SYMPOSIUM BOOKLET

CONSTITUTIONALISM AND PUBLIC LAW: GLOBAL SOUTH PERSPECTIVES

6-7 December 2021
Faculty of Law, University of Jember, Indonesia

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ABOUT THE SYMPOSIUM

Symposium on Constitutionalism and Public Law: Global South Perspectives

This symposium is an international platform to exchange ideas and perspectives about the recent issues on constitutionalism and public law in the Global South countries. It primarily aims to share experiences and explore contemporary issues on constitutionalism and public law, which include environmental and human rights aspects in the Global South countries.

The discourses on constitutionalism and public law have expanded the Euro-American outlooks in developing the discipline. On the other hand, constitutionalism and public law in many Global South countries are often marginalized. While many southern countries may follow the West-led perspectives, their distinctive features have increasingly attracted scholars to explore more complex relations: politically, socially, and culturally diverse. It often refers to the phrase 'Global South' that spans most countries from South Asia, Southeast Asia, Pacific Islands, Middle East, Africa to Latin America. The importance of the current analysis reflects emerging issues in respective countries under economic globalization that gradually impact the way to interact and promote domestic affairs. It particularly includes how each Global South government develops constitutional structure and addresses the environmental and human rights issues.

In this Symposium, scholars, practitioners, and policymakers have participated in delivering their presentations to share experiences and explore contemporary issues on constitutionalism and public law in the Global South countries, drawing upon the particular field of disciplines with legal contexts in their national, regional, comparative, and international experiences.

SYMPOSIUM CONVENORS

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PROGRAM OVERVIEW

Join Zoom Meeting
Meeting ID: 997 6785 7915 | Passcode: FHUNEJ

DAY 1: Monday, 06 December 2021

TIME (GMT+7)	SYMPOSIUM AGENDA
12:30 – 13:00	Preparation (login to Zoom application)
13:00 – 13:25	OPENING CEREMONY
	Caleidoscope Video
	Welcoming Remarks Dr. Bayu Dwi Anggono, *Dean of the Faculty of Law, University of Jember*
	Opening Remarks Dr. Iwan Taruna, *Rector of the University of Jember*
13:25 – 13:30	Welcoming Dance
13:30 – 15:30	SESSION I
Chair Evyta Rosiyanti Ramadhani *University of Jember, Indonesia*	1. Anti-defection Law and Issuance of Whip: A Study of Its Impact on Parliamentary Democracy in India and Bangladesh *Vijay K. Tyagi & Priya Kumari, O.P. Jindal Global University, India* 2. 'Political Question' and Judicial Attitude to Political Controversies in Nigeria: Implications for Constitutionalism *Ferdinand O. Ottoh, University of Lagos, Nigeria* 3. Why Does the Constitutional Guarantee of the Right to Life Fail to End Death Penalty in Indonesia? *Andy Omara, Universitas Gadjah Mada, Indonesia* 4. The Bangladesh Constitution: Who "We, The People" Are? *S M Masum Billah, Jagannath University, Bangladesh*
15:30 – 17:30	SESSION II
Chair Ary Wirya Dinata *University of Bengkulu, Indonesia*	1. Power Sharing and Zoning Formula as the Alternative Strategies for Managing Diversity in Nigerian Politics: Examining the Experience of the Fourth Republic Journey (1999-2019) *Usman Sambo, Yobe State University, Nigeria* *Babayo Sule, Federal University Kashere Gombe, Nigeria* 2. Integration Policy for Rohingya Asylum Seekers to Guaranteed the Rohingya Freedom of Religion in Indonesia as a Non-Immigrant States *Khairil Azmin Mokhtar, International Islamic University of Malaysia, Malaysia* *Rachminawati, Universitas Padjadjaran, Indonesia* *Hani Adhani, Constitutional Court of the Republic of Indonesia, Indonesia* 3. Constitutionalization of International Law: A Comparative Analysis between Bangladesh and India *Nabila Akter, Rahman's Chambers* 4. Majoritarian Nationalism and Violation of Human Rights in South Asia *Bhumika Sharma & Nikita Dobhal, Jagran School of Law, India* *Ruchi Ramesh Sharma, Rajkiya Kanya Mahavidyalaya, India*

Join Zoom Meeting
Meeting ID: 997 6785 7915 | Passcode: FHUNEJ

DAY 2: Tuesday, 07 December 2021

TIME (GMT +7)	**SYMPOSIUM AGENDA**
08:00 – 10:00	SESSION III
Chair Goytom G. Afera *Chonnam National University, South Korea*	1. Populism and Constitution in Brazil and Peru *Eleonora Mesquita Ceia, Ibmec University Center, Brazil* 2. A Clear Pathway for Acknowledging Native-Faith Followers' Rights through the Constitutional Court Decision No. 97/PUU-XIV/2016 *Rofi Wahanisa, Ahmad Habib Al Fikry & Fairus Augustina Rachmawati* *Universitas Negeri Semarang, Indonesia* 3. The Recognition of Forest Carbon Rights in Indonesia Based on the Constitutional Approach *Kenny Cetera, WRI Indonesia, Indonesia* 4. Falling Down the Rabbit Hole: How COVID-19 Accelerates the Decline of Democracy in Indonesia *Fildza Nabila Avianti, Raoul Wallenberg Institute, Indonesia*
10:00 – 12:00	SESSION IV
Chair Muhammad Bahrul Ulum *University of Jember, Indonesia*	1. Analysing the Indian Citizenship Amendment Act, 2019 in the Light of Constitutional Ethos: A Legal Insight *Shilpa Jain, Ankit Srivastava & Aditi Richa Tiwary* *Dharmashastra National Law University, India* 2. Comparative Analysis of the Impeachment Procedures in Nigeria and Indonesia: A Need for a Paradigm Change *Kalu Kingsley Anele, Pusan National University, South Korea* 3. Transformative Constitutionalism and Human Rights of Homosexuals in India *Purnima Khanna, Khalsa College of Law, Punjab, India* 4. Labour Exploitation at Sea as Modern-Day Slavery: The Perspective of Global South *Kartika Paramita, Universitas Prasetiya Mulya, Indonesia*
12:00 – 13:00	BREAK
13:00 – 15:00	SESSION V
Chair Ankit Srivastava *Dharmashastra National Law University, India*	1. Changing Dynamics of Constitutionalism: South Asia's Tryst with Constitution *Neha Tripathi & Anubhav Kumar, Maharashtra National Law University, India* 2. Constitutional Protection of the Environment in Argentina: Tensions in the Supreme Court Case Law *Fernando Arlettaz, University of Zaragoza, Spain* 3. Image Based Sexual Abuse of Women: An Indian Legal Scenario *Akhil Kashyap, High Court of Punjab and Haryana, India* 4. Critical Analysis of Human Right Based Approaches towards Persons with Disabilities *Fr. Baiju Thomas, RMV Educational and Research Institute, India*
15:00 – 15:30	CLOSING

ABOUT THE PRESENTERS

VIJAY K. TYAGI

Vijay K. Tyagi is an Academic Tutor & TRIP Fellow at the Jindal Global Law School, O.P. Jindal Global University. He has qualified for the University Grants Commission - Junior Research Fellowship (UGC-JRF). He obtained his B.Sc. (Hons.) in Electronics from Hansraj College, the University of Delhi in 2014. Thereafter, he completed his LL.B. degree from Campus Law Centre, the University of Delhi in 2018 and LL.M. with specialization in Constitutional Law from the Indian Law Institute, New Delhi, with a Gold Medal for scoring the highest CGPA in the academic year 2019-20. Vijay worked at PRS Legislative Research as Legislative Assistant to Member of Parliament (LAMP) Fellow for 2018-19. Vijay has also authored several articles on judicial review, anti-defection law, etc. His primary areas of interest include Constitutional Law, Election Law, and Administrative Law.

