



South Asian University

Faculty of Legal Studies

LLM

Monsoon Semester 1 in 2020

Course Information

---

---

**PART-I:-**

Course Title:	Comparative Constitutional Law of the SAARC Nations (CCLSAARCN)
Nature of the Paper:	Compulsory Paper
Course Code:	LW002
Course Instructor:	Dr. Nafees Ahmad, <a href="mailto:nafeestarana@gmail.com">nafeestarana@gmail.com</a> , <a href="mailto:drnafeesahmad@sau.ac.in">drnafeesahmad@sau.ac.in</a>
Course Duration:	One Semester
Credit Units:	4 (MSE/TPW/ESE)
Medium of Instruction:	English
Prerequisites:	Nil
Precursors:	Nil
Equivalent Courses:	N/A

---

---

PART-II  
MODULE CONTENTS

**WEEK-1: INTRODUCTION TO COMPARATIVE CONSTITUTIONAL OF SAARC NATIONS**

- The Idea of the Constitution: Concept, Genesis, Connect, Mobility, and Question, Comparative Constitutional Law of SAARC Nations (CCLSAARN); Concept, Nature, History and Contours, The Resurgence of Comparative Constitutional Law, The Legitimacy of the Comparative Constitutional Law, New Conceptualism in Comparative Constitutional Law, The Concept of Constitutional Identity, Comparative Constitutional Law in Global Age, Importance of the Study of Comparative Constitutional Law in SAARC Region, Aims & Functions of CCLSAARN, Sources of the Comparative Constitutional Law, Methods and Limits of Comparative Constitutional Law, Approaches to the Comparative Constitutional Culture and Analysis, Judicial Comparativism and Judicial Diplomacy, Classification of Different Forms of the Constitutions, The Comparative Constitutional Law: Should its Province be Determined? The New Global Constitutional Order and Summation.

**Discussion Topics:**

- ⇒ What is the Constitution and what are its connects and questions?
- ⇒ What is Comparative Constitutional Law?
- ⇒ Is there any definition 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 is Comparative Constitutional Purposes?
- ⇒ What are the controversies over the Court's references to foreign law (for example, in death penalty cases) 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 flexibility to respond to future needs and ensure appropriate degrees of on-going 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?

### **South Asian Constitutional Texts:**

1. The Constitution of Afghanistan (Preamble and Chapter One: State; Articles 1-21)
2. The Constitution of Bangladesh (Preamble and Articles 1-)
3. The Constitution of Bhutan (Preamble and Articles 1-5)
4. The Constitution of India (Preamble and Articles 1-5)
5. The Constitution of Maldives (Preamble and Articles 1-5)
6. The Constitution of Nepal (Preamble and Articles 1-5)
7. The Constitution of Pakistan (Preamble and Articles 1-5)
8. The Constitution of Sri Lanka (Preamble and Articles 1-5)
- ❖ **C/F: The Constitutions of USA, UK, CANADA & AUSTRALIA**

### **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 CONSTITUTION DESIGNING, DRAFTING AND MAIN FEATURES OF THE MAJOR SAARC CONSTITUTIONS**

- The Foundation of Constitution-Making; The Constituent Power, Processes, Inclusiveness, Scope, Magnitude, The Constitutional Ideology; Social Movements and The Nationalist Discourse in South Asia, Constitution-Making and Nation-Building, Participation in Constitutional Design: South Asian Exceptionalism. The Constitutional Transplants; Constitutional Borrowing and Non-Borrowing, Migration & Transmigration of Constitutional Ideas. 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.

### **Discussion Topics:**

- ⇒ Why make a Constitution? How Constitutions work? Why comply with the Constitution?
- ⇒ Law, Politics, and Constitutional Design.
- ⇒ What are the Theoretical Perspectives on Identity, Diversity and Legitimacy?
- ⇒ How to devise Popular and Durable National Constitutions?
- ⇒ The Constitutional Politics of Preference Formation.
- ⇒ The Politics of Accommodation in Nationally-Divided Societies.
- ⇒ The Constitutionalization of Politics in South Asia.
- ⇒ The law and politics of constitutional change in South Asia.
- ⇒ How Constitutions Influence Interests, Values, and Preferences?
- ⇒ The Comparative Constitutional Change.
- ⇒ The Influence of Experiences of Law and Legal Consciousness.
- ⇒ Perspectives of Persons for the first and last time.
- ⇒ Constitutional Standards and Jurisprudence.
- ⇒ Migration of Constitutional Ideas and Problems of Communication.
- ⇒ What to do when Constitutions Do Not Work?
- ⇒ Common features of the SAARC Nations for Constitutional Integration.

### **South Asian Constitutional Texts:**

1. The Constitution of Afghanistan, Preamble with Articles-1,2,3,4,5,6,7,8,13,14,18,19 & Chapter-Two
2. The Constitution of Bangladesh, Preamble with Articles-1,2,2A,3,4,4A,6,7 & Part-II
3. The Constitution of Bhutan, Preamble with Articles-1,2,3,4,5,8 & 10
4. The Constitution of India, Preamble with Articles-1,2,3,4, Parts-II & III
5. The Constitution of Maldives, Preamble with Articles-1,2,3,4,5,6,7,8,9 & Chapter-II
6. The Constitution of Nepal, Preamble with Articles-1,2,3,4,5,6,7 & Part-II
7. The Constitution of Pakistan, Preamble with Articles-1,2,2A,3,4,5,6 & Part-II
8. The Constitution of Sri Lanka, Preamble with Articles-1,2,3,4,5,6,7,8,9 & Chapter-III
- ❖ C/F: The Constitutions of USA, UK, CANADA & AUSTRALIA, Preamble with Articles

### **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 Schaefer, *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*, 8<sup>th</sup> 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*, 2<sup>nd</sup> 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. Goodyear India V. State of Haryana, AIR 1990 SC 781
2. Indira Nehru Gandhi V. Raj Narayan, AIR 1975 SC 2299
3. Keshavananda Bharati V. State of Kerala, AIR 1973 SC 1461
4. Miller v. California, US (1973)
5. Minerva Mills Ltd. V. Union of India, AIR 1980 SC 1789
6. Nakara V. Union of India, AIR 1983 SC 130
7. Official Liquidator V. Dayanand, (2008) 10 SCC 1
8. P.A. Inamdar V. State of Maharashtra, (2005) 6 SCC 537
9. Pradeep Jain (Dr.) V. Union of India V. Union of India, AIR 1984 SC 1420
10. State of Bihar V. Bal Mukund Sah, AIR 2000 SC 1296

