Two-Week Capacity Building Programme (Online)

On

Comparative Public Law and Hindu Philosophy: Research and Teaching Dimensions in 21st Century India

16-29 July 2021

Organised by

***Centre for Comparative Public Law (CCPL)*, Himachal Pradesh National Law University, Shimla in association with *Indian Council of Social Science Research (ICSSR)*, New Delhi**

The University

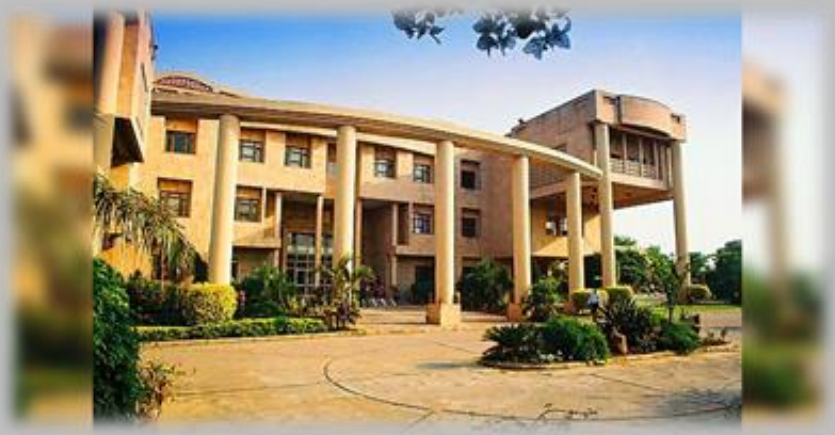
The Himachal Pradesh National Law University, Shimla (HPNLU, Shimla), placed in the geographical terrains of the Himalayas, is among the premier law schools in India. The institution is one of the few educational centres in the country which enjoys natural endowment of mesmeric beauty of location topography and enjoyable weather conditions throughout the year. The University is bestowed with all-natural conditions conducive of seeking, creating, and imparting knowledge. The institution is taking every possible step to achieve excellence in the field of law education and research.

Centre for Comparative Public Law

The *Centre for Comparative Public Law* (CCPL) has been established by HPNLU, Shimla to further advance research in comparative public law. The principal objective of CCPL is to undertake studies and investigations about fundamental categories/concepts of public law, advanced jurisprudence, and comparative legal systems.

ICSSR

Indian Council of Social Science Research (ICSSR) was established in the year of 1969 by the Government of India to promote research in social sciences in the country. Among other goals, the Council, sponsors social science research programmes and projects and administer grants to institutions and individuals for research in social sciences.



General

Comparativism or comparative methods of understanding (of law, and legal institutions) has become new academic canon in a globalizing world, where institutional arrangements as well as normative/ theoretical elements are increasingly seen to be universalizable. Frequent examples are found in the discussions on important public issues, policy statements, and decisions of the courts. Prof. Ludwig Ehrlich observed, in 1921, that, "…it (is) indispensable to utilize the experience of mankind in various states and at various times, it would appear even more important to adopt the same procedure on a scientific basis now that developments in every country reflect immediately upon conditions in other countries".

The history of comparativism in ancient and medieval India has a different story. In Ancient India, Nalanda and Takshashila were great Centres of learning. Greek, Chinese, and Prussian/Arabian scholars such as Fa-Hien, Huien Tsang, Ibn Batuta, Megasthenes, Al-Masudi, and many others travelled to India to study Indian political and social systems. However, instances of similar voyages from India to the other parts of the world are not known. Within Indian traditions of philosophy, there were several streams amongst whom the comparative influences are visible: *Dharmsastras, Nyaya, Mimansa, Buddhism, Jainism,* etc. These traditions, though benefiting from each other, prospered and matured in the same land, culture, and amongst the same set of people, which were tempered by invasions of Turks and Mughals from the 11th century onwards. Thus, comparative tradition and academic habitude were largely absent during ancient and medieval periods in India. This fact (whether) can be seen as the chief reason for languishing of the idea of law, legal system, and political institutions or the branch of knowledge called jurisprudence, during first fifteen centuries of the Christian calendar. One of the great scholars of Hindu Law, Robert Lingat (1973) declared that India could not develop something like jurisprudence/ legal philosophy.

Public Law and Philosophy

There is a general agreement on the classical division of law into public and private, though hardly a consensus in academic discourses, on the idea/concept of law, much less on the relationship between law and philosophy. Law, that is, and law, that might be or ought to be, are easy to be confused in research and teaching. For research and teaching always have some normative dimensions. Where law or legal institutions of different systems are to be compared, the problem of identification of the subject in two or more jurisdictions comes down to the problem of the concepts/definitions of law. The exercise becomes more deceptive when we count the fact that the two rules or institutions are the product of, and exist amongst the specific people, culture, and history. This unique problem is especially relevant for the countries, such as India, where the major part of the positive law is received from Europe.

