



South Asian University

Faculty of Legal Studies

LLM

Monsoon Semester 1 in 2023

Coursework Information

PART-I:-COURSEWORK INFORMATION

Course Title:	Comparative Constitutional Law of the SAARC Nations (CCLSAARCN)
Nature of the Paper:	Compulsory Paper
Course Code:	LW002
Course Instructor:	Dr. Nafees Ahmad, drnafeesahmad@sau.ac.in
Course Duration:	One Semester
Credit Units:	4 (MSE/TPW/ESE)
Medium of Instruction:	English
Prerequisites:	Nil
Precursors:	Nil
Equivalent Courses:	N/A
Teaching	Since 2011

PART-II:-MODULE CONTENTS

WEEK-1: INTRODUCTION TO COMPARATIVE CONSTITUTIONAL OF SAARC NATIONS

- THE IDEA OF THE CONSTITUTION [Different Forms and Classification of Constitutions]. Making the Constitutional Law [Concept, Genesis, Connect, Mobility and Question]. Introduction to Comparative Constitutional Law (CCL) and Applied Constitutional Theory [The Idea of Comparative Constitutional Law of SAARC Nations (CCLSAARN), Concept, Nature, History and Contours]. The Position of CCL in the SAARC Region [Aims, Importance of the Comparative Study of the Constitutional Law, Functions of the CCLSAARN, Legitimacy of the CCLSAARN]. The Concept of Constitutional Identity. The Possibilities of CCL and The Resurgence of the CCL [The Ascent and Descend of CCL in the Post-War Epoch, Renaissance of CCL, From CCL To CCS, Universality of CCL, Challenges in CCL Studies]. The New Conceptualism in CCL [The CCL in the Global Age & The New Global Constitutional Order]. The Sources of the CCL, Methods and Limits of CCL, Approaches to the Comparative Constitutional Culture and Analysis, CCL Judicial Imagination [Judicial Comparativism and Judicial Diplomacy]. The Comparative Constitutional Law [Should its Province be Determined?] Envisioning South Asian Fundamental Law Exceptionalism (SAFE) and Summation.

QUESTIONS IN FOCUS:

- ⇒ What is “comparative constitutional law” (CCL)? Is there any definition of the CCL?
- ⇒ What are the major contours, connects, concerns, and questions in the CCL and its boundaries?
- ⇒ Why has CCL become a popular approach in constitutional law today?
- ⇒ What specific methodological issues arise when we adopt a comparative approach to constitutional law?
- ⇒ What are the main substantive and methodological critiques of comparative constitutional law?
- ⇒ Why this paper? What is the rationale of this paper? Why do we have it?
- ⇒ Is there any Renaissance of Comparative Constitutional Law in the world?
- ⇒ Should we have Comparative Constitutional Law of SAARC Nations (CCLSAARN) kind of paper?
- ⇒ What are the challenges and basic issues in CCLSAARN?
- ⇒ What is the debate in Nation-state Constitution versus Global Constitution?
- ⇒ What is the idea of Comparativism? What are the dimensions and implications of comparativism?
- ⇒ What are the purposes, functions and benefits of the Comparative Constitutional Law?
- ⇒ What are the controversies over the Court’s references to foreign law (for example, in Death Penalty and LGBTQI+ rights cases etc.) 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 constitutional flexibility to respond to future needs and challenges and ensure appropriate degrees of on-going constitutional 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?

SAARC CONSTITUTIONAL TEXTS:

1. The Constitution of Islamic Emirate of Afghanistan [Afghanistan's Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964 consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]
 - [The Constitution of Islamic Republic of Afghanistan, 2004 (Preamble and Chapter One: State; Articles 1-21)]
 2. The Constitution of Bangladesh, 1972 (Preamble and Articles 1-)
 3. The Constitution of Bhutan, 2008 (Preamble and Articles 1-5)
 4. The Constitution of India, 1950 (Preamble and Articles 1-5)
 5. The Constitution of Maldives, 2008 (Preamble and Articles 1-5)
 6. The Constitution of Nepal, 2015 (Preamble and Articles 1-5)
 7. The Constitution of Pakistan, 1973 (Preamble and Articles 1-5)
 8. The Constitution of Sri Lanka, 1978 (Preamble and Articles 1-5)
- ❖ **C/F: The Constitutions of USA, UK, Canada, Australia & South Africa, Preambles with Articles, etc.**

REQUIRED READINGS:

1. D.D. Basu, *Comparative Constitutional Law*, 2nd ed., Wadhwa Publications, Nagpur, 2008, pp 1-12.
2. Rohit De, *A People's Constitution: The Everyday Life of Law in the Indian Republic*
3. Rosalind Dixon (Edited), *Comparative Constitutional Law in Asia*, Cheltenham, UK ; Northampton, MA, USA : Edward Elgar, [Published Feb. 28, 2014] ISBN: 9781781002698, eISBN: 9781781002704, DOI: 10.4337/9781781002704, Pages: 368
4. Rosalind Dixon and Tom Ginsburg, *Comparative Constitutional Law in Latin America*, 2017, Edward Elgar Publishing, US, ISBN 978 1 78536 920 9
5. Vicki C. Jackson and Mark V. Tushnet, *Comparative Constitutional Law*, Foundation Press, pp. 144-152.

RECOMMENDED READINGS:

- 1 Donald Kommers, *The Value of Comparative Constitutional Law*, 9 J. Marshall J. Prac. & Pro. 685 (1976).
- 2 M.P Singh, *Comparative Constitutional Law*, Eastern Book Company, 2011.
- 3 Mark Tushnet, *The Possibilities of Comparative Constitutional Law* (1999) 108 Yale Law Journal 1225.
- 4 Norman Dorsen; Michel Rosenfeld; András Sajó; Susanne Baer, *Comparative Constitutional Law in a Global Age-Comparative Constitutionalism: Cases and Materials*, , (pp. 2570-2596)
- 5 Ran Hirschl, *The Rise of Comparative Constitutional Law: Thoughts on Substance and Methods*, Indian Journal of Constitutional Law, (2008).
- 6 Tom Ginsburg and Rosalind Dixon (Edited), *Comparative Constitutional Law-Research Handbooks in Comparative Law Series* [Published May 31, 2011] ISBN: 9781848445390.

ADVANCED READINGS:

1. Ernest A. Young, *Foreign Law and the Denominator Problem* (2005) 119 *Harvard Law Review* 148.
2. James Gordley, *Comparative Legal Research: Its Function in the Development of Harmonized Law*, *American Journal of Comparative Law*, Vol. 43, 1995, 555-567.
3. Jan M Smits (ed), *Elgar Encyclopedia of Comparative Law*, Edward Elgar, Cheltenham, UK, 2006, pp 57-65, 187-199.
4. Mark C. Rahdert, *Comparative Constitutional Advocacy*, *American University Law Review*, Vol. 56:3, 2007, pp 253-665
5. Mark Tushnet, *Returning With Interest: Observations On Some Putative Benefits Of Studying Comparative Constitutional Law*, *Journal Of Constitutional Law*, Vol. 1: 2, pp 225-248
6. Michel Rosenfeld, “*Constitutional Migration and the Bounds of Comparative Analysis*,” *NYU Annual Survey of American Law*, Vol. 58, 2001, 67-83.
7. Morton J. Horwitz, “*Constitutional Transplants*,” 10 *Theoretical Inq. L.* 535, 2009, 535-560.
8. Ran Hirschl, “*The Question of Case Selection in Comparative Constitutional Law*,” *American Journal of Comparative Law*, Vol. 53, 2005, 125-155.
9. Reimann, Mathuas and Zimmermann, Reinard, *The Oxford Handbook of Comparative Law*, OUP, Oxford, 2006, pp 1225-1257. (included)
10. Roger P. Alford, *In Search of a Theory for Constitutional Comparativism* (2005) 52 *UCLA L. Rev.* 639.
11. Sujit Choudhry, *Globalisation in Search of Justification: Toward a Theory of Comparative Constitutional Interpretation* (1999) 74 *Ind. L. J.* 819
12. Vicki C. Jackson, “*Constitutional Comparisons: Convergence, Resistance, Engagement*,” *Comment in 119 Harv. L. Rev.* 109, Nov. 2005, 109-128.

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

1. Cheatle V. The Queen (1993) 177 C.L.R. 541 (Austl.)
2. Edwards V. Attorney-General for Canada, [1930] A.C. 124 (P.C. 1929)-Persons Case
3. Jacobson V. Massachusetts, 197 U.S. 11, 31-33 & n.1 (1905)
4. Kindler V. Canada [1991] 2 S.C.R. 779
5. Law Society of Upper Canada V. Skapinker, [1984] 1 S.C.R. 357, 366
6. McCulloch V. Maryland, 17 U.S. (4 Wheat.) 316 (1819)
7. Muller V. Oregon, 208 U.S. 412, 419-20, n.1 (1908)
8. Printz V. United States 521 US 897 (1997)
9. R. V. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295, 343-44 (Can.)

10. *Roe V. Wade*, 410 U.S. 113 (1973)
11. *Roper V. Simmons* 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).
12. *St. Catherine's Milling & Lumber Co. V. R.*, (1888) 14 App. Cas. 46, 50.
13. *Street V. Queensland Bar Ass'n*, (1989) 168 C.L.R. (Austl.)
14. *The Society of Unborn Children Ireland Ltd. V. Grogan*, (1991)
15. *United States V. Burns* [2001] 1 S.C.R. 283 (Can.)
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)
18. *White V. Jones* [1995] 2 AC 207
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 CONSTITUTIONAL LAW PRINCIPLES FOR CONSTITUTION MAKING, DESIGNING, DRAFTING AND CORE FEATURES OF THE SAARC CONSTITUTIONS

- The Constitutional Principles for Constitution-Making [Foundation, The Constituent Power, Processes, Inclusiveness, Scope, Magnitude]. The Theory and Practice of Constitution-Making [Scope and Limits]. The Constitutional Ideology [Socio-Political Movements Making Constitution]. The Nationalist Discourse in South Asia [Constitution-Making and Nation-Building, Participation in Constitutional Design: South Asian Fundamental Exceptionalism]. The Constitutional Transplants [Constitutional Borrowing and Non-Borrowing, Migration & Transmigration of Constitutional Ideas and Migration of Law]. Transitional Justice and the Transformation of Constitutionalism, The Constitutional Design, Drafting, Gender and External Influence, Comparative Constitutional Design, Different Governmental Systems and Major Constitutional Designs in Multicultural Societies, Panoramic Constitution Approaches, the Comparativist Dilemma, Constitutional Fortitude and Durability. The Main Features of the Major SAARC Constitutions and Summation.

QUESTIONS IN FOCUS:

- ⇒ What are the Constitutional Principles to develop, design, and devise a Constitution?
- ⇒ Why make a Constitution? How Constitutions work? Why comply with the Constitution?
- ⇒ How do we approach "multinational states" as a sociologically distinctive category of polity?
- ⇒ What are the main theoretical arguments and institutional strategies in addressing the specific constitutional challenges of such countries?
- ⇒ Is there any possibility to have a closer consideration of the liberal democratic model called the "plurinational state" in addressing the constitutional problems of multinational polities, its theoretical foundations, substantive features, the practical challenges that confront the plurinational state as a viable model of constitutional accommodation, and looks comparatively at empirical cases studies such as the Europe (Belgium, Spain, UK) and Canada.
- ⇒ What happens when constitutional accommodation fails in multinational/plurinational or otherwise plural societies? In the context of Scotland after the Brexit and independence referendums (and the possibility of a second independence referendum), we look at the difficult issue of secession as a solution to autonomy claims from the perspective of competing theoretical accounts of secession, such as "consensual", "choice" and "just cause" categories?
- ⇒ What is a "constitutional transition"? How do we define this? Why is it important? What are the types or models of constitutional transition that have been identified in the academic literature?
- ⇒ Are Scotland and the UK in a constitutional transition? If so, how does it relate to these models of transition?
- ⇒ What are the Roles of Law, Politics, and Social Movements in conceiving, evolving and framing the Constitutional Design?

- ⇒ What are the Theoretical Perspectives on Identity, Diversity and Legitimacy?
- ⇒ How to devise Popular and Durable National Constitutions?
- ⇒ What is the Constitutional Politics of Preference Formation?
- ⇒ How to address the Politics of Accommodation in Nationally-Divided Societies?
- ⇒ Is Constitutionalization of Politics in South Asia a reality?
- ⇒ How to attend and address the law and politics of constitutional change in South Asia?
- ⇒ How do Constitutions Influence Interests, Values, and Preferences?
- ⇒ What is the Comparative Constitutional Change?
- ⇒ How to understand the Influence of Experiences of Law and Legal Consciousness?
- ⇒ How to critically appreciate the Perspectives of Persons for the first and last time?
- ⇒ What are the Constitutional Standards and Jurisprudence involved in constitution-making?
- ⇒ What are the Migration of Constitutional Ideas and Problems of Communication?
- ⇒ What to do when Constitutions Do Not Work?
- ⇒ How to cajole and establish the Common Constitutional Characteristics of the SAARC Nations' Constitutions and how to evolve the Common Constitutional Conventions for envisioning the Constitutional Integration of SAARC jurisdictions?