FERDINAND O. OTTOH

Ferdinand O. Ottoh, Ph.D. is a lecturer at the Department of Political Science, University of Lagos, Akoka, Yaba, Lagos, Nigeria.

ANDY OMARA

Dr. Andy Omara is an Associate Professor of Constitutional Law at Gadjah Mada University School of Law, Yogyakarta, Indonesia. S.H. Gadjah Mada Univ. 1996; M.Pub&IntLaw, Univ. of Melbourne, 2007; Ph.D. Univ. of Washington, 2017. His primary research areas are Indonesian Constitutional Law, Judicial review, The Indonesian Judiciary, Comparative Constitutional Law. He published some papers in the Georgia Journal of International and Comparative Law, Yustisia Jurnal Hukum, Constitutional Review, Mimbar Hukum, and Indonesian Law Review.

S M MASUM BILLAH

Dr. S M Masum Billah is an Associate Professor of Law at Jagannath University Dhaka. He graduated from Rajshahi University with First Class First Position both in LLB (Hons) and LLM. He holds a Ph.D. from Faculty of Law, Victoria University of Wellington, New Zealand. His thesis examined the political nuances of land law and its relationship in perpetuating the poverty of the Bengal peasants. He is the honorary Director of Human Rights Summer School (HRSS), a regular Summer program renowned in South Asia organized by academic think-tank Empowerment of the Common People (ELCOP). In this role, he acts with ELCOP in championing the idea of rebellious lawyering, the art of advocacy and human rights teaching. His area of interests includes human rights, law and religion, land law and poverty, legal history and constitutionalism in South Asia. Billah's book "The Politics of Land Law" was published by University Press Limited (UPL) earlier this year. He is also the author of a Bengali book "Ainer Vab o Ovab" (The Art and Inert of Law) [Dhaka, Palal, 2019] that adds a new linguistic vista to Bangla legal understanding. He has authored the Bangladesh Chapter of the book, "Religious Offences in Common Law Asia: Colonial Legacies, Constitutional Rights and Contemporary Practice" edited by Thio LI An n and Jaclyn Neo and published by Hart Publishing, London. Dr Billah appears in TV talk shows and remains active in intellectually compelling debates on various issues of national and international importance.

USMAN SAMBO

Usman Sambo is a lecturer at the Department of Public Administration, Yobe State University, Damaturu Nigeria.

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KHAIRIL AZMIN MOKHTAR

Dr. Khairil Azmin Mokhtar is a senior law lecturer at the International Islamic University Malaysia. He has LL.B. (Hons) and Master of Comparative Laws degree. He was also awarded Ph.D. in Law from Aberystwyth University, Wales, United Kingdom. He teaches undergraduate and postgraduate courses in various law subjects including constitutional law, administrative law, comparative constitutional law, and human rights. He has supervised and co-supervised thesis writing for Ph.D.

and Master's degrees in various topics relating to constitutional law, human rights, international human rights law, federalism, Muslim laws and affairs, and comparative constitutional law. He has co-authored several books, including 'Administration of Islamic Affairs' and 'Democratic Transition and Constitutional Justice: Post Reformasi Constitutional Adjudication in Indonesia', and edited several books, including 'Constitutional Law and Human Rights in Malaysia' and 'Election Law' and. He has contributed more than 100 publications and papers published as chapters in books and law journals, and local and international conferences.

RACHMINAWATI

Rachminawati is a Lecturer & Researcher at the International Law Department, Faculty of Law, Universitas Padjadjaran (Unpad), Bandung, Indonesia. She got her Bachelor of Law from Unpad in 2003 and her Master of Arts in European Law and Policy from The University of Portsmouth United Kingdom in 2009. She has participated in The Hague Academy of International in The Hague, The Netherlands in 2006. Apart from her teaching obligation, she has published on human rights, ASEAN human rights, and international law, one of them had published by Palgrave Macmillan UK with the title "EU Law and Policy: A Useful Model for ASEAN?" One of her papers with the title "ASEAN Human Rights Declaration: A New Form of Universalism" got the first winner in IJIL Writing Competition, Universitas Indonesia, in 2013. Currently, She is a Ph.D. student at Ahmad Ibrahim School of Law (AIKOL), International Islamic University of Malaysia.

HANI ADHANI

Hani Adhani is a Substitute Registrar Constitutional Court of the Republic of Indonesia. He is also a Ph.D., Candidate, Ahmad Ibrahim School of Law, International Islamic University of Malaysia.

NABILA AKTER

Nabila Akter is an independent researcher, currently working as an Associate at Rahman's Chambers. She has completed LL.M. in International Law from South Asian University, New Delhi, India, and LL.B. from Daffodil International University, Dhaka, Bangladesh. Her publication was 'Statelessness From the View of Hannah Arendt to Present International Law' in the Voice of International Affairs.

BHUMIKA SHARMA

Bhumika Sharma is an Assistant Professor, Jagran School of Law, Dehradun, India

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ELEONORA MESQUITA CEIA

Eleonora Mesquita Ceia is a lecturer at Ibmec University Center, Brazil. She obtained Doctor of Law (Dr. iur.). Faculty of Law and Economics, Saarland University, Germany. Funded by Konrad-Adenauer-Stiftung. Master of European Law (LL.M. Eur.). Europa-Institut of Saarland University, Germany. Funded by Konrad-Adenauer-Stiftung. Bachelor of Law. Faculty of Law, Rio de Janeiro State University (UERJ), Brazil. Professor of Constitutional and International Law at Ibmec University Center. Her publication was Brazil-Europe: Reviewing and reinforcing political dialogues. In: Themoteo, Reinaldo (Coord.). Reviving and strengthening Brazil-Europe dialogues. Rio de Janeiro: Konrad Adenauer Stiftung, 2021.

ROFI WAHANISA

Dr. Rofi Wahanisa is a lecturer of Faculty of Law, Universitas Negeri Semarang. She obtained Bachelor's, Master's, and Doctoral degrees at the Faculty of Law, Diponegoro University. I teach courses in agrarian law, spatial planning and land use law, agrarian reform, forestry law, state administrative law, constitutional law, and procedural law of the constitutional court. Have some research experience in 2020 with the title Ideological Configuration of Identity Politics in Post-New Order Regional Policies and Regulations and Comparison of Business Competition Institutions between Indonesia and Thailand as a Form of Commission Strengthening

Indonesian Business Competition. In addition to research, he also has service experience in 2020 Building Community Participation in Lerep Tourism Village Spatial Planning Activities and Building Community Participation In Lerep Tourism Village Spatial Activities.

AHMAD HABIB AL FIKRY

Ahmad Habib Al Fikry is a student of Faculty of Law, Universitas Negeri Semarang year 2019. Active on campus by joining various organizations, such as Sekolah Rakyat Maroon 2019, Unit Peradilan Semu 2019-present, and Lex Scientia 2019-present. He has been active in national activities such as the National Seminar with the publication entitled "The Equilibrium Arrangement for Personal Data Protection as a Guarantee of Constitutional Rights: Reflections on Implementation in the Covid-19 Pandemic Period."

FAIRUS AUGUSTINA RACHMAWATI

Fairus Augustina Rachmawati is a student of the Faculty of Law, Universitas Negeri Semarang year 2018. Active on campus by joining various organizations, such as Private and Commercial Law Community (PCLC) 2021-Present, English Discussion Community 2020-2021, Lex Scientia 2019-2020. Active in national and international activities such as the National Seminar with the publication entitled "Implications of the Multi-interpretation Article of the ITE Law on the Elements of Humiliation and Defamation". Other than that I also joining an international activities such as International Model United Nations in Vietnam 2019, Model United Nations at Brawijaya University and Asia Pacific Youth SDGs Summit 2021.

