



COURSE MANUAL

Name of the Elective Course: Constitutionalism

Course Code: L-EL-1229

Name of the responsible Faculty Instructor:

Prof. Shubham Shandilya
Assistant Professor and Assistant Dean (Research), JGLS
shubham.shandilya@jgu.edu.in

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This document is prepared by the course instructor and contains basic information relevant to the execution of the course. It is the official record for all intends and purposes as far the course, *Constitutionalism*, is concerned.

This course manual can be used as a general guide to the subject. However, the instructor can modify, extend or supplement the course (without tampering its basic framework and objectives) for the effective and efficient delivery of the course. The instructor will provide student with reasons for such changes.

1.Course Title: Constitutionalism

Course Duration: **One Semester (14 Weeks)**

No. of Credit Units: 4 Credits for UG = 2 Credits for PG

Level: **Both**

Medium of Instruction: **English**

Pre-requisites (if applicable): Constitutional Law I & II

Equivalent Courses: N/A

1. Acknowledgement of Course Ideators

This course has been ideated by Shubham Shandilya, Assistant Professor and Assistant Dean (Research), Jindal Global Law School, O.P. Jindal Global University.

I would like to express my sincere gratitude to Professor (Dr.) Cheryl Saunders AO, Laureate Professor Emeritus, Melbourne Law School, University of Melbourne, whose insightful lectures and discussions during my time at Melbourne Law School profoundly shaped my interest in this field.

I am also deeply thankful to Anujay Shrivastava, Assistant Professor and Assistant Dean (Policy and Compliance), Jindal Global Law School, O.P. Jindal Global University for his thoughtful comments and valuable suggestions in refining this course.

2. Course Description

This course examines constitutionalism as a central concept in public law through historical, theoretical, and comparative perspectives. It explores competing conceptions of constitutionalism, internal critiques, and methodological debates within comparative constitutional law. Moving beyond Eurocentric accounts, the course analyses constitutional experiences across diverse jurisdictions, including those in the Global North and Global South. Particular attention is paid to constitutional actors, institutions, and practices beyond formal texts. The course also engages with contemporary challenges such as populism, climate change, technological governance, and global inequality. Through comparative case studies, students assess whether constitutionalism can be reimagined as a genuinely global normative project.

3. Course Aims

By the end of this course, students will be able to:

1. Understand and critically evaluate competing theories and critiques of constitutionalism.
2. Analyse constitutionalism comparatively across different legal, political, and historical contexts.
3. Apply methodological approaches to the study of comparative constitutional law.
4. Examine the role of constitutional actors and institutions beyond courts and texts.
5. Assess contemporary global challenges to constitutionalism and their implications for constitutional theory and practice.

4. Teaching Methodology

The course will be taught through a combination of lectures, seminars, group discussions, case study analyses, and student presentations. Readings will be assigned weekly, and students are expected to come prepared for active participation. The methodology emphasizes critical thinking, comparative analysis, and application of theoretical concepts to real-world jurisdictions. Guest lectures or discussions on specific case studies may be incorporated where feasible.

5. Intended Learning Outcomes

Learning Outcome	Weightage	Teaching– Learning Methods	Assessment Tools
Explain constitutionalism as a historical and theoretical concept, and critically assess competing conceptions and internal critiques within constitutional traditions.	20	Lectures, guided readings, group discussions	Class participation, reflection paper
Analyse and compare debates on the Global North and Global South in comparative constitutional law, including claims of universality, diffusion, and divergence.	20	Seminars, case study analyses	Class participation, reflection paper
Identify and critically evaluate the limits of methodological approaches in comparative constitutional law, including challenges of representation and inclusion across jurisdictions.	20	Assigned readings, structured critical discussions	Reflection paper
Assess the significance and limitations of the Global North–Global South framework in theorising constitutionalism and comparative constitutional practice.	20	Lectures, comparative exercises	Research paper
Apply comparative methods to examine constitutional governance and institutional design from multiple perspectives using selected case studies.	20	Group activities, comparative case studies	Class participation, research paper

