

**Chanakya National Law University, Patna**  
**Academic Session: 2022-23;**  
**LL. M.**

**Semester- I**

**Course Title: Comparative Public Law**

**Course Overview**

Constitutional Law and administrative Law together make Public Law. Public Law was first defined by Romans as “res publica” which meant Public Good. Public Law regulates the relationship between individual and the State. However with changing dimensions of the State the ambit of Public Law needs to be revisited. This course highlights the various aspects of Public Law which has become significant due to the concept of “Welfare State”. It enlightens the students about the various systems of governance which have evolved worldwide. The course further provides a comparative approach which enables the students to make a critical analysis of the various systems. It provides a comparative analysis of the structure of government, legislative process and the role of the judiciary to have better understanding of the Indian polity.

**Learning Outcomes**

The students may be benefitted by studying the comparative public law knowing in depth understanding of constitutional law and administrative law, criminal law and international law prevailing in major legal systems of the world and what the defects or shortcomings in Indian system may be rectified and will be helpful for a change in the existing approach for making a better legally binding society and good governance.

<b>Topic/ Module</b>	<b>Contents/ Concepts</b>	<b>Sessions / Lectures</b>
<b>Module I</b>	Module I <b>Public Law</b>  1. Meaning and definition of Public Law 2. Concept of Public Law	<b>6 Lectures</b>

	3.Public Law – International Law, Constitutional Law, Administrative Law and Criminal Law 4.Distinction between Public Law and Private Law 5. Nature, Significance and of Comparative Public La	
<b>Module II</b>	<b>Basic principles of organisation of government and forms of governments</b> 1. Presidential and Parliamentary forms of government 2. Federal and Unitary governments 3. Concept of Quasi-Federalism	<b>6 Lectures</b>
<b>Module III</b>	<b>Concept of Constitution</b> 1. Meaning and Idea of Constitution, Nature and objectives 2. Constitution as Fundamental La	<b>6 Lectures</b>
<b>Module IV</b>	<b>Constitutionalism</b> 1. Concept, Distinction between Constitution and Constitutionalism 2.Essential features of Constitutionalism -Written Constitution, Separation of Powers, 3.Fundamental Rights, Independence of Judiciary and Judicial Review	<b>6 Lectures</b>
<b>Module V</b>	<b>Constitutional foundations of powers</b> 1. Supremacy of Legislature in Law Making 2. Rule of law 3. Dicey’s Concept of Rule of Law 4. Modern Concept of Rule of Law 5. Social and economic rights as part of rule of law	<b>6 Lectures</b>
<b>Module VI</b>	<b>Separation of powers</b> 1. Concept of Separation of Powers 2. Checks and Balances 3. Separation of Powers or Separation of Functions 4. French concept of separation of powers and Administrative courts	<b>8 Lectures</b>
<b>Module VII</b>	<b>Courts</b> 1. Writ Jurisdiction 2. Protecting public interests through litigation. 3. Locus standi and the nature of the judicial power.	<b>6 Lectures</b>

<b>Module VIII</b>	<b>Judicial Review</b> 1. Independence of Judiciary 2. Concept and Origin of Judicial Review 3. Limitations on Judicial Review 4. Judicial Accountability	<b>10 lectures</b>
<b>Module IX</b>	<b>Constitutional Amendments</b> 1. Various Methods of Amendment 2. Limitations on Amending Power: Comparative Perspective 3. Theory of Basic Structure	<b>6 Lectures</b>

### Evaluation Criteria

Components	Marks Allotted
Attendance	5
Project Report	20
Presentation	5
End-Semester Examination	70
<b>Total Marks</b>	<b>100</b>

