

Legal Systems of South Asia

Course Objectives:

The course aims at introducing legal systems of South Asia to non-law students of the South Asian University by briefly studying their origin, evolution and characteristics, their comparable institutions and the solutions to their common and comparable problems for the promotion of regional peace and security.

Course Credits: 2

Course Contents:

1. Introduction to the Legal Systems of South Asia: Concept of legal system, examples of legal system, legal system as a field of enquiry, functions of the study of legal systems, aims of the study of legal systems (Weeks 1 and 2, 04 Hours)
2. Indian Legal System: From *Dharma* to Law: Sources of *Dharma*, evolution of law, legal developments since the arrival of the British, Indian constitutional developments (Weeks 3 and 4, 04 Hours)
3. Introduction to the Islamic Legal System: Immutable basis of Islamic law, sources of sharia, schools of sharia, Islamic dispensation of justice, adaptation of the Islamic legal system to the modern world (Weeks 5 and 6, 04 Hours)
4. Representations of the Islamic Legal System in South Asia: The Legal Systems of Afghanistan, Bangladesh, Maldives and Pakistan: The nature and forms of law, administration of justice, constitutional developments (Weeks 7 and 8, 04 Hours)
5. "Mixed" legal systems in South Asia: The Legal System of Bhutan, Nepal and Sri Lanka: The nature and forms of law, administration of justice, constitutional developments (Weeks 9 and 10, 04 Hours)
6. Issues in common and contemporary issues in the legal systems of South Asia: Constitutionalism, independency of the judiciary, access to justice, water-sharing and territorial problems, combating terrorism without derogating from international human rights, refugee and humanitarian law (Weeks 11 and 12, 04 Hours).

Select Readings

Basic Readings

Glenn, H. Patrick, *Legal Traditions of the World: Sustainable Diversity in Law* (Oxford: OUP, 2014).

Menski, W. *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (London: Platinum Press, 2000).

Supplementary Readings

Baxi, U., "The Colonial Heritage", in Legrand, P. and Munday, Roderick, eds., *Comparative Legal Studies: Traditions and Transitions* (Cambridge: Cambridge University Press, 2003), 3.
David, René and John E.C. Brierly, *Major Legal Systems in the World Today* (London: Stevens & Sons, 1985).

Hallaq, W.B., "The Logic of Legal Reasoning in Religious and Non-Religious Cultures: The Case of Islamic Law and the Common Law" 34 *Cleveland State Law Review* (1985–86), 79.

Hart, H.L.A., *The Concept of Law* (London: Oxford University Press, 1994).

Lingat, R., *The Classical Law of India* (New Delhi: Oxford University Press, 1998), J.D.M. Derrett (Translation).

May, R., *Law and Society, East and West. Dharma, Li and Nomos: Their Contribution to Thought and to Life* (Wiesbaden: Franz Steiner Verlag, 1985).

Örucü, E. et al., eds., *Studies in Legal Systems: Mixed and Mixing* (The Hague: Kluwer Law International, 1996).

Weiss, B., "Interpretation in Islamic Law: The Theory of Ijtihad", 26 *American Journal of Comparative Law* (1978), 199.

Zweigert, Konrad and Hein Kötz, *An Introduction to Comparative Law* (Oxford: Oxford University Press, 1998), Tony Weir (translation).

Further Readings

Agreement between Sri Lanka and India on the Boundary in the Gulf of Mannar and the Bay of Bengal between the two Countries and Related Matters, 1976, Article 5.

SAARC Regional Convention on Suppression of Terrorism, 1987.

The Constitution of Afghanistan.

The Constitution of India.

The Constitution of Nepal.

The Constitution of the Democratic Socialist Republic of Sri Lanka.

The Constitution of the Islamic Republic of Pakistan.

The Constitution of the Kingdom of Bhutan.

The Constitution of the People's Republic of Bangladesh.

The Constitution of the Republic of Maldives.

The Indus Waters Treaty (India and Pakistan) , 1960, Articles VIII, IX.

Treaty between His Majesty's Government of Nepal and the Government of India Concerning the Integrated Development of the Mahakali Barrage Including Sarada Barage, Tanakpur Barage, and Pancheshwar Project, Barrage, 1996, Article 9.

Treaty Between the Government of the People's Republic of Bangladesh and the Government of the Republic of India on Sharing of the Ganga/Ganges Waters at Farakka, 1996, Article VII.

Evaluation

Two written examinations of 100 marks.