



## **COURSE MANUAL**

**Name of the Elective Course: Constitutionalism in Emerging States**

**Course Code:**

**Name of the responsible Faculty Instructor:**

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**SPRING 2026**  
**(AY2025-26)**

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 intents and purposes as far as the elective course, *Constitutionalism in Emerging States*, 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 with its basic framework and objectives) for the effective and efficient delivery of the course. The instructor will provide students with reasons for such changes.

## **Part I**

Course Title: **Constitutionalism in Emerging States**

Course Code:

Course Duration: **One Semester (8 Weeks)**

No. of Credit Units: **2 Credits**

Level: **UG and PG**

Medium of Instruction: **English**

Pre-requisites (if applicable): N/A

Equivalent Courses: N/A

## **Part II**

### **1. Course Description**

This seminar on constitutionalism offers an opportunity to explore human rights in the national developmental context, with a special emphasis on our Asian region. Students will explore the important themes of human rights in Asia, with particular attention to the core domestic constitutional principles of democracy, human rights and the rule of law. With nearly two-thirds of the world's population and a diverse assortment of cultures and conditions, the Asian region offers a microcosm of the human rights challenges around the globe. While the human rights movement has made extraordinary strides in the post-World War II era to develop global standards and institutions this effort has been plagued by weak implementation at the local level. Significant regional human rights treaties and institutions in Europe, Africa and the Americas have sought to address this deficiency on a regional level with mixed success. As the only region without a comprehensive regional human rights regime, Asia has relied more completely on

domestic constitutionalism and local institutional practices to articulate and implement human rights. This has made the human rights debate more seriously a matter of local politics and legal culture. In this respect, Asia has had a noteworthy engagement with some of the central themes in the global human rights debate relating human rights to culture, the political economy of development, and to democratization. The seminar will explore these rich national themes in the Asian context. For the basic content to be addressed each session see the course schedule below.

## **2. Course Aims**

As a seminar, at the end of this course students should be able to:

1. understand historical challenges in the founding and maintenance of constitutional systems,
2. appreciate constitutional development and human rights challenges in developmental contexts, especially in Asia,
3. achieve a basic understanding of comparative political, economic and cultural values debates confronting human rights in various developmental contexts; and
4. assess and critically analyze human rights developments in the national context.

## **3. Teaching Methodology**

Because constitutionalism, democracy and human rights are constantly under renovation in Asia, the topic of Constitutionalism in Emerging States lends itself well to the seminar format where exploration and debate may challenge students to think outside the box. Because of the work-in-progress nature of the topic some of the initial foundation readings take a global perspective, laying a comparative theoretical foundation for Asia-focused discussions in subsequent weeks and for the student's own exploration of a specific Asian topic. The first seven sessions of the seminar will explore a range of foundation and area specific issues, with special emphasis on the constitutional processes that situate domestic human rights debates. For the assigned readings students will sign up to turn in response papers for two sessions, to be turned in the day before the class. This will be followed in the last session with student discussions of their own commentary on their approved topic, along with, in the last hour, the final class essay. In presenting their written commentary students might imagine they are in an editorial meeting where they have a few minutes to convince their editorial board (their classmates) that the topic is an important one demanding their attention.

The seminar commentary, to be turned in by the final session, will usually be on a country specific comparative assessment of a discrete constitutional and/or human rights question, chosen by the student with the instructor's approval. The goal is to locate the student in the local Asian constitutionalism and human rights discourse, while affording an opportunity to explore more general human rights themes in a substantive area of the student's interest. It would be best if the students view their topic as real-world important concern of interest to the relevant community and their classmates.

