

School of Law, Governance and Citizenship

Ambedkar University, Delhi

Course Outline: Constitutionalism and Social Transformation

Course Code: SLGC2LP207

Title: Constitutionalism and Social Transformation

Cohort for which it is compulsory: None

Cohort for which it is elective: M.A. in Law Politics and Society

No of Credits: 4

Semester and Year Offered: 3rd Semester course for M.A 2nd year students (Monsoon Semester 2018)

Course Coordinator and Team: Anuj Bhuwania

Email of course coordinator: anuj@aud.ac.in

Pre-requisites: None

Course Aim:

This course tries to historicise the idea of ‘social transformation’ accompanying constitution-making and constitutional interpretation in India. While the course stems from a need to understand the widespread positive valence this idea enjoys in Indian constitutional discourse, it will draw widely from global histories of underlying ideas, right from the French Revolution.

As the course will be a mix of comparative constitutional law, political theory and historical debates on Indian politics, it will be very much within the inter-disciplinary mandate of the School of Law, Governance and Citizenship at AUD. It will be an optional course for 2nd year MA students and would build on the course offered in the 1st semester as part of the MA in ‘Law, Politics and Society’ on ‘Introduction to the Indian Constitution’. This course is around an emerging area of academic focus and there is now a growing literature in this field, both in India and internationally.

A brief description of the Course:

There will be 4 modules in this course:

The first module introduces the term 'transformative constitutionalism' and examines how it arose in the 1990s in the context of South Africa and has since acquired widespread popularity as a way to think about postcolonial constitutionalism

In Module 2, the focus is on a longer modern history of debates around the nature of social transformation accompanying a constitutional transition. The key readings will centre around questions of transformation accompanying the American and the French Revolutions of the late 18th century

The Third module examines how this concept has played out in India's constitution making process, focusing on the peculiarity of the Directive Principles of State Policy.

The last module centres on the project of social transformation through land reforms and the constitutional conundrums it caused. The focus will be on the insertion of the Ninth Schedule into the Constitution, and particularly the emergency era 42nd amendment. The course will end with reflections on the long-term impact of the 42nd amendment in judicial discourse and constitutional interpretation. The increasing appearance of Directive Principles in judicial reasoning will be the focus of this part.

Course Aims and Objectives

- Introduces the term 'transformative constitutionalism' and looks at its history
- It aims to compare the two kinds of transformations wrought by the constitutions engendered by the American and the French Revolutions following Hannah Arendt, looking also at the classic writings by Burke and Tocqueville on this issue.
- Focus on the debates accompanying the incorporation of 'Directive Principles of State

Policy' in the Indian Constitution

- Examines the gradual apotheosis of 'Directive Principles of State Policy' in the context of post-independence legal debates around land reform, culminating in the emergency era 42nd amendment.
- Focus on the peculiarities of Articles 31B and 31C of the Constitution, and what they mean for Indian constitutional interpretation.

Syllabus with List of Readings

Module 1:
'Transformative Constitutionalism': The term and its history
(2 weeks)

Week 1 and 2:

The first module introduces the term 'transformative constitutionalism' and examines how it arose in the 1990s in the context of South Africa and has since acquired widespread popularity as a way to think about postcolonial constitutionalism

Readings:

Klare, Karl E. "Legal culture and transformative constitutionalism." *South African Journal on Human Rights* 14.1 (1998): 146-188.

Langa, Pius. "Transformative constitutionalism." *Stellenbosch L. Rev.* 17 (2006): 351.

	<p>Vieira, Oscar Vilhena, Upendra Baxi, and Frans Viljoen, eds. <i>Transformative Constitutionalism: Comparing the Apex Courts of Brazil, India and South Africa</i>. Pretoria University Law Press, 2013.</p> <p>Bogdandy, Armin Von(ed.) <i>Transformative Constitutionalism in Latin America: The Emergence of a New Jus Commune</i>. OUP, 2017. (Selections)</p> <p>Hailbronner, Michaela. "Transformative Constitutionalism: Not Only in the Global South." <i>American Journal of Comparative Law</i> (2016).</p> <p>Thiruvengadam, Arun, and Gedion T. Hessebon. "Constitutionalism and impoverishment: a complex dynamic." <i>The Oxford Handbook of Comparative Constitutional Law</i> (2012): 153</p>
<p>Module 2:</p> <p>Transformative Constitutionalism: A history of ideas (weeks)</p> <p>Weeks 3-6:</p>	<p>In this Module, the focus is on a longer modern history of debates around the nature of social transformation accompanying a constitutional transition. The key readings will center around questions of transformation accompanying the American and the French Revolutions of the late 18th century</p>
<p>Topics to be Covered:</p> <ul style="list-style-type: none"> • “The Social Question” and the Constitution • Comparing the American and the French constitutional revolutions of the 18th century 	<p>Readings:</p> <p>Sieyès, Emmanuel Joseph. <i>Political writings</i>. Indianapolis and Cambridge: Hackett (2003).</p> <p>Burke, Edmund. <i>Reflections on the Revolution in France</i>.</p> <p>Arendt, Hannah. <i>On Revolution</i>. (Selections)</p> <p>Alexis de Tocqueville, <i>The Ancient Regime and the French Revolution</i>. (Selections)</p> <p>Alexis de Tocqueville. <i>Democracy in America</i> (Selections)</p>