### Recommended/Reference Text Books and Resources:

#### Text Books /References

#### Reference Books

1. D.D. Basu, Comparative Constitutional Law (2nd ed., Wadhwa Nagpur).
2. David Strauss, The Living Constitution (Oxford University Press, 2010).
3. Dr. Subhash C Kashyap, Framing of Indian Constitution (Universal Law, 2004).
4. Elizabeth Giussani, Constitutional and Administrative Law (Sweet and Maxwell, 2008).
5. Erwin Chemerinsky, Constitutional Law, Principles and Policies (3rd ed., Aspen, 2006).
6. M.V. Pylee, Constitution of the World (Universal, 2006).
7. Mahendra P. Singh, Comparative Constitutional Law (Eastern Book Company, 1989).
8. Neal Devins and Louis Fisher, The Democratic Constitution (Oxford University Press, 2010).
9. S.N Ray, Judicial Review and Fundamental Rights (Eastern Law House, 1974).
10. Sudhir Krishna Swamy, Democracy and constitutionalism in India – A Study of the Basic Structure Doctrine (Oxford University Press, 2009).
11. A. Lakshminath, Judicial Process and Precedent (Fourth Edition, EBC, 2016).
12. A. Lakshminath, Vijay Ghormade and Mukund Sarda, Comparative and Select Legal Systems (Hind Law House, 2011).
13. O.P. Gauba, Social and Political Philosophy (Fifth Edition, Mayur Books, 2018).

## Articles

1. AmanUllah and UzairSamee, "Basic Structure of Constitution: Impact of KesavanandaBharati on Constitutional Status of Fundamental Rights", Vol. 26 (2) South Asian Studies 299-309 (JulyDecember 2011).
2. Anne Smith, "Internationalization and Constitutional Borrowing in Drafting Bills of Rights", 60(4) International and Comparative Law Quarterly 867-894 (2011October).
3. Bruce Ackerman, "The New Separation of Powers" 113 (3) Harv. L. Rev. 634-729 (2000)
4. Bryan Clark and Amanda Leiter, "Regulatory hide and seek: What agencies can (and can't) do to limit judicial review" 52(5) Boston College Law Review 1687-1732 (2011 November)
5. Chhavi Agarwal, "Rule of Law: Reflection upon we the People and Beyond" 252 (1) Madras Law Journal 8-16 (2010)
6. Daniel B. Rodriguez, "Change that matters: Essay on State Constitutional Development", 115(4) Penn State Law Review 1073-1098 (Spring 2011).
7. Daryl Levinson and Richard H. Pildes "Separation of Parties, Not Powers" 119(8) Harvard Law Review 2311-2386 (2006).
8. David King, "Formalizing Local Constitutional Standards of Review and the Implications for Federalism" 97 (7) Virginia Law Review 1685-1726 (November 2011). \* Suggested Readings are not exhaustive. Need to be supplemented with additional readings.
9. David Staruss, "Do we Have a Living Constitution" 59 (4) Drake Law Review 973-984 (2011 Summer)
10. Devi Prasad Singh, "Sovereignty, Judicial Review and Separation of Power", 7(5) Supreme Court Cases 1-13 (2012 September)
11. Glen Staszewski, "Political Reasons, Deliberative Democracy and Administrative Law", 97(3) Iowa Law Review 849-912 (2012 March):
12. Ishwara Bhat, "Why and how Federalism matters in Elimination of Disparities and Promotion of Equal Opportunities for Positive Rights", 54(3) Journal of the Indian Law Institute 324-363 (July-Sept 2012).
13. Jessica Bulman, "Federalism as a safeguard of the Separation of Powers", 112(3) Columbia Law Review 459-506 (2012 April) Jonathan Siegel, "Institutional case for Judicial Review" 97(4) Iowa Law Review 1147-1200 (2012 May).
14. K.K. Venugopal, "Separation of Power and the Supreme Court of India", Vol. 2 No. 2 Journal of Law and Social Policy 64-82 (July 2008).
15. Linda Bosniak, "Persons and Citizens in Constitutional Thought" 8 (1) International Journal of Constitutional Law 9-29 (January 2010).
16. Mark Tushnet, "The Possibilities of Comparative Constitutional Law", 108 Yale.L.J. 1225 (1999).
18. Nathan Chapman, "Due Process as Separation of Powers", 121(7) Yale Law Journal 1672-1807 (2012 May).
17. Quinn Rosenkranz, "Subjects of the Constitution" 62 (5) Stanford Law Review 1209-1292 (May 2010)
18. Rajvir Sharma, "Judiciary as Change Agent: Some insights into the Changing role of Judiciary in India", 58(2) Indian Journal of Public Administration 264-286 (2012 April-June).
19. Rebecca Brown, "Assisted Living for the Constitution" 59 (4) Drake Law Review 985-1000 (2011 Summer).

**20.** Schapiro, “Judicial Federalism and the Challenges of State Constitutional Contestation”, 115(4) Penn State Law Review 983-1006 (2011 Spring). 23. Tom Ginsburg, Eric Posner, “Sub Constitutionalism” 62 (6) Stanford Law Review 1583-1628 (June 2010).

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