

**CONSTITUTIONAL VALUES**  
**IN ADJUDICATION AND JUDICIAL REASONING\***

***Responsible Faculty Instructor:***

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Credits: 4

Credits Type: Law

Cross-registration: Not allowed

Pre-requisites: ‘Constitutional Law I & II’<sup>†</sup>

Level: B.A./B.B.A./B. Com., LL.B. (*Hons.*); three-year LL.B. (*Hons.*); LL.M. (General); LL.M. (Constitutional and Administrative Law)

[Note: Not suitable for three-year JGLS Arts (B.A.) Programmes.]

COURSE DESCRIPTION (COURSE VISION):

In 1961, Professor H.L.A. Hart posited that every legal system must have a ‘rule of adjudication’ which provides how disputes are to be settled or resolved in a regime of primary and secondary rules with the rule of recognition guiding a court on what ‘law’ applies to a particular case. In the subsequent decade, Professor Ronald Dworkin – who was his student and lifelong critic – argued that courts rely on not only legal rules, but upon moral principles to adjudicate hard-cases. Modern positivists and natural law scholars tend to exclusively subscribe to either Hart or Dworkin’s position. Nonetheless, it is axiomatic that judicial bodies, constitutional courts, and adjudicatory bodies must provide reasoned decisions while adjudicating legal disputes or acting in advisory capacities.

Justification is ubiquitous in judicial reasoning and is a recognised facet of the constitutional and administrative law requirement of a ‘speaking order’ as a facet of principles of natural justice. Thus, it is indisputable that judges and those in charge of judicial adjudication must provide reliance on some rule, convention, principles, or values that carry satisfactory guidance on how to settle or resolve a dispute. Understandably, justification is required in not only

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\* **Disclaimer:** This course is heavily inspired by a course of the similar title taught by Prof. (Dr.) Pritam Baruah, Dean, BML Munjal School of Law and Director, Centre for Constitutional Values in Spring 2018 and Fall 2018 at JGLS. While certain modules have been inspired by Prof. (Dr.) Baruah’s earlier course offerings, the course ideator has ensured that a substantial degree of variance is present in the current design. For instance, while Prof. Baruah’s course heavily focused on the three inter-linked values (rights) of liberty, dignity, and privacy, this proposal covers a broader variety of constitutional values including constitutional morality, transformative constitutionalism, rule of law, secularism, and judicial independence (which are not restricted to merely rights, but rather extend to constitutional foundations and institutions).

<sup>†</sup> **Note:** Pursuant to the Executive Dean, JGLS and the JGLS Academic Review Board’s decision to swap the contents of ‘Constitutional Law I’ and ‘Constitutional Law II’ w.e.f. Spring 2026, any students eligible to opt this course must necessarily complete ‘Constitutional Law II’ (Citizenship, Fundamental Rights and DPSPs) to undertake this course.

judicial reasoning, but is reflected in all forms of legal reasoning and a variety of laws (not limited to only Constitutional and Administrative laws).

When it comes to Constitutional Courts and Human Rights Adjudicatory Bodies, all of them place reliance on constitutional values in their judicial reasoning to adjudicate cases that deal with substantial questions of constitutional law and human rights (such as the Indian Supreme Court and the various Indian High Courts; the US Federal Supreme Court (SCOPUS); the UK Supreme Court (formerly the House of Lords); the Canadian Supreme Court; the South African Constitutional Court; the European Court of Justice (CJEU); the European Court of Human Rights (ECtHR)). Of course, the employment of constitutional values in a certain judgment or by a certain judge in a certain way is often contested by fellow judges, legal practitioners, scholars, and the public. Moreover, judges, legal practitioners, and scholars often express favour towards one conception or various conceptions of a constitutional value as employed in adjudication and judicial reasoning over a particular conception. In foundational *Constitutional Law I & II* courses, students encounter such contestation in conceptions and employment constitutional values such as democracy, equality, federalism, and separation of powers in detail.

In this course, building on our foundations in Constitutional Law and Theory, we will understand the nature, form, and limits of adjudication as it applies to constitutional values. We will review and critically appraise the origins, competing conceptions, and theoretical and judicial employment of select constitutional values including constitutional morality, transformative constitutionalism, dignity, privacy (including right to be forgotten/erasure), liberty, rule of law, secularism, and judicial independence. While doing so, we will also attempt to discover which of the conceptions of a constitutional value and the way it was employed (or should be employed) by a judicial body is the most logically appealing to each of us.

#### TEACHING METHODOLOGY:

The course will comprise lectures and interactive class discussions. Students are expected to and are strongly encouraged to read the assigned materials in advance of the class so that the lectures are made more fruitful by class discussions (although they are free to attend the class and to do the literature readings thereafter). Aiming to build research-capacity for constitutional theory and doctrinal research, this course may be reading heavy in certain modules.

Students will be also be given guidance on exploring research topics related to the course's scope and will be expected to produce a draft research paper by the end of the course with a draft research proposal as a precedent requirement and a paper presentation as a subsequent requirement (aiming to provide feedback), serving as building blocks toward the research paper.

INTENDED LEARNING OUTCOMES:

<b>Course Intended Learning Outcomes</b>	<b>Weightage in %</b>	<b>Teaching and Learning Activities</b>	<b>Assessment Tasks/ Activities</b>
Evaluate the nature, form, and limits of judicial reasoning.	10%	Lectures & Class discussions	To be confirmed after consultation with students.
Critically appraise the origins, evolution and competing conceptions of constitutional values such as constitutional morality, dignity, privacy, and rule of law. Furthermore, evaluate how these concepts are employed by various global judicial bodies.	40%	Lectures & Class discussions	To be confirmed after consultation with students.
Develop advanced doctrinal and qualitative analytical thinking and research skills to produce high-quality argumentation and/or research that synthesizes constitutional theory with judicial practice regarding a specific value within a particular jurisdictional framework or comparative constitutional adjudication.	30%	Lectures & Class discussions	To be confirmed after consultation with students.
Synthesize coherent legal arguments through self-directed research on topical issues of constitutional evolution.	20%	Lectures & Class discussions	To be confirmed after consultation with students.