SAARC CONSTITUTIONAL TEXTS:

1. The Constitution of Islamic Emirate of Afghanistan [Afghanistan's Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964 consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]
 - The Constitution of Afghanistan, 2004, Preamble with Articles-1,2,3,4,5,6,7,8,13,14,18,19 & Chapter-Two
2. The Constitution of Bangladesh, 1972, Preamble with Articles-1,2,2A,3,4,4A,6,7 & Part-II
3. The Constitution of Bhutan, 2008, Preamble with Articles-1,2,3,4,5,8 & 10
4. The Constitution of India, 1950, Preamble with Articles-1,2,3,4, Parts-II & III
5. The Constitution of Maldives, 2008, Preamble with Articles-1,2,3,4,5,6,7,8,9 & Chapter-II
6. The Constitution of Nepal, 2015, Preamble with Articles-1,2,3,4,5,6,7 & Part-II
7. The Constitution of Pakistan, 1973, Preamble with Articles-1,2,2A,3,4,5,6 & Part-II
8. The Constitution of Sri Lanka, 1978, Preamble with Articles-1,2,3,4,5,6,7,8,9 & Chapter-III
- ❖ C/F: **The Constitutions of USA, UK, Canada, Australia & South Africa, Preambles with Articles, etc.**

REQUIRED READINGS:

1. Donald S. Lutz, *Principles of Constitutional Design*, Cambridge University Press, NY 2008.
2. Frank Fagan and Saul Levmore, *The Timing of Law Making*, Edward Elgar Publishing, 2017, ISBN 978 1 78536 432 7
3. Helen Irving, *Constitutions and Gender*, EE Elgar Publication, 2017, ISBN 978 1 78471 695 0
4. Sujit Choudhary, *Constitutional Design for Divided Societies: Integration or Accommodation*, Oxford University Press, 2008.
5. Wim Voermans, Maarten Stremmer, Paul Cliteur, *Constitutional Preambles: A Comparative Analysis*, Edward Elgar Publishing, the Netherlands, 2017, ISBN 978 1 78536 814 1

RECOMMENDED READINGS:

1. Andrew Reynolds, *The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy* (Oxford Studies in Democratization), Oxford University Press, 2002

2. Edward Schneier, *Crafting Constitutional Democracies: The Politics of Institutional Design*, 2006.
3. Tom Ginsburg (Editor), *Comparative Constitutional Design* (Comparative Constitutional Law and Policy) [Hardcover], Cambridge University Press, New York 2012
4. Paul Brest, Sanford Levinson, Jack M. Balkin and Reva B. Siegel, *Processes of Constitutional Decision Making: Cases and Materials*, 2006.

ADVANCED READINGS:

1. David M. O'Brien, *Constitutional Law and Politics: Struggles for Power and Governmental Accountability*, 8th Edition, 2011
2. Gretchen Ritter, *The Constitution As Social Design; Gender and Civic Membership in the American Constitutional Order*, 2006.
3. Heinz Klug, "Constitution-Making, Democracy and the "Civilizing" of Unreconcilable Conflict: What Might We Learn from the South African Miracle?" University of Wisconsin Law School, Legal Studies Research Paper Series, Paper No/ 1046, May 2007, 1-35.
4. John Feldmeier, *Constitutional Law: Governmental Powers and Individual Freedoms*, 2nd Edition, 2012.
5. Jon Elster, "Forces and Mechanisms in the Constitution-Making Process," *Duke Law Journal*, 45:2, 1995, pp. 364-96.
6. Nicholas Aroney, *The Constitution of a Federal Commonwealth: The Making and Meaning of the Australian Constitution*, Cambridge University Press, Cambridge, 2009, pp 17-39.
7. Peter Berkowitz, *Constitutional Conservatism: Liberty, Self-Government and Political Moderation*, Hoover Institution Press Publication, 2013.
8. Tribe and Landry, "Reflections on Constitution-Making," *Am. U. J. Int'l L. & Pol'y Y*, 8:627, 627-646.

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

1. Dobbs v. Jackson Women's Health Organization, No. 19-1392, 597 U.S. ____ (24 June 2022)
2. Goodyear India V. State of Haryana, AIR 1990 SC 781
3. Indira Nehru Gandhi V. Raj Narayan, AIR 1975 SC 2299
4. Keshavananda Bharati V. State of Kerala, AIR 1973 SC 1461
5. Miller v. California, US (1973)
6. Minerva Mills Ltd. V. Union of India, AIR 1980 SC 1789
7. Nakara V. Union of India, AIR 1983 SC 130
8. Official Liquidator V. Dayanand, (2008) 10 SCC 1
9. P.A. Inamdar V. State of Maharashtra, (2005) 6 SCC 537
10. Pradeep Jain (Dr.) V. Union of India V. Union of India, AIR 1984 SC 1420
11. State of Bihar V. Bal Mukund Sah, AIR 2000 SC 1296
12. Synthetics & Chemicals Ltd. V. State of Uttar Pradesh, (1990) 1 SCC 109

WEEK-3: THE FUNDAMENTAL PRINCIPLES OF COMPARATIVE CONSTITUTIONALISM

- Constitutionalism [The Visage, Value, and Vision]. Constitutionalism [Delineations, Dimensions, and Devices]. The Norms and Forms of Constitutionalism [Classical, Contemporary, and Modern]. New Constitutionalism [Neo-liberal]. Models of Liberal Constitutionalism [Legal, Political, and Dialogic Constitutionalism]. The Paradigms, Predilections & Predicaments of Constitutionalism [The Concerns and Crises in the Modern Constitutionalism and Decolonization of Comparative Constitutionalism]. Non-Western Models of Constitutionalism [Postcolonial Republicanism, Ethnocracy, Abusive Constitutionalism and Constitutionalism in Islamic Countries]. Constitutionalism

Canvas [Transformative Constitutionalism, Global Pluralism, International Cosmopolitanism, Constitutionalism in Global South, the Twilight of Comparative Liberal-Democratic Constitutionalism]. Digital Constitutionalism [Constitutionalization of Algorithmic Societies]. Towards Juristocracy and Contemporary Constitutionalism as the Law of the Peoples [Paradigms of Reality, Challenges, Constitutionalism in a Polycentric Polity, Inter-Constitutional Collisions]. Comparative Constitutionalism in South Asia [The Concept of Constitutional State in Global South, The Predicament of Constitutionalism in South Asia, Challenges To Constitutionalism in South Asia By Religion, Equality & Economic Rifts, Caste Aversion, Security Threats, (REECAST) Syndrome & The Imagining the Idea of SAARCENTRIC Constitutionalism and Transnational Constitutionalism]. Constitutionalism, Resurgent Populism, and the Rule of Law in the 21st Century. Constitutionalism as Alternative Secularism and Constitutionalization. Reflections on Constitutionalism [From Balanced Constitutionalism to Sustainable Constitutionalism, People & Societies in the SAARC & Beyond] and Summation.

QUESTIONS IN FOCUS:

- ⇒ What is Constitutionalism? Is it bigger than the State and its Governors or subservient to both?
- ⇒ What is not Constitutionalism? Is it a new Constitutional Question?
- ⇒ What is digital Constitutionalism? Is it feasible to constitutionalize algorithmic societies?
- ⇒ What is the relationship between a written constitution and constitutionalism? Can there be Constitutionalism without a Constitution?
- ⇒ How to explore the interrelations between the constitutional arena (texts, institutions, jurisprudence) and the political sphere within which it operates, in particular as it pertains to the governance of collective identity, religion, urbanization, and economic inequality across time and place?
- ⇒ What is the *modus operandi* to advance an interdisciplinary approach, methodological and substantive, to the study of comparative constitutionalism, and to foster dialogue between legal scholars and social scientists studying a similar set of phenomena from different disciplinary angles?
- ⇒ What is Constitutionalism and Extra-Constitutionalism? Comparative Constitutionalism: Is it 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? What are the tensions between Constitutionalism and the Judicialization of Politics in South Asia?
- ⇒ How to reconcile Competing Nationhood and Constitutional Instability in South Asia?
- ⇒ How to do the Mapping of the Plurinational Understanding of Constitutionalism in South Asia?
- ⇒ What is the future of Constitutionalism in South Asia? How to have Cooperation among the SAARC Nations on Constitutional Commonalities?
- ⇒ How should we deal with the past and its phases? How can we learn to coexist with former oppressors and perpetrators of crimes? How can we reconcile and forgive?

SAARC CONSTITUTIONAL TEXTS:

1. The Constitution of Islamic Emirate of Afghanistan [Afghanistan's Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964 consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]
 - The Constitution of Afghanistan, 2004, Preamble with Articles 2, 3, 15,
2. The Constitution of Bangladesh, 1972, Preamble with Articles 8-25 (FPSP)
3. The Constitution of Bhutan, 2008, Preamble with Articles
4. The Constitution of India, 1950, Preamble with Articles, 36-51A
5. The Constitution of Maldives, 2008, Preamble with Articles 4, 8, 9, 10, 63, 66, 69
6. The Constitution of Nepal, 2015, Preamble with Articles of Parts III & IV
7. The Constitution of Pakistan, 1973, Preamble with Articles 29-40
8. The Constitution of Sri Lanka, 1978, 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 & South Africa, Preambles with Articles, etc.**

REQUIRED READINGS:

1. Arun K. Thiruvengadam, Sunil Khilnani and Vikram Raghavan (Editors), *Comparative Constitutionalism in South Asia* [hardcover] Oxford University Press, 2013
2. Chintan Chandrachud, *Balanced Constitutionalism: Courts and Legislatures in India and the United Kingdom*, Oxford University Press, 2017
3. Douglas H. Ginsburg, *On Constitutionalism*, Cato Supreme Court Review, pp 7-20
4. Mark Tushnet & Madhav Khosla, *Unstable Constitutionalism: Law and Politics in South Asia*, Cambridge University Press 2015, ISBN 978-1-107-06895-7
5. Rosalind Dixon and Tom Ginsburg, *Comparative Constitutional Law in Latin America*, 2017, Edward Elgar Publishing, US, ISBN 978 1 78536 920 9

RECOMMENDED READINGS:

- 1 Alec Stone Sweet, *Constitutionalism, Legal Pluralism, and International Regimes*, Indiana Journal Of Global Legal Studies, Vol. 16:2, pp 620-645
- 2 C Sunstein, *Constitutionalism and Secession*, 58 U. Chi. L. Rev. 633 (1991)
- 3 Cheryl Lawther, Luke Moffett, & Dov Jacobs, *Research Handbook on Transitional Justice*, 2017, ISBN 978 1 78195 530 7
- 4 Norman Dorsen, Michel Rosenfield, Andras Sajó, Susanne Baer, *Comparative Constitutionalism: Cases and Materials*, 2d (American Casebooks) [Hardcover]
- 5 Russel Hardin, *Liberalism, Constitutionalism and Democracy*, Oxford University Press, 2003
- 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:

1. Brian Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge, 2004), 7-59.
2. Douglas Greenberg, Stanley N. Katz, Steven C. Wheatley and Melanie Beth Oliviero, *Constitutionalism and Democracy: Transitions in the Contemporary World*, Oxford University Press, 1993.

3. Gerhard Casper, “*Changing Concepts of Constitutionalism: 18th to 20th Century*,” Supreme Court Review, Vol. 1989, 1989, 311-332.
4. Gordon S. Wood, *Eighteenth-Century American Constitutionalism*, Brown University.
5. J. J. Sheehan, “Presidential Address: The Problem of Sovereignty in European History,” *American Historical Review*, 111:1, 2006, 1-15.
6. Jo Murkens, “*The Quest for Constitutionalism in UK Public Law Discourse*,” Oxford Journal of Legal Studies, 29:3, 2009, 427-455.
7. Kazi Khaleed Ashraf, *An Architecture of Independence: The Making of Modern South Asia*, 1999.
8. M. J. C. Vile, *Constitutionalism and the Separation of Powers*.
9. Peter Quint, “*What is a Twentieth-Century Constitution?*” University of Maryland School of Law, Legal Studies Research Paper No. 2008-7, 238-257.
10. Richard Bellamy, *Constitutionalism, Democracy and Sovereignty: American and European Perspectives*, 1996
11. Robert Leckey, *Thick Instrumentalism And Comparative Constitutionalism: The Case Of Gay Rights*, Columbia Human Rights Law Review, 2009, Vol. 40:425 pp 425-478
12. Theodor Schilling, *Constitutionalization of General International Law: Some Structural Aspects*,
13. Vazira Fazila-Yacoobali Zamindar, *The Long Partition and the Making of Modern South Asia: Refugees, Boundaries, Histories*, Columbia University Press, 2007, 2010.