### **WEEK-3: THE FUNDAMENTAL PRINCIPLES OF COMPARATIVE CONSTITUTIONALISM**

- Constitutionalism; The Norms and Forms of Constitutionalism; Classical, Contemporary, Modern, Liberal, Political and New Constitutionalism, The Concept of State in the Third World and the Problematics of Constitutionalism, the Crisis in the Modern Constitutionalism, Pluralism and International Cosmopolitanism, Constitutionalism of the Global South, the Twilight of Comparative Liberal-Democratic Constitutionalism, Towards Juristocracy and Contemporary Constitutionalism as the Law of the Peoples: Paradigms of Reality and Challenges, Constitutionalism in a Polycentric Polity, Inter-Constitutional Collisions, Comparative Constitutionalism in South Asia, The Predicament of Constitutionalism in South Asia, Constitutionalism and the Rule of Law in the 21<sup>st</sup> Century, Alternative Secularism, Constitutionalization, Reflections on Constitutionalism; From Balanced Constitutionalism to Sustainable Constitutionalism, People & Societies in the SAARC & Beyond and Summation.

#### **Discussion Topics:**

- ⇒ What is a new Constitutional Question?
- ⇒ What is the relationship between a written constitution and constitutionalism?
- ⇒ Can there be Constitutionalism without a Constitution?
- ⇒ What is Constitutionalism and Extra-Constitutionalism?
- ⇒ Comparative Constitutionalism: 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?
- ⇒ Tension between Constitutionalism and the Judicialization of Politics in South Asia?
- ⇒ Competing Nationhood and Constitutional Instability in South Asia?
- ⇒ Mapping the Plurinational Understanding of Constitutionalism in South Asia?
- ⇒ What is the future of Constitutionalism in South Asia?
- ⇒ Cooperation among the SAARC Nations on Constitutional Commonalities.

#### **South Asian Constitutional Texts:**

1. The Constitution of Afghanistan, Preamble with Articles 2, 3, 15,
2. The Constitution of Bangladesh, Preamble with Articles 8-25 (FPSP)
3. The Constitution of Bhutan, Preamble with Articles
4. The Constitution of India, Preamble with Articles, 36-51A
5. The Constitution of Maldives, Preamble with Articles 4, 8, 9, 10, 63, 66, 69
6. The Constitution of Nepal, Preamble with Articles
7. The Constitution of Pakistan, Preamble with Articles 29-40

8. The Constitution of Sri Lanka, 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**

### **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 20<sup>th</sup> 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. Dred Scott V. Sandford, 60 U.S. 393 (1857)
19. Employment Division V. Smith, 494 US 872 (1990)
20. Escobedo V. Illinois, 378 U.S. 478 (1964)
21. Fracen V. City of Winnipeg, 40 Man. R. (2d) 137 (Ct. App. 1986)
22. Francis Coralie V. Union Territory of Delhi, AIR 1978 SC 597
23. Frontiero V. Richardson, 411 U.S. 677 (1973)
24. Gideon V. Wainwright, 372 U.S. 335 (1963)
25. Government of Andhra Pradesh V. P. Laxmi Devi, 2008 (4) SCC 720
26. Griffin V. County School Board, Prince Edward County,
27. Griswold V. Connecticut, 381 U.S. 479
28. Hammer V. Dagenhart, 247 U.S. 251 (1918)
29. Holden V. Hardy, 169 U.S. 366 (1898)
30. I.C. Golak Nath V. State of Punjab, AIR 1967 SC 1643
31. I.R. Coelho (Dead) By Lrs V. State of Tamil Nadu & Others, (2007) 2 SCC 1
32. Keshavanand Bharati V. State of Kerala, AIR 1973 SC 1461
33. Kokkinakis V. Greece
34. Korematsu V. United States, 323 U.S. 214 (1944)
35. Lawrence V. Texas: The Right that Dare Not Speak Its Name, 117 Harv. L. Rev. 1893 (2004)
36. Leyla Sahin V. Turkey
37. Lochner V. New York, 198 U.S. 45 (1905)
38. Malloy V. Hogan, 378 U.S. 1(1964)
39. Maneka Gandhi V. Union of India, AIR 1978 SC 593
40. Marbury V. Madison, 5 U.S. 137 (1903)
41. Milk Board V. Clearview Dairy Farm Inc., 69 B.C.L.R. 220 (Sup. Ct. 1986)
42. Miranda V. State of Arizona, 384 U.S. 436 (1966)
43. Murrays Lessee V. Hoboken Land and Improvement Co.
44. Parents Involved in Community Schools V. Seattle School District # 1, 127 S.Ct. 2738 (2007)
45. Parkdale Hotel Ltd. V. Canada (Attorney General), 2 EC. 514 (Fed. Ct. Trial Div.1986)

46. Planned Parenthood Association V. Casey, U.S. 1992
47. Prosecutor V. Tadic
48. R. V. Edwards Books and Arts Ltd., [1986] 2 S.C.R. 713 (Can.)
49. Raja Ram Pal V. Hon'ble Speaker, Lok Sabha & Others, (2007) 3 SCC 184
50. S.R. Bommai V. Union of India, (1994) 3SCC 1
51. Sankari Prasad Singh Deo V. Union of India, AIR SC 458 (1951)
52. Sejdic and Finci V. Bosnia and Herzegovina, Judgment, Application Nos. 2799/06 and 3483/06 (European Court of Human Rights, 22December, 2009): para49
53. Smith, Kline & French Laboratories Ltd. V. Canada (Attorney General) 1 EC. 274 (Fed. Ct. Trial Div. 1986)
54. Tyson & Bro.-United Theatre Ticket Offices, Inc. V. Banton, 273 U.S. 418, 445-57 (1927)
55. Velsamma Paul V. Cochin University, AIR 1996 SC 1011
56. West Coast Hotel Co. V. Parrish, 300 U.S. 379 (1937)
57. Wilson V. British Columbia (Medical Service Commission), 30 B.C.L.R. (2D) 1 (Ct. App. 1988)

#### **WEEK-4: GENERAL PRINCIPLES OF FEDERALISM IN SOUTH ASIA**

- General Principles of Federalism; Origins, Typologies & Uses, Federalism, Democracy and Ethno-national Conflict, Decentralization and Conflict Management in Multi-Cultural Societies, Constitutions, Federalism and Subsidiarity, Federalism; 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; The Case of South Asia, The Influence of the Imperial Structure on the SAARC Countries and the American example in the case of Canada and Australia and Summation.