	<p>Colley, Linda. "Empires of Writing: Britain, America and Constitutions, 1776–1848." <i>Law and History Review</i> 32.2 (2014): 237-266.</p> <p>Rawls, John. "The idea of an overlapping consensus." <i>Oxford J. Legal Stud.</i> 7 (1987): 1.</p>
<p>Module 3: Transformative Constitutionalism and the making of the Indian Constitution (3 weeks) Weeks 7-9</p>	<p>The Third module examines how the concept of social transformation played out in India's constitution making process, focusing on the peculiarity of the Directive Principles of State Policy.</p>
<p>Topics to be covered</p> <ul style="list-style-type: none"> • The drafting of Directive Principles of State Policy • The early post-independence history of interpreting Directive Principles of State Policy 	<p>Readings:</p> <p>Mithi Mukherjee. <i>India in the Shadows of Empire</i> (Selections)</p> <p>Mehta, Uday Singh. "Indian Constitutionalism: Crisis, Unity and history." <i>The Oxford Handbook of the Indian Constitution</i>. 2016.</p> <p>Khaitan, Tarunabh. "Directive Principles and the Expressive Accommodation of Ideological Dissenters." (2016).</p> <p>Granville Austin. <i>Indian Constitution: The Cornerstone of a Nation</i>. (Selections)</p> <p>Rodrigues, Valerian, ed. <i>The essential writings of BR Ambedkar</i>. Oxford University Press, 2010. (Selections)</p> <p>Upendra Baxi. "The Little Done, the Vast Undone-Some Reflections on</p>

	<p>Reading Glanville Austin's <i>The Indian Constitution</i>." (1967) <i>Journal of the Indian Law Institute</i> 9: 323.</p> <p>Tripathi, P. K. "Directive Principles of State Policy: The Lawyer's Approach to Them Hitherto, Parochial, Injurious and Unconstitutional." <i>Sup. Ct. J.</i> 17 (1954): 7.</p> <p>Bhatia, Gautam. "Directive Principles of State Policy." <i>The Oxford Handbook of the Indian Constitution</i>. 2016.</p>
<p>Module 4: : The politics of Transformative Constitutionalism in post-colonial India</p> <p>(3 weeks)</p> <p>Weeks: 9-12</p>	<p>The last module focuses on the project of social transformation through land reforms and the constitutional conundrums it caused. The focus will be on the insertion of the Ninth Schedule into the Constitution, and particularly the emergency era 42nd amendment. The course will end with reflections on the long-term impact of the 42nd amendment in judicial discourse and constitutional interpretation. The increasing appearance of Directive Principles in judicial reasoning will be the focus of this part.</p>
<p>Topics to be covered</p> <ul style="list-style-type: none"> • The legal background to the 42nd amendment • The legal academic debates around the 42nd amendment • The judicial fallout of the 42nd amendment 	<p>Readings:</p> <p>Austin, Granville. <i>Working a democratic constitution: a history of the Indian experience</i>. Oxford University Press, 2003. (Selections)</p> <p>Merillat, Herbert Christian Laing. <i>Land and the constitution in India</i>. 1970. (Selections)</p> <p>Upendra Baxi, Constitutional Changes: An Analysis of the Swaran Singh Committee Report, 2 SCC JOURNAL (1976)</p> <p>Kogekar, Sadanand Vasudeo. "Revision of the Constitution." <i>Economic and Political Weekly</i> (1976): 907-914.</p> <p>Dhavan, Rajeev. <i>The Amendment: Conspiracy Or Revolution?</i>. Wheeler, 1978.</p> <p>Dhavan, Rajeev. "Amending the amendment: the constitution (forty-fifth amendment) bill, 1978." <i>Journal of the Indian Law Institute</i> 20.2 (1978): 249-</p>

	<p>272.</p> <p><i>Minerva Mills vs Union of India</i> (Selections)</p> <p>Baxi, Upendra. <i>The Indian Supreme Court and Politics</i>. Eastern Book Co., 1980.</p> <p>Krishnaswamy, Sudhir. <i>Democracy and constitutionalism in India: a study of the basic structure doctrine</i>. Oxford University Press, 2010. (selections)</p> <p>Bhatia, Gautam. "Comprehensive Transformative Amendments-Theory and Practice: Rethinking the Nineteenth Amendment and the Place of Women's Rights in the Constitution." <i>Dartmouth Law Journal</i> 13 (2015): 1.</p>
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Assessment Methodology:

Term paper	20
Mid term	25
Response essays	20
End term	25
Class participation and Attendance	10