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# **BORROWING CONSTITUTIONAL WISDOM: EXAMINING THE ROLE OF COMPARATIVE CONSTITUTIONAL LAW IN INDIA**

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*“The Court is conscious of the limits of a comparative approach. Each country is governed by its own constitutional and legal structure. Constitutional structures have an abiding connection with the history, culture, political doctrine and values which a society considers as its founding principles. Foreign judgments must hence be read with circumspection ensuring that the text is not read isolated from its context.”*

- Justice Chandrachud in Justice K. Puttaswamy v. Union of India (2017).

The above statement is a testimony of the fact that comparative method has been incrementally accepted to widen the principles laid down in constitutional law of a country.

## **Introduction to Comparative Study in Constitutional Law**

In the globalizing world that we live in, there is an ever-growing convergence of ideas, practices, lifestyles and much more. With the rise of the recognition of a person as simply not an individual of the ‘State’ to which he belongs, but as an individual with a ‘global’ identity transcending national and international borders, the law has also kept pace with synchronizing itself in all countries and jurisdictions. Since Constitutional law is the “grundnorm” for individuals all across the globe to be governed by a legal system, the legitimacy the Courts often derive from their counterparts is an interesting and intriguing aspect of studying law and legal philosophy.

Courts in India and abroad, while adjudicating on complex issues of constitutional law, do not remain “cribbed, cabined and confined” to doctrinaire limits set by the black letter law. They expand their horizon and intellectual perspective to learn from other jurisdictions and draw inspiration from their practices and enforcement of legal rights and carve out a niche to bring about evolutionary and purposive interpretations of law.

However, while it may seem appealing to learn from the best jurisdictional practices of other jurisdictions, it remains a contentious component of domestic constitutional practice and adjudication in India. It has been maintained that there is no legal principle prohibiting a constitutional court from relying on these decisions. However, the process must be done with caution, and structural parallels must be carefully examined before applying a foreign court's ruling to a domestic case.

In the *Puttaswamy* judgment, the Hon'ble Supreme Court of India traces the entire history of privacy law related judgements in various jurisdictions.<sup>1</sup> The comparative approach is therefore, made clear in very succinct way by the text of the question itself. The use of judgements, as given in foreign jurisdiction, in their specific setting, can at times be relied upon to supplement the rationale of deciding our cases in certain. This tool can never be binding but be only of persuasive value irrespective of the reliance. This would mean that the case that has been decided relying upon the foreign judgment would become a binding principle of law but the decision of the foreign court will be nothing more than a persuasive case law.

### **Brief History about Comparative Approach in Constitutional Law**

Comparative approach to decide a case in the Indian context can trace its background to the colonial history of the country. The integrated nature of our society and pre-independence laws that were continued after 1947 such as Indian Contract Act, 1872; Indian Penal Code, 1860 etc. made it necessary that the case laws of UK court find weight in the courts of our country. There are multiple instances wherein one could the use of UK court judgements being used by the Indian Court while cases pertaining to the such laws mentioned earlier. There are so many decisions of privy council which continue to hold relevance even now such *Balfour v. Balfour*, *R v. Tolson* etc.

The problem, however, arose in specifically when the courts were dealing within an interplay with constitutional law and areas that do not find any mention anywhere in any law. To rectify that situation the comparative method was used and the same is now actively relied upon in situations wherein the court do not find help with any Indian Law. This could be simply in the form of the using such things for unique interpretation or be it for filling gaps in laws.

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<sup>1</sup> (2017) 10 SCC 1 (134).

## Tracing the growth of Comparative Constitutional Law

There has been tremendous growth in the field of constitutional law in the past few decades. An important reason for its growth has been the importation of constitutional law principles in one country from other countries. Another significant reason contributing to this growth is the “internationalization of constitutional law”<sup>2</sup> meaning thereby that there has been an increasing role of international conventions and treaties in shaping the domestic laws of the nations and in influencing their approach towards legal issues they address.

For instance, there is an ever increasing reliance on the Universal Declaration on Human Rights (UDHR) in cases concerning human rights, on United Nations Convention Against Torture (UNCAT) in cases on torture, on United Nations Convention on the Elimination of Racial Discrimination (UNCERD) in cases relating to discrimination and on Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in cases relating to offences against women, Convention on the Rights of the Child (CRC) for affording protection to rights of children and so on. Though these conventions do not form an integral part of the constitutions of any countries, however, the states are obliged under international law to comply with these treaties. As regards India, Article 253 of the Constitution of India enumerates the “Parliament’s power to make laws for the implementation of international treaties and agreements.”

Therefore, we see that comparative approach also helps in judicial creativity and provides scope for learning from international standards. For instance, the Apex Court in *Vishakha v. State of Rajasthan*,<sup>3</sup> created law of the land holding that the right to be free from sexual harassment is fundamental right guaranteed under *Articles 14, 15 and 21* of the Constitution. The Court had issued guidelines to be followed by employer for controlling harassment of woman at her work place. These guidelines, despite being *pro tem*, in the absence of any Indian legislation on the matter, relied on international conventions and declarations (such as the CEDAW and the Beijing Declaration) to import and enforce the mandate in India. Similar reference to CEDAW was made in *Independent Thought v. Union of India*<sup>4</sup> to read down Section 375 IPC and make it consistent with the Constitution of India.