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
2. A.L.A. Schechter Poultry Corp. V. United States, 295 U.S. 495 (1935)
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)
5. Atkins V. Virginia, 536 U.S. 304 (2002)
6. Babri Mosque-Ram Janam Bhumi Dispute
7. Bal Patil V. Union of India, (2005) 6 SCC 690
8. Becker V. Alberta, 45 A.R. 37 (Q.B. 1983)
9. Blencoe V. British Columbia (Human Rights Commission), [2000] 2 S.C.R. 307 (Can.)
10. Bosnia V. Serbia,
11. Brown V. Board of Education, 247 U.S. 483 (1954)
12. Burron V. Baltimore, 7 Pet. 243 (1833)
13. Carter V. Carter Coal Co., 298 U.S. 238 (1936)
14. Church of the Lukumi Babalu Aye, Inc. V. City of Hialeah, 508 US 520 (1993)
15. Citizens United V. Federal Election Commission, 558 U.S. 08-205 (2010)
16. Coppage V. Kansas, 236 U.S. 1 (1915)
17. District of Columbia V. Heller, 128 S. Ct. 2783 (2008)
18. Dobbs v. Jackson Women's Health Organization, No. 19-1392, 597 U.S. ____ (24 June 2022)
19. Dred Scott V. Sandford, 60 U.S. 393 (1857)
20. Employment Division V. Smith, 494 US 872 (1990)
21. Escobedo V. Illinois, 378 U.S. 478 (1964)
22. Fracen V. City of Winnipeg, 40 Man. R. (2d) 137 (Ct. App. 1986)
23. Francis Coralie V. Union Territory of Delhi, AIR 1978 SC 597
24. Frontiero V. Richardson, 411 U.S. 677 (1973)
25. Gideon V. Wainwright, 372 U.S. 335 (1963)
26. Government of Andhra Pradesh V. P. Laxmi Devi, 2008 (4) SCC 720
27. Griffin V. County School Board, Prince Edward County,
28. Griswold V. Connecticut, 381 U.S. 479
29. Hammer V. Dagenhart, 247 U.S. 251 (1918)

30. Holden V. Hardy, 169 U.S. 366 (1898)
31. I.C. Golak Nath V. State of Punjab, AIR 1967 SC 1643
32. I.R. Coelho (Dead) By Lrs V. State of Tamil Nadu & Others, (2007) 2 SCC 1
33. Keshavanand Bharati V. State of Kerala, AIR 1973 SC 1461
34. Kokkinakis V. Greece
35. Korematsu V. United States, 323 U.S. 214 (1944)
36. Lawrence V. Texas: The Right that Dare Not Speak Its Name, 117 Harv. L. Rev. 1893 (2004)
37. Leyla Sahin V. Turkey
38. Lochner V. New York, 198 U.S. 45 (1905)
39. Malloy V. Hogan, 378 U.S. 1(1964)
40. Maneka Gandhi V. Union of India, AIR 1978 SC 593
41. Marbury V. Madison, 5 U.S. 137 (1903)
42. Milk Board V. Clearview Dairy Farm Inc., 69 B.C.L.R. 220 (Sup. Ct. 1986)
43. Miranda V. State of Arizona, 384 U.S. 436 (1966)
44. Murrays Lessee V. Hoboken Land and Improvement Co.
45. Parents Involved in Community Schools V. Seattle School District # 1, 127 S.Ct. 2738 (2007)
46. Parkdale Hotel Ltd. V. Canada (Attorney General), 2 EC. 514 (Fed. Ct. Trial Div.1986)
47. Planned Parenthood Association V. Casey, U.S. 1992
48. Prosecutor V. Tadic
49. R. V. Edwards Books and Arts Ltd., [1986] 2 S.C.R. 713 (Can.)
50. Raja Ram Pal V. Hon'ble Speaker, Lok Sabha & Others, (2007) 3 SCC 184
51. S.R. Bommai V. Union of India, (1994) 3SCC 1
52. Sankari Prasad Singh Deo V. Union of India, AIR SC 458 (1951)
53. Sejdic and Finci V. Bosnia and Herzegovina, Judgment, Application Nos. 2799/06 and 3483/06 (European Court of Human Rights, 22December, 2009): para49
54. Smith, Kline & French Laboratories Ltd. V. Canada (Attorney General) 1 EC. 274 (Fed. Ct. Trial Div. 1986)
55. Tyson & Bro.-United Theatre Ticket Offices, Inc. V. Banton, 273 U.S. 418, 445-57 (1927)
56. Velsamma Paul V. Cochin University, AIR 1996 SC 1011
57. West Coast Hotel Co. V. Parrish, 300 U.S. 379 (1937)
58. Wilson V. British Columbia (Medical Service Commission), 30 B.C.L.R. (2D) 1 (Ct. App. 1988)

WEEK-4: GENERAL PRINCIPLES OF FEDERALISM IN THE SAARC NATIONS & BEYOND

- General Principles and Conceptual Foundations of Federalism & Federation [Origins, Typologies, Uses & Evolution in Intellectual Debates (US Federal Experience), Genesis of Federal States, Pathology of Federations, Connection between State-Building and National Unity & Integration]. Federalism [Plurinationalism, Secession, and Democracy]. Comparative Federalism [Exploring Nature, Meaning & Canvas with Comparative Approach Framework, Theoretical Vetting & Latest Case Studies]. The Ethno-nationalism Conflict [Decentralization, Conflict Management in Multi-Cultural Societies]. Federalism and Subsidiarity [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 and the Case of South Asia [The Influence of the Imperial Structures on the SAARC Nations, Initiating Constitutional Decolonization and the Comparative Examples from Austria, Australia, Belgium, Canada, EU, Germany, India, Scotland, Switzerland, UK, USA, EU, etc.] and Summation.

QUESTIONS IN FOCUS:

- ⇒ What Federalism? Why Federalism? Which Federalism? Who's Federalism?

- ⇒ What is the essence of Comparative Federalism?
- ⇒ What is the Tug of War within the Federalism?
- ⇒ Federalism and Federation and their Origins and Formation of Federal States.
- ⇒ What are the 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.
- ⇒ What is the success and failure of federalism?
- ⇒ The Status of Kashmir in the Constitutions of Pakistan and India

SAARC CONSTITUTIONAL TEXTS:

1. The Constitution of Islamic Emirate of Afghanistan [Afghanistan's Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964 consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]
 - The Constitution of Afghanistan, 2004, Articles- 1 (1)
 2. The Constitution of Bangladesh, 1972, Articles- 1
 3. The Constitution of Bhutan, 2008, Articles-
 4. The Constitution of India, 1950, Articles 245, 248, 250, 253, 256
 5. The Constitution of Maldives, 2008, Articles- 230-235
 6. The Constitution of Nepal, 2015, Articles-56-60, 74-125
 7. The Constitution of Pakistan, 1973, Articles-
[Pakistan's International Law Obligations (A dualist state, The Rules of Business 1973, The Cabinet signs & ratifies International Treaties and Agreements, the Parliament-Incorporation via Legislation.)]
 8. The Constitution of Sri Lanka, 1978, Articles- 2,
- ❖ **C/F: The Constitutions of USA, UK, Canada, Australia & South Africa, Preambles with Articles, etc.**

REQUIRED READINGS:

1. Baogang He, Brian Galligan and Takashi Inoguchi, *Federalism in Asia*, Edward Elgar Publishing Limited-UK, 2007, ISBN 978 1 84720 140 9
2. Douglas V. Verney, *Federalism, Federative Systems, and Federations: The United States, Canada and India*, Publius, 25:2, Spring 1995, 81-97.
3. J. C. Boogman & G. N. Van der Plaats, *Federalism-History and Current Significance of a Form of Government*, Martinus Nijhoff-The Hague-1980, ISBN-13: 978-90-247-9003-6
4. John Kincaid and G. Alan Tarr, *Constitutional Origins, Structure, and Change in Federal Countries*, McGill-Queen's University Press 2005, ISBN 0-7735-2916-0
5. Katharine Adeney & Filippo Boni, 'Federalism and regime change: De/centralization in Pakistan – 1956–2020' (2022) *Regional & Federal Studies*, DOI: 10.1080/13597566.2022.2126456

6. Katharine Adeney, *Federalism and Ethnic Conflict Regulation in India and Pakistan*, 2007, Palgrave MacMillan-New York, ISBN-10: 1-4039-7186-2
7. Michael Burgess, *Comparative Federalism: Theory and Practice*, Routledge, New York, 2006, pp. 9-49 and pp. 50-75.
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9. Rosalind Dixon (Ed), *Comparative Constitutional Law in Asia*, Cheltenham, UK; Northampton, MA, USA : Edward Elgar Publishing, 2014
10. Soofi, Ahmer Bilal, 'Pakistan', in Simon Chesterman, Hisashi Owada, and Ben Saul (eds), *The Oxford Handbook of International Law in Asia and the Pacific*, Oxford Handbooks (2019; online edn, Oxford Academic, 4 Oct. 2019), <https://doi.org/10.1093/law/9780198793854.003.0024>
11. Ursula K. Hicks, *Federalism: Failure and Success-A Comparative Study*, The Macmillan Press Ltd, 1978, ISBN 978-1-349-04008-7

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- 2 Baogang He, Brian Galligan and Takashi Inoguchi, *Federalism in Asia*, 2009.
- 3 Donald Horowitz, *The Many Uses of Federalism*, 55 Drake L. Rev. 953, 2007, 953-966.
- 4 Jan Erk, *Explaining Federalism: State, Society and Congruence in Austria, Belgium, Canada, Germany and Switzerland*, Routledge, New York, 2008, pp 1-13, 44-48.
- 5 Jessica s. Wallack & T. N. Srinivasan, *Federalism and Economic Reform-International Perspectives*, Cambridge University Press, 2006, ISBN-10 0-521-85580-2
- 6 Kalyani Robbins, *The Law and Policy of Environmental Federalism: A Comparative Analysis*, Edward Elgar Publishing, 2017, ISBN 978 1 78347 361 8
- 7 Katherine Adeney, *Federalism and Ethnic Conflict Regulation in India and Pakistan*, 2006.
- 8 Mansoor Akbar Kundi, 'Federalism In Pakistan: Problems & Prospects' (2002) 11 *Asian and African Studies* 1 37-48
- 9 Mark Tushnet, *Comparative Constitutional Federalism: Europe and America*, 1990.
- 10 Mikhail Filippov, Peter C. Ordeshook and Olga Shvetsova, *Designing Federalism: A Theory of Self-Sustainable Federal Institutions*, 2004.
- 11 Mohammad Waseem, 'Federalism in Pakistan' (2010) LUMS
- 12 Sunita Parikh, India: *From Political Federalism and Fiscal Centralization to Greater Subnational Autonomy*, Chapter 10 in Daniel Halberstam & Mathias Reimann (Editors) *Federalism and Legal Unification-A Comparative Empirical Investigation of Twenty Systems*, Springer-New York, pp. 255-265, ISBN 978-94-007-7397-4

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- 4 Craig Baxter, *Constitution Making: The Development of Federalism in Pakistan*, *Asian Survey*, 14:12, Dec. 1974, 1074-1085.
- 5 D. D. Basu, *Introduction to the Constitution of India*, Lexis-Nexis-Butterworth-Wadhwa, 2008, pp. 51-66, 327-334, 344-351, 357-367.
- 6 Excerpts from 18th and 19th Amendments re Provincial Autonomy.

- 7 Extract from Montesquieu, *The Spirit of the Laws*, 1748 (also in the *Modern History Sourcebook* at <http://www.fordham.edu/halsall/mod/montesquieuspirit.html>)
- 8 Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford: OUP, 2008) at 156-163.
- 9 James Madison, Federalist No. 47 in *The Federalist Papers* (1787) (Clinton Rossiter ed. 1999) p. 268-276 (also at http://thomas.loc.gov/home/histdox/fed_47.html)
- 10 John C. Goodman, "What is Classical Liberalism?" National Center for Policy Analysis.
- 11 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*,
- 12 Loius Tillin, "Unity in Diversity? Asymmetry in Indian Federalism," *Publius*, 2006, 1-23.
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- 17 Syed Jaffar Ahmed, "*Overview of the Constitution of Pakistan*," *PILDAT*, Briefing Paper No. 17, August 2004, 9-20.
- 18 The Constitution of the United States of America (**For Reference**).
- 19 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).
- 20 Vicki C. Jackson and Mark V. Tushnet, *Comparative Constitutional Law*, Foundation Press, pp 791-803, 825-827, 843-858.
- 21 Yonatan Tesfaye Fessha, *Ethnic Diversity and Federalism*, 2011.