#### **Discussion Topics:**

- ⇒ What Federalism? Why Federalism? Which Federalism? Who's Federalism?
- ⇒ The Essence of Federalism.
- ⇒ Federalism and the Tug of War Within?
- ⇒ Federalism and Federation and their Origins and Formation of Federal States.
- ⇒ 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.
- ⇒ The Status of Kashmir in the Constitutions of Pakistan and India

#### **South Asian Constitutional Texts:**

1. The Constitution of Afghanistan, Articles- 1 (1)
2. The Constitution of Bangladesh, Articles- 1
3. The Constitution of Bhutan, Articles-
4. The Constitution of India, Articles 245, 248, 250, 253, 256
5. The Constitution of Maldives, Articles- 230-235

6. The Constitution of Nepal, Articles-
7. The Constitution of Pakistan, Articles-
8. The Constitution of Sri Lanka, Articles- 2,
- ❖ C/F: The Constitutions of USA, UK, CANADA & AUSTRALIA

### **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, *Federalism and Ethnic Conflict Regulation in India and Pakistan*, 2007, Palgrave MacMillan-New York, ISBN-10: 1-4039-7186-2
6. Michael Burgess, *Comparative Federalism: Theory and Practice*, Routledge, New York, 2006, pp. 9-49 and pp. 50-75.
7. Rosalind Dixon (Ed), *Comparative Constitutional Law in Asia*, Cheltenham, UK; Northampton, MA, USA : Edward Elgar Publishing, 2014
8. Ursula K. Hicks, *Federalism: Failure and Success-A Comparative Study*, The Macmillan Press Ltd, 1978, ISBN 978-1-349-04008-7

### **RECOMMENDED READINGS:**

- 1 Alexander Hamilton, Federalist No. 9, in The Federalist Papers (1787) (at [http://thomas.loc.gov/home/histdox/fed\\_09.html](http://thomas.loc.gov/home/histdox/fed_09.html)).
- 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 Mark Tushnet, *Comparative Constitutional Federalism: Europe and America*, 1990.
- 9 Mikhail Filippov, Peter C. Ordeshook and Olga Shvetsova, *Designing Federalism: A Theory of Self-Sustainable Federal Institutions*, 2004.
- 10 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

### **ADVANCED READINGS:**

- 1 A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (1885; 5<sup>th</sup> ed., 1897), 131-172 (“Parliamentary Sovereignty and Federalism”).
- 2 Benjamin F. Wright, Jr., “The Origins of the Separation of Powers in America,” *Economica*, No. 40, May 1933, 169-185.

- 3 Charles Fried, *Saying What the Law is: The Constitution in the Supreme Court*, First Indian Reprint, Universal Publishing Co. Pvt Ltd., 2008, pp 13-48.
- 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](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.
- 13 Mahendra P. Singh, V N Shukla, *The Constitution of India*, 11th ed., EBC, Lucknow, 2008, pp A28-A35.
- 14 Mark Tushnet, *The Constitution of the United States of America: A Contextual Analysis*, Hart Publishing Ltd, 2009, pp 159-181.
- 15 Martha A. Field, "The Differing Federalisms of Canada and the United States" (1992) 55 Law and Contemporary Problems. 107.
- 16 Ronald L. Watts, "Federalism, Federal Political Systems, and Federations," Annual Review of Political Science 1998, 1:117, 117-133.
- 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.

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

1. A.G. Canada V. A.G. Ontario, (1937) AC 326
2. A.G. for Commonwealth V. Colonial Sugar Refining Co.[1914] AC 237
3. A.G. for Ontario V. A.G. for Canada, (1896) AC 348
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. Douglas V. Verney, (1995) 25 Publius 81, 81-95
21. *Ex parte* Grossman, 267 U. S. 87–119 (1925)
22. Florida Growers V. Paul, (1963) 373 US 132
23. Gonzales V. Raich, 545 US 1 (2005)
24. Haji Saifullah Case
25. Hamdi V. Rumsfeld, 542 US 507 (2004)
26. Hopkins V. Cleary, (1935) 296 US 315
27. Jamat-e-Islami V. Federation of Pakistan, PLD 2008 SC 30
28. Kapur Singh V. Union of India, AIR 1984 SC 1410
29. Kentucky V. Dennison, (1982) 456 US 742
30. Kuldip Nayar v. UOI AIR 2006 SC 3127, (2006) 7 SCC 1.
31. 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>
32. Mahmood Khan Achakzai V. Pakistan, 49 PLD 426, 446-47 (1997) (Pak.)
33. Maritime Bank V. Receiver General, (1892) AC 437
34. McPherson v. Blacker, 146 U. S. 1, 27 (1892)
35. Minerva Mills V. Union of India, AIR 1980 SC 1789
36. Mistretta v. United States, 488 US 361, 401 (1989)
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 at 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. Sinnot 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-5: THE DOCTRINE OF NEW SEPERATION OF POWERS IN THE CONSTITUTIONS OF THE SAARC NATIONS**

- The General Principles of the Separation of Powers; the Normative Hierarchy of the Branches, the 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, Vigilance Bodies, and Media. 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.

#### **Discussion Topics:**

- ⇒ What are the general principles of the separation of powers?
- ⇒ How does the separation of powers differ from the New Separation of Powers?
- ⇒ Is there any normative hierarchy among the branches?
- ⇒ The idea of good governance and Weberian model?

#### **South Asian Constitutional Texts:**

9. The Constitution of Afghanistan, Articles- 1 (1)
10. The Constitution of Bangladesh, Articles- 1
11. The Constitution of Bhutan, Articles-
12. The Constitution of India, Articles 245, 248, 250, 253, 256
13. The Constitution of Maldives, Articles- 230-235
14. The Constitution of Nepal, Articles-
15. The Constitution of Pakistan, Articles-
16. The Constitution of Sri Lanka, Articles- 2,
- ❖ **C/F: The Constitutions of USA, UK, CANADA & AUSTRALIA**

#### **REQUIRED READINGS:**

9. Baogang He, Brian Galligan and Takashi Inoguchi, *Federalism in Asia*, Edward Elgar Publishing Limited-UK, 2007, ISBN 978 1 84720 140 9

10. Douglas V. Verney, *Federalism, Federative Systems, and Federations: The United States, Canada and India*, *Publius*, 25:2, Spring 1995, 81-97.
11. 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
12. 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
13. Katharine Adeney, *Federalism and Ethnic Conflict Regulation in India and Pakistan*, 2007, Palgrave MacMillan-New York, ISBN-10: 1-4039-7186–2
14. Michael Burgess, *Comparative Federalism: Theory and Practice*, Routledge, New York, 2006, pp. 9-49 and pp. 50-75.
15. Rosalind Dixon (Ed), *Comparative Constitutional Law in Asia*, Cheltenham, UK; Northampton, MA, USA : Edward Elgar Publishing, 2014
16. Ursula K. Hicks, *Federalism: Failure and Success-A Comparative Study*, The Macmillan Press Ltd, 1978, ISBN 978-1-349-04008-7