6. Grading of Student Achievement

To pass this course, students shall obtain a minimum of 40% in the cumulative aspects of coursework, i.e., internal assessments (including moot court, mid-term exam, presentations, research paper) and the end term examination. Internal assessments shall carry a total of 70 marks. **End of semester exam shall carry 30 marks out of which students have to obtain a minimum of 30% marks to fulfil the requirement of passing the course.**

The details of the grades as well as the criteria for awarding such grades are provided below:

PERCENTAGE OF MARKS	GRADE	GRADE VALUE	GRADE DESCRIPTION
80 and above	O	8	Outstanding – Exceptional knowledge of the subject matter, thorough understanding of issues; ability to synthesize ideas, rules and principles and extraordinary critical and analytical ability
75 – 79	A+	7.5	Excellent - Sound knowledge of the subject matter, thorough understanding of issues; ability to synthesize ideas, rules and principles and critical and analytical ability
70 – 74	A	7	Very Good - Sound knowledge of the subject matter, excellent organizational capacity, ability to synthesize ideas, rules and principles, critically analyze existing materials and originality in thinking and presentation
65 – 69	A-	6	Good - Good understanding of the subject matter, ability to identify issues and provide balanced solutions to problems and good critical and analytical skills
60 – 64	B+	5	Fair – Average understanding of the subject matter, limited ability to identify issues and provide solutions to problems and reasonable critical and analytical skills

PERCENTAGE OF MARKS	GRADE	GRADE VALUE	GRADE DESCRIPTION
55 – 59	B	4	Acceptable - Adequate knowledge of the subject matter to go to the next level of study and reasonable critical and analytical skills.
50 – 54	B-	3	Marginal - Limited knowledge of the subject matter and irrelevant use of materials and, poor critical and analytical skills
45 – 49	P1	2	Pass 1 – Pass with basic understanding of the subject matter
40 – 44	P2	1	Pass 2 – Pass with rudimentary understanding of the subject matter
Below 40	F	0	Fail - Poor comprehension of the subject matter; poor critical and analytical skills and marginal use of the relevant materials. Will require repeating the course
Incomplete	I	0	Incomplete - “Extenuating circumstances” preventing the student from taking the end-semester, or re-sit, examination as the case may be; the Vice Dean (Examinations) at their discretion assign the “I” grade. If an "I" grade is assigned, the student would appear for the end-semester, or re-sit examination, as the case may be, as and when the subsequent opportunity is provided by the University.

7. Criteria for Student Assessments

Assessment of the participants will be based on the following criteria.

Assessment	Weightage	Remarks
Class Participation	15 marks	Assessed on active and informed engagement in class discussions, case analyses, and group-based or individual activities.
Reflection Paper	25 Marks	A critical reflection based on assigned course readings, demonstrating engagement with key themes, arguments, and debates covered in the course.

Assessment	Weightage	Remarks
Research Paper	30 Marks	3,000-4,000 word paper on an approved topic related to course themes.
End Semester Examination (Compulsory)	30 Marks	There will be a compulsory end-semester examination/component for all participants of the course who have successfully met the requisite attendance as per the governing JGU policies.

Course/Class Policies

Cell Phones, Laptops and Similar Gadgets

Use of cell phones is prohibited in class; laptops and similar electronic gadgets may be used during class with the explicit permission of the concerned course instructor.

Academic Integrity and Plagiarism

Learning and knowledge production of any kind is a collaborative process. Collaboration demands an ethical responsibility to acknowledge who we have learnt from, what we have learned, and how reading and learning from others have helped us shape our own ideas. Even our own ideas demand an acknowledgement of the sources and processes through which those ideas have emerged. Thus, all ideas must be supported by citations. All ideas borrowed from articles, books, journals, magazines, case laws, statutes, photographs, films, paintings, etc., in print or online, must be credited with the original source. If the source or inspiration of your idea is a friend, a casual chat, something that you overheard, or heard being discussed at a conference or in class, even they must be duly credited. If you paraphrase or directly quote from a web source in the examination, presentation or essays, the source must be acknowledged. The university has a framework to deal with cases of plagiarism. All form of plagiarism will be taken seriously by the University and prescribed sanctions will be imposed on those who commit plagiarism.

