

# Chanakya National Law University, Patna

Academic Session: 2022-23

LL.M. II Semester

**Course Title: Comparative Constitutional Law (England, U.S.A., Canada and India)**

**Group A**

## **Course Overview**

We have witnessed the renaissance of comparative constitutional law as a field of research. Despite such a flourishing, the methodological foundations and the ultimate ratio of comparative constitutional law are still debated among scholars, who are divided among many different methodological approaches. Moreover, even the most traditional approaches to comparative law are challenged by new phenomena, such as globalization, the migration of constitutional ideas and the so-called judicial dialogue among courts all over the world. Are we witnessing a process of convergence of the systems of the world towards a global dimension of constitutional law? And if so, what is the role and the meaning of comparative constitutional law in the new changing contours of legal systems around the world? In order to tentatively address such basic issues in the field of comparative constitutional law, going back to its foundation, the essence and the methods of comparative constitutional law, seems to be inevitable.

## **Learning Outcomes**

The objects of comparative constitutional law have traditionally been the constitutions of modern States. The aim of comparative constitutional law is to study and confront the plurality of constitutional rules and to highlight similarities and differences in order to create models or ideal-types able to explain the ultimate values that underpin the constitutional agreements. Ultimately, if the aim of comparative law is to 'acquire knowledge of the different rules and institutions that are compared' comparative constitutional law is vested with a particular task: to acquire knowledge of the fundamental principles that forge the relationship between sovereign power and citizen's freedom in different constitutional systems. Comparative constitutional law is a fascinating field of research, dealing with one of the most engaging human challenges: built-up legal orders that may face and govern the complexity of a given society. Looking at the differences and similarities developed by different legal systems, comparative legal scholars aim to better understand the ultimate reasons of certain institutional choices and their transformations over time, in a phrase the 'constitutional life' of a legal system.

<b>Topic/ Module</b>	<b>Contents/ Concepts</b>	<b>Sessions / Lectures</b>
<b>Module: 1</b>	Concept of Constitution – Constitutional Law – General Constitutional Objectives	<b>8 Lectures</b>
<b>Module: 2</b>	Making of the Constitution: United Kingdom, USA, Canada and India	<b>7 Lectures</b>
<b>Module: 3</b>	The Constitution and its relationship with Statehood, Territoriality and Citizenship	<b>7 Lectures</b>
<b>Module: 4</b>	Forms of Government: Federal and Unitary	<b>7 Lectures</b>
<b>Module: 5</b>	Federal – USA, India, Australia, Canada etc.	<b>7 Lectures</b>
<b>Module: 6</b>	Unitary – UK, France	<b>4 Lectures</b>
<b>Module: 7</b>	Constitutionalism and Rule of Law: Rights Regime and their Protection	<b>7 Lectures</b>
<b>Module: 8</b>	Separation of Powers and Checks and Balances: Executive, Legislature and Judiciary	<b>7 Lectures</b>
<b>Module: 9</b>	Judicial Review	<b>7 Lectures</b>
<b>Module: 10</b>	Constitutional Law and Millennium Development Goals – Globalization and	<b>7 Lectures</b>
<b>Module: 11</b>	Amending Powers – Limits	<b>7 Lectures</b>

## **SUGGESTED READINGS\***

### **Books**

1. D.D.Basu, *Comparative Constitutional Law* (2nd ed., Wadhwa Nagpur, 2008).
2. D.D.Basu, *Comparative Federalism* (Lexis Nexis, 2007).
3. DD Basu, *Introduction to the Constitution of India* (Lexis-Nexis-Butterworth-Wadhwa, 2008).
4. Dr. Subhash C Kashyap, *Framing of Indian Constitution* (Universal Law, 2004).
5. Erwin Chemerinsky, *Constitutional Law, Principles and Policies* (3rd ed., Aspen, 2006).
6. Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (OUP, 2008).
7. M.P. Singh, *Comparative Constitutional Law* (Eastern Book Company, 2011).
8. M.P.Jain, *Indian Constitutional Law* (6th ed., Wadhwa, Nagpur).
9. Mark Tushnet, *Why the Constitution Matters* (Yale University Press, 2010).

10. *Methods of Comparative Law* (Edward Elgar Publishing, 2012).
11. Neal Devins and Louis Fisher, *The Democratic Constitution* (Oxford, 2010).
12. Sudhir Krishna Swamy, *Democracy and constitutionalism in India – A study of the Basic Structure Doctrine* (Oxford University Press, 2009).
13. Vicki C. Jackson, Mark V. Tushnet, *Comparative Constitutional Law* (2nd ed. Foundation Press, 2006).

\* Suggested Readings are not exhaustive. Need to be supplemented with additional readings.

### Articles

1. Bruce Ackerman, “The New Separation of Powers” 113 (3) *Harv. L. Rev.* 634-72 (2000).
2. Levinson, Daryl J. and Richard H. Pildes, “Separation of Parties, Not Powers.” 119(8) *Harvard Law Review* 2311-2386 (2006).
3. Mark Tushnet, “Returning With Interest: Observations on Some Putative Benefits of Studying Comparative Constitutional Law”, 1 *U. Pa. J. Const. L.* 325
4. Mark Tushnet, “The Inevitable Globalization of Constitutional Law”, 49 *Va. J. Int'l L.* 985 (2008-2009).
5. Mark Tushnet, “The Possibilities of Comparative Constitutional Law” 108 *Yale.L.J.* 1225 (1999).
6. Michael J. Klarman, “What's so Great About Constitutionalism?” 93 *Nw. U.L. Rev.* 145

Note: This syllabus is subject to changes. Appropriate cases and acts will be discussed during the lectures. If necessary additional information on reading and reference sourcing will be provided as the course proceeds.

### Instructor Details

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