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<sup>2</sup> Michel Rosenfeld and Andras Sajó, *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press, Nov. 2012).

<sup>3</sup> AIR 1997 SC 3011.

<sup>4</sup> (2017) 10 SCC 800 (40).

Another important reason for the growth of constitutional comparative law can be substantiated with a real life hypothetical example. Let's say, I have five siblings, all elder to me. When each of them goes through a certain phase of life, let's say their Class 12<sup>th</sup> board exams, all of them one by one have certain experiences and learnings from the mistakes they might have committed, or they may have certain good tricks, techniques and ideas that can be utilised by someone later. So, basically if I am the last one to appear for board exams after seeing four of my siblings having gone through the same phase at different times, I can learn valuable lessons from their experiences, and also possibly use their notes and have reference to notes of four different people, and then make my own notes by consolidating and refining those, and this may possibly help me fare better than all of them.

If we put this analogy to use in constitutional law practice and the development of law as it takes place over a period of time, we will be able to understand how and why a comparative approach really helps a system grow and evolve better. It was way back in 2007, when a 9-judge Bench of the Supreme Court of India in *I.R. Coelho (dead) by LRs v. State of Tamil Nadu & Ors.*<sup>5</sup>, rightly observed that:

“The Constitution is a living document. The constitutional provisions have to be construed having regard to the march of time and the development of law. It is, therefore, necessary that while construing the doctrine of basic structure due regard be had to various decisions which led to expansion and development of the law.”

This view was reiterated in in *Justice K.S. Puttaswamy v. Union of India*<sup>6</sup>, wherein it was stated:

“The Constitution is a sacred living document and, hence, susceptible to appropriate interpretation of its provisions based on changing needs of ‘*We, the People*’ and other well defined parameters.”

These illustrations and references by our Hon'ble Supreme Court time and again point to the utility of constitutions to, *firstly* not remain static and accept the necessity of modifications according to changing needs of the society, and *secondly*, adopt a flexible approach while interpreting the constitutions. Both these goals can be achieved by taking a comparative method

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<sup>5</sup> (2007) 2 SCC 1 (79).

<sup>6</sup> (2017) 10 SCC 1 (482).

of study of the constitution. For instance, similar applications have been made in constitutional interpretation, and are often even unambiguously recognized by constitutions themselves, as in the South African Constitution, which permits judges to consider international law when interpreting the Bill of Rights.<sup>7</sup>

### Need and Role of a Comparative Study

K. Zweigert and H. Kotz point out, “the method of comparative law can provide a much richer range of model solutions than a legal science devoted to single nation, simply because the different system of the world can offer a greater variety of solutions than could be thought up in a life time by even the most imaginative jurist who was corralled in his own system... it extends and enriches the ‘supply of solutions’ and offers the scholar of critical capacity the opportunity of finding the ‘better solution’ for his time and place.”<sup>8</sup>

In brief, it augments knowledge by discovering different models for preventing or resolving social conflicts. It widens the dimensions of critical legal research by comparing, contrasting, and exposing to larger social experiences about law and legal system. It enables better understanding of legal data.<sup>9</sup>

Different human communities in different parts of the globe approach the values of human rights, democracy, cultural pluralism, development, welfare and democracy through their own distinct models and institutions, the valuable lessons about the success and failure, problems and solutions and ease and the difficulties provide input for critical evaluation.<sup>10</sup> For knowing the value and use of quinine, it is not necessary that it should be grown in one’s own backyard.<sup>11</sup>

Chief Justice K.G. Balakrishnan in his paper ‘*The Role of Foreign Precedents in a Country’s Legal System*’<sup>12</sup> offers several examples in the jurisprudence of the Supreme Court of India that

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<sup>7</sup> Margaret A. Burnham, *Cultivating a Seedling Charter: South Africa’s Court Grows its Constitution* (1997) 3 *Michigan Journal of Race and Law* 29, 44

<sup>8</sup> K. Zweigert and H. Kotz, *Introduction to Comparative Law* 40 (Oxford: Clarendon Press, 3rd edn., 1998).

<sup>9</sup> Elisabetta Gande, “Development of Comparative Law in Italy” in Mathias Reimann and Reinhard Zimmerman (eds.), *The Oxford Handbook of Comparative Law* (Oxford University Press, Oxford, 2006) at 118.

<sup>10</sup> John Bell, *Legal Research and Distinctiveness of Comparative Law* in Mark Van Hoecke (ed.), *Methodologies of Legal Research* 158 (Hart Publishing, Oxford and Portland, 2013).

<sup>11</sup> Rudolf von Ihering cited in K. Zweigert and H. Kotz, *Introduction to Comparative Law* 40 (Oxford: Clarendon Press, 3rd edn., 1998).