Disability Support and Accommodation Requirements

JGU endeavours to make all its courses inclusive and accessible to students with different abilities. In accordance with the Rights of Persons with Disabilities Act (2016), the JGU Disability Support Committee (DSC) has identified conditions that could hinder a student's overall well-being. These include physical and mobility related difficulties, visual and hearing impairment, mental health conditions and intellectual/learning difficulties e.g., dyslexia, dyscalculia. Students with any known disability needing academic and other support are required to register with the Disability Support Committee (DSC) by following the procedure specified at <https://jgu.edu.in/disability-support-committee/>

Students who need support may register before the deadline for registration ends, as communicated by the DSC via email each semester. Those students who wish to continue receiving support from the previous semester, must re-register every semester prior to the deadline for re-registration as communicated by the DSC via email. Last minute

registrations and support are discouraged and might not be possible as sufficient time is required to make the arrangements for support.

The DSC maintains strict confidentiality about the identity of the student and the nature of their disability and the same is requested from faculty members and staff as well. The DSC takes a strong stance against in-class and out-of-class references made about a student's disability without their consent and disrespectful comments referring to a student's disability. With due respect for confidentiality, faculty and students are encouraged to have honest conversations about the needs of students with disabilities and to discuss how a course may be better tailored to cater to a student with disability.

All general queries are to be addressed to disabilitysupportcommittee@jgu.edu.in

Safe Space Pledge

This course may discuss a range of issues and events that might result in distress for some students. Discussions in the course might also provoke strong emotional responses. To make sure that all students collectively benefit from the course, and do not feel disturbed due to either the content of the course or the conduct of the discussions. Therefore, it is incumbent upon all within the classroom to pledge to maintain respect towards our peers. This does not mean that you need to feel restrained about what you feel and what you want to say. Conversely, this is about creating a safe space where everyone can speak and learn without inhibitions and fear. This responsibility lies not only with students, but also with the instructor.

P.S. The course instructor, as part of introducing the course manual, will discuss the scope of the Safe Space Pledge with the class.

Keywords Syllabus

Constitutionalism; Comparative Constitutional Law; Global North and Global South; Constitutional Theory; Postcolonial Constitutionalism; Constitutional Institutions; Judicial Role; Popular Sovereignty; Populism; Climate Constitutionalism; TWAIL; Global Governance

Course Design and Overview (Weekly Plan)

Week	Topics
1	Introduction to Constitutionalism: Meaning, historical development, and core features of constitutionalism; constitutionalism as a normative project.
2	Competing Conceptions of Constitutionalism: Internal critiques, tensions, and alternative accounts; Indian constitutionalism and contextual understandings.
3	Constitutionalism in Comparative Perspective: Universality, diffusion, and divergence in constitutional ideas across jurisdictions.
4	Global North and Global South Debates: Theoretical meaning of the Global South; postcolonial approaches and legal syncretism in constitutionalism.
5	Comparative Constitutionalism in Practice: Constitutional borrowing, convergence, and resistance. <i>Case study:</i> Australia and the Voice to Parliament.
6	Methods of Comparative Constitutionalism: Doctrinal, contextual, and critical methods; what and why we compare constitutions.
7	Methods Applied: Comparative analysis of fundamental rights frameworks. <i>Case studies:</i> Kenya (2010), Nepal (2015), Chile (draft 2022).
8	Constitutional Actors and Institutions: Courts, separation of powers, institutional failure, and theories of judicial role.
9	Beyond Courts: The role of “the People,” constitutional resilience, and non-traditional or guarantor institutions.
10	Actors and Institutions in Context: Comparative case studies on constitutional practice and resilience. <i>Case studies:</i> Sri Lanka, Nepal, South Africa.
11	Making Constitutionalism Genuinely Global: Constitutionalism and international law; environmental and climate constitutionalism.
12	Contemporary Challenges to Constitutionalism: Populism, authoritarianism, and democratic backsliding.

Week	Topics
13	Technology and Global Inequality: Algorithmic governance, rule of law, and TWAIL perspectives on constitutionalism.
14	Revision Week

Module Descriptions:

The course is divided into five modules spread across 15 weeks:

- **Module 1 (Weeks 1–2): Introduction to Constitutionalism and Competing Conceptions**

Introduces constitutionalism as a core concept in public law, examining its historical development, normative foundations, and competing theoretical accounts. The module highlights internal critiques and tensions within constitutionalism across different constitutional traditions.