KENNY CETERA

Kenny Cetera is an independent researcher with focus on environmental law. He is affiliated with World Resources Institute (WRI) Indonesia, working on illegal logging and forest crimes issues. His publication were entitled, "How Wood Identification Technologies Help Ensure Timber Legality in Indonesia." Working Paper. Jakarta, Indonesia: WRI and Kajian Teori Public Trust Doctrine Dalam Kasus Lingkungan: Studi Kasus UU Minerba Baru. Jurnal Hukum Lingkungan Indonesia, 7(1), 28–47.

FILDZA NABILA AVIANTI

Fildza Nabila Avianti has worked in human rights sector for 6 years. She graduated from Columbia Law School in 2020, focusing on public international law and international human rights law.

SHILPA JAIN

Dr. Shilpa Jain is an Associate Professor, Academic In-charge and director of Centre for Human Rights at DNLU Jabalpur. She published a pepr entitled, "Conflict of Laws vis~a~vis NRI marriages in Punjab" published by NMIMS Law Review (2021) and Shutdowns and Virtual Curfews: Searching for Rights in Digital Darkness published by CASIHR Journal on Human Rights (2020).

ANKIT SRIVASTAVA

Ankit Srivastava is an Assistant Professor and Director of Centre for research in Competition Law and Policy at DNLU Jabalpur. He published a paper entitled, "Competition Law in Asia: The interplay of power dynamics in the digital market" published by Lentera Hukum, University of Jember, Indonesia (2021).

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Dr Kalu Kingsley Anele obtained his doctorate degree at Korea Maritime and Ocean University. He is a Research Fellow at Cultural Heritage Preservation Research Institute, Pusan National University, Busan, South Korea. He was a Research Fellow at the Nigerian Institute of Advanced Legal Studies (NIALS), Lagos, Nigeria, where he co-authored a book titled Restatement of Customary in Nigeria and co-edited a book titled Class action: practice and procedure essays in honour of Professor Epiphany Azinge, Ph.D., SAN, OON, both books published by NIALS. He was a member of Oyo State Law Review Committee. Kalu has participated in the Justice4All Project in Nigeria sponsored by the United Kingdom Government's Department for International Development and Managed by the British Council. Kalu graduated from Imo State University, Owerri, Nigeria. He published papers in Maritime Safety and Security Law Journal, International and

Comparative Corporate law Journal, Journal of Korean Traditional Costume, Journal of Territorial & Maritime Studies, Indonesian Law Review, Journal of Korean Law, Commonwealth Law Bulletin, Brawijaya Law Journal, Indonesian Journal of International and Comparative Law, European Journal of Comparative Law and Governance, Seoul Law Journal, WMU J Marit Affairs, and Company Law Research.

KARTIKA PARAMITA

Kartika Paramita is an Assistant Professor in International Business Law Program, Universitas Prasetiya Mulya, Indonesia. She is a member of the Indonesian Bar Association and graduated from the Master of Commercial Law Program of Erasmus University Rotterdam, the Netherlands, with a specialization in Maritime and Transport Law. Her publication was entitled, "Tort Claim under the Ship Time Charter: The Perspective of Indonesian Law," in Fiat Justitia: Jurnal Ilmu Hukum.

NEHA TRIPATHI

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ANUBHAV KUMAR

Anubhav Kumar is an LL.M. graduate from Maharashtra National Law University, Aurangabad. He specializes in Constitutional Law and Energy Laws. His publication was Constitutional Courts and Judicial Independence: Conceptualising Judicial Dissent in South Asian Perspective, accepted for publication, VIPS Student Law Review, Volume 3, bearing ISSN 2582-0311 (Print) and ISSN 2582-0303 (Online).

FERNANDO ARLETTAZ

Fernando Arlettaz holds a PhD in Legal Sociology and Political Institutions (University of Zaragoza, Spain). He was post-doctoral fellow at the Centre d'Études et de Recherches Internationales et Communautaires (Aix-Marseille University, France). He is interested in Human Rights both at the constitutional and international levels, as well as in legal theory and legal sociology. His recent publications are in Legal Issues of Economic Integration, The Hague Academy for International Law, The Legal History Review / Tijdschrift voor Rechtsgeschiedenis / Revue d'Histoire du Droit, Journal of Law, Religion and State, and The Canadian Yearbook of International Law / Annuaire Canadien de Droit International.

AKHIL KASHYAP

Akhil Kashyap is an Advocate practicing in the High Court of Punjab and Haryana, India, having specialization in women rights. He completed his masters of law in criminal law and has also taught as an Assistant Professor of Law. He published a paper entitled, "Evolution of UAPA 1967: Countering Terrorism or a Terrorizing Law" in "Anti-Terrorism and National Security Laws: Legal Issues and Challenges" ISBN No.978-93-87047-37-2

FR. BAIJU THOMAS

Fr. Baiju Thomas is a Research Scholar at the Faculty of Disability Management and Special Education, Ramakrishna Mission Vivekananda Educational and Research Institute, Coimbatore Campus, Tamil Nadu. He had served Premdhan Ashram, a Rehabilitation Centre for 10 years. He has completed his MA in Hindi from Garhwal University, Uttarkhand. He has also completed his B.Ed special education (Intellectual disability) from North East Hill University, Shillong, and M.Ed in special education (Intellectual disability) from Ramakrishna Mission Vivekananda Educational and Research Institute, Coimbatore, TN. His area of interest is Education, Special education, Research, sociology, leadership and community building programs. He has participated a total of 215 International and National Conferences, Worship, Seminars and Webinars and has presented more than thirty two papers. He has also published more than fifty papers both in reputed journals and ISBN books as chapters. He was also awarded the best student during M.Ed. studies. He is a Asian book & Indian book of Record for Maximum authors contributing in a book on Covid- 19, set by ESN Publications, India.

ABSTRACTS IN SESSION I

SESSION I

1. Anti-defection Law and Issuance of Whip: A Study of Its Impact on Parliamentary Democracy in India and Bangladesh
   Vijay K. Tyagi & Priya Kumari, O.P. Jindal Global University, India

2. 'Political Question' and Judicial Attitude to Political Controversies in Nigeria: Implications for Constitutionalism
   Ferdinand O. Ottoh, University of Lagos, Nigeria

3. Why Does the Constitutional Guarantee of the Right to Life Fail to End Death Penalty in Indonesia?
   Andy Omara, Universitas Gadjah Mada, Indonesia

4. The Bangladesh Constitution: Who "We, The People" Are?
   S M Masum Billah, Jagannath University, Bangladesh

DATE: Monday, 06 December 2021

TIME: 13:30 – 15:30 (GMT+7 Jakarta Time)

CHAIR: Evyta Rosiyanti Ramadhani, *University of Jember, Indonesia*

ZOOM MEETING: Meeting ID: 997 6785 7915 | Passcode: FHUNEJ

Anti-defection Law and Issuance of Whip: A Study of its Impact on Parliamentary Democracy in India and Bangladesh

India and Bangladesh on seeking independence opted for the Westminster model of parliamentary form of government. Here, the real authority lies in the hands of the executive on which a check was also essential. The Constitutions of India and Bangladesh have thus incorporated the principle of collective responsibility in which the political executive is made responsible towards the House of the people. However, even after doing so, the maintenance of political stability due to floor crossing became a challenge for both democracies. As a remedy, anti-defection law was incorporated in the Constitution of Bangladesh since its inception. India brought the law via the 52nd Constitutional Amendment in 1985. This law entails disqualification of a legislator if the legislator votes against the direction issued by the political party he or she is associated with. This is possible because political parties have an unfettered power to issue whips mandating members to vote in a particular manner on the floor of the House. Such an unregulated power is a threat to some of the basic tenets of parliamentary democracy like separation of powers and accountability of executive towards the legislature. Specifically, the legislative business is overshadowed by the executive due to the fear of disqualification in the minds of the legislators. The result is an executive legislation which is contrary to the principle that lawmaking is the primary function of the legislature. The objective of this paper is to put forth a model for India and Bangladesh to strike a balance between the maintenance of political stability and safeguarding the basic principles of parliamentary democracy. The authors would be studying Article 70 (b) and paragraph 2 (1) (b) of Schedule X of Bangladesh and the Indian Constitution respectively. The result of the entire study would focus on how to narrow down the scope of the anti-defection law in India and Bangladesh to preserve parliamentary democracy and maintain political stability. To conclude, anti-defection law is the need of the hour but such a broad authority to issue whip without any limitation is a threat to fundamental democratic norms which needs to be reviewed.

