



South Asian University
Faculty of Legal Studies
LLM
Monsoon Semester 1 in 2024

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| 1. Department: | Not Applicable |
| 2. Faculty: | Legal Studies |
| 3. Course Code: | LW002 (Compulsory) |
| 4. Course Title: | Comparative Constitutional Law of the SAARC Nations (CCLSAARN) |
| 5. Number of Credits: | 4 |
| 6. Course objectives: | |

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

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

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

- The ability to research a variety of constitutional issues in various constitutional regimes in an ever-changing political and constitutional environment;
- Substantial understanding of CCLSAARN in SAARC jurisdictions from a comparative perspective;
- Extensive knowledge of the protection and enforcement of constitutional rights and human freedoms in SAARC jurisdictions;

- The capacity to examine CCLSAARC problems from a comparative and interdisciplinary standpoint in their historical context;
- The pertinent skills to scrutinize and critically evaluate CCLSAARC issues in their regional, international, and global understanding;
- Gaining expertise to locate policy-oriented solutions to CCLSAARC concerns as an individual researcher and an international group member.

7. Minimum prerequisites for taking this course, if any: Nil

8. Course Structure with units if applicable: See Below

WEEK-1: INTRODUCTION TO COMPARATIVE CONSTITUTIONAL OF SAARC NATIONS

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

SAARC CONSTITUTIONAL TEXTS:

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

REQUIRED READINGS: Relevant pages of the readings below shall be consulted in the classroom:

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, 2014 ISBN: 9781781002698, p. 368
4. Vicki C. Jackson and Mark V. Tushnet, *Comparative Constitutional Law*, Foundation Press, pp. 144-152.

RECOMMENDED READINGS: The context-based readings shall be shared in the classroom.

CASE LAW: One leading case law shall be discussed out of the Case Digest to be shared in classroom.

WEEK-2: THE CONSTITUTIONAL LAW PRINCIPLES FOR CONSTITUTION MAKING, DESIGNING, DRAFTING AND CORE FEATURES OF THE SAARC CONSTITUTIONS

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

SAARC CONSTITUTIONAL TEXTS:

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

REQUIRED READINGS: Relevant pages of the readings below shall be consulted in the classroom.

1. Donald S. Lutz, *Principles of Constitutional Design*, Cambridge University Press, NY 2008.
2. Helen Irving, *Constitutions and Gender*, EE Elgar Publication, 2017, ISBN 978 1 78471 695 0
3. Sujit Choudhary, *Constitutional Design for Divided Societies: Integration or Accommodation*, Oxford University Press, 2008.

RECOMMENDED READINGS: The context-based readings shall be shared in the classroom.

CASE LAW: One leading case law shall be discussed out of the Case Digest to be shared in classroom.

WEEK-3: THE FUNDAMENTAL PRINCIPLES OF COMPARATIVE CONSTITUTIONALISM

- Constitutionalism [The Visage, Value, and Vision]. Constitutionalism [Delineations, Dimensions, and Devices]. The Norms and Forms of Constitutionalism [Classical, Contemporary, and Modern]. New Constitutionalism [Neo-liberal]. Models of Liberal Constitutionalism [Legal, Political, and Dialogic Constitutionalism]. The Paradigms, Predilections & Predicaments of Constitutionalism [The Concerns and Crises in the Modern Constitutionalism and Decolonization of Comparative Constitutionalism]. Non-Western Models of Constitutionalism [Postcolonial Republicanism, Ethnocracy, Abusive Constitutionalism and Constitutionalism in Islamic Countries]. Constitutionalism Canvas [Transformative Constitutionalism, Global Pluralism, International Cosmopolitanism, Constitutionalism in Global South, the Twilight of Comparative Liberal-Democratic Constitutionalism]. Digital Constitutionalism [Constitutionalization of Algorithmic Societies]. Towards Juristocracy and Contemporary Constitutionalism as the Law of the Peoples [Paradigms of Reality, Challenges, Constitutionalism in a Polycentric Polity, Inter-Constitutional Collisions]. Comparative Constitutionalism in South Asia [The Concept of Constitutional State in Global South, The Predicament of Constitutionalism in South Asia, Challenges To Constitutionalism in South Asia By Religion, Equality & Economic Rifts, Caste Aversion, Security Threats, (REECAST) Syndrome & The Imagining the Idea of SAARC CENTRIC Constitutionalism and Transnational Constitutionalism]. Constitutionalism, Resurgent Populism, and the Rule of Law in the 21st Century. Constitutionalism as Alternative Secularism and Constitutionalization. Reflections on Constitutionalism [From Balanced Constitutionalism to Sustainable Constitutionalism, People & Societies in the SAARC & Beyond] and Summation.