A final requirement on the last hour of class will be an in-class final essay on a question presented where the aim will be to reflect on one of the core themes of the course. The aim of this essay will not be to test details of the course but rather to reflect your views on core themes of the course. **The file you submit must be labeled with your surname and the words “Final Report,” eg. Davis Final Report.**

#### 4. Intended Learning Outcomes

Course Intended Learning Outcomes	Weightage in %	Teaching and Learning Activities	Assessment Tasks/ Activities
The goal of response papers is to locate the student in the local Asian constitutionalism and human rights discourse, while affording an opportunity to critically reflect on the readings assigned in the chosen week.	20	Response Paper	Response Paper
Research commentaries must reflect original work on a current issue and must fully credit all resources by proper citation and use of quotation marks. Strict compliance with university policy on plagiarism is required.	40	Research Report	Research Report
The aim of this essay will not be to test details of the course but rather to reflect your views on core themes of the course.	40	Final Reflection Essay	Final Reflection Essay

#### 5. Grading of Student Achievement

To pass this course, students shall obtain a minimum of 40% in the cumulative aspects of coursework, i.e., the response paper, the research commentary and the final essay. Internal assessments shall carry a total of 70 marks. **End of semester essay shall carry 40 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	<b>Outstanding</b> – 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	<b>Excellent</b> - 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	<b>Very Good</b> - 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	<b>Good</b> - 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	<b>Fair</b> – Average understanding of the subject matter, limited ability to identify issues and provide solutions to problems and reasonable critical and analytical skills
55 – 59	B	4	<b>Acceptable</b> - Adequate knowledge of the subject matter to go to the next level of study and reasonable critical and analytical skills.

PERCENTAGE OF MARKS	GRADE	GRADE VALUE	GRADE DESCRIPTION
50 – 54	B-	3	<b>Marginal</b> - Limited knowledge of the subject matter and irrelevant use of materials and, poor critical and analytical skills
45 – 49	P1	2	<b>Pass 1</b> – Pass with basic understanding of the subject matter
40 – 44	P2	1	<b>Pass 2</b> – Pass with rudimentary understanding of the subject matter
Below 40	F	0	<b>Fail</b> - 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	<b>Incomplete</b> - “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.

## 6. Criteria for Student Assessments

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

Assessment	Weightage	Remarks
Response Paper	20 Marks	
Research Report	40 Marks	

Assessment	Weightage	Remarks
Final Reflection Essay	40 Marks	

### **Part III**

#### **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](mailto: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.

## **Part IV**

### **Course Design and Overview (Weekly Plan)**

<b>Week</b>	<b>Topics</b>
1.	<b><i>Introduction</i></b>
2.	<b><i>Constitutional Theory: A Primer on Constitutional Discourse</i></b>
3.	<b><i>The Institutional Processes of Constitutionalism</i></b>

4.	<b><i>Freedom: Looking at Freedom of Expression in a Constitutional Context</i></b>
5.	<b><i>The Asian Values Debate: Political Culture, Religion, Human Rights and Development</i></b>
6.	<b><i>Inclusion in and Exclusion from the Human Rights Community: The Role of Federalism and Autonomy</i></b>
7.	<b><i>Has India Defied Gravity?</i></b>
8.	<b><i>Wrap up discussion</i></b>

### **Module Descriptions:**

#### **1. Introduction**

In this first session we will discuss the basic expectations and logistics of the course and introduce the topic of constitutionalism in emerging states, with emphasis on the Asian context. This includes a brief overview of the syllabus, an overview highlighting the difficulties the Asian region has experienced in developing constitutional democracy and the challenges posed for human rights protection. Because the first week will be introductory, to the extent time permits, I will use any extra time available to briefly introduce the broader global human rights movement as background for our course. This will offer a refresher for students who have taken a general international human rights course and a first introduction for students who have not yet done so. Students may begin to consider possible specific interests for their commentary topic.