'Political Question' and Judicial Attitude to Political Controversies in Nigeria: Implications for Constitutionalism

Political question is one of the jurisprudential issues in constitutional democracy as the courts may not want to exercise the power of judicial review to determine the constitutionality of the action of the other organs of government or a statute before it. Judicial review as a legal instrument has been used to expand or reduce the powers of the governments but the courts decide to exercise this power discretionarily on the ground that it falls within the province of politics. The paper argues that this attitude is a negation of the principle of constitutionalism. It contends that deliberate avoidance of political questions by the courts is a typical attitude of the judiciary in Nigeria in most political controversies. This is to the effect that the issues of discretion and non-justiciable are abused by the courts. It is therefore imperative to unravel the intricacies of the doctrine of political questions by undertaking a comprehensive jurisprudential analysis of the doctrine, highlighting the most controversial aspects and how the attitude of the court in political controversies undermines its commitment to constitutionalism. The implications of this are that it goes against the spirit of checks and balances, fundamental human rights, and rule of law. The methodological path is to analyse the various theories and review extant cases on political controversies and the decisions reached thereof by the courts. It concludes that the doctrine of political questions will be judiciously used by the court and not to avoid determining contentious political issues that may likely derail Nigeria's democratic process and stability.

Why Does the Constitutional Guarantee of the Right to Life Fail to End Death Penalty in Indonesia?

The updated Constitution of Indonesia inserts significant provisions on Human Rights including provisions on Civil and Political Rights, and Economic, Social, and Cultural Rights. It also sets important principles related to human rights such as non-derogable rights, non-retroactive, the limit of human rights and the state's obligation to respect, protect and fulfill human rights. Chapter on Human Rights places seven fundamental rights, including the right to life, into non-derogable rights. This means that the right to life and the other six basic rights are constitutionally guaranteed in any circumstances whatsoever. This provision reflects ultimate constitutional protection to the right of life of individuals. It can be said that the Constitution is clear about the supreme position of the right to life. It cannot be derogated in any situations. The question is while the constitution is clear about the absolute character of the right to life, does the Constitutional Court share the same perspective when it reviews cases related to the right to life? Hypothetically, the Court's will share view with the Constitution since the Constitution is the ultimate reference of the Constitutional Court when it conducts judicial review. However, the Constitutional Court is equipped by different method of interpretations including interpreting the text of the constitution or referring to the original intention of the constitutional drafters. This paper aims to understand the Court reasonings in determining the status of the right to life. How does the Court decision decided judicial review cases associated with right to life? Does the Court ruling in this cases influence the existence death penalty in Indonesia? To respond the aforementioned questions, this paper will first study the background regarding the inclusion of nonderogable rights in general. It will be followed by the general tendency on how countries treat nonderogable rights in their constitution and practice? Second, it will specifically study the minutes of the constitutional drafting to understand the background concerning the inclusion of right to life in the updated Constitution. In addition, it will also study the actual text of the constitution which determine the right to life as nonderogable right. Finally, this paper will analyze the relevant constitutional court rulings to understand the Court interpretation regarding the nature of the right to life. In the end it will finally answer whether or not the constitutional guarantee of the right to life will end death penalty in Indonesia.

The Bangladesh Constitution: Who "We, The People" Are?

Bangladesh Constitution starts with three words: "We, the People". The words are simple but mighty. They are also revolutionary. They are mighty because they signify the collective mind of the nation. They are revolutionary because they represent a glorified moment of the Bengali nation's commitment to oneness. This oneness develops into an image of a document that we call the Constitution. In the recent past, the Bangladesh Supreme Court in 16th Amendment Case (2016) underscored the necessity of "We jurisprudence" as opposed to "I Jurisprudence". The case involved a tussle between the executive and the judiciary over the process of judges' impeachment. The doctrine of popular sovereignty is widely expressed through the phrase: "powers belong to people (art 7)". But how is the power of the people to be applied? The Constitution relies on the doctrine of trust –the power is exercised through their elected representatives. The Constitution promotes the culture of popular sovereignty by giving the branch closest to the people –the legislature, a great deal of final say. Thus, the legislature is the primary conduit of the people's will. Could we say, however, that the will of the legislature can always be taken to be the will of the people? If not, is popular sovereignty under the Constitution a misnomer? Three notions govern the picture: i) the procedural constraint of popular sovereignty; ii) the approach of interpreting the Constitution; iii) people's participation in the constitutional amending process. The nature of these three notions brings two further questions: i) are we the same "ourselves" that we were in 1972 when the Constitution was farmed? And ii) what impacts do the constitutional amendments make on the identity questions of the people? This standpoint, tempt me to question: who actually 'We, the People' are – whose sovereignty is conditioned in this way or that? Are there people who are 'unpeople in the same country?In my paper, I will address these questions considering the culture of judicial review, textual ambiguity and constitutional unamendability. I will refer to Indian and American constitutional jurisprudence in critiquing the Bangladesh situation.

ABSTRACTS IN SESSION II

SESSION II

1. Power Sharing and Zoning Formula as the Alternative Strategies for Managing Diversity in Nigerian Politics: Examining the Experience of the Fourth Republic Journey (1999-2019)
   Usman Sambo, Yobe State University, Nigeria
   Babayo Sule, Federal University Kashere Gombe, Nigeria

2. Integration Policy for Rohingya Asylum Seekers to Guaranteed the Rohingya Freedom of Religion in Indonesia as a Non-Immigrant States
   Khairil Azmin Mokhtar, International Islamic University of Malaysia, Malaysia
   Rachminawati, Universitas Padjadjaran, Indonesia
   Hani Adhani, Constitutional Court of the Republic of Indonesia, Indonesia

3. Constitutionalization of International Law: A Comparative Analysis between Bangladesh and India
   Nabila Akter, South Asian University, India

4. Majoritarian Nationalism and Violation of Human Rights in South Asia
   Bhumika Sharma & Nikita Dobhal, Jagran School of Law, India
   Ruchi Ramesh Sharma, Rajkiya Kanya Mahavidyalaya, India

DATE: Monday, 06 December 2021

TIME: 15:30 – 17:30 (GMT+7 Jakarta Time)

CHAIR: Ary Wirya Dinata, *University of Bengkulu, Indonesia*

ZOOM MEETING: Meeting ID: 997 6785 7915 | Passcode: FHUNEJ

Power Sharing and Zoning Formula as the Alternative Strategies for Managing Diversity in Nigerian Politics: Examining the Experience of the Fourth Republic Journey (1999-2019)