SAARC CONSTITUTIONAL TEXTS:

1. The Constitution of Islamic Emirate of Afghanistan [Afghanistan's Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964 consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]
 - The Constitution of Afghanistan, 2004, Preamble with Articles 2, 3, 15,
2. The Constitution of Bangladesh, 1972, Preamble with Articles 8-25 (FPSP)
3. The Constitution of Bhutan, 2008, Preamble with Articles
4. The Constitution of India, 1950, Preamble with Articles, 36-51A
5. The Constitution of Maldives, 2008, Preamble with Articles 4, 8, 9, 10, 63, 66, 69
6. The Constitution of Nepal, 2015, Preamble with Articles of Parts III & IV
7. The Constitution of Pakistan, 1973, Preamble with Articles 29-40
8. The Constitution of Sri Lanka, 1978, Preamble with Articles, 9 (Religion), 27, 28 29 (DPSP)
- ❖ **U.K. Constitutional Amendment & Governance Act, 2010**
- ❖ **C/F: The Constitutions of USA, UK, Canada, Australia & South Africa, Preambles with Articles, etc.**

REQUIRED READINGS: Relevant pages of the readings below shall be consulted in the classroom.

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

RECOMMENDED READINGS: The context-based readings shall be shared in the classroom.

CASE LAW: Three leading cases law shall be discussed out of the Case Digest to be shared in classroom.

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

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

SAARC CONSTITUTIONAL TEXTS:

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

REQUIRED READINGS: Relevant pages of the readings below shall be consulted in the classroom.

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. Katharine Adeney, *Federalism and Ethnic Conflict Regulation in India and Pakistan*, 2007, Palgrave MacMillan-New York, ISBN-10: 1-4039-7186-2
5. Mumtaz, Owais, 'Story of Federalism in Pakistan' (2016).
<http://dx.doi.org/10.2139/ssrn.3152176>

RECOMMENDED READINGS: The context-based readings shall be shared in the classroom.

CASE LAW: Two leading cases law shall be discussed out of the Case Digest to be shared in classroom.

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

- The General Principles of the Separation of Powers [The Normative Hierarchy of the Branches, Sources, Traditions and Functions]. The Westminster Model and its Impact on the SAARC Nations. The Separation of Powers in the Constitutions of the SAARC Nations [Problems of a Constitutional State, Equilibrium, Experience, Stability, Institutional Balances and Boundaries]. A Comparative Model of Separation of Powers. The Three Branches Model and Beyond. The Doctrine of the New Separation of Powers [The Separation of Powers Beyond State, The Internationalization of Law and Governance in the Constitutionalized State, The Emergence of the New Branches (Central Banks, Election Commissions, Vigilance Bodies, Media, etc)]. The Enumeration of the New Independent Organs of the State [Democratic Legitimacy, Functional Specialization, Fundamental Rights, The Diffusion of Accountability and the New Separationism] and Summation.

SAARC CONSTITUTIONAL TEXTS:

1. The Constitution of Islamic Emirate of Afghanistan [Afghanistan's Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964 consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]
 - The Constitution of Afghanistan, 2004, Articles- 1 (1)
2. The Constitution of Bangladesh, 1972, Articles-1
3. The Constitution of Bhutan, 2008, Articles-
4. The Constitution of India, 1950, Articles 245, 248, 250, 253, 256
5. The Constitution of Maldives, 2008, Articles- 230-235
6. The Constitution of Nepal, 2015, Articles-57 (1) & 109, 57 (2), 162 (4), 197, 231 (3), 232 (7), 274 (4), and 296 (4)
7. The Constitution of Pakistan, 1973, Articles-141-159
8. The Constitution of Sri Lanka, 1978, Articles- 2,
- ❖ C/F: The Constitutions of USA, UK, Canada, Australia & South Africa, Preambles with Articles, etc.

REQUIRED READINGS: Relevant pages of the readings below shall be consulted in the classroom.

- 1 A. V. Dicey, '*Introduction to the Study of the Law of the Constitution*' (1885; 5th ed., 1897), 131-172 ("Parliamentary Sovereignty and Federalism").
- 2 Benjamin F. Wright, Jr., '*The Origins of the Separation of Powers in America*' (1933) *Economica*, No. 40, 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 Vicki C. Jackson and Mark V. Tushnet, '*Comparative Constitutional Law*' Foundation Press, pp 791-803, 825-827, 843-858.