### **RECOMMENDED READINGS:**

- 11 Alexander Hamilton, Federalist No. 9, in *The Federalist Papers* (1787) (at [http://thomas.loc.gov/home/histdox/fed\\_09.html](http://thomas.loc.gov/home/histdox/fed_09.html)).
- 12 Baogang He, Brian Galligan and Takashi Inoguchi, *Federalism in Asia*, 2009.
- 13 Donald Horowitz, *The Many Uses of Federalism*, 55 *Drake L. Rev.* 953, 2007, 953-966.
- 14 Jan Erk, *Explaining Federalism: State, Society and Congruence in Austria, Belgium, Canada, Germany and Switzerland*, Routledge, New York, 2008, pp 1-13, 44-48.
- 15 Jessica s. Wallack & T. N. Srinivasan, *Federalism and Economic Reform-International Perspectives*, Cambridge University Press, 2006, ISBN-10 0-521-85580-2
- 16 Kalyani Robbins, *The Law and Policy of Environmental Federalism: A Comparative Analysis*, Edward Elgar Publishing, 2017, ISBN 978 1 78347 361 8
- 17 Katherine Adeney, *Federalism and Ethnic Conflict Regulation in India and Pakistan*, 2006.
- 18 Mark Tushnet, *Comparative Constitutional Federalism: Europe and America*, 1990.
- 19 Mikhail Filippov, Peter C. Ordeshook and Olga Shvetsova, *Designing Federalism: A Theory of Self-Sustainable Federal Institutions*, 2004.
- 20 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

### **ADVANCED READINGS:**

- 22 A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (1885; 5<sup>th</sup> ed., 1897), 131-172 (“Parliamentary Sovereignty and Federalism”).
- 23 Benjamin F. Wright, Jr., “The Origins of the Separation of Powers in America,” *Economica*, No. 40, May 1933, 169-185.
- 24 Charles Fried, *Saying What the Law is: The Constitution in the Supreme Court*, First Indian Reprint, Universal Publishing Co. Pvt Ltd., 2008, pp 13-48.
- 25 Craig Baxter, *Constitution Making: The Development of Federalism in Pakistan*, *Asian Survey*, 14:12, Dec. 1974, 1074-1085.
- 26 D. D. Basu, *Introduction to the Constitution of India*, Lexis-Nexis-Butterworth-Wadhwa, 2008, pp. 51-66, 327-334, 344-351, 357-367.
- 27 Excerpts from 18th and 19th Amendments re Provincial Autonomy.
- 28 Extract from Montesquieu, *The Spirit of the Laws*, 1748 (also in the *Modern History Sourcebook* at <http://www.fordham.edu/halsall/mod/montesquieuspirit.html>)

- 29 Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford: OUP, 2008) at 156-163.
- 30 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](http://thomas.loc.gov/home/histdox/fed_47.html))
- 31 John C. Goodman, "What is Classical Liberalism?" National Center for Policy Analysis.
- 32 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*,
- 33 Loius Tillin, "Unity in Diversity? Asymmetry in Indian Federalism," *Publius*, 2006, 1-23.
- 34 Mahendra P. Singh, V N Shukla, *The Constitution of India*, 11th ed., EBC, Lucknow, 2008, pp A28-A35.
- 35 Mark Tushnet, *The Constitution of the United States of America: A Contextual Analysis*, Hart Publishing Ltd, 2009, pp 159-181.
- 36 Martha A. Field, "The Differing Federalisms of Canada and the United States" (1992) 55 *Law and Contemporary Problems*. 107.
- 37 Ronald L. Watts, "Federalism, Federal Political Systems, and Federations," *Annual Review of Political Science* 1998, 1:117, 117-133.
- 38 Syed Jaffar Ahmed, "Overview of the Constitution of Pakistan," *PILDAT*, Briefing Paper No. 17, August 2004, 9-20.
- 39 The Constitution of the United States of America (**For Reference**).
- 40 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).
- 41 Vicki C. Jackson and Mark V. Tushnet, *Comparative Constitutional Law*, Foundation Press, pp 791-803, 825-827, 843-858.
- 42 Yonatan Tesfaye Fessha, *Ethnic Diversity and Federalism*, 2011.

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

72. A.G. Canada V. A.G. Ontario, (1937) AC 326
73. A.G. for Commonwealth V. Colonial Sugar Refining Co.[1914] AC 237
74. A.G. for Ontario V. A.G. for Canada, (1896) AC 348
75. A.G., Nova Scotia V. A.G., Canada, (1951) SCR 31
76. Alden V. Maine, 119 S. Ct. 2240 (1999)
77. Ashton V. Cameron County, (1936) 298 US 513
78. Asma Jilani V. Government of Punjab, PLD 1972SC 139
79. Atiabari Tea Co. V. State of Assam, (1961) 1 SCR 809
80. Automobile Transport V. State of Rajasthan, AIR 1962 SC 1406
81. Bank of Toronto V. Lambe, (1887) 12 AC 575
82. Begum Nusrat Bhutto V. Chief of Army Staff, 29 PLD 657, 695 (1977)
83. Benazir Butto Case
84. Blum V. Bacon, (1982) 457 US 132
85. Bowsher v. Synar, 478 US (1986) 714, 731
86. Carmichael V. S. Coal Co., (1937) 301 US 495
87. Chandler V. Director of Public Prosecutions [1964] AC 763
88. Clinton v. City of New York, 524 U. S. 417-450 (1998)
89. College Savings Bank V. Florida Prepaid Post-Secondary Education Expense Board, 119 S. Ct. 2219 (1999)
90. Dames & Moore v. Regan, 453 US 654, 686 (1981)
91. Douglas V. Verney, (1995) 25 *Publius* 81, 81-95
92. *Ex parte* Grossman, 267 U. S. 87-119 (1925)
93. Florida Growers V. Paul, (1963) 373 US 132
94. Gonzales V. Raich, 545 US 1 (2005)