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4. A.G., Nova Scotia V. A.G., Canada, (1951) SCR 31
5. Alden V. Maine, 119 S. Ct. 2240 (1999)
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
9. Automobile Transport V. State of Rajasthan, AIR 1962 SC 1406
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
13. Blum V. Bacon, (1982) 457 US 132
14. Bowsher v. Synar, 478 US (1986) 714, 731
15. Carmichael V. S. Coal Co., (1937) 301 US 495
16. Chandler V. Director of Public Prosecutions [1964] AC 763
17. Clinton v. City of New York, 524 U. S. 417-450 (1998)
18. College Savings Bank V. Florida Prepaid Post-Secondary Education Expense Board, 119 S. Ct. 2219 (1999)
19. Dames & Moore v. Regan, 453 US 654, 686 (1981)
20. Dobbs v. Jackson Women's Health Organization, No. 19-1392, 597 U.S. ____ (24 June 2022)
21. Douglas V. Verney, (1995) 25 *Publius* 81, 81-95

22. *Ex parte* Grossman, 267 U. S. 87–119 (1925)
23. Florida Growers V. Paul, (1963) 373 US 132
24. Gonzales V. Raich, 545 US 1 (2005)
25. Haji Saifullah Case
26. Hamdi V. Rumsfeld, 542 US 507 (2004)
27. Hopkins V. Cleary, (1935) 296 US 315
28. Jamat-e-Islami V. Federation of Pakistan, PLD 2008 SC 30
29. Kapur Singh V. Union of India, AIR 1984 SC 1410
30. Kentucky V. Dennison, (1982) 456 US 742
31. Kuldip Nayar v. UOI AIR 2006 SC 3127, (2006) 7 SCC 1.
32. Labatt Breweries of Canada V. Attorney General of Canada, Supreme Court of Canada [1980] 1 S.C.R. 914 <http://scc.lexum.umontreal.ca/en/1979/1980rcs1-914/1980rcs1-914.html>
33. Mahmood Khan Achakzai V. Pakistan, 49 PLD 426, 446-47 (1997) (Pak.)
34. Maritime Bank V. Receiver General, (1892) AC 437
35. McPherson v. Blacker, 146 U. S. 1, 27 (1892)
36. Minerva Mills V. Union of India, AIR 1980 SC 1789
37. Mistretta v. United States, 488 US 361, 401 (1989)
38. Montreal V. Montreal Street Ry., (1912) AC 333
39. Nadeem Ahmad Advocate V. Federation of Pakistan, Constitution Petition No. 08 of July 2009
40. National Labor Relations Board v. Noel Canning *et al* 705 F. 3d 490US (Decided: June 26, 2014) pp-5-33
41. Nawaz Sharif Case
42. New Process Steel, L. P. v. NLRB, 560 US (2010) 674–688
43. Pulp & Power Co. V. Manitoba Free Press, (1923) AC 326
44. R v. Attorney-General, [2005] UKHL 56, [2005]4 All ER 1253
45. R V. Comptroller-General of Patents, *ex parte* Tomlinson [1899] 1 QB 909 at 913-4
46. R V. Crown Zellerbach Canada Ltd., Supreme Court of Canada, [1988] 1 S.C.R.401
47. R v. Parole Board and Another, [2005] EWHC 5469 (Admin), [2005] 1 All ER 11
48. R v. Secretary of State for Home Department, [2005] UKHL 69, 1 All ER 219 at 19, 28
49. R v. Secretary of State for Work and Pensions, [2005] UKHL 29, [2006] 1 All ER 487 at 32
50. R.M.D.C. V. Union of India, AIR 1957 SC 628
51. Rapanos United States, 547 US 715 (2006)
52. Secretary of State for the Home Department V. Rahman, [2002] UKHL 47, [2002] 1 All ER 122 at 139
53. Shamsher V. State of Punjab, AIR 1974 SC 2192
54. Singh v. United Kingdom, [1996] 22 EHRR 1
55. Sinnott v. Minister of Education, [2001] 1 IR 545
56. State of Karnataka V. Union of India, AIR 1978 SC 68
57. State of West Bengal V. Union of India, AIR 1963 SC 1241
58. State V. Zia-ur-Rahman, PLD 1973 SC 49
59. Steward V. Davis, (1938) 301 US 548
60. Stuart v. Laird, 1 Cranch 299 (1803)
61. Syed Zafar Ali Khan V. General Pervez Musharraf, Chief Executive of Pakistan, PLD 2000 SC 869
62. T.D. and Others V. the Minister of Education, [2001] 4 IR 259
63. Tariq Rahim Case
64. The Federation of Pakistan V. Maulvi Tazimuddin Khan, PLD 1955 FC 240
65. The Pocket Veto Case, 279 US (1929) 655-690.
66. The State V. Dosso, PLD 1958 SC 533

67. Tika Iqbal Muhammad Khan V. General Pervez Musharraf, Chief of Army Staff, Rawalpindi and Others, PLD 2008 SC 615
68. Union Colliery V. Bryden, (1899) AC 580
69. United States v. Mid-West Oil Co., 236 U. S. 459–474 (1915)
70. United States V. Morrison 529 US 598 (2000)
71. Wajihuddin Ahmad V. Chief Election Commissioner, PLD 2008 SC 25
72. Youngstown Sheet & Tube Co. v. Sawyer, 343 US 579–611 (1952)

WEEK-5: THE EMERGENCE OF THE DOCTRINE OF NEW SEPERATION OF POWERS AND THE CONSTITUTIONS OF THE SAARC NATION-STATES

- The General Principles of the Separation of Powers [The Normative Hierarchy of the Branches, 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, Election Commissions, Vigilance Bodies, Media, etc)]. 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.

QUESTIONS IN FOCUS:

- ⇒ Do you believe that the division of powers is required?
- ⇒ How does the separation of powers differ from the New Separation of Powers?
- ⇒ How significant is the UK’s doctrine of the separation of powers?
- ⇒ Is there any normative hierarchy among the branches?
- ⇒ What are the general principles of the separation of powers?
- ⇒ What are the groups that make up each institution?
- ⇒ What are the primary institutions that the doctrine covers, and who makes up each of them? How to describe each institution’s function?
- ⇒ What does the modern theory of separation of powers mean?
- ⇒ What does the separation of powers concept entail?
- ⇒ What does the *Sub-judice* Rule mean? [*Is a rule that prohibits MPs or Lords from talking about anything relevant to an active legal case?*]
- ⇒ What is the idea of good governance and Weberian model?
- ⇒ What were reasons responsible for creating separation of powers?
- ⇒ When Baron Montesquieu claimed that “no liberty” could exist, what did he mean?
- ⇒ Which of the following institutions has a “everyday” interaction with the others? [*Executive v. Judiciary, Judiciary v. Legislature, and Legislature v. Judiciary*]

SAARC CONSTITUTIONAL TEXTS:

1. The Constitution of Islamic Emirate of Afghanistan [Afghanistan’s Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964 consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]
 - The Constitution of Afghanistan, 2004, Articles- 1 (1)
2. The Constitution of Bangladesh, 1972, Articles-1
3. The Constitution of Bhutan, 2008, Articles-

4. The Constitution of India, 1950, Articles 245, 248, 250, 253, 256
5. The Constitution of Maldives, 2008, Articles- 230-235
6. The Constitution of Nepal, 2015, Articles-57 (1) & 109, 57 (2), 162 (4), 197, 231 (3), 232 (7), 274 (4), and 296 (4)
7. The Constitution of Pakistan, 1973, Articles-141-159
8. The Constitution of Sri Lanka, 1978, Articles- 2,
- ❖ **C/F: The Constitutions of USA, UK, Canada, Australia & South Africa, Preambles with Articles, etc.**

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- 5 Vicki C. Jackson and Mark V. Tushnet, *Comparative Constitutional Law*, Foundation Press, pp 791-803, 825-827, 843-858.

RECOMMENDED READINGS:

1. Cynthia Farid, ‘Perceiving law without colonialism: Revisiting courts and constitutionalism in South Asia’ (2023) *International Journal of Law in Context* 1-18. DOI:10.1017/S1744552323000083
2. D. D. Basu, *Introduction to the Constitution of India*, Lexis-Nexis-Butterworth-Wadhwa, 2008, pp. 51-66, 327-334, 344-351, 357-367.
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37. Montreal V. Montreal Street Ry., (1912) AC 333
38. Nadeem Ahmad Advocate V. Federation of Pakistan, Constitution Petition No. 08 of July 2009
39. National Labor Relations Board v. Noel Canning *et al* 705 F. 3d 490US (Decided: June 26, 2014) pp-5-33
40. Nawaz Sharif Case
41. New Process Steel, L. P. v. NLRB, 560 US (2010) 674–688
42. Pulp & Power Co. V. Manitoba Free Press, (1923) AC 326
43. R v. Attorney-General, [2005] UKHL 56, [2005]4 All ER 1253
44. R V. Comptroller-General of Patents, *ex parte* Tomlinson [1899] 1 QB 909 at 913-4
45. R V. Crown Zellerbach Canada Ltd., Supreme Court of Canada, [1988] 1 S.C.R.401
46. R v. Parole Board and Another, [2005] EWHC 5469 (Admin), [2005] 1 All ER 11
47. R v. Secretary of State for Home Department, [2005] UKHL 69, 1 All ER 219 at 19, 28
48. R v. Secretary of State for Work and Pensions, [2005] UKHL 29, [2006] 1 All ER 487 32
49. R.M.D.C. V. Union of India, AIR 1957 SC 628
50. Rapanos United States, 547 US 715 (2006)
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
54. Sinnott v. Minister of Education, [2001] 1 IR 545
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)
69. United States v. Morrison 529 US 598 (2000)
70. Wajihuddin Ahmad v. Chief Election Commissioner, PLD 2008 SC 25
71. 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 NATION-STATES

- 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, International Jurisdictions, etc]. 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 hereinabove or otherwise shall be attended upon in detail*)

QUESTIONS IN FOCUS:

- ⇒ What are the paradigms of Treaty-Making and implementation thereof in South Asia?
- ⇒ What are Multilateral Treaties and the Common Good in the of SAARC context?
- ⇒ What is the place of Human Rights Treaties in the SAARC Constitutions?
- ⇒ What is Constitution and Harmonic Convergence in South Asian Constitutional order?
- ⇒ What is Soft Law? What are the challenges to the Relationship between Treaties and Soft Law?
- ⇒ What is Foreign Policy? What are the Core Principles of Foreign Policy in South Asia?
- ⇒ What are the dimensions of Doing Foreign Policy in South Asia & Elsewhere?
- ⇒ Does Pakistan Foreign Policy at loggerheads with Indian Foreign Policy? Reasons?
- ⇒ What is the phenomenon of Rogue States in Post-Cold War Era?
- ⇒ Is there any feasibility of Common Foreign Policy of SAARC Nations in International Matters?

SAARC CONSTITUTIONAL TEXTS:

1. The Constitution of Islamic Emirate of Afghanistan [Afghanistan's Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964 consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]
 - The Constitution of Afghanistan, 2004, Articles- 7, 8 (Foreign Policy) 10, 11 (Trade),
2. The Constitution of Bangladesh, 1972, Articles-
3. The Constitution of Bhutan, 2008, Articles-
4. The Constitution of India, 1950, Articles- 253,301-304
5. The Constitution of Maldives, 2008, Articles-
6. The Constitution of Nepal, 2015, Articles-
7. The Constitution of Pakistan, 1973, Articles-
8. The Constitution of Sri Lanka, 1978, Articles-
- ❖ **C/F: The Constitutions of USA, UK, Canada, Australia & South Africa, Preambles with Articles, etc.**

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).
3. Articles 53 and 64 of the Vienna Convention on the Law of Treaties 1969.
4. Jennings, R. and Watts, A. Oppenheim's International Law (London: Longman, 1996) [ISBN 0582302455] ninth edition, pp.22–52.
5. Ryan K Beasley, Juliet Kaarbo, Jeffrey S Lantis and Michael T Snarr, *Foreign Policy in Comparative Perspective: Domestic and International Influences on State Behavior*, 2012

RECOMMENDED READINGS:

- 1 Abdul Sattar, *Pakistan's Foreign Policy; A Concise History*, 2007
- 2 Aparna Pande, *Explaining Pakistan's Foreign Policy: Escaping India*, Routledge Contemporary South Asia Series, 2011.
- 3 Steve Smith, Amelia Hadfield & Tim Dunne, *Foreign Policy: Theories, Actors, Cases*, 2008.
- 4 Syed Anwar Husain, *Bangladesh National Scenario Foreign Policy and SAARC*, 2003
- 5 Nicaragua case, ICJ Reports (1986), Paras 175–190 (Harris, pp.893–898).
- 6 North Sea continental shelf cases, ICJ Reports (1969), Paras 70–78 and 81 (Harris, pp.24–29).
- 7 The nuclear tests cases, ICJ Reports (1974), Paras 43–51 (Harris, pp.795–799).
- 8 Statement on Principles Applicable to the Formation of General Customary Law, International Law Association, London 2000 part IV.
- 9 Lawrence Saez, *The South Asian Association for Regional Cooperation (SAARC): An Emerging Collaboration Architecture*, 2011.