#### **2. Constitutional Theory: A Primer on Constitutional Discourse.**

Our substantive exploration begins with the leading classic theoretical book, situated in the US context, on liberal constitutionalism and its theory. The aim is to introduce a discursive theory of constitutionalism we may consider for comparative application. The fundamental role of constitutional judicial review is considered. The US example is particularly instructive because of the role of the US in the birth of constitutionalism, its robust history of constitutional judicial review and its level of constitutional development. One essay considers current challenges that tradition faces. We will then briefly consider the role of constitutional judicial review in domestic implementation of human rights in the several Asian contexts addressed by Ginsburg, Yeh and Chang. How well does

constitutionalism and the rule of law travel? What are the motivations of East Asian leaders in adopting and using institutions of constitutional judicial review? An added consideration will be the illiberal challenges now facing liberal democracies.

### **3. The Institutional Processes of Constitutionalism.**

Here we expand our foundation horizon, considering basic practices in civil and common law traditions as a prelude to considering (in the following weeks) how such institutions and underlying issues have been imported into the Asian context. As with Bickel, the object in reading the classic Cappelletti book is to understand and recognize the basic constitutional institutions used to implement the rule of law and human rights components of a modern democracy. Horowitz moves us forward to more recent comparative developments. Are there effective substitutes? Do such institutions work well?

### **4. Freedom: Looking at Freedom of Expression in a Constitutional Context**

Another foundational aspect of a discursive theory of liberal constitutionalism is the notion of freedom, especially freedom of expression. Enlightened theory of democracy presumed a role for the people in governance. This in turn presumed an enlightened citizenry with freedom of expression to engage the public debate. What are the boundaries of freedom of speech and what role does it play in constitutional governance?

### **5. The Asian Values Debate: Political Culture, Religion, Human Rights and Development.**

Here students confront arguments that Western notions of human rights are inappropriate for Asian societies. These arguments challenge claims about the universality of human rights and the role of liberal constitutional institutions in the development process. Are human rights appropriate to Asian culture? Beyond the debate over Confucianism and democratization in East Asia that earlier drove this debate other more specifically religious traditions will be considered.

### **6. Inclusion in and Exclusion from the Human Rights Community: The Role of Federalism and Autonomy.**

Institutional arrangements important to achieving constitutionalism and human rights often go beyond judicial review and human rights institutions. Where ethnic national groups are involved or simply where local self-rule is valued these institutions often include federalism or autonomy arrangements. These have especially been of interest to constitution makers in Asia. Are they effective tools to secure group rights? Do such institutions work well?

### **7. Has India Defied Gravity?**

As the world's largest democracy, India long appeared to defy the gravity that often plagues underdeveloped countries in sustaining a vibrant democracy. India sustained democracy under difficult economic conditions for over six decades. What is the secret to India's constitutional success? Will such success continue or is it under threat from populists and illiberal tendencies? Has democracy mediated the ethnic and religious conflicts that have plagued South Asian Society, or has it made matters worse? What are its prospects going forward? Why has corruption plagued Indian democracy? What are its other failings? What are the cures?

### **8. Wrap up discussion and the final essay.**

This discussion with Michael Sandel could be useful in collecting student thoughts on the course in preparation for the final essay: Democracy deeply-rooted in India but under threat, says Harvard professor Michael Sandel (msn.com).

## **Part V Relevant Readings / Essential Readings**

### **Week 1**

- Michael C. Davis, "Constitutionalism in Asia," *Journal of Democracy* <https://www.journalofdemocracy.org/articles/strengthening-constitutionalism-in-asia/>.

### **Week 2**

#### ***Essential Readings***

- Alexander Bickel, *The Least Dangerous Branch, The Supreme Court at the Bar of Politics*, 2nd Edition (New Haven: Yale University Press, 1986). Chapters 1 and 4.
- Tom Ginsburg, *Judicial Review in New Democracies, Constitutional Courts in Asian Cases* (Cambridge: Cambridge University Press, 2003). Chapters 1, 2, and 3
- Michael C. Davis, "Is the US Using Beijing's Authoritarian Playbook?" <https://politicsrights.com/is-the-us-using-beijings-authoritarian-playbook/>.