Nigeria is a plural society that is currently operating a democratic system of ruling. The multiplicity of ethnic groups, religious beliefs and cultural diversities made the contest for sharing intense and chaotic. Many scholars (Sklar 1984, Nnoli 1987, Dudley 1991, Joseph 1997 and Diamond 1995) emphasised that the Nigerian state is in a crisis of governance and development because of the extreme struggle for power control at the centre. Many studies (Diamond 1988, Lindberg 2006, Adejumobi 2010, Peel 2010, Adebanwi & Obadare 2013, Le Van 2015 and Usuanlele & Ibhawoh 2017) argued that Nigerian politics is bedevilled with ethnicity, religious manipulation and regional sentiments which made power competition particularly at the centre a difficult task since political independence sometimes leading to the threat of succession. Thus, if the diversity is not managed appropriately, it will threaten the co-existence and governance of the country. This study identified that despite the existence of numerous studies as presented above, none has paid adequate attention to the strategies of survival and management of diversity in Nigeria which ushered in the longest democratic experiment in the history of the country in the Fourth Republic. This is the target of this study. The study has the main objective of contribution to knowledge by filling the research gap. In addition, the work has other specific objectives as follows: To examine the nature and dimension of zoning formula and power sharing in Nigeria and analyse how the strategies of zoning formula and power sharing helped in the management of diversity in the Nigerian state. The research adopted the research design of a qualitative approach to data collection and data analysis. The study is identified as a descriptive qualitative method which sought to describe the strategy that the Nigerian state is using in the management of diversity. A qualitative approach is a paradigm of data collection which involves the gathering of a large assembled data either from the primary or secondary sources for the generation of ideas and themes that can be grouped into several arrangements for analysis (Sharan 2009, Sekaran & Bougie 2013, Creswell 2014). Thus, the research will use secondary sources of data collection because the topic is wide which can make data gathering through primary sources a difficult task. The sources to be consulted for this research include books, journals, newspapers, internet sources, reports and other related documents (Bogden & Biklen, 2007). The data collected would be analysed and interpreted using content analysis where the data obtained is presented in themes and sub-themes identified based on the discussion of the subject matter (Braun & Clarke 2013 and Lune & Berg 2017). The work will use two theories to be integrated and interpreted or applied within the context of the work for empirical and theoretical support. The theories are the Lijphart Consociational Democracy and theory of Pluralism. The origin, major assumptions, criticisms and applicability of the theories would be discussed in the context of the work. Findings would be based on the outcome of the study after discussion and interpretation of the data collected.

Integration Policy for Rohingya Asylum Seekers to Guaranteed the Rohingya Freedom of Religion in Indonesia as a Non-Immigrant States: Why and How it can be done?

Rohingya crisis is getting from bad to worse due to covid-19 pandemic and the coup d'etat in Myanmar. The decision of the ICJ on the Gambia vs. Myanmar case did not contribute effectively to solve the crisis, especially on the idea of their repatriation to the Rakhine States. In Indonesia, Rohingya remain in their temporary shelter supported by UNHCR and IOM. It seems there is no foreseeable comprehensive solution to this issue. Ensuring the freedom of religion for the Rohingya asylum seekers is a issue with the repatriation policy. This is not only an obligation under international law but also a mandate under the constitution of Indonesia to give the protection of the people's fundamental rights including Rohingya refugees' freedom of religion. Among options available in order to achieve the objective is by integrating Rohingya with the locals in Indonesia. Integartion policy believes as the most feasible and sustainable solution to guarantee the Rohingya refugees' freedom of religion compared to returning them to Myanmar or resettling them to third countries. The reason for protecting the Rohingya religion's freedom must be taken into account in searching solutions for Rohingya because freedom of religion is one of the fundamental rights guaranteed by international law and by the constitution of Indonesia. The paper seeks to what extent Indonesia government grants the Rohingya refugees the right to integrate with locals in order to allow them to exercise freedom of religion. It will also assess the existing law and/or policy relating to asylum seekers especially in handling Rohingya refugees by focusing on matters pertaining to religious freedom. This is qualitative legal research, mostly searching data via literature search and review both offline and online sources. Some interviews will be conducted especially with the experts and the Constitutional Court's officials of Indonesia who are knowledgeable on the issue. The findings provide recommendations for the government of Indonesia, as well as for other ASEAN member states on the necessity to take integration option to protect the Rohingya fundamental rights of freedom religion. It also proposed on how the process of integration can be done. "

Constitutionalization of International Law: A Comparative Analysis between Bangladesh and India

The central preoccupation of Constitutionalism is the relationship between universal human rights, the rule of law, democracy, and judicial review within a liberal democratic constitutional order. Undoubtedly, the political dimension is necessary to understand the relevance of constitutional law in a state. South Asian nations, being part of the larger Global South, have had some difficulty in maintaining their Independence of Constitutions because most South Asian states emerged independently out of colonial regimes or colonial backed autocratic regimes. However, the contents of present constitutional law are becoming more international in various ways because national constitutions have to deal with international and transnational questions being influenced by other constitutions in their history. International law has progressed from a law of coordination between states to a law of close cooperation reaching far into the realm of traditional domestic concerns. It ultimately depends on the national Constitution whether and how particular international treaties and the outcome of these networks enter the domestic legal system and their position in those systems. This Constitutionalization of international law can be labelled a "project" that is being designed and yet to be accomplished or a "phenomenon" that already exists and is only being described. Bangladesh and India are two South Asian nations with different constitutional cultures. Despite following the dualistic legal tradition, Bangladesh and India are constitutionally committed to respecting international law in various state affairs under Article 25 and 51 in their Constitution, respectively. Both states have ratified almost all the core international human rights instruments for protecting and promoting human rights. Many national and international legal instruments are initiated, but human rights violations are still a big concern in various forms in there. The Supreme Court of both the States has utilised the provisions and principles of international instruments in many cases as an aid to the interpretation of the Constitution and ordinary laws. This paper concentrates on a comparative analysis on applying international law to protect human rights in domestic courts of Bangladesh and India. This research will follow a doctrinal approach considering approaches from both the states towards the Constitutionalization of International law.

Majoritarian Nationalism and Violation of Human Rights in South Asia

The right of nationality for minorities is facing acute challenge across the world. Various studies conducted in the past years establish the fact that there has been a rise in hatred and injustice towards various minorities led by the political leadership of the countries. North Korea, China, India, Pakistan, Cambodia etc. are amongst those countries known for oppressing and marginalizing the minorities. The objective of this paper is to highlight the prevailing increasing instances of majoritarian nationalism existing in South Asia. The doctrinal approach has been adopted in the present study. International Reports on Human Rights have been studied. Various countries, especially in South Asia are demonstrated nationalism at the cost of violation of the human rights. The minorities are suppressed to promote nationalism of majoritarian religions. Almost all States have one or more minority groups within their national territories, characterized by their own ethnic, linguistic or religious identity which differs from that of the majority population. Harmonious relations among minorities, between minorities and majorities as well as respect for each group's identity is a great asset to the multi-ethnic and multi-cultural diversity of the global society. The fundamental right to equality of the minorities in various parts of the world are often deprived of in a way adversely affecting their enjoyment of a range of human rights. The right of nationality for minorities should be safeguarded and promoted. There is a need to accept that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live. It is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief. The political parties also need to think on a larger perspective considering the interests of the country as whole, not limited to own political interests.