The challenge (definition of law) is aggravated in a unique way when comparative studies of legal institutions and processes are undertaken relating to two countries, both of them having, transplanted legal systems: for example, India, Brazil, Japan, or South Africa.

Competing theoretical definitions of law, therefore, are of little help. The conceptual frameworks of law as command, law with reference to interests, as normative order, or as social rules can neither account for diverse historical social practices of rules nor for norms that are actually, directly or indirectly, taken into considerations by officials of the state for enforcement. For instance, one can see some of the court decisions in the last one decade, such as, LGBTQIA+; Naz Foundation; Sabarimala; triple talaq; reservation; prohibition of alcohol; privacy & data protection; collegium system for the appointment in the Constitutional courts; standards of judicial review; constitutional amendment & constitutional identity; specific socio-economic rights; access to school and higher education, justice or natural resources such as water; legal concepts & identity of state; electoral & representative democracy, etc. A teacher or researcher of the subject of comparative public law may have to run through the maze of propositions qualifying through one or the other theoretical paradigms, to be law or otherwise. Further the semantical and epistemological requirements of study and research pose daunting tasks. Yet, starting point for law, to be safe, may be identified, in the form of statute law-rules and procedures, declaration of laws by constitutional courts contained in multiplicity of judgements on a specific rule/law, as enforced, relating to the subject matter of study.

The exercise of demarcation of public law, too, is not a simple task. Law, in general, is divided into Public Law and Private Law. The classical distinction was not based upon some exclusive characteristics and common nature amongst the set of laws. Rather, the division was made in the interest of convenience of study. It is well accepted that even in cases of private laws, considerations of public benefits and public interests arise frequently. HLA Hart regards the division to be arbitrary. Modern public discourse, activism, and academic debates in social sciences show an inimitable feature. The feature consists in the two opposite but accompanying arguments. On the one side, for socio-economic entitlement, or legitimate sphere of state intervention and enterprises, there is demand and tendency that state should restrict itself, and the state has little business with. On the other hand, in the context of liberal rights, state is frequently invited in the bedroom and kitchen of the individual and family. This is an unprecedented situation wherein the Indian State finds itself. This is a momentous yet precarious occasion where the government, court, and the legal academics have to steer the country and the legal system.

Problem of Law and Hindu Philosophy

The academic tools in general and specially, applicable to the study of common law, have been developed in the West. Judicial processes, standards, and techniques utilized therein, the interpretation of specific constitutional provisions and rules/principles thereof, are some examples representing the historical and cultural achievements made in the West. This problem can amply be illustrated with the help of two traditionally regarded, social goods. The first being, access to justice and laws regulating that access. The second is access to education, other socio-economic entitlements. Within the liberal legal paradigm, the academic arsenals may simply be found to be inadequate. Thus, specific tools of empirical or doctrinal research have little potential to facilitate and to produce meaningful comparative studies. Carl Schmitt characterized this Western academic habitude in a beautiful sentence, "[T]he central concepts of modern state theory are all secularized theological concepts" (1922). The aspect of study of comparative public law can be understood easily, if we consider two essential characteristics of the subject. That is, on a given issue there certainly has been some institution(s) and rules from times immemorial, for example, the subject of forests and allocation of benefits arising out of it. Forests have existed for millenniums and so had been the rules on it, stated or unstated, with details of position of the State/King. These rules and relationships between rules and local inhabitants and state/king, had had quite diverse nature in two or more different countries, and were necessarily product of respective history and culture of the land. A similar problematization is called for the relationships and mutual location of the individual and the community represented by the State. These kinds of comparisons are hardly possible with the popular research approaches: empirical/quantitative involving tools of observation, interview, sampling, or ethnography. Difficulty is not of lesser degree when we employ the prevalent types of research in qualitative or doctrinal, for the reasons that it starts with given categories and concepts in law and adjudication.

After the emergence of realist approaches and critical school in jurisprudence, the focus of studies in public law has been on case studies. There have been a very few scholarly books written, on the Hindu public law and legal systems, during the post-independence period. The studies in comparative public law are entirely undertaken within the paradigm of liberal law and legal systems. A majority of these studies in law are bent upon proving that Ancient and largely medieval India had no (ordered) legal system and could not develop studies, something, similar to jurisprudence (Robert Lingat, 1973, 1998). Recently, one of the doyens of Indian Legal Education has produced similar study asserting that the ancient India had no legal system (F.S. Nariman, 2006). Nariman asserts that, "Dharmsastras did not visualize an ordered legal system, but they did conceptualize an aspiration-*nyaya*- which we now call *'justice'. Yajnavalkya* emphasizes equity, reason, and conscience in the process of justice".