RECOMMENDED READINGS: The context-based readings shall be shared in the classroom.

CASE LAW: Two leading cases law shall be discussed out of the Case Digest to be shared in classroom.

WEEK-6: THE TREATY MAKING MECHANISMS AND FOREIGN POLICY DISCOURSE UNDER THE CONSTITUTIONS OF THE SAARC NATION-STATES

- The Role of International Law in Municipal Constitutional Law [The Treaty Making Mechanisms under the Constitutions of SAARC Nations, SAARC Constitutions and International Treaty Law, Multilateral Treaty-Making and National Constitutions, Relationship between Treaties and Soft Law, Implementation of Multilateral Treaties in National, Regional, International Jurisdictions, etc]. Foreign Policy Discourse under the Constitutions of the SAARC Nations [Thematic and Analytical Perspectives on Foreign Policy, Patterns and Sources of Foreign Policy, and the Foreign Policy Imperatives in South Asia].

SAARC CONSTITUTIONAL TEXTS:

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

REQUIRED READINGS: Relevant pages of the readings below shall be consulted in the classroom.

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: The context-based readings shall be shared in the classroom.

CASE LAW: Two leading cases law shall be discussed out of the Case Digest to be shared in classroom.

MID SEMESTER EXAMINATION

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

- The Rise of Transnational Constitutional Laws (TCL) [Norms, Functions, Processes, Arenas, and Approaches (Historical & Sociological)]. The Interaction between National and International Courts [The Domestic Transformation of International Law, The Patterns of Institutional Formation through Historical Junctures in National Societies, The Social Processes of National States into Transnational

Constitutional Order, and Envisioning Global Constitutional Norms for Stabilizing Framework for the Functions of State Institutions]. The Constitutional Structures [Forms of Government; Parliamentary, Presidential, and Hybrid Models, Exploring the Subterranean Continuities between National Constitutional Law and Contemporary Models of Global Law, The Comparative Constitutional Structures & Their Evolution]. The Concept of Constitutional Autochthony. The Idea of Living Originalism in the SAARC [Parliamentary Governance v. Presidential Governance, The Cabinet Government and Legislative-Executive Relations Matrix]. Theory of Unamendable Basic Structure [UBS] of the Constitutions in the SAARC Nations [Form and Function in Comparative Constitutional Law Contexts]. The Constitutional Breakdowns [Delegated Legislation, The Labyrinth of Constitutionality of Military Courts in South Asia, The Role of Courts in Civil-Military Governments in South Asia] and Summation.

SAARC CONSTITUTIONAL TEXTS:

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

REQUIRED READINGS: Relevant pages of the readings below shall be consulted in the classroom.

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), Issue 1, Art. 2

RECOMMENDED READINGS: The context-based readings shall be shared in the classroom.

CASE LAW: Two leading cases law shall be discussed out of the Case Digest to be shared in classroom.

WEEK-8: THE PHILOSOPHY OF CONSTITUTIONAL RIGHTS IN THE COMPARATIVE CONSTITUTIONAL LAW OF SAARC NATIONS

- Rights [Definition, Nature, and Justification, Human Rights in Constitutional Order and Political Practice in South Asia]. The Structure and Scope of Constitutional Rights [Rights Holders & Defenders, Rights & Political Ideology, Global Rights Discourse and Criticism of Rights]. Understanding the Evolution of State Responsibility in the Reconstruction of Comparative Constitutional Human Rights Jurisprudence in the SAARC Context. The Constitutional Human Rights of the People and

the Role of the SAARC Judiciaries in their Protection [The Right to Life & Liberty, The Right to Diversity & Identity, Employment Rights, the Right to Free Expression in Global World Order (Broadcasting Law), the Right to Privacy, the Right to Protection against Hate & Racist Speech, Free Press, Racial Equality, Freedom of Religion, the Right to Health, Gender Equality, Reproductive Rights, Victims' Rights, the Right to Fair Trial Guarantee, Rights of Children, Civil and Political Rights, Socio-Economic and Cultural Rights in Established and Emerging Democracies, the Right to Leave and Return]. The Constitutional Protection of Same-Sex Partnerships and LGBTQIA+ Rights under CCLSAARN etc. The Safeguards against the Abuse of Power, Constitutional Guarantees, Prohibitions and the Institutional Safeguards (NHRCs).

