

FACULTY OF LAW
UNIVERSITY OF DELHI

LL.M/MCL Course Material
I Term (2022)

Paper No.YLM-101

Comparative Constitutional Law & Governance

COMPARATIVE CONSTITUTIONAL LAW AND GOVERNANCE

(Comparative study limited to U.S., U.K., and India)

This paper aims at introducing the constitutional law and governance on a comparative platform to the students of LL.M Programme. The paper is designed to give an overall picture of constitution and constitutionalism and to examine different types of governments. The three functions of the state are also given importance so that the students will be able to appreciate the constitutional functions of the state in a comparative environment. As the Constitution is a dynamic document timely modification is a necessity, but often resulting in challenges raised before the superior courts. How the judiciary strikes a balance between the political efforts and stability of the constitution while ensuring the dynamic character of the constitution. The various issues of governance affecting the people and the remedies available to them are also part of this paper.

1. **The Concept of Constitution & Constitutionalism**
 - (i) Meaning and idea of Constitution
 - (ii) Constitution as a dynamic and supreme law
 - (iii) Concept of constitutionalism
 - (iv) Distinction between Constitution and constitutionalism
 - (v) Essential features of constitutionalism
2. **Study of Comparative Constitutional Law**
 - (i) Relevance
 - (ii) Problems and concerns in using comparison
3. **Some Constitutional Principles**
 - (i) Rule of law
 - (a) Modern concept of rule of law
 - (b) Social and economic Rights as part of rule of law
 - (ii) Separation of powers
 - (a) The doctrine of checks and balances
 - (iii) Position of rule of law and separation of powers in the Indian Constitution
4. **Constitutional Foundations of Powers**
 - (i) Legislative power
 - (ii) The executive power
 - (iii) The judicial power
 - (a) Appointment of judges and judicial accountability
 - (b) Role of courts and fundamental rights
 - (c) Role of courts in ensuring good governance
5. **The State and Governance**
 - (i) The concept of good governance
 - (ii) The methods to ensure good governance
 - (iii) State and civil liberties
6. **Forms of Governments**
 - (iv) Federal and unitary forms
 - (a) Features, advantages and disadvantages
 - (b) Models of federalism quasi-federalism

- (v) Parliamentary and Presidential forms of government
- 7. Amendment of the Constitution**
 - (i) Methods of amendment
 - (ii) Limitations on the amending power: comparative perspective
 - (iii) Theory of basic structure: origin and development
- 8. Constitutional Review**
 - (i) Concept and origin of judicial review
 - (ii) Methods of constitutional Review
 - (a) Judicial and political review
 - (b) Concentrated and Diffused review
 - (c) Anticipatory and successive review
 - (iii) Limitations on judicial review

Recommended Readings:

1. Christopher Forsyth, Mark Elliott, Swati Jhaveri, Effective Judicial Review: a Cornerstone of Good Governance (OUP, 2010)
2. D.D. Basu, Comparative Constitutional Law (2nd Ed., Wadhwa, Nagpur)
3. David Strauss, The Living Constitution (OUP, 2010)
4. Dr. Subhash Kashyap, Framing of Indian Constitution (Universal Law, 2004)
5. Elizabeth Giussani, Constitutional and Administrative Law (Sweet and Maxwell, 2008)
6. Erwin Chemerinsky, Constitutional Law, Principles and Policies (3rd ed., Aspen, 2006)
7. M.V.Pylee, Constitutions of the World (Universal, 2006)
8. Mahendra P. Singh, Comparative Constitutional Law (Eastern Book Company, 1989)
9. Neal Devins and Louis Fisher, The Democratic Constitution (OUP, 2010)
10. S.N.Ray, Judicial Review and Fundamental Rights (Eastern Law House, 1974)
11. Sudhir Krishnaswamy, Democracy and Constitutionalism in India-a Study of the Basic Structure Doctrine (OUP, 2009)
12. Sunil Khilnani, Vikram Raghavan, Arun Thiruvengadam, Comparative Constitutionalism in South Asia (OUP, 2013)
13. Vikram David Amar, Mark Tushnet, Global Perspectives on Constitutional Law (OUP, 2009)
14. Zachery Elkins, Tom Ginsburg, James Melton, The Endurance of National Constitutions (Cambridge University Press, 2009)
15. D.D.Basu, Comparative Federalism (Lexis Nexis, 2007)
16. D.D.Basu, Introduction to the Constitution of India (Lexis Nexis Butterworth-Wadhwa, 2008)
17. Granville Austin, The Indian Constitution: Cornerstone of a Nation (OUP, 2008)
18. M.P.Jain, Indian Constitutional Law (6th ed., Wadhwa, Nagpur)
19. Mark Tushnet, Why the Constitution Matters (Yale University Press, 2010)
20. Methods of Comparative Law (Edward Elgar Publishing, 2012)
21. Vicki C.Jackson , Mark Tushnet, Comparative Constitutional Law (2nd ed., Foundation Press, 2006)