ADVANCED READINGS:

- 1 David M. Malone, *Does the Elephant Dance? Contemporary Indian Foreign Policy*, 2012
- 2 Eugenia Baroncelli, *Conflict and Regional Intergration between Pakistan and India: An Inquiry into the Economic Gains and the Peace Dividend from SAFTA*, 2012.
- 3 Foreign Service Institute, *Indian Foreign Policy: Challenges and Opportunities*, 2007.
- 4 Gordon Silverstein, *Imbalance of Powers: Constitutional Interpretation and Making of American Foreign Policy*, 1996.
- 5 Joyce P. Kaufman, *A Concise History of US Foreign Policy*, 2010.
- 6 Lloyd I. Rudolph and Susane Rudolph, *Making US Foreign Policy toward South Asia: Regional Imperatives and the Imperial Presidency*, 2008.
- 7 Valerie M. Hudson, *Foreign Policy Analysis: Classic and Contemporary Theory*, 2006.

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
3. Aramachine V. State of Rajasthan, AIR 1992 Raj 7, para 10, 14, 17.
4. Atiabari Tea Co. Ltd. V. State of Assam, AIR 1961 SC 232
5. Automobile Transport (Rajasthan) Ltd. V. State of Rajasthan, AIR 1962 SC 1406
6. Indian Cement V. State of Andhra Pradesh, AIR 1988 SC 567
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
9. State of Kerala V. A.B. Abdul Khadir, AIR 1970 SC 1912
10. State of Madras V. N.R. Natrajan Mudaliar, AIR 1969 SC 147
11. State of Tamil Nadu V. Sanjeetha, AIR 1993 SC 237
12. United States V. Lopez 514 US 549 (1995)
13. Video Electronics V. State of Punjab, AIR 1990 SC 820

MID SEMESTER EXAMINATION

WEEK-7: THE RISE OF TRANSNATIONAL CONSTITUTIONAL LAWS, NORMS AND SOCIOLOGY OF CONSTITUTIONAL LAW IN THE COMPARATIVE CONSTITUTIONAL STRUCTURAL CONTINUITIES IN THE SAARC NATIONS

- The Rise of Transnational Constitutional Laws (TCL) [Norms, Functions, Processes, Arenas, and Approaches (Historical & Sociological)]. The Interaction between National and International Courts [The Domestic Transformation of International Law, The Patterns of Institutional Formation through Historical Junctures in National Societies, The Social Processes of National States into Transnational Constitutional Order, and Envisioning Global Constitutional Norms for Stabilizing Framework for the Functions of State Institutions]. The Constitutional Structures [Forms of Government; Parliamentary, Presidential, and Hybrid Models, Exploring the Subterranean Continuities between National Constitutional Law and Contemporary Models of Global Law, The Comparative Constitutional Structures & Their Evolution]. The Concept of Constitutional Autochthony. The Idea of Living Originalism in the SAARC [Parliamentary Governance v. Presidential Governance, The Cabinet Government and Legislative-Executive Relations Matrix]. Theory of Unamendable Basic Structure [UBS] of the Constitutions in the SAARC Nations [Form and Function in Comparative Constitutional Law Contexts]. The Constitutional Breakdowns [Delegated Legislation, The Labyrinth of Constitutionality of Military Courts in South Asia, The Role of Courts in Civil-Military Governments in South Asia] and Summation. (*Any one issue referred hereinabove or otherwise shall be attended upon in detail*)

QUESTIONS IN FOCUS:

- ⇒ What are the Transnational Constitutional Norms and their reflection and implementation in the Constitutional Governance?
- ⇒ How to address and understand the benefits of the rise of transnational constitutional laws?
- ⇒ What is the interaction between national and international courts and how does it facilitate the domestic transformation of international law?
- ⇒ How to analyse the patterns of institutional formation through historical junctures in national societies?
- ⇒ How to examine the social processes that has encapsulated national states into a progressively transnational constitutional order, and how does it explain the growth of global constitutional norms for evolving a stabilizing framework for the functions of state institutions?
- ⇒ What are distinctive historical and sociological approaches to examine the deep continuities between national constitutional law and contemporary models of global law?
- ⇒ What is the contribution these developments to the sociology of constitutional law and to the sociology of post-national legal processes and to the sociology of human rights law?
- ⇒ What is Self-foundation of social systems and Self-constraint of growth pressures?
- ⇒ What are the Autochthonic Issues in the context of the Boundaries, Nationalities, Refugees and Migrants?
- ⇒ What is 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?

SAARC CONSTITUTIONAL TEXTS:

1. The Constitution of Islamic Emirate of Afghanistan [Afghanistan's Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964 consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]
 - The Constitution of Afghanistan, 2004, Articles-

2. The Constitution of Bangladesh, 1972, Articles-
3. The Constitution of Bhutan, 2008, Articles-
4. The Constitution of India, 1950, Articles-
5. The Constitution of Maldives, 2008, Articles-
6. The Constitution of Nepal, 2015, Articles-
7. The Constitution of Pakistan, 1973, Articles-
8. The Constitution of Sri Lanka, 1978, Articles-
- ❖ **C/F: The Constitutions of USA, UK, Canada, Australia & South Africa, Preamble with Articles, etc.**

REQUIRED READINGS:

1. Ayesha Jalal, *Democracy and Authoritarianism in South Asia: A Comparative and Historical Perspective* (Contemporary South Asia)
2. Chris Thornhill, *A Sociology of Constitutions: Constitutions and State Legitimacy in Historical-Sociological Perspective*, (Cambridge Studies in Law and Society),
3. Juan J. Linz, "Presidential or Parliamentary Democracy: Does it Make a Difference?" in *The Failure of Presidential Democracy* (Johns Hopkins, 1994), 3-36.
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*,
- 2 Cody Moon, *Comparative Constitutional Analysis: Should the United States Supreme Court Join the Dialogue?* Journal of Law & Policy [Vol. 12:229
- 3 Giovanni Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes*, 1994.
- 4 Gunther Teubner, *Constitutional Fragments: Societal Constitutionalism and Globalization*, (Oxford Constitutional Theory)
- 5 Nico Krisch, *Beyond Constitutionalism: The Pluralist Structure of Post-national Law* (Oxford Constitutional Theory)
- 6 Ran Hirschl, *The Secularist Appeal of Constitutional Law and Courts: A Comparative Account*, ReligioWest Kick-off Meeting Paper, 2011.
- 7 Stavsky, Mark M. (1983), *The Doctrine of State Necessity in Pakistan*, Cornell International Law Journal, Vol. 16 Issue. 2, Article 2.

ADVANCED READINGS:

1. Elizabeth Wicks, *The Evolution of a Constitution: Eight Key Moments in British Constitutional History*, 2006.
2. Jan Sikuta and Eva Hubalkova, *European Court of Human Rights: Case-Law of the Grand Chamber 1998-2006*, (2007)
3. Jeffrey L. Dunoff & Joel P. Trachtman (Editors), *Ruling the World? Constitutionalism, International Law and Global Governance*,
4. K. J. Newman, *The Constitutional Evolution of Pakistan*, International Affairs, 38:3, 1962, 353-364.
5. Ludger Helms, "Five Ways of Institutionalizing Political Opposition: Lessons from the Advanced Democracies," 2004, 22-30, 40-45, 49-54.
6. Mark W. Janis, Richard S. Kay and Anthony W. Bradley, *European Human Rights Law: Text and Materials*, 2008.

7. Martin Loughlin and Petra Dobner, *The Twilight of Constitutionalism*, (Oxford Constitutional Theory), Oxford University Press.
8. Vernon Bogdanor, *The Monarchy and the Constitution*, 1998.
9. Walter Bagehot, *The English Constitution* (2nd ed., 1873), 48-60 (“The Cabinet”).

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)
2. Australia Capital Television Pty. Ltd. v. Commonwealth, (1992) 177 C.L.R. 106
3. Beauharnais v. Illinois, 343 U.S. 250 (1952)
4. Gérard V. La Forest, 46 ME. L. REV. 211, 212-13 (1994). The Use of American Precedents in Canadian Courts
5. I.C. Golak Nath and others v. State the Punjab and other (AIR 1967 SC 1643)
6. I.R. Coelho v. State of Tamil Nadu (AIR 2007 SC 861)
7. Indira Nehru Gandhi v. Shri Raj Narain (AIR 1975 SC 2299)
8. Kesavananda Bharati v. State of Kerala (AIR 1973 SC 1641)
9. Lavigne v. Ontario Public Service Employees Union, [1991] 2 S.C.R. 211.
10. Mabo v. Queensland [No.2], (1992) 175 C.L.R. 1.
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)
13. Nadeem Ahmed, Advocate v. Federation of Pakistan (PLD 2010 SC 1165)
14. Sajjan Singh v. The State of Rajasthan (AIR 1965 SC 845)
15. State v. Makwanyane,
16. The Queen v. Keegstra, [1990] 3 S.C.R. 697.
17. Van der Peet v. The Queen, [1996] 2 S.C.R. 507
18. Waman Rao v. Union of India (AIR 1981 SC 271)
19. Zia-ur-Rehman Case [(PLD 1973 SC 49)]
20. Fauji Foundation v. Shamimur Rehman (PLD 1983 SC 457)
21. Sabir Shah v. Federation of Pakistan (PLD 1994 SC 738)
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

- Rights [Definition, Nature, and Justification, Human Rights in Constitutional Order and Political Practice in South Asia]. The Structure and Scope of Constitutional Rights [Rights Holders & Defenders, Rights & Political Ideology, Global Rights Discourse and Criticism of Rights]. Understanding the Evolution of State Responsibility in the Reconstruction of Comparative Constitutional Human Rights Jurisprudence in the SAARC Context. The Constitutional Human Rights of the People and the Role of the SAARC Judiciaries in their Protection [The Right to Life & Liberty, The Right to Diversity & Identity, Employment Rights, the Right to Free Expression in Global World Order (Broadcasting Law), the Right to Privacy, the Right to Protection against Hate & Racist Speech, Free Press, Racial Equality, Freedom of Religion, the Right to Health, Gender Equality, Reproductive Rights, Victims’ Rights, the Right to Fair Trial Guarantee, Rights of Children, Civil and Political Rights, Socio-Economic and Cultural Rights in Established and Emerging Democracies, the Right to Leave and Return]. The Constitutional Protection of Same-Sex Partnerships and LGBTQIA+ Rights under CCLSAARCN etc. The Safeguards against the Abuse of Power, Constitutional Guarantees, Prohibitions and the Institutional Safeguards (NHRCs).

