8. V.K. Ahuja & Kankana Baishya (eds.), *Research and Publication Ethics*, National Law University and Judicial Academy, Assam (2024).

IV. Contact details

For any discussion, comments, appointments, etc., you can reach out to me through my email id ssarkar@jmi.ac.in or meet me at my chamber. My mobile number is 8826609980. Call me at reasonable hours, especially in the evening.