95. Haji Saifullah Case
96. Hamdi V. Rumsfeld, 542 US 507 (2004)
97. Hopkins V. Cleary, (1935) 296 US 315
98. Jamat-e-Islami V. Federation of Pakistan, PLD 2008 SC 30
99. Kapur Singh V. Union of India, AIR 1984 SC 1410
100. Kentucky V. Dennison, (1982) 456 US 742
101. Kuldip Nayar v. UOI AIR 2006 SC 3127, (2006) 7 SCC 1.
102. 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>
103. Mahmood Khan Achakzai V. Pakistan, 49 PLD 426, 446-47 (1997) (Pak.)
104. Maritime Bank V. Receiver General, (1892) AC 437
105. McPherson v. Blacker, 146 U. S. 1, 27 (1892)
106. Minerva Mills V. Union of India, AIR 1980 SC 1789
107. Mistretta v. United States, 488 US 361, 401 (1989)
108. Montreal V. Montreal Street Ry., (1912) AC 333
109. Nadeem Ahmad Advocate V. Federation of Pakistan, Constitution Petition No. 08 of July 2009
110. National Labor Relations Board v. Noel Canning *et al* 705 F. 3d 490US (Decided: June 26, 2014) pp-5-33
111. Nawaz Sharif Case
112. New Process Steel, L. P. v. NLRB, 560 US (2010) 674–688
113. Pulp & Power Co. V. Manitoba Free Press, (1923) AC 326
114. R v. Attorney-General, [2005] UKHL 56, [2005]4 All ER 1253
115. R V. Comptroller-General of Patents, *ex parte* Tomlinson [1899] 1 QB 909 at 913-4
116. R V. Crown Zellerbach Canada Ltd., Supreme Court of Canada, [1988] 1 S.C.R.401
117. R v. Parole Board and Another, [2005] EWHC 5469 (Admin), [2005] 1 All ER 11
118. R v. Secretary of State for Home Department, [2005] UKHL 69, 1 All ER 219 at 19, 28
119. R v. Secretary of State for Work and Pensions, [2005] UKHL 29, [2006] 1 All ER 487 32
120. R.M.D.C. V. Union of India, AIR 1957 SC 628
121. Rapanos United States, 547 US 715 (2006)
122. Secretary of State for the Home Department V. Rahman, [2002] UKHL 47, [2002] 1 All ER 122 at 139
123. Shamsher V. State of Punjab, AIR 1974 SC 2192
124. Singh v. United Kingdom, [1996] 22 EHRR 1
125. Sinnott v. Minister of Education, [2001] 1 IR 545
126. State of Karnataka V. Union of India, AIR 1978 SC 68
127. State of West Bengal V. Union of India, AIR 1963 SC 1241
128. State V. Zia-ur-Rahman, PLD 1973 SC 49
129. Steward V. Davis, (1938) 301 US 548
130. Stuart v. Laird, 1 Cranch 299 (1803)
131. Syed Zafar Ali Khan V. General Pervez Musharraf, Chief Executive of Pakistan, PLD 2000 SC 869
132. T.D. and Others V. the Minister of Education, [2001] 4 IR 259
133. Tariq Rahim Case
134. The Federation of Pakistan V. Maulvi Tazimuddin Khan, PLD 1955 FC 240
135. The Pocket Veto Case, 279 US (1929) 655-690.
136. The State V. Dosso, PLD 1958 SC 533
137. Tika Iqbal Muhammad Khan V. General Pervez Musharraf, Chief of Army Staff, Rawalpindi and Others, PLD 2008 SC 615
138. Union Colliery V. Bryden, (1899) AC 580
139. United States v. Mid-West Oil Co., 236 U. S. 459–474 (1915)

- 140. United States V. Morrison 529 US 598 (2000)
- 141. Wajihuddin Ahmad V. Chief Election Commissioner, PLD 2008 SC 25
- 142. 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 NATIONS**

- 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, and International Jurisdictions. 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 herein or otherwise shall be attended upon in detail*)

**Discussion Topics:**

- ⇒ Paradigms of Treaty-Making and its Implementation.
- ⇒ Multilateral Treaties and the Common Good.
- ⇒ The Place of Human Rights Treaties.
- ⇒ Constitution and Harmonic Convergence.
- ⇒ What is Soft Law?
- ⇒ Challenges to the Relationship between Treaties and Soft Law
- ⇒ What is Foreign Policy?
- ⇒ The Core Principles of Foreign Policy
- ⇒ Dimensions of Doing Foreign Policy in South Asia & Elsewhere.
- ⇒ Does Pakistan Foreign Policy at loggerheads with Indian Foreign Policy? Reasons?
- ⇒ The Phenomenon of Rogue States in Post-Cold War Era.
- ⇒ Feasibility of Common Foreign Policy of SAARC Nations in International Matters?

**South Asian Constitutional Texts:**

1. The Constitution of Afghanistan, Articles- 7, 8 (Foreign Policy) 10, 11 (Trade),
2. The Constitution of Bangladesh, Articles-
3. The Constitution of Bhutan, Articles-
4. The Constitution of India, Articles- 253,301-304
5. The Constitution of Maldives, Articles-
6. The Constitution of Nepal, Articles-
7. The Constitution of Pakistan, Articles-
8. The Constitution of Sri Lanka, Articles-

**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-2020**

## **WEEK-7: THE COMPARATIVE CONSTITUTIONAL STRUCTURES AND THEIR EVOLUTION AND IMPLICATIONS FOR SUBSTANTATIVE CONSTITUTIONAL LAW IN THE SAARC NATIONS**

- Transnational Constitutional Norms; Functions, Arenas and Processes, Constitutional Structures: Hybrid Meta-Codes. The Comparative Constitutional Structure & Their Evolution; the Concept of Autochthony. The Living Originalism in the SAARC, Parliamentarianism v. Presidentialism. The Cabinet Government and Legislative-Executive Relations. Theory of Unamendable Basic Structure of the Constitutions in the SAARC Nations: Form and Function in Comparative Constitutional Law. The Constitutional Breakdowns, Delegated Legislation, The Constitutionality of Military Courts in South Asia, The Role of Courts in Civil-Military Governments in South Asia.

*(Any one issue referred herein or otherwise shall be attended upon in detail)*

### **Discussion Topics:**

- ⇒ What are the Transnational Constitutional Norms and their reflection and implementation in the Constitutional Governance?
- ⇒ What is Self-foundation of social systems and Self- constraint of growth pressures?
- ⇒ Autochthonic Issues: Boundaries, Nationalities, Refugees and Migrants.
- ⇒ 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?