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

QUESTIONS IN FOCUS:

- ⇒ 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**
 - ↪ *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992)
 - ↪ *Virginia v. Black*, 538 U.S. 343 (2003)
 - ↪ *Jersild v. Denmark*, European Court of Human Rights (Sept. 23, 1994) (available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=jersild&sessionid=12906962&skin=hudoc-en>)

- ⇒ **Freedom of Speech Part II: Defamation, Free Press, and Privacy**
 - ↪ *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)
 - ↪ *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**
 - ↪ *Dandridge v. Williams*, 397 U.S. 471 (1970)
 - ↪ Frank B. Cross, *The Error of Positive Rights*, 48 UCLA L. Rev. 857 (2001)
 - ↪ Mark Tushnet, "Enforcing Social and Economic Rights," Chapter-8, in WEAK COURTS, STRONG RIGHTS: JUDICIAL REVIEW AND SOCIAL WELFARE RIGHTS IN COMPARATIVE CONSTITUTIONAL LAW (Princeton 2008)

SAARC CONSTITUTIONAL TEXTS:

1. The Constitution of Islamic Emirate of Afghanistan [Afghanistan's Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964 consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]
 - The Constitution of Afghanistan, 2004, Preamble with Articles 6, 7, 8, 22-59
2. The Constitution of Bangladesh, 1972, Preamble with Article 26-47A
3. The Constitution of Bhutan, 2008, Preamble with Articles
4. The Constitution of India, 1950, Preamble with Articles 12-32
5. The Constitution of Maldives, 2008, Preamble with Articles 16-69(FR), 189 (HRC)
6. The Constitution of Nepal, 2015, Preamble with Articles

7. The Constitution of Pakistan, 1973, Preamble with Articles 8-28
8. The Constitution of Sri Lanka, 1978, Preamble with Articles 10-17
- ❖ **C/F: The Constitutions of USA, UK, Canada, Australia & South Africa, Preambles with Articles, etc.**

REQUIRED READINGS:

1. Craig, Paul and de Bruca, Grainne, *EU Law – Text, Cases and Materials* (Oxford, UK: Oxford University Press 2015)
2. Dworkin, Ronald, *‘Taking Rights Seriously’* (Cambridge, Mass.: The Belknap Press of Harvard University Press)
3. Friedrich Kubler, *‘How Much Freedom for Racist Speech?’* (1998) *Transnational Aspects of a Conflict of Human Rights*, 27 *Hofstra L. Rev.* 335
4. Gardbaum, Stephen, *‘Human Rights as International Constitutional Rights’* (2008) 19 *European Journal of International Law* 4, 749
5. Harbo, Tor-Inge, *‘The Function of the Proportionality Principle in EU Law’* (2010) 16 *European Law Journal* 2, 158
6. Jamal Greene, Madhav Khosla, *‘Constitutional Rights in South Asia: Introduction’* (2018) 16 *International Journal of Constitutional Law* 2 2018 470–474,
<https://doi.org/10.1093/icon/moy043>
7. James Q. Whitman, *‘The Two Western Cultures of Privacy: Dignity Versus Liberty’* (2004) 113 *Yale L. J.* 1151
8. Zucca, Lorenzo, *‘Constitutional Dilemmas: Conflicts of Fundamental Legal Rights in Europe and the USA’* (Oxford, UK: Oxford University Press 2007)

RECOMMENDED READINGS:

- 1 Andrew Clapham, *Human Rights: A Very Short Introduction* (Oxford University Press, 2007).
- 2 Henry J. Steiner, Philip Alston and Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals* 3rd ed (Oxford: Oxford University Press, 2007), ISBN: 9780199279425
- 3 Hurst Hannum, S. James Anaya, and Dinah Shelton (eds.), *International Human Rights: Problems of Law, Policy, and Practice* (Aspen, 5th edition 2011).
- 4 Marie-Bénédicte Dembour, *“What Are Human Rights? Four Schools of Thought,”* *Human Rights Quarterly* (Feb. 2010).
- 5 Rita Manchanda, *The No Nonsense Guide to Minority in South Asia*, 2009.
- 6 Byrne, I., & Hossain, S, *‘South Asia: Economic and Social Rights Case Law of Bangladesh, Nepal, Pakistan and Sri Lanka’* (2009) In M. Langford (Ed.), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* 125-143 Cambridge: Cambridge University Press. DOI:10.1017/CBO9780511815485.008

ADVANCED READINGS:

- 1 Bjorn Dressel, *The Judicialization of Politics in Asia*, (Routledge Law in Asia), 2012.
- 2 Hsien-Li Tan, *The Asian Inter-governmental Commission on Human Rights: Institutionalizing Human Rights in Southeast Asia*, 2011.
- 3 Jack Donnelly, *International Human Rights* (Dilemmas in World Politics), 2012.
- 4 Javaid Rehman, *International Human Rights Law: A Practical Approach* 2nd ed (London: Longman 2009), ISBN: 9781405811811
- 5 Olivier de Schutter, *International Human Rights Law*, Cambridge University Press, 2010.
- 6 Paul L. Hoffman and Christopher N. Camponovo, *International Human Rights Lawyering, Cases and Materials* (American Casebooks), 2008

- 7 Rajat Ganguly, *Autonomy and Ethnic Conflict in South and South-East Asia* (Asian Security Studies), 2013.
- 8 Randall Peerenboom, *Human Rights in Asia: A Comparative Legal Study of Twelve Asian Jurisdictions, France and the USA*, 2006.
- 9 Richard Bilder, *Guide to International Human Rights Practice*, (Hannum, ed., Transnational, 2004); Chapter 1, “*An Overview of International Human Rights Law*,” (pp. 3-18).
- 10 Thomas Davis and Brian Galligan, *Human Rights in Asia*, 2011.

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
2. Anwar Ali Sarkar V. State of West Bengal, AIR 1952 SC 75
3. Aruna Ramchandra Shanbaug V. Union of India and Others, JT 2011 (3) SC 300
4. Barrios Altos V. Peru, IACHR Ser. C No. 75 (14 March 2001), para 189
5. Bhagwan Dass V. State (NCT) of Delhi, 2011 (5) 498
6. Bombay Hawkers Union V. B.M.C., (1985) 3 SCC 528
7. Budayeva V. Russia, [2008] ECHR
8. Center for PIL V. Union of India, 1995 Sppl. (3) SCC 382
9. Cerc V. Union of India, AIR 1995 SC 922
10. Charles Shobhraj V. Delhi Admin., (1978) 4 SCC 104
11. D.K. Basu V. State of West Bengal, (1997) 1 SCC 4116
12. Dandridge V. Williams, 397 U.S. 471 (1970)
13. Darshan Masih V. The State, (1990) Pakistan
14. Deshaney V. Winnebago, 489 US 189 (1989)
15. Fadeyeva V. Russia, [2005] ECHR 376
16. Guerra V. Italy, (1998) 26 EHRR 357
17. Haynes V. Alfred A. Knopf Inc., 8 F.3d 1222 (7th Cir. 1993)
18. Hich Lal Tiwari V. Kamala Devi and Others, (2001) 6 SCC 496
19. Hussainara Khatoon V. Home Secretary, (1980) 1 SCC 81
20. Indian Council for Enviro-Legal Action V. Union of India, (1996) 5 SCC 281
21. Indian Express Newspaper (Bombay) V. Union of India, AIR 1986 SC 515
22. Indira Sawhney V. Union of India, AIR 2000 SC 498
23. Jersild V. Denmark, September 23, 1994
24. Kapila Hingorani V. Union of India, (2003) 6 SCC 1
25. Khatri V. State of Bihar, AIR 1966 SC 928
26. Khudiram Chakma V. Union Territory of Arunachal Pradesh, AIR 1992 GAU 105
27. Lata Singh V. State of Uttar Pradesh & Another, 2006 (5) SCC 475
28. Lopez Ostra V. Spain, (1994) 20 EHRR 277
29. Lucy V. State of Goa, AIR 1990 Bom. 355
30. M.C. Mehta V. Union of India, (1988) 1 SCC 471
31. M.C. Mehta V. Union of India, (1991) 2SCC 353
32. M.H. Hoskot V. State of Maharashtra, AIR 1978 SC 1548
33. Mariela Viceconte V. Ministry of Health and Social Welfare, Case No. 31.777/96 (1998) (Argentina)
34. Minister of Health V. Treatment Action Campaign(TAC), (2002) 5 SA 721 (SA)
35. National Human Rights Commission V. State of Arunachal Pradesh, (1996) 1 SCC 742
36. New York Times Co. V. Sullivan 376 US 254 (1964)
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

41. P.Katara V, Union of India, (1998) 4 SCC 286
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. Romesh Thapar 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
54. Sakshi V. Union of India, (2004) 5 SCC 518
55. Shantisar Builders V. L. Narayan, (1991) 1 SCC 520
56. Sheela Barse V. State of Maharashtra, (1983) 2 SCC 96
57. Simon, Julio Hector y otros, 328 Fallos 2056 (2005)
58. Soering V. UK, (1989) 11 EHRR 439
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)7 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
67. Tatar V. Romania, [2009] ECHR Para 88
68. Unni Krishnan V. State of Andhra Pradesh, (1993), 1 SCC 645
69. Velasquez Rodriguez V. Honduras, Case 7920, Ser. C., No. 4, IACHR 35 OEA/ser. L/V/III. 19 doc. 13 (1988)
70. Vineet Narain V. Union of India, 1998 Cri. L.J. 1208
71. Virginia V. Black, 538 US 343 (2003)
72. Vishakha V. State of Rajasthan, 1997, 6 SCC 241

WEEK-9: THE PRINCIPLES OF COMPARATIVE CONSTITUTIONAL LAW INTERPRETATION

- The Principles and Theories of Constitutional Interpretation [Legitimacy and Interpretation, The Values and Challenges of Comparative Legal Reasoning, The Process of Judicial Decision-Making in South Asia]. The Emergence of the Doctrine of Necessity [The Judiciary in the SAARC Nations and its Response in Situations of Assertion and Subjugation]. Law and the Comparative Constitutional Adjudication and the Courts [The Judicial Engagement with Comparative Constitutional Law Perspective]. Docket Management and Institutional Success of Constitutional Courts in the SAARC Nations and Summation.

QUESTIONS IN FOCUS:

- ⇒ 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?

SAARC CONSTITUTIONAL TEXTS:

1. The Constitution of Islamic Emirate of Afghanistan [Afghanistan’s Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964 consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]
 - The Constitution of Afghanistan, 2004, Articles-
2. The Constitution of Bangladesh, 1978, Articles- 94, 96(3) (SJC), 127-132 (C & G)
3. The Constitution of Bhutan, 2008, Articles-
4. The Constitution of India, 1950, Articles- 148-151 (C & G)
5. The Constitution of Maldives, 2008, Articles- 157 (JSC), 209 (AG)
6. The Constitution of Nepal, 2015, Articles-
7. The Constitution of Pakistan, 1973, Articles-
8. The Constitution of Sri Lanka, 1978, Articles-
- ❖ **C/F: The Constitutions of USA, UK, Canada, Australia & South Africa, Preambles with Articles, etc.**

REQUIRED READINGS:

- 1 Mark Tushnet, *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law*.
- 2 Mark V. Tushnet, *Interpreting Constitutions Comparatively: Some Cautionary Notes, with Reference to Affirmative Action*, Connecticut Law Review, Vol. 36 Spring 2004, Number 32004
- 3 Paul Gewirtz, *Approaches to Constitutional Interpretation: Comparative Constitutionalism and Chinese Characteristics*, HKLJ, Vol. 31 Part 2, 2001 pp. 200-223
- 4 Saxena, S., & McClure, A, ‘*Law, Courts, and Constitutions in Twentieth-Century South Asia*’ (2023) 41 Law and History Review 2 241-251 DOI:10.1017/S0738248023000093
- 5 Sujit Choudhry, *The Migration of Constitutional Ideas*.

RECOMMENDED READINGS:

1. Jo Eric Khushal Murkens, *Comparative Constitutional Law in the Courts: Reflections on the Originalists’ Objections*, LSE Law, Society and Economy Working Papers 15/2008
2. Liora Lazarus, *Reasoning Rights: Comparative Judicial Engagement*, 2013
3. Markku Kiikeri, *Comparative Legal Reasoning and European Law*, Publisher: Springer-Verlag ISBN-13: 9781402002847 New York, LLC, 2001.
4. Markku Kiikeri, *Comparative Legal Reasoning*, 1980.
5. P.S. Atiyah and Roberts S. Summers, *Form and Substance in Anglo-American Law: A Comparative Study in Legal Reasoning, Legal Theory and Legal Institutions*, 1987.

6. R.H. Fallon, Jr., *A Constructivist Coherence Theory of Constitutional Interpretation*, 100 *Harvard Law Review*, 1189, (1987)
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>
8. Vicki C. Jackson, *Constitutions as "Living Trees"? Comparative Constitutional Law and Interpretive Metaphors*, *Fordham Law Review*, Vol. 75, 2006
9. Vicki Jackson, *Constitutional Engagement in a Transitional Era*, 2013.