#### ***Optional Readings***

- J.R. Yeh and W.C. Chang, "The Emergence of East Asia Constitutionalism: Features and Comparison," *ASLI Working Paper Series No. 006* (2009).
- Bruce Ackerman, "Movement-Party Constitutionalism: India" (2018)

### **Week 3**

#### ***Essential Readings***

- Mauro Cappelletti, *Judicial Review in the Contemporary World* (Indianapolis: The Bobbs –Merrill Company, 1971). (a thin book—you may skim all)

- Donald L. Horowitz, “Constitutional Courts: A Primer for Decision Makers,” *Journal of Democracy*, Vol. 17, pp. 125-137 (2006).
- Tom Ginsburg and Yan Lin, “Constitutional Interpretation in Law-Making: China’s Invisible Constitutional Enforcement Mechanism,” (August, 2014) [http://works.bepress.com/tom\\_ginsburg/54/](http://works.bepress.com/tom_ginsburg/54/)
- Ronojoy Sen, “India’s Democracy at 70: The Disputed Role of the Courts,” *Journal of Democracy*, Vol. 28/3 (2017) pp. 96-105.
- Moiz Tundawala, “Can ‘Kesavananda Bharati’ Save India From Becoming a Hindu Rashtra,” *The Wire*, 24/4/2023. <https://thewire.in/law/kesavananda-bharati-50-years-hindu-rashtra>.

### ***Optional Readings***

- Mark Tushnet, “Authoritarian Constitutionalism,” *Cornell Law Review*, Vol. 100, pp. 391-461 (2014-15)
- Dawood I. Ahmed and Thomas Ginsburg, “Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy in Constitutions,” *Virginia Journal of International Law*, Vol. 54, p. 615 (2015)\* (Required reading in week 6)

## **Week 4**

### ***Essential Readings***

- Lee C. Bollinger, *The Tolerant Society, Freedom of Speech and Extremist Speech in America* (Oxford: Oxford University Press, 1986). Chapters 2-4.

### ***Optional Readings***

- India: Media Crackdown During Covid-19 Lockdown, *Rights and Risk Analysis Group*, June 15, 2020. <http://www.rightsrisks.org/banner/india-medias-crackdown-during-covid-19-lockdown-2/>
- Michael C. Davis, “Promises to keep: The Basic Law, the ‘Umbrella Movement’ and democratic reform in Hong Kong,” in Mahmood Manshipouri, editor, *Information Politics, Protests and Human Rights in the Digital Age* (Cambridge University Press, 2016), pp. 239-266.

## **Week 5**

### ***Essential Readings***

#### *Constitutionalism and Political Culture*

- Michael C. Davis, “The Political Economy and Culture of Human Rights in East Asia,” in Sarah Joseph and Adam McBeth, eds., *Research Handbook on International Human Rights Law* (London: Edward Elgar Publishers, 2010) pp. 414-439.

- Joseph T. Siegle, Michael Weinstein and Morton Halperin, “Why Democracies Excel,” *Foreign Affairs*, Vol. 83/5, pp. 57-71 (December 2004).

### *Religion*

- Alfred Stepan, “Religion, Democracy and the ‘Twin Tolerations’,” in Larry Diamond, et al, eds., *World Religions and Democracy* (Baltimore: Johns Hopkins Press, 2005), pp. 3-26.
- Pretap Bhanu Mehta, “Hinduism and Self-Rule,” in Diamond, et al, *World Religions*, pp. 56-69.
- Dawood I. Ahmed and Thomas Ginsburg, “Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy in Constitutions,” *Virginia Journal of International Law*, Vol. 54, p. 615 (2015)
- Victoria Hui, Civilization, Religion, Peaceful and Non-Peaceful Change in Asia, *The Oxford Handbook of Peaceful Change in IR*.

### **Optional Readings**

- Michael C. Davis, “Constitutionalism and Political Culture: The Debate Over Human Rights and Asian Values,” *Harvard Human Rights Journal*, Vol. 11, pp. 109-47
- (1998) and “East Asia After the Crisis: Human Rights, Constitutionalism and State Reform,” *Human Rights Quarterly*, 2004, Vol. 26/1, pp. 126-151.
- Cathy Sun, “Different but the Same: Religious Persecution in China,” *Harvard Politics Review* (April 2019).