An anthropological and sociological study of ancient societies in Australia and India, simply, testify how myopic Indian scholarships have been, in law, so far, about the awareness of the indigenous society, its laws, and legal systems. On the one hand, Indians scholars of legal education are denying that the ancient Indians understood a well-developed legal system as well as law and accordingly had established appropriate legal institution and judicial processes (M P Singh & Niraj Kumar, 2019). On the other hand, by the late 20th Century, the Australian Judicial System conceded, abandoning the theory of *terra-nullis*, to the claim that the aboriginals had a sort of legal system and social order prior to arrival of Europeans in that Continent (*Mabo v. Queensland* [1992] H.C.A. 23; (*Mabo II* Case). The politics of teaching and research, therefore, sometimes appears to be a strange phenomenon. This politics, however, has long lasting consequences for the existing social order and its continuance. An impartial and authentic study and teaching would, necessarily, require new tools and methodology for the task at hand.

The emphasis of the two weeks programme, is, intended to ignite and initiate serious academic debate and to prepare young faculties and researchers for the study of Indian legal philosophy and public law. It is our belief and confidence behind the initiative that the Constitution of India and the constitutional precepts may appropriately be understood in the context of and sufficient background knowledge of ancient Hindu philosophy.

FOCUS AREA OF CBP

About the Capacity Building Programme

Centre for Comparative Public Law (CCPL), HPNLU, Shimla in association with the ICSSR, New Delhi is organizing this Two-week intensive capacity building programme for interested candidates from the field law, social sciences, and philosophy. The CBP would be conducted via the Online Medium of Cisco WebEx meeting platform. The programme shall focus on the areas delineated above and encompass comprehensively various aspects of Hindu philosophical tradition and modern law. The resource persons and trainers from across the world in the field of traditional Hindu legal and philosophical knowledge systems shall conduct sessions during the CBP. The programme is expected to help participants in building foundations for further research and development in the field of study.

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Proposed tentative topics for Sessions of the CBP
How to Think of Public Law in the Context of Hindu Philosophy
Theoretical Foundations of Public Law in India and Challenges of Comparative Study
Classification of Ancient Hindu Texts and determining their inter-se priority for study analysis and development of public law
The Ancient Concept of Dharma as an alternative of the modern Western idea of 'Law'
Relevance of Mimamsa and Nyaya Philosophy for Contemporary Public Law in India 'समकालीन सामाजिक कानून के सन्दर्भ में मीमांसे एवं न्याय दर्शन का महत्व'
Theories of Knowledge in Upanishads and implications for philosophy of law
Role and Importance of language, Sanskrit, Pali and Prakrit and problems in advancement of Indian Legal Philosophy during British and post Independent India
Basic Tenets and Hindu Philosophy and their (in) compatibility with the Western liberal Law and Economic Systems
Tracing Hindu Legal System in India and Status of Public Law in Ancient India
State and Individual: A discourse on multiple variety in Ancient India
Ancient Texts: Research Design and Literature Review
Developing suitable Methodology for the Study of Comparative Public Law and Hindu Philosophy
Methodology of Public Law and its application to Indigenous Legal Philosophy
Role and Importance of language, Sanskrit, Pali and Prakrit and problems in advancement of Indian Legal Philosophy during British and post Independent India
Hindu Personal Law and its relation to State/King in ancient India
Muslim Personal Law and its relation to State/King in medieval India

Administrative Law and Methods during Ashoka and Gupta periods
Theory and practice of Social/Public good and their relation to state in ancient and Medieval India
Law, State and Religion: A Comparative Perspective on Identity
The concepts of Capital and its relation to Law in (Arthashastra of Kautilya, Adam Smith and Thomas Piketty
Forgotten alternatives (on foundations of Public Law) in the Constituent Assembly of India
Problems in Production of Standard Text Book on Hindu Jurisprudence
Agrarian Crisis and Rural Distress: possibilities before the Public Law in 21st Century
Basic Tenets and Hindu Philosophy and their (in) compatibility with the Western liberal Law and Economic Systems
The Ancient Concept of Dharma as an alternative of the modern Western idea of 'Law'
Applicability of the Western legal theories to study Hindu Constitutional Law (Special reference to P V Kane's Works)
Status of Socio-Economic Rights in Pre-British India
Democratic governance and influence of Buddhist philosophy in ancient India
Critical evaluation of access to justice in contemporary legal system of India: Insights from Mimansa Philosophy
Use of Data in Legal Research for development of Hindu Philosophy as an area of Research
Use of E-Learning Tools for Research on Comparative Public Law and Hindu Philosophy
Ethics in Research, Publication, and use of E-Learning Tools for Hindu Philosophical Research
Applicability of Research Tools into Hindu Philosophical Study