ADVANCED READINGS:

1. Cass R. Sustein, David Schkade, Lisa M. Ellman and Andres Sawicki, *Are Judges Political? : An Empirical Analysis of the Federal Judiciary*, 2006.
2. Clark M. Neilly III, *Terms of Engagement: How Our Courts Should Enforce the Constitution's Promise of Limited Government*, 2013.
3. Edwin Viera, *How to Dethrone the Imperial Judiciary*, 2004.
4. Gerard Conway, *The Limits of Legal Reasoning and the European Court of Justice*, Cambridge University Press.
5. Giovanni Sartori, Pompeu Aasanovas, Mariangela Biasiotti and Meritxell Fernandez-Barrera, *Approaches to Legal Ontologies: Theories, Domains, Methodologies*, 2013
6. Hanns Hohmann, *The Nature of Common Law and Comparative Study of Legal Reasoning*, *The American Journal of Comparative Law*, Vol. 38, No. 1, Winter, 1990.
7. Joseph E. David, *Legal Comparability and Cultural Identity: The Case of Legal Reasoning in Jewish and Islamic Traditions*, *Electronic Journal of Comparative Law*, Vol. 14.1 (May 2010)
8. Justin Crowe, *Building the Judiciary: Law, Courts and the Politics of Institutional Development*, 2012.
9. Kari A. Rogvi, *West-Nordic Constitutional Judicial Review: A Comparative Study of Scandinavian Judicial Review and Judicial Reasoning*, 2013.
10. Keith E. Whittington, *Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court and Constitutional Leadership*. 2009.
11. Luiz Eduardo Ribeiro Salles, *Forum Shopping in International Adjudication: The Role of Preliminary Objections*, 2013.
12. Markku Suksi, *Sub-State Governance through Territorial Autonomy: A Comparative Study in Constitutional Law of Powers, Procedures...*, 2011.
13. Rebecca Lefler, *A Comparison Of Comparison: Use Of Foreign Case Law As Persuasive Authority By The United States Supreme Court, The Supreme Court Of Canada, And The High Court Of Australia*, *Southern California Interdisciplinary Law Journal*, Vol. 11:165, 2001

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

1. *Allen v. Wright*, 468 US 737 (1984)
2. *Asma Jilani v. Government of Punjab* (1972)
3. *Begum Nusrat Bhutto v. Chief of Army Staff* (1977)
4. *Benazir Bhutto v. Federation of Pakistan* (1997)
5. *Brewer v. Scalia* (Debate on the Article 39 of the South African Constitution Article 142, Para 2 of the Constitution of Serbia)
6. *Federation of Pakistan v. Muhammad Saifullah Khan* (1989)
7. *Federation of Pakistan v. Tamizuddin Khan* (1955)
8. *Hamdi v. Rumsfeld*, 542 US 507 (2004)
9. *Nawaz Sharif v. President of Pakistan* (1993)
10. *Tariq Rahim v. Federation of Pakistan* (1992)

11. The State v. Dosso (1958)
12. Zafar Ali Shah v. Pervez Musharraf, Chief Executive of Pakistan (2000)

WEEK-10: MISCILLANY OF FUNDAMENTAL CONSTITUTIONAL DOCTRINES, VALUES AND QUESTIONS IN THE CONSTITUTIONS OF THE SAARC NATIONS

- The Supremacy of the Constitution. The Global Rule of Law. Due Process. Procedure Established By Law. Comparative Judicial Precedent [Comparative Judicial Review and the Rise of Weak-Form of Judicial Review, Democratic Objections To Judicial Review, Constitutional Review]. Judicial Institutionalism [Independence of Judiciary, Public Interest Litigation (PIL), Judicial Minimalism and Judicial Activism, Constitutional Provisions for the Protection of the Judiciary, The Judicialization of Politics in the SAARC, etc]. Evolution of the SAARC Law with Emphasis on the Institutional Law and Litigation [Institutional Vices, Constitutional Transplants, Administrative Law etc.] South Asian Constitutional Values and Summation. (*Any one issue referred hereinabove or otherwise shall be attended upon in detail*)

QUESTIONS IN FOCUS:

- ⇒ 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 Islamic Emirate of Afghanistan [Afghanistan's Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964 consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]
 - The Constitution of Afghanistan, 2004, Articles- 81, 107, 110 & [Articles- 5, 34]
2. The Constitution of Bangladesh, 1972, Articles- 65, 68, 73A, 75, 80, 93 & [Articles-]
3. The Constitution of Bhutan, 2008, Articles- & [Articles-]
4. The Constitution of India, 1950, Articles- 105, 106, 107 & [Articles-]
5. The Constitution of Maldives, 2008, Articles 70, 83, 90 & [Articles-]
6. The Constitution of Nepal, 2015, Articles- & [Articles-]
7. The Constitution of Pakistan, 1973, Articles- 50, 57, 66, 67, 70 & [Articles-184 (3), 199]
8. The Constitution of Sri Lanka, 1978, Articles- 62, 67, 75 & [Articles-]
- ❖ **C/F: The Constitutions of USA, UK, Canada, Australia & South Africa, Preambles with Articles, etc.**

REQUIRED READINGS:

1. Gustavo Fernandes de Andrade, *Comparative Constitutional Law: Judicial Review*, 3 U Pa. J. Const. L. 977 (2001)

2. Mark Tushnet, *Alternative Forms of Judicial Review*, Ch. 2, in *Weak Courts, Strong Rights: Judicial Review And Social Welfare Rights In Comparative Constitutional Law* (Princeton 2008)
3. S.P. Sathe, *Judicial Activism: The Indian Experience*, 6 Wash. U. J. L. & Pol'y 29, 70-80 (2001) (section E on standing)
4. Meghna Sabharwal and Evan M. Berman, *Public Administration in South Asia: India, Bangladesh and Pakistan*, 2013

RECOMMENDED READINGS:

1. 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.
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.
3. Christopher M. Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, *The American Journal of Comparative Law*, vol. 44, 1996, 605-626.
4. D.D. Basu, *Comparative Constitution Law*, 2nd (ed.), Wadhwa, 2008, pp 324-350 & 403-416.
5. 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.
6. Joseph Raz, *The Rule of Law and Its Virtue*, *The Law Quarterly Review*, vol 93 (1977) 196.
7. Richard H. Fallon Jr., *The Rule of Law as a Concept in Constitutional Discourse*, *Columbia Law Review*, vol.97 (1997) 1.
8. Stephen Burbank, *What Do We Mean by Judicial Independence?* *Ohio State Law Journal*, 64:323, 2003, 323-339.
9. Lorne Neudorf, *The Dynamics of Judicial Independence: A Comparative Study of Courts in Malaysia and Pakistan*, ISBN 978-3-319-49883-6 Springer 2017.

ADVANCED READINGS:

- 1 Alexander Hamilton, Federalist No. 78 in *The Federalist Papers* (1787), also available at http://thomas.loc.gov/home/histdox/fed_78.html
- 2 Alexander M. Bickel, *The Least Dangerous Branch: The SC at the Bar of Politics*, Yale University Press.
- 3 Archibald Cox, *Court and the Constitution*, Houghton Mifflin, pp 341 -378
- 4 Charles L. Black, *The People and the Court: Judicial Review in a Democracy*, The Macmillan Company, 1960
- 5 Cheryl Saunders, *The Constitution of Australia: A Contextual Analysis* (Constitutional Systems of the World), 2011.
- 6 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 Publishing Co., New Delhi, 2005, pp 165-173.
- 7 Gustavo Fernandes De Andrade, *Comparative Constitutional Law: Judicial Review*, *University of Pennsylvania Journal of Constitutional Law*, vol.3, n.3, 2001, pp. 989-997
- 8 Jack Wade Nowlin, *The Constitutional Limits of Judicial Review: A Structural Interpretative Approach*, *Oklahoma Law Review*, 1999
- 9 Jeffrey Jowell, *The Growing International Consensus in Favour of Independent Judicial Appointment Commissions*, in *Judicial Appointments: Balancing Judicial Independence, Accountability and Appointments*, 1-10.
- 10 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)

- 11 Jeremy Waldron, *The Core of the Case Against Judicial Review*, Yale Law Journal, 115:6, April 2006, 1348-1406.
- 12 Lauren Segal, Sharon Cort and Cyril Ramaphosa, *One Law, One Nation: The Making of the South African Constitution*, 2012.
- 13 M.P. Singh, *V.N Shukla's Constitutional Law*, (11th ed.) Eastern Book Company, pp A 52 – A 56, 482-536, 614-677
- 14 Nirmalendu Rakshit, *Judicial Appointments*, Economic & Political Weekly, 39:27, July 2004, 2959-2961.
- 15 Seervai, *Constitutional Law*, pp. Vol.1, 260-275, Vol.3, 2613-2986
- 16 Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*, Cambridge University Press, pp 34 – 64, 64- 89
- 17 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.

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 in SAARC Jurisdictions. Parliamentary Privileges and Immunities in the SAARC Nations [Constitutional Conundrums, Parliamentary Crisis in SAARC Nations, Political Practices & Party Systems]. The Electoral Systems. Governance Institutions in the SAARC Countries [The Institution of the Ombudsmen in the SAARC Nations (Transparency & Good Governance), The Civil & Military Services, the Police, etc]. The Paradigm of Democratic Transition and Consolidation [Constitutions in Action, Future of Democratic Governance in the SAARC Nations, the Militarism in the SAARC, the Constitutionalism of Democratization in SAARC Countries, the Contradictions in the Transition to Democracy and Strengthening of Democracy and Rule of Law in the SAARC Region] and Summation.

QUESTIONS IN FOCUS:

- ⇒ 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 Islamic Emirate of Afghanistan [Afghanistan's Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964 consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]
 - The Constitution of Afghanistan, 2004, Articles- 81, 107, 110
 2. The Constitution of Bangladesh, 1972, Articles- 65, 68, 73A, 75, 80, 93 Articles- 118 (Elections), 133 (Services)
 3. The Constitution of Bhutan, 2008, Articles-
 4. The Constitution of India, 1950, Articles- 105, 106, 107 & Articles- 309, 315 (UPSC), 324 (Elections)
 5. The Constitution of Maldives, 2008, Articles 70, 83, 90 & Articles- 179 (Civil Service), 236 (Services), 244 (Police), 167-170, 276 (Elections), 199 (Anti-CC)
 6. The Constitution of Nepal, 2015, Articles-
 7. The Constitution of Pakistan, 1973, Articles- 50, 57, 66, 67, 70 & Articles- 103, 104 (Elections)
 8. The Constitution of Sri Lanka, 1978, Articles- 62, 67, 75
- ❖ **C/F: U.K. Public Services Code, 2010**
- ❖ **C/F: The Constitutions of USA, UK, Canada, Australia & South Africa, Preamble with Articles, etc.**

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.
2. Asia Regional Report Based on Research And Dialogue with Political Parties, *Political Parties in South Asia: The Challenge of Change*, International Institute for Democracy and Electoral Assistance, Sweden, 2007.
3. David Arnold and Peter Robb, *Institutions and Ideologies: A SOAS South Asia Reader* (Studies in Asian Topics).
4. Erskine May, *Parliamentary Practice: The Law, Privileges, Proceedings and Usage of Parliament*, W.R. Mackay et al. (eds) (London: Butterworths, 2004) (ISBN 0-406-97094-7)
5. Josh Chafetz, *Democracy's Privileged Few: Legislative Privilege and Democratic Norms in the British and American Constitutions* (Yale Univ. Press 2007) (ISBN 0-300-11325-0)
6. Neal Devins, *Congress as Culprit: How Lawmakers Spurred on the Court's Anti-Congress Crusade*, 51 Duke L. J. 435, 441-47 (2001) (section II.A. on expedited review procedures)
7. Pradeep Chhibber & Ken Kollman, *The Formation of National Party Systems*, Princeton University Press, 2004, ISBN 0-691-11931-7
8. Simon Wigley, *Parliamentary Immunity: Protecting Democracy or Protecting Corruption?* Journal of Political Philosophy, Vol. 11, No.2, pp. 23-40.
9. UK Parliament, Reports of the Joint Committee on Parliamentary Privileges in Session, HL 43-I/ HC 214-I. (London: The Stationery Office Limited, 1999).

RECOMMENDED READINGS:

- 1 Alina Rocha Menocal, *Why Electoral Systems Matter: An Analysis Of Their Incentives And Effects On Key Areas Of Governance*.

- 2 Andrew Reynolds, *Electoral Systems and the Protection and Participation of Minorities*, Minority Rights Group International, 2006.
- 3 International Ombudsman Institute, *Australasia and Pacific Ombudsman Institutions: Mandates, Competencies and Good Practice*, 2013.
- 4 Alpheus Todd, *Parliamentary Government in England: Its Origin, Development and Practical Operation*: Volume 2, 2001.
- 5 Christopher J. Kam, *Party Discipline and Parliamentary Politics*, 2011.
- 6 D.D. Basu, *Comparative Constitution Law*, 2nd (ed.), Wadhwa, 2008, pp 324-350 & 403-416.
- 7 Inc. Bar Charts, *Parliamentary Procedure*, 2002.
- 8 Marc Van der Hulst, *The Parliamentary Mandate*. (Geneva: Inter-Parliamentary Union, 2001) (ISBN 92-9142-056-5)
- 9 Mark Tushnet, *Making Constitutional Law: Thurgood Marshall and the Supreme Court, 1961-1991*, 1997.
- 10 Michael Zander, *The Law-Making Process-Law in Context*, 2005
- 11 W.O. Aydelotte, *The History of Parliamentary Behaviour*, 1977.