### **South Asian Constitutional Texts:**

1. The Constitution of Afghanistan, Articles-
  2. The Constitution of Bangladesh, Articles-
  3. The Constitution of Bhutan, Articles-
  4. The Constitution of India, Articles-
  5. The Constitution of Maldives, Articles-
  6. The Constitution of Nepal, Articles-
  7. The Constitution of Pakistan, Articles-
  8. The Constitution of Sri Lanka, Articles-
- ❖ **C/F: The Constitutions of USA, UK, CANADA & AUSTRALIA**

### **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, 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; Right to Life & Liberty, Employment Rights, Right to Free Expression, Right to Privacy, Right to Protection against Hate & Racist Speech, Free Press, Racial Equality, Freedom of Religion, Right to Health, Gender Equality, Reproductive Rights, Victims' Rights, Right to Fair Trial Guarantee, Rights of Children, Civil and Political Rights, Socio-Economic and Cultural Rights in Established and Emerging Democracies, Right to Leave and Return. The Constitutional Protection of Same-Sex Partnerships and LGBTQ Rights under CCLSAARCN etc. The Safeguards against the Abuse of Power, Constitutional Guarantees, Prohibitions and the Institutional Safeguards (NHRCs). *(Any one part referred herein or otherwise shall be attended upon in detail)*

### **Discussion Topics:**

- ⇒ 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)

**South Asian Constitutional Texts:**

1. The Constitution of Afghanistan, Preamble with Articles 6, 7, 8, 22-59
2. The Constitution of Bangladesh, Preamble with Article 26-47A
3. The Constitution of Bhutan, Preamble with Articles
4. The Constitution of India, Preamble with Articles 12-32
5. The Constitution of Maldives, Preamble with Articles 16-69(FR), 189 (HRC)
6. The Constitution of Nepal, Preamble with Articles
7. The Constitution of Pakistan, Preamble with Articles 8-28
8. The Constitution of Sri Lanka, Preamble with Articles 10-17

**REQUIRED READINGS:**

1. Dworkin, Ronald, *Taking Rights Seriously*, Cambridge, Mass.: The Belknap Press of Harvard University Press.
2. Friedrich Kubler, *How Much Freedom for Racist Speech?: Transnational Aspects of a Conflict of Human Rights*, 27 Hofstra L. Rev. 335 (1998)
3. James Q. Whitman, *The Two Western Cultures of Privacy: Dignity Versus Liberty*, 113 Yale L. J. 1151 (2004)

**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.

**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 (7<sup>th</sup> 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) 2 SCC 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 COMPARATIVE CONSTITUTIONAL LAW INTERPRETATION**

- 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.

### **Discussion Topics:**

- ⇒ What are Theories of Constitutional Interpretation?
- ⇒ What is Comparative Constitutional Interpretation?
- ⇒ What is the Contemporary Theoretical Debate?
- ⇒ What is the Living Constitution and its 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?

### **South Asian Constitutional Texts:**

1. The Constitution of Afghanistan, Articles-
2. The Constitution of Bangladesh, Articles- 94, 96(3) (SJC), 127-132 (C & G)
3. The Constitution of Bhutan, Articles-
4. The Constitution of India, Articles- 148-151 (C & G)
5. The Constitution of Maldives, Articles- 157 (JSC), 209 (AG)
6. The Constitution of Nepal, Articles-
7. The Constitution of Pakistan, Articles-
8. The Constitution of Sri Lanka, Articles-

### **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 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: MISCELLANY OF FUNDAMENTAL CONSTITUTIONAL FEATURES, QUESTIONS & VALUES IN THE CONSTITUTIONS OF THE SAARC NATIONS**

- The Supremacy of the Constitutions, the Global Rule of Law, Due Process, Comparative Judicial Precedent, Comparative Judicial Review and the Rise of Weak-Form of Judicial Review, Constitutional Review, Independence of Judiciary, Public Interest Litigation (PIL), Judicial Minimalism and Judicial Activism, Constitutional Provisions for the Protection of the Judiciary and The Judicialization of Politics in South Asia. The Idea of Free Speech In A Global World; Broadcasting Law; Evolution of the South Asian Law with Emphasis on the Institutional Law and Litigation; Corruption; Constitutional Transplants; Administrative Law etc. and Summation.  
(Any one issue referred herein or otherwise shall be attended upon in detail)

### **Discussion Topics:**

- ⇒ 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 Afghanistan, Articles- 81, 107, 110 & [Articles- 5, 34]
2. The Constitution of Bangladesh, Articles- 65, 68, 73A, 75, 80, 93 & [Articles-]
3. The Constitution of Bhutan, Articles- & [Articles-]
4. The Constitution of India, Articles- 105, 106, 107 & [Articles-]
5. The Constitution of Maldives, Articles 70, 83, 90 & [Articles-]
6. The Constitution of Nepal, Articles- & [Articles-]
7. The Constitution of Pakistan, Articles- 50, 57, 66, 67, 70 & [Articles-184 (3), 199]
8. The Constitution of Sri Lanka, Articles- 62, 67, 75 & [Articles-]

**C/F: The Constitutions of USA, UK, CANADA & AUSTRALIA**

### **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](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 Fernades 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, Parliamentary Privileges and Immunities in South Asia and Constitutional Conundrums, Parliamentary Crisis in South Asia, Political Practices & Party Systems, the Electoral Systems, Governance Institutions in South Asia; The Institution of the Ombudsmen in South Asia, The Civil & Military Services and the Police. The Paradigm of Democratic Transition and Consolidation; Constitutions in Action, Future of Democratic Governance in South Asia, the Militarism in South Asia, the Constitutionalism of Democratization in South Asia, the Contradictions in the Transition to Democracy and Strengthening of Democracy and Rule of Law in SAARC region and Summation.

**Discussion Topics:**

- ⇒ 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 Afghanistan, Articles- 81, 107, 110
2. The Constitution of Bangladesh, Articles- 65, 68, 73A, 75, 80, 93 Articles- 118 (Elections), 133 (Services)

3. The Constitution of Bhutan, Articles-
  4. The Constitution of India, Articles- 105, 106, 107 & Articles- 309, 315 (UPSC), 324 (Elections)
  5. The Constitution of Maldives, Articles 70, 83, 90 & Articles- 179 (Civil Service), 236 (Services), 244 (Police), 167-170, 276 (Elections), 199 (Anti-CC)
  6. The Constitution of Nepal, Articles-
  7. The Constitution of Pakistan, Articles- 50, 57, 66, 67, 70 & Articles- 103, 104 (Elections)
  8. The Constitution of Sri Lanka, Articles- 62, 67, 75
- C/F: The Constitutions of USA, UK, CANADA & AUSTRALIA
- ❖ **U.K. Public Services Code, 2010**

### **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](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, EXECUTIVE POWERS & EMERGENCIES AND CONSTITUTIONAL AMENDMENTS IN THE SAARC CONSTITUTIONS**

- The SAARC Constitutions, 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, Repeal and Secession and Summation.

