

Comparative Individual Liberties: Gender and Race

Touro Law Center
Summer Program in India
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Introduction

This is a comparative constitutional law course that will focus on issues of equality under the Constitutions of the United States and India. After an overview of the Indian legal system and a general comparative study of the American and Indian Constitutions, the course will focus on equality in the context of race and gender. The course will emphasize how a country's cultural conditions shape that society's approach to equality and will examine the extent to which laws designed to provide true equality have actually had an impact on individuals and communities.

The first half of the course will be devoted to studying issues of race and caste in the two societies. Supreme Court decisions from the United States and India will be compared. Special attention will be placed on contrasting affirmative action programs (called "protective discrimination" in India) in the two countries. The class will study the two countries' cultural and historical contexts as they relate to issues of race and caste. The class will examine the relevant constitutional principles and the Courts' interpretation of these principles.

The second half of the course will explore issues involving women and the law. As with race, this issue will be explored in the context of the different cultural conditions in India and the United States. The leading US Supreme Court cases will be discussed and compared to those of the Indian Supreme Court. Central to this study will be an analysis of different formulations and theories of equality as well as on the different institutional roles of the two Supreme Courts.

Part I. Equality and Race/Caste Discrimination

A. United States

United States Constitution, 13th, 14th & 15th Amendments
Regents of the University of California v. Bakke, 438 U.S. 265 (1978)
Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996)
City of Richmond v. J.A.Croson Co., 488 U.S. 469 (1989)
Metro Broadcasting, Inc. v Federal Communications Commission, 497 U.S. 547 (1990)
Adarand Constructors, Inc. v Pena, 115 S.Ct. 2097 (1995)
Grutter v. Bollinger, 539 US 306 (2003)
Gratz v. Bollinger, 539 US 244 (2003)
Cass R. Sunstein, *Affirmative Action, Caste, and Cultural Comparisons*, 97 MICH. L.REV. 1311 (1999)
Town Hall Quotes from African-American Leaders Supporting Affirmative Action
Angelo N. Ancheta, *Revisiting Bakke and Diversity-Based Admissions: Constitutional Law, Social Science Research, and the University of Michigan Affirmative Action Cases* (2003)
Charles Fried, *Uneasy Preferences* (1999)
Nat Hentoff, *Making Affirmative Action Fair for All* (2003)
George Will, *The Distortion of Affirmative Action* (2001)
Nat Hentoff, *A Secret Quota* (2003)

B. India

Constitution of India, selected provisions
Clark Cunningham and N.R. Madhava Menon, *Seeking Equality in Multi-Cultural Societies* (1997)
Balaji v. State of Mysore, AIR 1963 S.C. 649
State of Kerala v. Thomas, AIR 1976 S.C. 490
Mahendra P. Singh, *Affirmative Protection of Minorities in India*, from THE LIVING LAW OF NATIONS (1996)
Fali Sam Nariman, *The Indian Constitution: An Experiment in Unity Amid Diversity*, from FORGING UNITY OUT OF DIVERSITY: THE APPROACHES OF EIGHT NATIONS (1985)
Marc Galanter, Readings from LAW AND SOCIETY IN MODERN INDIA (1989)
Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (1984)
Thomas Sowell, *Preferential Policies: An International Perspective*
Bhikku Parekh, *India's Diversity* from DISSENT 145-148 (Summer 1996)
Fali S. Nariman, *Making a Mockery of Merit*, THE INDIAN EXPRESS (May 22, 2000)
Chandra Bhan Prasad & Sheoraj Singh Bechain, *There's No Merit in This Argument, Alas*, THE INDIAN EXPRESS (June 2, 2000)

Part II Equality and Gender-Based Discrimination

A. United States

United States Constitution, 14th & 19th Amendments
Reed v. Reed, 404 U.S. 71 (1971)
Frontiero v. Richardson, 411 U.S. 677 (1973)
Craig v. Boren, 429 U.S. 190 (1976)
J.E.B. v. Alabama, 114 S.Ct. 1419 (1994)
United States v. Virginia, 116 S.Ct. 2264 (1996)
Califano v. Goldfarb, 430 U.S. 199 (1977)
Califano v. Webster, 430 U.S. 313 (1977)
Christine Littleton, *Reconstructing Sexual Equality*, 75 CAL.L.REV. 1296-1297 (1987)
Herma Hill Kay, *Equality and Difference: The Case of Pregnancy*, 1 BERKELEY WOMEN'S L.J. 26-27 (1985)
Richard Posner, *Conservative Feminism*, 1989 U.CHI.LEGAL F. 191, 195-198
Ruth Bader Ginsburg and Barbara Flagg, *Some Reflections on the Feminist Legal Thought of the 1970s* (1989)
Mary Becker, *Towards a Substantive Feminism* (1999)
Carol Smart, *The Quest for a Feminist Jurisprudence* (1989)

B. India

Constitution of India, selected provisions
TOWARDS EQUALITY, Report of the Committee on the Status of Women in India, 1975
Chokhi v. State, AIR 1957 Raj. 10
Shahbad v. Abdulla, AIR 1967 J & K 120
Sager v. State, AIR 1968 AP 165
Girdha v. State, AIR 1953 MB 147
Air India v. Nergesh Meerza, AIR 1981 S.C. 1829
Vishaka v. State of Rajasthan, AIR 1997 S.C. 3011
Chairman, Railway Board v. Chandrima Das, 2 SCC 465 (2000)
Apparel Export Promotion Council v. A.K. Chopra, 1 SCC 765 (1999)
Elisabeth Bumiller, *MAY YOU BE THE MOTHER OF A HUNDRED SONS* (1990)
Aradhana Parmar, *Women and the Law*, in *LAW, POLITICS, AND SOCIETY IN INDIA* (1990)
Ratna Kapoor & Brenda Cossman, *On Women, Equality and the Constitution*, NATIONAL LAW SCHOOL JOURNAL, Bangalore (1993)
Indira Jaising, *Gender Justice and the Supreme Court*, in *SUPREME BUT NOT INFALLIBLE*
B. Sivaramayya, *Gender Justice*, in *FIFTY YEARS OF THE SUPREME COURT OF INDIA*