## **Week 6**

### **Essential Readings**

#### *Federalism*

- Alfred Stepan, Juan Linz, and Yogendra Yadav, “The Rise of ‘State-Nations’”, 21/3 *Journal of Democracy*, Vol. 21/3, pp. 50-68 (2010).
- Michael C. Davis, “Federalism and Democratic Reform in China with Lessons from India,” *Jindal Journal of Public Policy*, Vol. 2/1, pp. 4-27 (2014).

#### *Autonomy*

- Michael C. Davis, “Tibet and China’s National Minority Policies,” *Orbis* (Summer, 2012), Vol. 56, No. 3, pp. 429-446. <http://dx.doi.org/10.1016/j.orbis.2012.05.009>
- Igor Blazevic, “Burma Votes for Change: The Challenges Ahead,” *Journal of Democracy*, Vol. 27/2 (2016) pp. 102-115.

### **Optional Readings**

- Michael C. Davis, “Repression, Resistance and Resilience in Tibet,” *Georgetown Journal of International Affairs*, Vol. 12/2, pp. 29-38 (Fall, 2011).
- Louisa Greve, “The Troubled Periphery,” *Journal of Democracy*, Vol. 24/1 (2013).
- Francesca R. Jensenius, *social justice through inclusion: The Consequences of Electoral Quotas in India* (Oxford University Press, 2017)

## Week 7

### ***Essential Readings***

- Sumit Ganguly, “India’s Unlikely Democracy,” *Journal of Democracy*, Vol.18/2, April 2007, at 30-83. (includes articles by Ganguly, Mehta, Sinha, and Jenkins)
- Sumit Ganguly, India’s Endangered Democracy,” *Journal of Democracy*, Vol. 32/4 (2021) <https://www.journalofdemocracy.org/articles/indias-endangered-democracy/>
- Alina Mungiu-Pippidi, “Controlling Corruption Through Collective Action,” *Journal of Democracy*, Vol. 24/1, pp. 101-115, (2013).
- C. Raj Kumar, *Corruption and Human Rights in India* (New Delhi: Oxford University Press, 2011) Chapters 5 and 6.
- Alfred Stepan, Juan Linz and Yogendra Yadav, “The Rise of ‘State-Nations’,” *Journal of Democracy*, Vol. 21/3, pp. 50-68 (2010).
- Anubhav Gupta, “In India, Modi is Using Covid-19 to Further Undermine a Once Vibrant Democracy,” *World Politics Review*, June 24, 2020.
- Ashutosh Varshney, “How India’s Ruling Party Erodes Democracy,” *Journal of Democracy*, Vol. 33/4, October, 2022.  
<https://www.journalofdemocracy.org/articles/how-indias-ruling-party-erodes-democracy/>
- Lokendra Malik, “The Supreme Court Should Protect the Heart and Soul of the Constitution of India,” *LiveLaw.in*, November 21, 2020  
<https://www.livelaw.in/columns/the-supreme-court-should-protect-the-heart-and-soul-of-the-constitution-of-india-166168>

### ***Optional Readings***

- Sumit Ganguly, Larry Diamond, and Marc F. Plattner, eds., *The State of India’s Democracy (Baltimore: Johns Hopkins Univ. Press, 2007)*.  
[http://www.press.jhu.edu/books/title\\_pages/9600.html](http://www.press.jhu.edu/books/title_pages/9600.html)
- Kanchan Chandra, “The Triumph of Hindu Majoritarianism: A Requiem for an Old Idea of India,” *Foreign Affairs*, November 23, 2018.

## Week 8

- Optional readings to skim: Asian Human Rights Charter, ASEAN Human Rights Declaration of 2012, ASEAN Human Rights Mechanism, Bangkok Declaration, Cairo Declaration.