- **Module 2 (Weeks 3–5): Revisiting the debates on Constitutionalism in Global North and Global South**

Examines constitutionalism comparatively across jurisdictions, analysing claims of universality, diffusion, and divergence. The module critically assesses the Global North–Global South framework and its relevance to comparative constitutional analysis.

- **Module 3 (Weeks 6-7): Methods for Study and Practice of Comparative Constitutionalism**

Explores methodological approaches to comparative constitutional law, including doctrinal, contextual, and critical methods. These approaches are applied through comparative analysis of rights frameworks in selected constitutions.

- **Module 4 (Weeks 8-10): Constitutional Actors and Institutions**

Focuses on constitutional institutions and actors beyond texts, including courts, political branches, and the people. The module analyses institutional design, constitutional resilience, and separation of powers through comparative case studies.

- **Module 5 (Weeks 11-13): Making Constitutionalism Genuinely Global**

Engages with contemporary challenges to constitutionalism such as populism, climate change, technology, and global inequality. The module evaluates whether constitutionalism can respond meaningfully to these issues across diverse constitutional contexts.

**Module 1- Introduction to Constitutionalism and competing conceptions
Weeks 1-2**

Mandatory Readings

- Martin Loughlin ‘Introduction: What is Constitutionalism?’ in Martin Loughlin Against Constitutionalism (Harvard University Press 2022) 1-24
- Martin Loughlin ‘Overcoming Constitutionalism’ in Martin Loughlin Against Constitutionalism (Harvard University Press 2022) 191 – 202
- Robert Schütze, Constitutionalism(s), in The Cambridge Companion to Comparative Constitutional Law (Roger Masterman and Robert Schütze (eds.) Cambridge University Press 2019)
- Sujit Choudhury, Madhav Khosla and Pratap Bhanu Mehta, Chapter 1: Locating Indian Constitutionalism, in Sujit Choudhury, Madhav Khosla and Pratap Bhanu Mehta (eds.), The Oxford Handbook of the Indian Constitution (OUP 2016).
- Hirschl, R. (2022) ‘Methodology and Research Design’, in D.S. Law (ed.) *Constitutionalism in Context*. Cambridge: Cambridge University Press (Comparative Constitutional Law and Policy), pp. 41–58.

Further Readings:

- Abhijeet Shrivastava, Evolving Meanings and Judicial Reasonings - Filling in the Silences of ‘Constitutional Morality’, 10(1) NUJS International Journal of Law and Policy Review 46 (2021).
- Adrian Vermeule, Common Good Constitutionalism (Polity Press 2022).
- Conor Casey & Adrian Vermeule, Myths of Common Good Constitutionalism 45 Harvard J. L & Pub. Pol’y 103 (2022).
- David Landau, Abusive Constitutionalism, (2013) 47 U.C. Davis Law Review 189.
- Gautam Bhatia, Chapter 36: Directive Principles of State Policy, in Sujit Choudhury, Madhav Khosla and Pratap Bhanu Mehta (eds.), The Oxford Handbook of the Indian Constitution (Oxford University Press 2016).
- Karl E Klare, ‘Legal Culture and Transformative Constitutionalism’ (1998) 14(1) South African Journal on Human Rights 146.
- Donald S. Lutz, “Constitutionalism”, Ch. 1, PRINCIPLES OF CONSTITUTIONAL DESIGN, Cambridge University Press (2006), pp. 1-24.
- Keith E. Whittington, “Constitutionalism”, Ch. 16, KE. Whittington et al. (eds.), THE OXFORD HANDBOOK OF LAW & POLITICS, Oxford University Press (2008), pp. 281-295.

- Uday Mehta, “Indian Constitutionalism: Crisis, Unity, & History”, in Sujit Choudhury, Madhav Khosla and Pratap Bhanu Mehta (eds.), The Oxford Handbook of the Indian Constitution (Oxford University Press 2016).