ABSTRACTS IN SESSION III

SESSION III

1. Populism and Constitution in Brazil and Peru
   Eleonora Mesquita Ceia, Ibmec University Center, Brazil

2. A Clear Pathway for Acknowledging Native-Faith Followers' Rights through the Constitutional Court Decision No. 97/PUU-XIV/2016
   Rofi Wahanisa, Ahmad Habib Al Fikry & Fairus Augustina Rachmawati
   Universitas Negeri Semarang, Indonesia

3. The Recognition of Forest Carbon Rights in Indonesia Based on the Constitutional Approach
   Kenny Cetera, WRI Indonesia, Indonesia

4. Falling Down the Rabbit Hole: How COVID-19 Accelerates the Decline of Democracy in Indonesia
   Fildza Nabila Avianti, Raoul Wallenberg Institute, Indonesia

DATE: Tuesday, 07 December 2021

TIME: 08:00 – 10:00 (GMT+7 Jakarta Time)

CHAIR: Goytom G. Afera, *Chonnam National University, South Korea*

ZOOM MEETING: Meeting ID: 997 6785 7915 | Passcode: FHUNEJ

Populism and Constitution in Brazil and Peru

Populism is not a recent phenomenon in South America countries. The region provides a good case study for the examination of populism as a strategy used in common by different ideological orientations: the populist governments of Getúlio Vargas and Juan Domingo Péron, the Bolivarian experiences from the 1990s onwards, the fujimorism and the bolsonarism. The varied manifestations of populism (democratic/authoritarian, revolutionary/conservative, inclusionary/exclusionary, left-wing/right-wing) are often forgotten in academic studies, notably in the field of constitutional law. The debate on the relationship between constitutionalism and populism is fundamental because constituent power and constitutional identity are issues usually instrumentalized by populist governments to reach their political goals. If the handling of constitutional law is abusive, it may infringe basic principles of the rule of law. The paper aims to provide a comparative analysis of two main experiences in recent development of populism in South America: the rhetoric and practices of Jair Bolsonaro's government in Brazil and Pedro Castillo's government in Peru regarding constitutional reforms and human rights issues. Thereby the paper intends to contribute to the discussion on the different dimensions of populism and their impact on South American constitutionalism. The comparison between the two governments is justified: Brazil and Peru are presidential republics whose societies are shaken by harsh political polarization. Bolsonaro and Castillo have anti-corruption discourses and support a new constituent process, but present antagonistic economic views. The methodology consists of bibliographic and documentary researches which include specialized literature on South American populism and constitutionalism as well as government's plans, speeches and legislations. As results the paper identifies that both governments have difficulties to execute their respective agendas on customs and constituent referendums due to governability problems and important features of the constitutional design, such as eternity clauses, judicial review and constitutional rigidity. The paper concludes that the populist strategies of Bolsonaro and Castillo are different. Bolsonarism is antiliberal and promotes human rights regression, whereas Castillo's populism is conservative, but democratic. In common both face coalition presidentialism and constitutional protection mechanisms as constraints to put their political goals fully into practice.

A Clear Pathway for Acknowledging Native-Faith Followers' Rights through the Constitutional Court Decision No. 97/PUU-XIV/2016

The conception of state of law holds the principles of human rights protection and independent as well as unbiased justice in its implementation. The Constitutional Court has a significant role in reviewing constitutionality under the constitution as stipulated in Article 24C paragraph (1) of the Constitution. This context inherent to the functions of the Constitutional Court in exercising its authority which results in a final and binding decision. Constitutional judges play a pivotal role as they are expected to implement structural partiality and laws upheld in the society. This notion corresponds to Article 5 paragraph (1) of the Law of Judicial Power and the theory of progressive law which view that laws are established for human life. The objectives of this article are to: (i) pinpoint the functions of the Constitutional Court in reviewing the Law of Civil Administration; and (ii) uncover the implications of the Constitutional Court Decision No. 97/PUU-XIV/2016. The writer used a normative legal research. The results indicate that (i) in reviewing the Law of Civil Administration the Constitutional Court serves its functions as a constitutional guard, constitutional interpreter, human rights protector, and democracy protector. First, in reviewing a quo law the judges' considerations are based on the 1945 Constitution as the realization of upholding the constitution. Second, as a constitutional interpreter, the judges interpret religions and beliefs are an integral entity. Third, granting the request of reviewing a quo law is considered as a concrete manifestation of fulfilling and protecting human rights, in this case native-faith followers. Fourth, the request granted provides a clear pathway for acknowledging the identity of native-faith followers so that they can freely practise their faith. (ii) The decision of a quo has massive implications for society and leads to the establishment of laws as a tool of social engineering. The acknowledgement of native-faith followers in the system of civil administration becomes a new norm which gives assurance for implementing and fulfilling native-faith followers' rights.

The Recognition of Forest Carbon Rights In Indonesia Based on the Constitutional Approach

As a forest-rich nation, Indonesia has participated actively on carbon trading scheme as the measure to reduce the impact of climate change. The issues on carbon rights came into surface with the rapid development of forest carbon trading and green projects targeting land-use based emissions. It raises the question on the legal ownership of carbon stored on trees, which are planted on land. This article aims to discuss the existing problems on the recognition of carbon rights in Indonesia and its impact on the community rights over forest resources. The discussion will be analysed from the constitutional approach, particularly on the view of the indigenous rights recognition and state control on natural resources. The article writing utilizes juridical-normative method. Primary data will be obtained through interviews with selected climate change experts. The secondary data includes relevant Indonesian laws, regulations, and court decisions. The result will envisage that state control on natural resources as regulated under article 33 of Constitution was interpreted narrowly, showing that the state control trumps over individual or communal rights. As the hypothesis, there is no clear explanation on the relationship between land tenure and carbon ownership on existing regulation. In practice, the community shall go through complex licensing procedures to participate and obtain incentives from carbon trading and green projects pertaining to forest carbon. Hence, the draft bill of president regulation on Carbon Economic Value Instrument defines carbon right as "the control of carbon by the state that are transferable to business and/or activities through licensing or other states through authorization". The definition denotes the state as the sole owner of carbon commodities and it against the spirit of indigenous and community rights recognition as recognized by the Constitution, especially article 18B sub article (2) on the recognition of indigenous rights and article 28I sub article (3) on the tribute of traditional rights in harmony with current development. Though carbon right is a modern concept, it is ideal to transfer it for community who depends their livelihood on forest and make the current framework on carbon trading less procedural for them.

Falling Down the Rabbit Hole: How COVID-19 Accelerates the Decline of Democracy in Indonesia

Instead of placing human rights at the center of crisis mitigation and recovery efforts, government responses across Southeast Asia have curbed freedom of speech and civic space. The Southeast Asian Governments' Crisis Playbook to expand their reach during the COVID-19 pandemic is similar. During crises, governments rely on emergency laws and temporary powers to extend the boundaries of their current legislations. Secondly, democratic activities are suspended under the pretense of security measures. Third, the surveillance of citizens is increased to deter and pre-empt democratic activities. Fourth, political non-compliance or civil disobedience is framed as a national security threat or as an act of terrorism. Fifth, post-crisis, attempts are made to expand temporary legislation by enacting new and long-standing laws. In turn, the autocratic governments have become the sole arbiters of truth by discrediting criticism of their mismanagement under "fake news", defamation, sedition laws, and technology offenses. The objective of this paper is, first, to know if democracy is declining in Southeast Asia. Second, if it does, how do the governments expand their control even when it violates democratic rights. Third, to show ways we can do to better protect our rights, according to best practices. I will use comparative analysis to compare and contrast the democratic experience of countries in Southeast Asia. I will also use normative legal research to find legal rules, principles, and doctrines of the law regarding democracy, civil and political rights, and other relevant rights. I will also use the empirical research method to know how democracy is practiced in Southeast Asia during the COVID-19 pandemic. My preliminary results show an overwhelming practice that can harm democracy today and also in the long run. In conclusion, civic spaces in Southeast Asian countries are shrinking, civil society organizations have often been targets of attack and faced hardship due to retracted funding. This condition adds to the difficulties faced by civil society in maintaining its democratic and human rights watchdog activities.