SAARC CONSTITUTIONAL TEXTS:

1. The Constitution of Islamic Emirate of Afghanistan [Afghanistan's Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964 consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]
 - The Constitution of Afghanistan, 2004, Preamble with Articles 6, 7, 8, 22-59
2. The Constitution of Bangladesh, 1972, Preamble with Article 26-47A
3. The Constitution of Bhutan, 2008, Preamble with Articles
4. The Constitution of India, 1950, Preamble with Articles 12-32
5. The Constitution of Maldives, 2008, Preamble with Articles 16-69(FR), 189 (HRC)
6. The Constitution of Nepal, 2015, Preamble with Articles
7. The Constitution of Pakistan, 1973, Preamble with Articles 8-28
8. The Constitution of Sri Lanka, 1978, Preamble with Articles 10-17
- ❖ **C/F: The Constitutions of USA, UK, Canada, Australia & South Africa, Preambles with Articles, etc.**

REQUIRED READINGS: Relevant pages of the readings below shall be consulted in the classroom.

1. Dworkin, Ronald, '*Taking Rights Seriously*' (Cambridge, Mass.: The Belknap Press of Harvard University Press)
2. Gardbaum, Stephen, '*Human Rights as International Constitutional Rights*' (2008) 19 European Journal of International Law 4, 749
3. Jamal Greene, Madhav Khosla, '*Constitutional Rights in South Asia: Introduction*' (2018) 16 International Journal of Constitutional Law 2 2018 470–474, <https://doi.org/10.1093/icon/moy043>
4. James Q. Whitman, '*The Two Western Cultures of Privacy: Dignity Versus Liberty*' (2004) 113 Yale L. J. 1151
5. Zucca, Lorenzo, '*Constitutional Dilemmas: Conflicts of Fundamental Legal Rights in Europe and the USA*' (Oxford, UK: Oxford University Press 2007)

RECOMMENDED READINGS: The context-based readings shall be shared in the classroom.

CASE LAW: Two leading cases law shall be discussed out of the Case Digest to be shared in classroom.

WEEK-9: THE PRINCIPLES OF COMPARATIVE CONSTITUTIONAL LAW INTERPRETATION

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

Perspective]. Docket Management and Institutional Success of Constitutional Courts in the SAARC Nations and Summation.

SAARC CONSTITUTIONAL TEXTS:

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

REQUIRED READINGS: Relevant pages of the readings below shall be consulted in the classroom.

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

RECOMMENDED READINGS: The context-based readings shall be shared in the classroom.

CASE LAW: Two leading cases law shall be discussed out of the Case Digest to be shared in classroom.

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

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

SOUTH ASIAN CONSTITUTIONAL TEXTS:

1. The Constitution of Islamic Emirate of Afghanistan [Afghanistan's Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964

consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]

- The Constitution of Afghanistan, 2004, Articles- 81, 107, 110 & [Articles- 5, 34]
- 2. The Constitution of Bangladesh, 1972, Articles- 65, 68, 73A, 75, 80, 93 & [Articles-]
- 3. The Constitution of Bhutan, 2008, Articles- & [Articles-]
- 4. The Constitution of India, 1950, Articles- 105, 106, 107 & [Articles-]
- 5. The Constitution of Maldives, 2008, Articles 70, 83, 90 & [Articles-]
- 6. The Constitution of Nepal, 2015, Articles- & [Articles-]
- 7. The Constitution of Pakistan, 1973, Articles- 50, 57, 66, 67, 70 & [Articles-184 (3), 199]
- 8. The Constitution of Sri Lanka, 1978, Articles- 62, 67, 75 & [Articles-]
- ❖ **C/F: The Constitutions of USA, UK, Canada, Australia & South Africa, Preambles with Articles, etc.**

REQUIRED READINGS: Relevant pages of the readings below shall be consulted in the classroom.

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: The context-based readings shall be shared in the classroom.

CASE LAW: Two leading cases law shall be discussed out of the Case Digest to be shared in classroom.