**Discussion Topics:**

- ⇒ 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

**South Asian Constitutional Texts:**

1. The Constitution of Afghanistan, Articles- 143-148 (Emergency), 90, 149, 150 (Amendment)

2. The Constitution of Bangladesh, Articles- 141 (Emergency), 142 (Amendment)
3. The Constitution of Bhutan, Articles-
4. The Constitution of India, Articles- 352, 355, 356 (Emergency), 368 (Amendment)
5. The Constitution of Maldives, Articles- 261 (Amendment), 253-260 (Emergency),
6. The Constitution of Nepal, Articles-
7. The Constitution of Pakistan, Articles-
8. The Constitution of Sri Lanka, Articles- 82, 84,

### **REQUIRED READINGS:**

1. Rosalind Dixon, *Constitutional Amendment Rules: A Comparative Perspective*,
2. Ackerman, Bruce (1991), *We the People: Foundations*, Cambridge, MA: The Belknap Press of Harvard University Press.
3. Amar, Akhil Reed (1994), *The Consent of the Governed: Constitutional Amendment Outside Art V*, *Columbia Law Review* 94: 457-511.

### **RECOMMENDED READINGS:**

1. Alexander Hamilton, “*The Real Character of the Executive*,” Federalist No. 69 in *The Federalist Papers* (1787), also available at <http://www.constitution.org/fed/federa69.htm>.
2. Amar, Vikram David (2000), *People Made Me Do It: Can the People of the States Instruct and Coerce their State Legislatures in the Article V Constitutional Amendment Process*, *William & Mary Law Review* 41: 1037–92.
3. Ambwani, Justice Sunil (2007), *I.R. Coelho (dead) by L.Rs. Vs. State of Tamil Nadu & Others: A Case Study*, Lecture Delivered at the Advocates Association organized by SAMVAAD.
4. Attwood, Bain and Andrew Markus (2007), *The 1967 Referendum: Race, Power, and the Australian Constitution*, 2nd edition, Canberra: Aboriginal Studies Press.
5. Balkin, Jack M. (2007), *Original Meaning and Constitutional Redemption*, *Constitutional Commentary* 24: 427–532.
6. Stephen Ellmann, *A Constitution for All Seasons: Providing against Emergencies in a Post-Apartheid Constitution*, 1989.
7. Steven C. Silverman, *Legal challenges to the State Emergency: Searching for a Judicial Response to the Threat of State Internal Security Power*, (An Operational Training Research Paper)
8. Victor V. Ramraj and Arun K. Thruvengadam, *Emergency Powers in Asia: Exploring the Limits of Legality*, 2010.
9. Walter Bagehot, *The English Constitution* (2nd ed., 1873), 61-93 (“The Monarchy”).
10. Zohar, Noam (1995), ‘Midrash: Amendment through the Molding of Meaning’, in *Responding to Imperfection: The Theory and Practice of Constitutional Amendment*, edited by Sanford Levinson, Princeton: Princeton University Press, pp. 307–18.

### **ADVANCED READINGS:**

- 1 Anil Kalhan, “Constitution and ‘Extra-Constitution’: Emergency Powers in Post-Colonial Pakistan and India,” *Emergency Powers in Asia: Exploring the Limits of Legality* (Ramraj and Thruvengadam, eds.) (Cambridge, 2010).
- 2 Arendt Lijphart, “Emergency Powers and Emergency Regimes,” *Asian Survey*, 18:4, April 1978, 401.
- 3 Boudreaux, Donald J. and A.C. Prichard (1993), ‘Rewriting the Constitution: An Economic Analysis of the Constitutional Amendment Process’, *Fordham Law Review* 62: 111–62.

- 4 Buchanan, James M, and Gordon Tullock [1962] (2004) *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, Vol. 2, Indianapolis: Liberty Fund, Inc.
- 5 Choudhry, Sujit (2007), 'Rethinking Comparative Constitutional Law: Multinational Democracies, Constitutional Amendment, and Secession', Paper presented at the annual meeting of the Law and Society Association.
- 6 Choudhry, Sujit (2010) "'I Have a Mandate": The South African Constitutional Court and the African National Congress in a Dominant Party Democracy', Working Paper.
- 7 Dahl, Robert A. (2003), *How Democratic is the American Constitution?*, 2nd edition, New Haven: Yale University Press.
- 8 Denning, Brannon P. and John R. Vile (2002), 'The Relevance of Constitutional Amendments: A Response to David Strauss', *Tulane Law Review* 77: 247–82.
- 9 Dixon, Rosalind (2010), 'Updating Rules', *Supreme Court Review* 2009: 319–46.
- 10 Dixon, Rosalind, 'Partial Constitutional Amendments', *University of Pennsylvania Journal of Constitutional Law* 7.
- 11 Dixon, Rosalind and Eric Posner 'The Limits of Constitutional Convergence', *University of Chicago Journal of International Law*.
- 12 Dixon, Rosalind and Richard Holden, 'Constitutional Amendment Rules: The Denominator Problem in *Comparative Constitutional Design*, edited by Tom Ginsburg, New York: Cambridge University Press.
- 13 Eisgruber, Christopher L. (2001), *Constitutional Self-Government*, Cambridge, MA: Harvard University Press.
- 14 Elkins, Zachary, Tom Ginsburg and James Melton (2009), *The Endurance of National Constitutions*, Cambridge: Cambridge University Press.
- 15 Elster, John (2003), 'Don't Burn Your Bridges Before You Come to It: Some Ambiguities and Complexities of Pre-commitment', *University of Texas Law Review* 81: 1751–88.
- 16 Eskridge, William Jr. and John Ferejohn (2001), 'Super-Statutes', *Duke Law Journal* 50: 1215–76.
- 17 Ferejohn and Pasquino, "The Law of the Exception: A Typology of Emergency Powers," *I. Con*, 2:2, 2004, 210-239.
- 18 Ferejohn, John (1997), 'The Politics of Imperfection: The Amendment of Constitutions', *Law and Social Inquiry* 22: 501–30.
- 19 Ferejohn, John and Lawrence Sager (2003), 'Commitment and Constitutionalism', *University of Texas Law Review* 81: 1929–63.
- 20 Forbath, William E. (2003), 'The Politics of Constitutional Design: Obduracy and Amendability? A Comment on Ferejohn and Sager', *University of Texas Law Review* 81: 1965–84.
- 21 Friedman, Barry (1993), 'Dialogue and Judicial Review', *Michigan Law Review* 91: 577–682.
- 22 Gardbaum, Stephen (2010), 'Reassessing the New Commonwealth Model of Constitutionalism', *International Journal of Constitutional Law* 8: 167–206.
- 23 Ginsburg, Tom and Eric Posner (2010), 'Subconstitutionalism', *Stanford Law Review* 62: 1583–628.
- 24 Griffin, Stephen M. (1998), 'The Nominee is . . . Article V', in *Constitutional Stupidities, Constitutional Tragedies*, edited by William N. Eskridge and Sanford Levinson, New York: New York University Press, pp. 51–3.
- 25 Grodin, Joseph R., Calvin R. Massey and Richard B. Cunningham (1993), *The California State Constitution: A Reference Guide*, Santa Barbara, CA: Greenwood Press.
- 26 Holmes, Stephen (1995), *Passions and Constraint: On the Theory of Liberal Democracy*, Chicago: University of Chicago Press.
- 27 Holmes, Stephen and Cass Sunstein (1995), 'The Politics of Constitutional Revision in Eastern Europe', in *Responding to Imperfection: The Theory and Practice of Constitutional Amendment*, edited by Sanford Levinson, Princeton: Princeton University Press, pp. 275–306.