Module 2-Revisiting the debates on Constitutionalism in Global North and Global South

Weeks 3-5

Mandatory Readings

- Berihun Adugna Gebeye A Theory of African Constitutionalism (OUP 2021) ch 1, ‘Legal Syncretism as a Theoretical Framework for African Constitutionalism’ 9-34
- Caroline Levander and Walter Mignolo ‘Introduction: The Global South and World Dis/Order’ 5(1) The Global South 1-11
- Case study: ‘The Voice: what is it, where did it come from, and what can it achieve?’ The Conversation March 28, 2023; Sandra Eades ‘The Voice to Parliament and Echoes of Mabo’ Pursuit July 6, 2023
- Ran Hirschl, ‘How Universal is Comparative Constitutional Law?’ in Comparative Matters: The Renaissance of Comparative Constitutional Law (Oxford University Press 2014) 192-223
- Cheryl Saunders, ‘Towards a Global Constitutional Gene Pool’ (2009) 4 National Taiwan University Law Review 3, 21-38
- M.P. Singh, 'Constitutionalism in India in Comparative Perspective' (2018) 11 NUJS L. Rev. 643, available at, <https://nujlawreview.org/wp-content/uploads/2020/08/11.4-MP-Singh-CONSTITUTIONALISM-IN-INDIA-IN-COMPARATIVE-PERSPECTIVE.pdf>

Module 3-Methods for Study and Practice of Comparative Constitutionalism

Weeks 6-7

Mandatory Readings

- Philipp Dann, Michael Riegner and Maxim Bönnemann, ‘The Southern Turn in Comparative Constitutional Law: An Introduction’ Dann/Riegner/Bönnemann (eds), The Global South and Comparative Constitutional Law, (OUP 2020) 1-38
- Gunter Frankenberg ‘Comparing constitutions: theory and method’ in Comparative Constitutional Studies: Between Magic and Deceit (Elgar 2018) 67-107

- Madhav Khosla, 'Is a Science of Comparative Constitutionalism Possible?', 135(2022) Harvard Law Review 2110
- Ran Hirschl 'Methodology and Research Design' in David S Law Constitutionalism in Context (CUP 2022) 41 – 58
- Vicki C Jackson 'Comparative Constitutional Law: Methodologies' in Michel Rosenfeld and Andras Sajó (eds) The Oxford Handbook of Comparative Constitutional Law (OUP 2012) 54-74
- Case studies: comparison of fundamental rights chapters in Kenya (2010), Nepal (2015), Chile (draft, 2022)

Module 4-Constitutional Actors and Institutions

Weeks 8-10

Mandatory Readings

- David Landau 'Institutional failure and intertemporal theories of the judicial role in the global south' in David Bilchitz and David Landau The Evolution of the Separation of Powers (Elgar 2018) 31-56
- Dinesha Samararatne 'Sri Lanka's Guarantor Branch: Constitutional Resilience by Stealth?' in Tarunabh Khaitan, Dinesha Samararatne, Swati Jhaveri, Constitutional Resilience Beyond Courts: Views from South Asia (Hart 2023) 257 – 282
- Dinesha Samararatne The People in the Palace guest editorial Verfassungblog (15 July 2022)
- Case studies: Sri Lanka, Nepal, South Africa

Module 5- Making Constitutionalism Genuinely Global

Weeks 11-13

Mandatory Readings

- Cheryl Saunders 'The Grand Puzzle of Comparative Law' Laureate Lecture, Tang Prize in the Rule of Law, 2023.
- Conrado Hubner Mendes & Danielle Hanna Rached 'Environment' in Conrado Hubner Mendes (ed) et al The Oxford Handbook of Constitutional Law in Latin America 782- 798

- Jan-Werner Muller ‘Populism and Constitutionalism’ in Cristobal Rovira Kaltwasser (ed) et al The Oxford Handbook of Populism (OUP 2017) 590-606
- Naz Khatoun Modirzadeh ‘[L]et us All Agree to Die a Little’: TWAIL’s Unfulfilled Promise’ (forthcoming 65 Harvard International Law Journal)
- John Tasioulas ‘The Rule of Algorithm and the Rule of Law’ (January 7, 2023). Vienna Lectures on Legal Philosophy (2023)
- Case studies: ‘Tuvalu’s Fight to Exist: Interview with Minister Simon Kofe’ Harvard International Review April 7, 2023; ‘Understanding the Military Coup in Myanmar, Two Years Later’ East-West Wire, March 15, 2023

Week 14 [Revision Week]