WEEK-11: THE LAW MAKING, PARLIAMENTARY PRIVILEGES, IMMUNITIES AND THE GOVERNANCE INSTITUTIONS AND THE FUTURE OF DEMOCRACY IN SOUTH ASIA

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

SOUTH ASIAN CONSTITUTIONAL TEXTS:

1. The Constitution of Islamic Emirate of Afghanistan [Afghanistan's Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964 consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]
 - The Constitution of Afghanistan, 2004, Articles- 81, 107, 110
2. The Constitution of Bangladesh, 1972, Articles- 65, 68, 73A, 75, 80, 93 Articles- 118 (Elections), 133 (Services)
3. The Constitution of Bhutan, 2008, Articles-

4. The Constitution of India, 1950, Articles- 105, 106, 107 & Articles- 309, 315 (UPSC), 324 (Elections)
5. The Constitution of Maldives, 2008, Articles 70, 83, 90 & Articles- 179 (Civil Service), 236 (Services), 244 (Police), 167-170, 276 (Elections), 199 (Anti-CC)
6. The Constitution of Nepal, 2015, Articles-
7. The Constitution of Pakistan, 1973, Articles- 50, 57, 66, 67, 70 & Articles- 103, 104 (Elections)
8. The Constitution of Sri Lanka, 1978, Articles- 62, 67, 75
- ❖ **C/F: U.K. Public Services Code, 2010**
- ❖ **C/F: The Constitutions of USA, UK, Canada, Australia & South Africa, Preamble with Articles, etc.**

REQUIRED READINGS: Relevant pages of the readings below shall be consulted in the classroom.

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. Pradeep Chhibber & Ken Kollman, *The Formation of National Party Systems*, Princeton University Press, 2004, ISBN 0-691-11931-7
6. Simon Wigley, *Parliamentary Immunity: Protecting Democracy or Protecting Corruption?* Journal of Political Philosophy, Vol. 11, No.2, pp. 23–40.

RECOMMENDED READINGS: The context-based readings shall be shared in the classroom.

CASE LAW: Two leading cases law shall be discussed out of the Case Digest to be shared in classroom.

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

- The Constitutional Prerogatives in the SAARC Constitutions. The Constitutionalism of Emergency Powers and Emergency Regimes. The Constitutional Amendments in a Comparative Perspective [Rules, Practices, and Functions of the Amendment]. Beware of Amendment [The Comparative Conundrum of Amendment (Transnational Constitutionalism, Incompatibility of Supermajority With Democratic Commitments To Equality-Based Citizenship {EBC}, Constitutional Proximity Impact, etc.), The Emergence of the Doctrine of Unconstitutional Constitutional Amendments For Anti-Democratic Constitutional Objectives (Transnational Engagements), Coercive Constitutionalism, Repeal, Secession, etc.] and Summation.

SAARC CONSTITUTIONAL TEXTS:

1. The Constitution of Islamic Emirate of Afghanistan [Afghanistan's Unwritten Constitution under the Taliban From 15 August 2021, the Parts of Monarchy Constitution of Afghanistan-1964 consistent with Islamic Sharia (*Hanafi* School of Islamic Law) invoked for Transitional Application in Afghanistan]
 - The Constitution of Afghanistan, 2004, Articles- 143-148 (Emergency), 90, 149, 150 (Amendment)

2. The Constitution of Bangladesh, 1972, Articles- 141 (Emergency), 142 (Amendment)
3. The Constitution of Bhutan, 2008, Articles-
4. The Constitution of India, 1950, Articles- 352, 355, 356 (Emergency), 368 (Amendment)
5. The Constitution of Maldives, 2008, Articles- 261 (Amendment), 253-260 (Emergency),
6. The Constitution of Nepal, 2015, Articles-
7. The Constitution of Pakistan, 1973, Articles-
8. The Constitution of Sri Lanka, 1978, Articles- 82, 84,
- ❖ **C/F: The Constitutions of USA, UK, Canada, Australia & South Africa, Preamble with Articles, etc.**

REQUIRED READINGS: Relevant pages of the readings below shall be consulted in the classroom.

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

RECOMMENDED READINGS: The context-based readings shall be shared in the classroom.

CASE LAW: Two leading cases law shall be discussed out of the Case Digest to be shared in classroom.

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

9. Reading suggestions: Text books/Web-resources/other

Journal Readings' pages/Text Books' pages/Web-resources/Other resources have been provided after every week and detailed context-based readings with case law for dedicated understanding would be provided in the classroom.

10. Evaluation and Weightage of different components of evaluation

Standard (A+, A, A-...F) Grading is based on students' overall performance in the assessment tasks/activities/assignments/term papers etc.

To pass this course, students must obtain an aggregate mark of 50% and a minimum of 50% in each of the coursework and the examination elements of the assessment. Coursework for this purpose means those ways in which students are assessed otherwise than by the end of session examination.