ABSTRACTS IN SESSION IV

SESSION IV

1. Analysing the Indian Citizenship Amendment Act, 2019 in the Light of Constitutional Ethos: A Legal Insight
   Shilpa Jain, Ankit Srivastava & Aditi Richa Tiwary
   Dharmashastra National Law University, India

2. Comparative Analysis of the Impeachment Procedures in Nigeria and Indonesia: A Need for a Paradigm Change
   Kalu Kingsley Anele, Pusan National University, South Korea

3. Transformative Constitutionalism and Human Rights of Homosexuals in India
   Purnima Khanna, Khalsa College of Law, Punjab, India

4. Labour Exploitation at Sea as Modern-Day Slavery: The Perspective of Global South
   Kartika Paramita, Universitas Prasetiya Mulya, Indonesia

DATE: Tuesday, 07 December 2021

TIME: 10:00 – 12:00 (GMT+7 Jakarta Time)

CHAIR: Muhammad Bahrul Ulum, *University of Jember, Indonesia*

ZOOM MEETING: Meeting ID: 997 6785 7915 | Passcode: FHUNEJ

Analysing the Indian Citizenship Amendment Act, 2019 in the light of Constitutional Ethos: A Legal Insight

The grandeur of India's diverse milieu has invariably found reverence at all points in the history of the global south. However, recent incidents pertaining to the recognition, grant and continuance of citizenship in India need an even-handed analysis in the light of the Constitutional ethos of the State. The Citizenship Amendment Act, 2019, coupled with the changes introduced to regulate the National Register of Citizens in India are perceived as being reflective of a religious classification in grant and continuance of Indian citizenship. The changes brought about in the Act aim at regulating Indian migration policy by recognising Hindus, Sikhs, Buddhists, Jains, Parsis or Christian communities from Afghanistan, Bangladesh or Pakistan, who entered India on or before December 31, 2014 as legal migrants, while terming the rest as illegal migrants. Although the changes have not been enforced due to the strong resentment of citizenry, the existence of an intention on the part of the State to bring forth such laws raises questions of Constitutional significance. As the Act was introduced, a considerable fraction of Indian citizenry was at a discord with such law owing to the presence of Article 14 of the Indian Constitution which prohibits discrimination based on religion, among other grounds. On the other hand, the stance of the State was that the law aims at granting protection to the persecuted religious minorities from other States. The authors have aimed to undertake a purely legal study into the nuances and intricacies of the problem, in order to explicate viable solutions by an in-depth analysis of the issue in an unprejudiced manner. The methods employed in the present work include empirical research consisting of transnational surveys to assess the perspectives on the policy in the Global South. Further, interviews of legal luminaries and experts would substantiate the study. Such empirical work is in addition to the doctrinal study undertaken to elucidate the academic insight to the issue. The conclusion and recommendations would be entirely based on the data collected and the academic work undertaken.

Comparative Analysis of the Impeachment Procedures in Nigeria and Indonesia: A Need for a Paradigm Change

Despite the importance of impeachment as a fruit of constitutionalism and a feature of democracy and the rule of law, jaundiced political affiliations, institutional corruption, and the absence of democratic tenets hamper its application in Nigeria and Indonesia. The impeachment of elected government officials in Nigeria and Indonesia reveals a weaponisation of the process for personal gains. Hence, there is a penchant to use the process as a tool to remove elected officials for parochial political reasons. This paper aims to comparatively analyse the impeachment procedures in Nigeria and Indonesia to suggest measures to strengthen and safeguard them. The methodology deployed is essentially a desk review of both primary and secondary materials. Consequently, legal instruments, cases, and academic publications are dialectically interrogated. More importantly, a comparative analysis of the impeachment procedures and their applications in Nigeria and Indonesia are conducted to highlight the commonalities and variant processes in both countries. The research reveals that despite the constitutional provisions of impeachment procedures in both countries, their application remains fraught with neo-patrimonialism and narrow party considerations as the procedures have been weaponised against perceived political enemies due to the totalitarian tendencies of the elected officials in both countries. Moreover, the existence of wieldy impeachment constitutional provisions and weak institutional regime propagate the abuse of the impeachment procedures in Nigeria and Indonesia. The research argues that whereas the procedures of impeachment are contained in both countries' constitutions, the application of these procedures have been weakened by selfish interests and ulterior motives to be in power endlessly. Therefore, this paper suggests, inter alia, ensuring a succinct impeachment procedure, prosecuting corrupt politicians and judges by effectively implementing extant anti-corruption laws, and implementing impeachment procedure to reflect the malfeasance of the executive in Nigeria and Indonesia. More pointedly, given the central role the court plays in impeachment proceedings in both countries, it becomes imperative to ensure that the appointment of judges is removed from the executive branch of government. It is submitted that if these measures are vigorously implemented, the abuse of the impeachment procedures in Nigeria and Indonesia will be curbed.

Transformative Constitutionalism and Human Rights of Homosexuals in India

The movement for decriminalizing homosexual relations and human rights of LGBT community has gained momentum in the last decade throughout the world. Various NGOs and LGBT society has fought a long battle demanding decriminalization of sodomy and to declare sexual orientation as part of fundamental right to life under Article 21 of the Indian Constitution. Indian Constitution provides fundamental right to equality under Article 14. Further, in Articles 15 and 16, it is provided that no one shall be discriminated on the ground of sex. Indian judiciary has paved the way for human rights of this community through various landmark judgments. The methodology adopted for the present paper is doctrinal and analytical. Various legal and constitutional provisions and landmark judgments of the Indian Supreme Court have been analytically discussed. Present paper discusses homosexuality in the light of provisions of Indian Penal Code and the Constitution. It analyses the landmark judgments delivered by the Indian Supreme Court and High Courts on the subject of rights of LGBT community. The paper also explains various terms which are covered. The members of LGBT community are as much part of the society as any other male or female individual. They shall not be discriminated on the basis of their sexual orientation and are undeniably entitled to protection and guarantee of fundamental rights to life and equality provided by the Indian Constitution.

Labour Exploitation at Sea as Modern-Day Slavery: The Perspective of Global South

Since the 1980s, most of the fishing firms in industrialized countries have recruited their personnel from developing States. Triggered mostly by the growing of seafood demand, this situation has brought deteriorating impact not only on the maritime ecological system due to the practices of Illegal, Unreported, and Unregulated (IUU) Fishing, but also to the maritime workforce, who has become highly vulnerable to the practice of forced labour and human trafficking. In light of such problem, the study's primary aim is to answer whether the case of labour exploitation at sea can be categorized as a practice of modern-day slavery and what consequence may follow. The paper will cover legal frameworks available in international law and Global South countries. Other aspects such as the nations' history and culture will also be addressed in order to give more comprehensive discussion regarding the issue. The study employs functional comparative method which focuses not only to the available laws and regulations but also their social impacts. This method does not only assist the writer in identifying the real objective of the law but also in giving evaluation to such objective to determine the best system in settling the problem.

ABSTRACTS IN SESSION V

SESSION V

1. Changing Dynamics of Constitutionalism: South Asia's Tryst with Constitution
   Neha Tripathi & Anubhav Kumar, Maharashtra National Law University, India

2. Constitutional Protection of the Environment in Argentina: Tensions in the Supreme Court Case Law
   Fernando Arlettaz, University of Zaragoza, Spain

3. Image Based Sexual Abuse of Women: An Indian Legal Scenario
   Akhil Kashyap, High Court of Punjab and Haryana, India

4. Critical Analysis of Human Right Based Approaches towards Persons with Disabilities
   Fr. Baiju Thomas, RMV Educational and Research Institute, India

DATE: Tuesday, 07 December 2021

TIME: 13:00 – 15:00 (GMT+7 Jakarta Time)