- 28 Issacharoff, Samuel (2003), 'The Enabling Role of Democratic Constitutionalism: Fixed Rules and Some Implications for Contested Presidential Elections', *University of Texas Law Review* 81: 1985–2012.
- 29 Jacobsohn, Gary (2006), 'An Unconstitutional Constitution? A Constitutional Perspective', *International Journal of Constitutional Law* 4: 460–87.
- 30 Jenny S. Martinez, "Inherent Executive Power: A Comparative Perspective," 115 *Yale L.J.* 2480, 2005-2006, 2482-2511.
- 31 Kelly, James B. and Christopher P. Manfredi, eds. (2009), *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*, Vancouver: University of British Columbia Press.
- 32 Lessig, Lawrence (1993), 'Fidelity in Translation', *University of Texas Law Review* 71: 1165–268.
- 33 Levinson, Sanford (1995), 'How Many Times Has the United States Constitution Been Amended? (A) < 26; (B) 26; (C) 27; (D) > 27: Accounting for Constitutional Change', in *Responding to Imperfection: The Theory and Practice of Constitutional Amendment*, edited by Sanford Levinson, Princeton: Princeton University Press, pp. 13–36.
- 34 Levinson, Sanford (1996), 'The Political Implications of Amending Clauses', *Constitutional Commentary* 13: 107–24.
- 35 Levinson, Sanford (2001), 'Designing an Amendment Process', in *Constitutional Culture and Democratic Rule*, edited by John Ferejohn, Jack M. Rakove and Jonathan Riley, Cambridge: Cambridge University Press, pp. 271–87.
- 36 Levinson, Sanford (2006), *Our Undemocratic Constitution*, New York: Oxford University Press.
- 37 Lutz, Donald S. (1995), 'Toward a Theory of Constitutional Amendment', in *Responding to Imperfection: The Theory and Practice of Constitutional Amendment*, edited by Sanford Levinson, Princeton: Princeton University Press, pp. 237–74..
- 38 Mansbridge, Jane J. (1986), *Why We Lost the ERA*, Chicago: University of Chicago Press.
- Marilley, Suzanne M. (1997), *Woman Suffrage and the Origins of Liberal Feminism in the United States, 1820–1920*, Cambridge, MA: Harvard University Press.
- 39 Michelman, Frank L. (1986) 'The Supreme Court 1985 Term, Foreword: Traces of Self-government', *Harvard Law Review* 100: 4–77.
- 40 Murphy, Walter F. (1995), 'Merlin's Memory: The Past and Future Imperfect of the Once and Future Polity', in *Responding to Imperfection: The Theory and Practice of Constitutional Amendment*, edited by Sanford Levinson, Princeton: Princeton University Press, pp. 163–90.
- 41 Neuborne, Bert (2003), 'The Supreme Court of India', *International Journal of Constitutional Law* 1: 476–510.
- 42 Rasch, Bjørn Erik and Roger D. Congleton (2006), 'Amendment Procedures and Constitutional Stability', in *Democratic Constitutional Design and Public Policy: Analysis and Evidence*, edited by Roger D. Congleton and Birgitt Swedenborg, Cambridge, MA: MIT University Press, pp. 319–42.
- 43 Rawls, John (1993), *Political Liberalism*, New York: Columbia University Press.
- 44 Sager, Lawrence (2001), 'The Birth Logic of a Democratic Constitution', in *Constitutional Culture and Democratic Rule*, edited by John Ferejohn, Jack M. Rakove and Jonathan Riley, Cambridge: Cambridge University Press, pp. 110–46.
- 45 Schumpeter, Joseph (1962), *Capitalism, Socialism, and Democracy*, New York: Harper & Row.
- 46 Siegel, Reva (2006), '2005–2006 Brennan Center Symposium Lecture: Constitutional Culture, Social Movement Conflict and Constitutional Change', *University of California Law Review* 94: 1323–420.
- 47 Simeon, Richard (2009), 'Constitutional Design and Change in Federal Systems: Issues and Questions', *Publius: The Journal of Federalism* 39: 241–61
- 48 Stone, Geoffrey R. (1988), 'Precedent, the Amendment Process, and the Evolution of Constitutional Doctrine', *Harvard Journal of Law and Public Policy* 11: 67–74.

- 49 Strauss, David (1996), 'Common Law Constitutional Interpretation', *University of Chicago Law Review* 63: 877–936.
- 50 Sullivan, Kathleen M. (1995), 'Constitutional Amendmentitis', *The American Prospect*, September 21.
- 51 Tushnet, Mark (2009), 'Constitutional Workarounds', *Texas Law Review* 87: 1499–516.
- 52 Vermeule, Adrian (2006), 'Constitutional Amendments and Common Law', in *The Least Examined Branch: The Role of Legislatures in the Constitutional State*, edited by Richard W. Bauman and Tsvi Kahana, Cambridge: Cambridge University Press, pp. 229–73.
- 53 Winterton, George (1994), *Monarchy to Republic: Australian Republican Government*, Oxford: Oxford University Press.
- 54 Winterton, George (2001), 'The Resurrection of the Republic', Law and Policy Paper 15, Centre for International and Public Law, ANU.
- 55 Young, Ernest (2007), 'The Constitution Outside the Constitution', *Yale Law Journal* 117: 408–73.

**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

\*\*\*\*\*

- 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 have been reflected upon, acted upon, and incorporated appropriately. However, 2020-Syllabus-CCLSAARCN is under 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

\*\*\*\*\*