

LM-2011

COMPARATIVE JURISPRUDENCE

TOPIC I: INTRODUCTION TO COMPARATIVE JURISPRUDENCE

1. Comparison between various schools of jurisprudence
2. Understanding jurisprudential concepts in contemporary legal discourse

Required Readings:

- Legal Personality
- Rights and Duties

TOPIC II: NATURE OF JURISPRUDENCE

1. How does jurisprudence construct 'human being' which is the primary subject of jurisprudential theories and law? Are human beings essentially separate individuals or are they connected with others?
2. Is there a need to shift the focus of jurisprudence from rights to care for jurisprudence to become concerned for all living beings?

Required readings:

- Robin West, "Jurisprudence and Gender", 55(1) *University of Chicago Law Review*, 1-72 (Excerpts)
- Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species, Membership*, Chap 1(2006)
- Amita Dhanda, "Legal Capacity in the Disability Rights Convention: Stranglehold of the Past or Lodestar for the Future?", 34(2) *Syracuse Journal of International Law & Commerce*, 431-438 and 346-352 (Spring 2007)

TOPIC III: EQUALITY AND GENDER BIAS

1. Concept of patriarchy and Indian Legal System
2. Desexualising laws against sexual offences
3. Feminist Legal Theory
4. LGBT struggle in India

Required Readings:

1. Michael Freedman (ed.), *Lloyd's Introduction to Jurisprudence* (8th ed. 2008), Chapter on 'Feminist Jurisprudence'
2. Morris Gatens, "A Critique of the Sex/Gender Distinction" in *Feminism and Subjectivity*, pp. 139-154
3. Kamla Bhasin, *What is Patriarchy?* (1993)
4. Uma Chakravorty, "Conceptualizing Brahmanical Patriarchy in Early India: Gender, Class and State", *Economic and Political Weekly*, April 3 (1993)
5. Arvind Narayan, "'That Despicable Specimen of Humanity': Policing of Homosexuality in India", in Kalpana Kannabiran (ed), *Challenging the Rule(S) of Law: Colonialism, Criminology and Human Rights in India* (2008) Sage India
6. Ved Kumari, "Gender Analyses of Indian Penal Code" in Amita Dhanda and Archana Parashar (ed), *Engendering Law Essays in honour of Lotika Sarkar*, 139-160 (1999)

Suggested Readings:

Suresh Kumar Koushal v. Naz Foundation, (2014) 1 SCC 1

TOPIC IV: BASIC NEEDS AND THEIR LEGAL ADMINISTRATION

1. The concept of Basic Human Needs
2. Basic Needs and the concept of Human Rights
3. Arguments for Public Interest Litigation and Basic Needs

Required Readings:

1. ✓ D. Conrad, "The Human Right to Basic Necessities of Life", *X&XI Delhi Law Review* (1981-82) pp. 51-75
2. ✓ B.B. Pandey, "The Constitutionality of Basic Human Needs: An Ignored Area of Human Discourse" 4 *Supreme Court Cases* (1988) pp. 1-16
3. ✓ B.B. Pandey, "When They Came to Court Seeking Basic Needs: Alternatives to the 'Flawed' Response", 3 *Journal of Indian Law Institute* (1989) pp. 360-377

Suggested Readings:

- ✓ Upendra Baxi, "From Human Rights to the Rights to be Human: Some Heresies" in Upendra Baxi (ed.), *The Right to be Human* (1987), pp. 185-200

TOPIC V: THE PROBLEM OF RECEPTION/IMPOSITION OF LAW

1. Notions and reasons for reception
2. Objections to reception: Savigny's thesis and its critique
3. Reception of common law in India
4. Impact of received law and search for alternatives

Required Readings:

1. Julius Stone, *Social Dimensions of Law and Justice* (1966), pp. 86-118
2. J.D.M. Derret, "Justice, Equity and Good Conscience", in J.N.D. Anderson (ed.), *Changing Law in Developing Countries* (1963), pp. 11-53
3. Preface to *Comparative Law in the 21st Century* ed(Andrew Harding and Esinorucu) Kluwer Academic Publishers

Suggested Readings:

1. M. Galanter, "The Aborted Restoration of Indigenous Law in India", 14 *Comparative Studies in Society and History* (1972), pp. 53-67.
2. Upendra Baxi, *The Crisis of the Indian Legal System* (1982), pp. 41-47
3. Gyula Eorsi, *Comparative Civil (Private) Law* (1979), pp. 562-568.
4. Rene David & John E.C. Brierly, *Major Legal Systems in the World Today* (3rd ed. 1985), pp. 485-515.
5. Masaji Chiba, *Asian Indigenous Law: In Interaction with Received Law* (1986).

→ TOPIC VI: LAW AND JUSTICE

Theory of Justice / idea of justice.

1. Concept of Distributive justice
2. Concept of justice as fairness
3. Entitlement theory of justice
4. Restorative Justice
5. Natural Justice

Required Readings:

1. John Rawls, *A Theory of Justice* (1976), pp. 11-22
2. Lawrence B. Solum, "Natural Justice" *The American Journal of Jurisprudence*, Vol 51 (2006) Pp.65-105

Suggested Readings:

Amartya Sen, *The Idea of Justice* (2009)

→ TOPIC VII: LIBERTY AND SOCIETY

1. Liberty as a concept
2. Operationalisation of liberty in a democratic society
 - Constitutional Freedoms and reasonable restrictions
 - Debates on Euthanasia
 - Death penalty
 - Civil disobedience
 - Affixing liability

Required Readings:

1. Christopher Caudwell, *The Concept of Freedom* (1977), pp. 51-75
2. K.K. Mathew, *Democracy, Equality and Freedom* (1978) pp. 127-145

TOPIC VIII: LAW, RELIGION AND STATE

1. Concept of Secularism
2. Uniform Civil Code and India

Required Readings:

1. D.A. Desai, "Relevance of Secularism Today" 14 *Indian Bar Review* (1987) p. 333
2. *Indias Secular Constitution*, Rajeev Bhargav (2010)
- 3.

Suggested Readings:

Ronojoy Sen, "Legalizing Religion: The Indian Supreme Court and Secularism" (2007)
<http://www.eastwestcentre.org/download/3243/32173/PS030.pdf>

TOPIC IX: THE POLITICAL ECONOMY OF THE INDIAN LAW

1. Notion of Political Economy
2. Economic analysis of the Law
3. Interface between economic policies and human rights of the disadvantaged groups

Required Readings:

1. Yash Ghai et al. (eds.), *The Political Economy of Law: A Third World Reader* (1987), pp. 198-212
2. "Market fundamentalisms: Business Ethics at the Altar of Human Rights" in Upendra Baxi, *The Future of Human Rights*, pp 276-302 (2nd Ed. 2006)

Suggested Readings:

1. Clay Cross, "Law and Politics" in J. Waldron, *The Law* (1990), Chapter 2, pp. 8-28
2. Arthur J. Jacobson, "The Other Path of the Law", 103 *The Yale Law Journal* (1994), pp. 2213-2237 [Available at <http://links.jstor.org/sici?sici=0044-0094%28199406%29103%3A8%3C2213%3ATOPOTL%3E2.0.CO%3B2-F>]
3. Rohit Chopra, "Neoliberalism as *Doxa*: Bourdieu's Theory of the State and the Contemporary Indian Discourse on Globalization and Liberalization", XVII *Cultural Studies* (2003), pp. 419-444 [Available at <http://sites.google.com/site/lawcentreone/jurisworkshop>]