

ANTI-DISCRIMINATION LAW

Responsible Faculty Instructor:

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Assistant Professor

Credits: 4 (for undergraduate) / 2 (for LL.M.)

Credits Type: Law

Cross-registration: None

Pre-requisites: Core course on Constitutional Law (I and II)

COURSE DESCRIPTION (COURSE VISION):

Discrimination is a central issue in Indian politics and society. It consistently turns up as the underlying subject of disagreement in a range of the country's most contentious political disputes. Religious conflict, the caste system, ethnic and regional disparities, and patriarchal institutions have played significant roles in India's history and continue to hold sway today. Needless to say, there is a compelling need for detailed understanding of how fundamentally these issues are linked with discrimination. This course is meant to develop an understanding of the foundations of the constitutional guarantee against discrimination under the equality code. It will also investigate specific grounds or areas where discrimination arises, and how the constitutional guarantee has been operationalised in those specific areas. This course will probe how scholarship and court cases on the subject have been dealing with different issues concerning discrimination – whether in a piecemeal way or by locating a concrete foundation for the fundamental right against discrimination. This course seeks to use modern theoretical legal scholarship on the subject, as well as a more holistic survey of Indian jurisprudence, so that students can obtain a reliable picture of the existing legal position on this critical right and the foremost challenges faced by it.

TEACHING METHODOLOGY:

The course will be primarily conducted through lecture-discussion mode led by the faculty. Students will be aided with reference materials (including scholarly articles, chapters from relevant text books and edited volumes, and case-law), and classroom PowerPoint slides. The right against discrimination is an area of contemporary relevance, and students are encouraged to actively brainstorm. They are especially encouraged to remain abreast with current news cycles, and engage with relevant (and verified) current affairs during classroom discussions. Laptop use and class notes are left to the discretion of the enrolled students.

INTENDED LEARNING OUTCOMES:

Course Intended Learning Outcomes	Weightage in %	Teaching and Learning Activities	Assessment Tasks/ Activities
By the end of this course, students should be able to:			
Demonstrate analytical understanding of the core concepts and issues concerning anti-discrimination law, including leading legal precedents.	35%	<p>Reading of prescribed literature and judicial precedents before scheduled lectures.</p> <p>Discussion and critical appraisal of the prescribed literature and judicial precedents during the lecture sessions.</p> <p>Reading of recommended introductory materials and constitutional clauses to familiarise with basic legal terminologies, clauses and case laws.</p>	<p>End-term Assessment (30%)</p> <ul style="list-style-type: none"> • May consist of analytical essays, or • Set of long essay questions and short-notes. <p>Internal assessment (70%)</p> <ul style="list-style-type: none"> • To be determined by the concerned faculty member in consultation with the batch.
Demonstrate critical understanding of relevant secondary theoretical sources.	35%	Same as above	Same as above
Demonstrate an understanding of contemporary challenges around the right against discrimination.	15%	Same as above	Same as above
Demonstrate an understanding of what exactly is at stake with respect the right to equality which is a critical right under the Constitution.	15%	Same as above	Same as above

READING LIST (up to 10 select readings):

1. Anurag Bhaskar, "Reservation as a Fundamental Right: Interpretation of Article 16(4)" 10 *Indian Journal of Constitutional Law* (2021);
2. Hugh Collins & Tarunabh Khaitan, "Indirect Discrimination Law: Controversies and Critical Questions" in Collins & Khaitan (eds.), *Foundations of Indirect Discrimination Law* (Bloomsbury 2018) 20-25;
3. Lalit Panda and Husain Aanis Khan, *The State Shall Not Discriminate: A Roadmap for the Right Against Discrimination in India* (Vidhi Centre for Legal Policy 2023);
4. Sandra Fredman, "Direct and Indirect Discrimination: Is There Still a Divide?" in Collins & Khaitan (eds.), *Foundations of Indirect Discrimination Law* (Bloomsbury 2018);
5. Shreya Atrey and Gauri Pillai, "A feminist rewriting of *Air India v Nergesh Meerza* AIR 1981 SC 1829: proposal for a test of discrimination under Article 15(1)" 5(3) *Indian Law Review* 338 (2021);
6. Susanne Baer, "Equality" in Rosenfeld and Sajó (eds.) *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press, 2012) 986-987;
7. Tarunabh Khaitan, "Beyond Reasonableness: A Rigorous Standard of Review for Article 15 Infringement" 50(2) *Journal of the Indian Law Institute* 177 (2008);
8. Tarunabh Khaitan, "Equality: Legislative Review under Article 14" in *The Oxford Handbook of the Indian Constitution* (Oxford University Press 2016) Sujit Choudhry et al (eds.) 699-719;
9. Tarunabh Khaitan, *A Theory of Discrimination Law* (Oxford University Press 2015);
10. Vinay Sitapati, "Reservations" in *The Oxford Handbook of the Indian Constitution* (Oxford University Press 2016) Sujit Choudhry et al (eds.) 738-41.

WEEKLY READING PLAN (WEEKLY OUTLINE):

A weekly plan is provided below:

MODULES	WEEK(S)
MODULE 1: INTRODUCTION <ul style="list-style-type: none"> • <i>Philosophical foundations of discrimination law;</i> • <i>Foundational principles of equality</i> 	Week 1
MODULE 2: EQUALITY CODE UNDER THE CONSTITUTION <ul style="list-style-type: none"> • <i>Introduction to the right to equality (Articles 14-18);</i> • <i>Historical context;</i> • <i>Analysis of relevant texts and tests</i> 	Weeks 2-3
MODULE 3: DIRECT DISCRIMINATION AND INDIRECT	Week 4

DISCRIMINATION • <i>Meaning and Contours</i>	
MODULE 4: RESERVATIONS • <i>Affirmative action under the Constitution (tracing the journey);</i> • <i>Analysis of key cases</i>	Weeks 5-6
MODULE 5: RELIGIOUS FREEDOMS, PERSONAL LAWS, AND ANTI-DISCRIMINATION • <i>Religion and differentiated norms</i>	Weeks 7-8
MODULE 6: GENDER IDENTITY AND DISCRIMINATION • <i>Exploring grounds for discrimination</i> • <i>Understanding constitutional protections</i>	Weeks 9-10
MODULE 7: CITIZENSHIP AND ANTI-DISCRIMINATION • <i>Exploring contemporary debates around citizenship as a ground for discrimination</i>	Weeks 11-12
MODULE 8: PRIVATE DISCRIMINATION • <i>Private discrimination and constitutional guarantees</i>	Week 13
REVISION WEEK	Week 14