CHAIR: Ankit Srivastava, *Dharmashastra National Law University, India*

ZOOM MEETING: Meeting ID: 997 6785 7915 | Passcode: FHUNEJ

Changing Dynamics of Constitutionalism: South Asia's Tryst with Constitution

With the growing interest surrounding emergence and development of constitutionalism in South-Asia, it is relevant to revisit the traditional notion of constitutionalism in the light of expansion of constitutionalism in recent democracies and developing nations which presents range of perspectives and methodological approach in the field of comparative constitutional law. Internationally, South-Asia is often associated with rising economies but also having unequal distribution of resources and uneven development, which necessitates undertaking studies in the area of constitutionalism, which is specifically based on the South-Asian experiences and perspectives. In the light of the prevailing view that constitutional framework in South-Asia is seen secondary and subsidiary to developed constitutional systems around the world and that South-Asian countries have merely re-produced the constitutional framework of developed nations, it is pertinent to contribute to the literature and scholarship in the field of comparative constitutional law pertaining to South-Asia. The overt attention towards western notion of liberalism, has often led to incomplete and unclear approach towards existence of constitutionalism in South-Asia, thus, the paper aims to discuss the relevance of constitutionalism in South-Asian countries by drawing parallels with the notion of liberal constitutionalism. The paper will study the elements of constitutionalism in South-Asia alongside underlying socio-economic and political discourse surrounding contemporary understanding of constitutionalism in South-Asian countries. Lastly, the paper will analyse the role of courts in affirming and transforming the constitutionalism in South-Asia. In lieu of revived interest towards South-Asia and Third-World Approach to International Law, it is only practical and pragmatic to study the existence of constitutionalism with specific reference to modern discourse in the light of issues pertaining to democracy, judicial review, separation of power and enforcement of fundamental human rights enshrined in their respective constitutions. With the acceptance of varieties of constitutionalism, the concept extends far-reaching and important questions surrounding legal and political discourse. South-Asia in terms of its emergence from history of colonialism and other prevalent forms of distinct cultural, social and political practices, presents a heterogeneous experience in the light of recognition and enforcement of socio-economic rights and transformations and deviations from its past experiences.

Constitutional Protection of the Environment in Argentina: Tensions in the Supreme Court Case Law

The safeguard of the environment has attracted legal attention in Argentina since the ’60s. However, it was only in 1994 that an explicit mention about the issue was introduced in the formal Constitution. According to the new article 41, all the inhabitants have a right to the protection of the environment and public authorities have to guarantee it. The objective of the paper is to analyse the tensions implicit in the application of this constitutional norm by the Supreme Court using the methodology of public law and legal theory. Three tensions can indeed be found in the Supreme Court case law. First, there is a delicate balance to be found between the protection of the environment and the protection of private property and economic activity, the latter being also assured by the Constitution. The issue is particularly acute in a country like Argentina, whose economy strongly depends on the primary sector. Second, due to the federal nature of the Argentinian political system, the distribution of legislative and jurisdictional powers between the federal and the local governments is disputed. In this equation, leaning towards the federal government may favour more homogeneity in environmental standards but, at the same time, it would reduce local autonomy. Finally, there is a tension between the legislative and the judiciary branches, both at the federal and the local levels. Environmental standards established by the judiciary are usually higher than those decided by the legislative branch; however, giving the judges the possibility to determine those standards in the absence of any previous legal norm (or even, sometimes, against that norm) could be a source of legal uncertainty. The resolution of these tensions by the Supreme Court does not mean that one of the terms always prevails over the other. The Court tries to find a balance between constitutional values, which exposes its constitutional jurisprudence to the criticism of the advocates

of both sides. Moreover, the difficulty of finding the adequate constitutional balance is usually added to the legal and factual complexity of environmental issues. This results sometimes in ambiguity and lack of clarity.

Image Based Sexual Abuse of Women: An Indian Legal Scenario

Introduction to the Problem: Digital India is the upshot of many innovations and technological advancements. The internet has brought upon a revolution in the right to freedom and expression. Now, the expression of a person is more easily accessible than ever, may it be personal speech or public one. However most of the Indian population is still unaware about the usage of internet and the risks involved hereto. People fail to understand that as internet has made lives easier for them, it has also made commission of crime easier too. Country like India, which still possesses the traces of patriarchal society, an ineffectively regulated cyber world is not a safe place for women. Violence against women is not a new phenomenon in India. Women have always been subject to various forms of harassments such as sati-pratha, devadasi, dowry, dowry death, forced prostitution, etc. The 2017 report of NCRB showed that cybercrime in India has almost doubled in comparison to last year with 21,769 reported cases. The paper is intended to analyze and examine the Image based Sexual Abuse in the Indian Socio-Legal Scenario while expounding the Constitutional and Humanitarian rights with regard to the same. The paper briefly illustrates the plight caused by Image based Sexual Assault to women in South Asian Countries. Further, the paper concludes with Impact of Sexual Assault in Cyberspace on women along with practical remedies to counter the same. The paper is normative legal research using a comparative approach and regulations related to image based sexual assault. The study highlighted that the definition of Sexual Abuse in the term “Image Based Sexual Abuse” is too restrictive. The laws against voyeurism in India have a restrictive definition to “private” which directly contradicts the Right to Privacy and Right to life of the Individual as provided by the Universal Declaration of Human Rights and Indian Constitution. Furthermore, Indian legal system lacks the specialized laws to deal with Image based Sexual Abuse which has added plight to the perils of women. Under such circumstances the role of Judiciary becomes paramount.

Critical Analysis of Human Right Based Approaches towards Persons with Disabilities throughout the Globe

The study discovers critical analysis of human rights (HR) approaches to disabled people around the globe. PwD constitutes a significant proportion of the global population but continues to be among the most underprivileged and marginalized. HR is the regulation established by a government to maintain individual rights in a country and is often included in the rules of a country. We also have global HR standards that apply to all people in the world and the benefit of a country. It must ratify such accords or agreements. This study values the many HR rules designed to protect disabled people. In practically all areas of society, PwDs face a lot of discrimination. Yet, discrimination against them is futile, since you can always be incapacitated by disease, incidents, or natural hazards. Numerous global HR laws are protecting the rights of PwDs. It is hard to collect precise evidence that the majority of PwDs globally as disabilities measurement approaches differ throughout countries and also with the aim of procedure of the data. In the recent decade, knowledge and understanding of disability rights concerns have expanded. HR could be integrated into development in a myriad of areas. Several groups have embraced HR methods, which reflect the greatest investor and partnership dedication to development rights. HR is a central theme for all irrespective of gender, country, residence, gender, race, creed, color, or other categories. HR is thus non-discriminatory, which means that they are the right of all human beings and it can be denied. As all human beings have rights, not all people on earth enjoy them fairly. Many nations and people overlook HR and severely mistreat other persons. The study shows human equality; HR is therefore responsible for the people. Thus, until the foundations of the Act are reinforced, PwDs cannot fully comply with their rights. It is time for effective rules to safeguard their rights and to improve their – focused on a strategy based on "right" rather than charity, medicine, or society. To resolve the restraints limiting their development, it is necessary to expand legal borders so that a 'human-friendly environment' may be created for all PwDs throughout the globe.


UNNES

ABOUT THE SYMPOSIUM

Symposium on Constitutionalism and Public Law: Global South Perspectives

This symposium is an international platform to exchange ideas and perspectives about the recent issues on constitutionalism and public law in the Global South countries. It primarily aims to share experiences and explore contemporary issues on constitutionalism and public law, which include environmental and human rights aspects in the Global South countries.

The discourses on constitutionalism and public law have expanded the Euro-American outlooks in developing the discipline. On the other hand, constitutionalism and public law in many Global South countries are often marginalized. While many southern countries may follow the West-led perspectives, their distinctive features have increasingly attracted scholars to explore more complex relations: politically, socially, and culturally diverse. It often refers to the phrase 'Global South' that spans most countries from South Asia, Southeast Asia, Pacific Islands, Middle East, Africa to Latin America. The importance of the current analysis reflects emerging issues in respective countries under economic globalization that gradually impact the way to interact and promote domestic affairs. It particularly includes how each Global South government develops constitutional structure and addresses the environmental and human rights issues.

In this Symposium, scholars, practitioners, and policymakers have participated in delivering their presentations to share experiences and explore contemporary issues on constitutionalism and public law in the Global South countries, drawing upon the particular field of disciplines with legal contexts in their national, regional, comparative, and international experiences.

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