READING LIST (select ten readings):

1. Anubhav Khamroi and Anujay Shrivastava, ‘Analysing the practical implications of a right to privacy: State surveillance and constitution’ (2019) 8 Indian Constitutional Law Review 1-20.
2. Cass Sunstein, Legal Reasoning and Political Conflict (Oxford University Press 1996), chapter 2.
3. Karl E. Klare, ‘Legal Culture and Transformative Constitutionalism’ (1998) South African Journal on Human Rights 14:1.
4. Lon Fuller, ‘Forms and Limits of Adjudication’ (1978) 92 Harvard Law Review 353.
5. M.P. Singh, ‘Securing the Independence of the Judiciary-The Indian Experience’ (2000) 10(2) Ind. Int'l & Comp. L. Rev. 245.
6. Nakul Nayak, ‘Constitutional Morality: An Indian Framework’ (2023) 71(2) American Journal of Comparative Law 354.
7. Pritam Baruah, ‘Human Dignity in Adjudication: The Limits of Placeholder and Essential Contestability Accounts’ (2014) 2 Canadian Journal of Law and Jurisprudence 329-56.
8. RONALD DWORKIN, JUSTICE FOR HEDGEHOGS (2011), Ch. 8.
9. Samuel D. Warren II and Louis Brandeis, ‘The Right to Privacy’ (1890) 4 Harvard Law Review 193.
10. Tarunabh Khaitan, ‘Dignity as an Expressive Norm: Neither Vacuous Nor a Panacea’ (2012) 32(1) Oxford Journal of Legal Studies 14.

WEEKLY READING PLAN (WEEKLY OUTLINE):

A weekly reading plan for this proposed elective may be incorporated and shared by the Faculty Instructor to the Executive Dean, JGLS and the JGLS Academic Review Board (ARB) at the stage of the drafting of the Course Manual as per the JGLS Faculty Rules and Regulations 2026 and in compliance with the template for elective courses.

However, I am providing an indicative weekly teaching structure below (full-set of readings to be included in the final Course Manual):

WEEK(S)	MODULES (INDICATIVE)
Week 1	<p style="text-align: center;"><b>THE NATURE OF ADJUDICATION</b></p> <ul style="list-style-type: none"> <li>• Why Adjudication? (Jeremy Bentham/John Austin/H.L.A. Hart/Ronald Dworkin/Jeremy Waldron)</li> <li>• Legal and Constitutional Reasoning</li> <li>• Form and Limits of Adjudication</li> <li>• Competing Conceptions in Legal Reasoning</li> <li>• Conceptual Bankruptcy in Values</li> </ul>

Weeks 2-3	<p style="text-align: center;"><b>CONSTITUTIONAL MORALITY AND TRANSFORMATIVE CONSTITUTIONALISM</b></p> <ul style="list-style-type: none"> <li>• Origins of Constitutional Morality</li> <li>• Constitutional Morality in India and abroad</li> <li>• Indian Supreme Court and Constitutional Morality</li> <li>• Klare's conception of Transformative Constitutionalism</li> <li>• Indian Supreme Court's conception of Transformative Constitutionalism</li> </ul>
Weeks 4-6	<p style="text-align: center;"><b>DIGNITY</b></p> <ul style="list-style-type: none"> <li>• Kantian Intrinsic-Dignity</li> <li>• Contingent Dignity (Waldron)</li> <li>• Economic Dignity (Chandrachud)</li> <li>• Competing Conceptions of Dignity</li> <li>• Dignity from a comparative perspective</li> </ul>
Weeks 7-9	<p style="text-align: center;"><b>PRIVACY AND RIGHT TO BE FORGOTTEN/ERASURE</b></p> <ul style="list-style-type: none"> <li>• Foundations of Privacy: Warren and Brandeis</li> <li>• Competing conceptions of Privacy</li> <li>• Privacy and US Federal Supreme Court (SCOTUS)</li> <li>• Privacy and Indian Supreme Court</li> <li>• Right to be Forgotten/Erasure in India and EU</li> <li>• Privacy vs. Right to be Forgotten</li> </ul>
Week 10	<p style="text-align: center;"><b>LIBERTY</b></p> <ul style="list-style-type: none"> <li>• Conceptions of Liberty</li> <li>• Liberty and Indian Supreme Court</li> <li>• Liberty from a comparative perspective</li> </ul>
Week 11	<p style="text-align: center;"><b>RULE OF LAW</b></p> <ul style="list-style-type: none"> <li>• Conceptions of Rule of Law</li> <li>• Rule of Law and Indian Supreme Court</li> <li>• Rule of Law from a comparative perspective</li> </ul>
Week 12	<p style="text-align: center;"><b>SECULARISM</b></p> <ul style="list-style-type: none"> <li>• Conceptions of Secularism</li> <li>• Secularism and Indian Supreme Court</li> <li>• Secularism from a comparative perspective</li> </ul>

Weeks 13-14	<b>JUDICIAL INDEPENDENCE</b> <ul style="list-style-type: none"><li>• Theory of Judicial Independence</li><li>• Judicial Independence and India</li><li>• Judicial Independence from a comparative perspective</li></ul>
Week 15	<b>REVISION WEEK</b>