ADVANCED READINGS:

- 1 Alexander Hamilton, Federalist No. 78 in *The Federalist Papers* (1787), also available at http://thomas.loc.gov/home/histdox/fed_78.html
- 2 Asia Report, *Reforming Pakistan's Electoral System*, 2011
- 3 Aurel Croissant, *Electoral Politics in Southeast and East Asia: A Comparative Perspective*,
- 4 Benjamin Reilly, *Electoral Systems and Party Systems in East Asia*, *Journal of East Asian Studies* 7 (2007), 185–202
- 5 Cheryl Saunders, *The Constitution of Australia: A Contextual Analysis* (Constitutional Systems of the World), 2011.
- 6 Evan M. Berman, *Public Administration in Southeast Asia: Thailand, Philippines, Malaysia, Hong Kong and Macao*, 2012.
- 7 Gabriele Kucsko-Stadlmayer, *European Ombudsman-Institutions: A Comparative Legal Analysis Regarding the Multifaceted Realization of an Idea*, 2008.
- 8 Graham Hassall and Cheryl Saunders, *The People's Representatives: Electoral Systems in the Asia-Pacific Region*, 1997.
- 9 Hassan Abbas, Editor, *Stabilizing Pakistan Through Police Reform*, Asia Society Report by the Independent Commission on Pakistan Police Reform, 2012
- 10 Herbert Doring and Mark Hallerberg, *Patterns of Parliamentary Behaviour: Passage of Legislation Across Western Europe*, 2004.
- 11 Jeffrey Jowell, *The Growing International Consensus in Favour of Independent Judicial Appointment Commissions*, in *Judicial Appointments: Balancing Judicial Independence, Accountability and Appointments*, 1-10.
- 12 Jesse Norman, *Edmund Burke: The First Conservative*, 2013
- 13 John Gerring *Minor Parties In Plurality Electoral Systems Party Politics*, 11(1), SAGE Publications, 2005, pp. 79–107
- 14 Kishore C. Dash, *Regionalism in South Asia: Negotiating Cooperation, Institutional Structures*, 2008.
- 15 Lauren Segal, Sharon Cort and Cyril Ramaphosa, *One Law, One Nation: The Making of the South African Constitution*, 2012.
- 16 Linda Radzik, *Marking Amends: Atonement in Morality, Law and Politics*, 2011.
- 17 M.P. Singh, *V.N Shukla's Constitutional Law*, (11th Ed.) Eastern Book Company, pp. A 52 – A 56, 482-536, 614-677
- 18 Magnus Blomgren and Oliver Rozenberd, *Parliamentary Roles in Modern Legislatures*, Routledge Publication, 2012.

- 19 Mark C. Miller, Jeb Barnes and Robert A. Katzmann, *Making Policy, Making Law: An Inter-Branch Perspective*, 2004
- 20 Martha Minow, *Making All the Difference: Inclusion, Exclusion and American Law*, 1991
- 21 Matt Golder *Democratic Electoral Systems around the World, 1946–2000*, New York University, New York, NY, USA.
- 22 Michael Rush and Philip Giddings, *Parliamentary Socialisation: Learning the Ropes or Determining Behaviour*, 2011.
- 23 Neil Nugent, *The Government and Politics of the European Union*, 2010
- 24 Oonagh Gay and Patricia Leopold, *Conduct Unbecoming: The Regulation of Parliamentary Behaviour*, 2004.
- 25 Patrick Wormald, *The Making of English Law: King Alfred to the Twelfth Century, Vol.1: Legislation and its Limits*, 2001.
- 26 Sandy Donovan, *Making Laws: A Look at How a Bill Becomes a Law*, 2004.
- 27 Scott Mainwaring, *Politicians, Parties And Electoral Systems: Brazil In Comparative Perspective*, 1990
- 28 Seervai, *Constitutional Law*, pp. Vol.1, 260-275, Vol.3, 2613-2986
- 29 South Asians for Human Rights (SAHR), *Minorities and Inclusive Electoral Processes in South Asia*, Report compiled in 2011.
- 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.)
- 31 Vicki C. Jackson and Mark V. Tushnet, *Comparative Constitutional Law*, Foundation Press, pp 213-222, 337-342 & 456 – 491, 640 – 650.
- 32 William J. Chambliss and Marjorie S. Zatz, *Making Law: The State, the Law and Structural Contradictions-African Systems of Thought*, 1993.

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

1. Abid Khan and Others v. Government of Bangladesh and Others, Writ Petition No. 3831 of 2001, Bangladesh: Supreme Court, 5 March 2003
2. Anderson v. Celebrezze, 460 US 780 No.9
3. Burdick v. Takushi, 504 US 428.
4. Crawford v. Marion County Election Bd. (Nos.07-21 and 07-25) 472 F. 3d 949
5. Harper v. Virginia Bd. of Elections, 383 US 663
6. Jatish Chandra Ghose V. Harisadhan Mukherjee, AIR 1961 SC 613
7. M.S.M. Sharma V. Sri Krishna Sinha, AIR 1959 SC 395
8. Md. Sadaqat Khan (Fakku) and Others v. Chief Election Commissioner, Bangladesh Election Commission, Writ Petition No. 10129 of 2007, Bangladesh: Supreme Court, 18 May 2008
9. Norman v. Reed, 502 US 279 pp. 5-7
10. S.S. Dhanoa V. Union of India, AIR 1991 SC 1745
11. State of Karnataka V. Union of India, (1977) 4 SCC 608
12. Tej Kiran V. Sajiva, AIR 1970 SC 1573
13. Union of India V. Gopal, AIR 1978 SC 684
14. Washington State Grange v. Washington State Republican Party, 552 U. S.
15. Workers Party v. Federation of Pakistan (PLD 2012 SC 87)

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

- The Constitutional Prerogatives in the SAARC Constitutions. The 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 (Transnational Constitutionalism, Incompatibility of Supermajority With Democratic Commitments To Equality-Based Citizenship {EBC}, Constitutional Proximity Impact, etc.), The Emergence of the Doctrine of Unconstitutional Constitutional Amendments For Anti-Democratic Constitutional Objectives (Transnational Engagements), Coercive Constitutionalism, Repeal, Secession, etc.] and Summation.

QUESTIONS IN FOCUS:

- ⇒ 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

SAARC CONSTITUTIONAL TEXTS:

1. The Constitution of Islamic Emirate of Afghanistan [Afghanistan's Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964 consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]
 - The Constitution of Afghanistan, 2004, Articles- 143-148 (Emergency), 90, 149, 150 (Amendment)
2. The Constitution of Bangladesh, 1972, Articles- 141 (Emergency), 142 (Amendment)
3. The Constitution of Bhutan, 2008, Articles-
4. The Constitution of India, 1950, Articles- 352, 355, 356 (Emergency), 368 (Amendment)
5. The Constitution of Maldives, 2008, Articles- 261 (Amendment), 253-260 (Emergency),
6. The Constitution of Nepal, 2015, Articles-
7. The Constitution of Pakistan, 1973, Articles-
8. The Constitution of Sri Lanka, 1978, Articles- 82, 84,
- ❖ **C/F: The Constitutions of USA, UK, Canada, Australia & South Africa, Preamble with Articles, etc.**

REQUIRED READINGS:

1. Ackerman, Bruce, *'We the People: Foundations'* Cambridge, MA: 1991, The Belknap Press of Harvard University Press.
2. Amar, Akhil Reed, *'The Consent of the Governed: Constitutional Amendment Outside Art V'* (1994) Columbia Law Review 94: 457-511.
3. Rosalind Dixon, *Constitutional Amendment Rules: A Comparative Perspective,*
4. Rosalind Dixon, David Landau, *'Transnational constitutionalism and a limited doctrine of unconstitutional constitutional amendment'* (2015) 13 International Journal of Constitutional Law 3 606–638 <https://doi.org/10.1093/icon/mov039>

RECOMMENDED READINGS:

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9. Walter Bagehot, *The English Constitution* (2nd ed., 1873), 61-93 (“The Monarchy”).
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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)
8. Golaknath V. State of Punjab, 1967 AIR 1643
9. Hammer V. Dagenhart, 247 US 251 (1918)
10. Hans V. Louisiana, 134 US 1 (1890)
11. Keshavananda Bharati V. State of Kerala, AIR 1973 SC 1461
12. Kihota Hollohon V. Zachilhu, AIR 1993 SC 412
13. NLRB V. Jones Laughlin Steel Corp., 301 US 1 (1937)
14. Romer V. Evans, 517 US 620 (1990)
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)
20. Wurridjal V. Commonwealth of Australia, [2009] HCA 2

COURSE WRAP-UP AND THANKS GIVING

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

CURRICULUM VISION:

- THE SYLLABUS OF COMPARATIVE CONSTITUTIONAL LAW OF SAARC NATIONS IS SUBJECT TO PERENNIAL APPRAISAL, ASSESSMENT, REVISION, IMPROVEMENTS, UPDATES KEEPING IN VIEW THE NEW CONSTITUTIONAL DEVELOPMENTS, INNOVATIONS, HYBRIDS, CROSS FERTILIZATIONS OR MATTERS INCIDENTAL THERETO OR CONNECTED THEREWITH IN THE REGION AND ELSEWHERE OR OTHERWISE.
- Note: The recommendations of BoS dated: Friday, 29 November 2019 has been fully ruminated and duly reflected upon, acted upon and the same have been appropriately incorporated. However, 2023-Syllabus-CCLSAARCN is under regular review and evaluation as per FLS-SAU past practice and otherwise. Further, the case law of SAARC countries other than India is also under swot and study.
- All constitutional developments taking place in the Constitutions of SAARC nations and other major and prominent constitutions across the world shall also be incorporated in the syllabus and reflected upon during the Monsoon Semester

Following proposals are not the part of CCLSAARCN:

Let's ruminare:

- South Asian Society of Comparative Constitutional Law [SASCCL]
- South Asian Journal of Comparative Constitutional Law [SAJCCL]
- South Asian Society of International law [SASIL]
- South Asian Journal of International Law [SAJIL]

I follow the below *TAG lines* as the students are pivotal to all my professional and institutional engagements:

- SARCORT [South Asian Regional Consciousness Obligatory Research Teaching]
- PACTUS [Persuasion, Allegiance, Conviction, Trustworthiness, Uniformity, Sustainability]

PART-III:- COURSEWORK DESCRIPTION:

The coursework of the LL.M. in Comparative Constitutional Law of SAARC Nations (CCLSAARCN) addresses matters relating to the development and execution of constitutional governance in its wider historical, socio-political, regional, and international context. The core coursework focuses on deep-seated issues in CCLSAARCN regarding constitution-making and constitutional design, constitutional government; emergence of new separation of powers, horizontal and vertical dynamics of Constitutionalism, and the protection of constitutional rights and freedoms in emerging, commanding, and weakening constitutional democracies worldwide. The coursework encapsulates historical and current developments in all SAARC constitutional systems. At the Faculty of Legal Studies, the LL.M. programme in CCLSAARCN is committed to research-based teaching. Areas of research and education comprise the evolution to and from democracy and the rule of law, constitution-making from a historical perspective and in ongoing constitution-building methods, comparative constitutional adjudication, civil and political rights in well-founded and emerging democratic dispensations, questions of equality and non-discrimination, socio-economic rights, reproductive rights, biomedical law, and Constitutionalization of Artificial Intelligence (AI), as well as Digital Constitutionalism. The CCLSAARCN coursework Faculty builds on this core and introduces coursework on newly emerging constitutional developments as they come up.

The CCLSAARCN Faculty prepares students for comparative and inter-disciplinary analysis of complex constitutional problems. Coursework enables students to explore constitutional issues across SAARC legal systems, engage in advanced critical thinking, and cultivate their arguments in oral communications and collaborations. Classes are vastly participatory, empowering students to benefit from the regional perspectives and Global structure of the students' interactions; in-class deliberations facilitate dynamic discernment into current CCLSAARCN developments as they evolve, facilitating critical engagement with these advancements wedded with sensitivity, sensibility, and susceptibility to the diversified and multi-cultural composition of the SAARC academic fraternity. Individual research skills are developed through comparative problem-driven case studies. Students are motivated to attend problematic constitutional scenarios and pragmatic premises through comparative constitutional law analysis employing a theoretical framework well-informed by interdisciplinary vision. Consequently, SAU students can respond to confronting constitutional crises and contesting the fundamental rights glitches with cutting-edge analytical skills, extracting critical comparative constitutional law analysis and pursuing to propound practice-oriented and policy-relevant responses.

COURSEWORK COROLLARIES

After completing the CCLSAARCN LL.M. programme, the student will have acquired the following skills:

- The ability to research a variety of constitutional issues in various constitutional regimes in an ever-changing political and constitutional environment;
- Substantial understanding of CCLSAARCN in SAARC jurisdictions from a comparative perspective;
- Extensive knowledge of the protection and enforcement of constitutional rights and human freedoms in SAARC jurisdictions;
- The capacity to examine CCLSAARCN problems from a comparative and interdisciplinary standpoint in their historical context;
- The pertinent skills to scrutinize and critically evaluate CCLSAARCN issues in their regional, international, and global understanding;
- Gaining expertise to locate policy-oriented solutions to CCLSAARCN concerns as an individual researcher and an international group member.