<sup>12</sup> Chief Justice K.G. Balakrishnan, *The Role of Foreign Precedents In A Country’s Legal System*, *National Law School of India Review* Vol. 22(1) (October 28, 2008), available at: <http://docs.manupatra.in/newsline/articles/Upload/DD0D1FD1-B18C-4240-9B41-15C5923FE819.pdf>

could serve as a model for use of foreign judgements in constitutional adjudication. Since the Indian Constitution is often referred to as a ‘bag of borrowings’, and rightly so, because it draws its features heavily from the Constitutions of many countries, when cases started coming up for adjudication before Courts in the early years of the Constitution’s adoption and enactment in 1950, the judges often had to resort to foreign precedents, and it was felt that such reference to the foreign precedents was indispensable or unavoidable, while interpreting those provisions.

Therefore, from the above discussion it is clear that first and foremost, comparative research is extremely useful in the guidance of constitution-makers and judicial members. For instance, in the Constituent Assembly Debates, there is extensive reference to the practices of various nations, followed by debates on adopting those practices as they were or with slight modifications so that they would address the needs of the Indian population. As far as the members of the judiciary are concerned, they are the final interpreter of laws. What the founding fathers of our nation had in mind while extensively laying down the provisions of the Constitution can be learnt only from the Constituent Assembly Debates and the foreign laws which have similar provisions and the approach foreign judiciary has adopted in interpreting the same.

Constitution-makers and judges do take inspiration from “institutional models, structures, procedures, arguments, and doctrines” from beyond their jurisdiction, and they require a good understanding of such materials to explain their use to themselves and the audiences to which they must respond. Judges can also improve their relative knowledge and understanding of foreign materials by conversing with constitutional judges from different nations<sup>13</sup> and referring to pertinent examination, analysis, and comparative evaluation of the materials in comparative constitutional law academics’ works.<sup>14</sup>

Further, a comparative study may also prove to be immensely useful for a researcher or scholar of constitutional law to understand the contours of certain provisions in her own country, identify the shortcomings, refer to other countries’ provisions providing for the same and look for suggestions and improvements that can be adopted or suggested to bring in amendments at a later date. For instance, I as a research scholar may feel that the “freedom of speech and

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<sup>13</sup> Anne-Marie Slaughter, *A New World Order* (2004).

<sup>14</sup> Michel Rosenfeld and Andras Sajó, *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press, Nov. 2012).

expression in India” is highly restrictive because of the list of reasonable restrictions appended to Article 19(2) and on a comparative assessment with American “Freedom of Press”, I may feel that right is couched in better terms affording greater flexibility. However, I may then undertake a comparative analysis of the social, cultural and political circumstances prevalent in India and be able to draw a reasonable inference as to why the current framework is better.

As a result, the primary purposes of comparative analysis are to discover and highlight common or universal principles, as well as to establish how individual constitutional jurisprudence conforms to those principles, or may be changed to do so.

### **Indian Supreme Court’s Comparative Approach**

The Indian constitutional jurisprudence has, since its inception, been heavily influenced by American jurisprudence. Be it the interpretation of Article 12, to determine the scope and ambit of “State and other authorities” to determine the instrumentalities or agencies of the Government<sup>15</sup>, or the ever-debatable Article 14 relating to “equality before law and equal protection of laws” to import the inherent though not explicitly mentioned ‘doctrine of reasonable classification’<sup>16</sup>, American judgments have always been resorted to.

While interpreting the fundamental rights under Article 19, particularly the “freedom of speech and expression”, the Indian Courts have acknowledged the legitimacy of placing reliance on foreign precedents. In the *Express Newspapers v. Union of India*<sup>17</sup> case, Justice Bhagwati with respect to Article 19(1)(a) of the Constitution of India observed:

“It is trite to observe that the fundamental right to freedom of speech and expression enshrined in Art. 19(1)(a) of our constitution is based on....Amendment of the Constitution of the United States of America and it would be, therefore, legitimate and proper to refer to those decisions of the Supreme Court of the United States....in order to appreciate the true nature, scope and extent of this right in spite of the warning administered by this court against the use of American and other cases.”

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<sup>15</sup> Ramana v. I.A.A.I., AIR 1979 SC 1628 (para. 15); Sukhdev v. Bhagatram, AIR 1975 SC 1331 (1359-60).

<sup>16</sup> Chiranjit Lal v. Union of India, (1950) SCR 869 (912); State of Bombay v. Balsara, (1951) SCR 682 (708-09); Special Courts Bill, in re, (1979) 1 SCC 380 (para. 78).

<sup>17</sup> AIR 1958 SC 578 (614).

This reference to American jurisprudence has been maintained even in recent judgments on Article 19 like *Anuradha Bhasin v. Union of India*.<sup>18</sup>

In a similar vein, while interpreting Article 301 of the Constitution, that is, the “Freedom of Trade and Commerce” in *Automobile Transport v. State of Rajasthan*<sup>19</sup>, Justice Subba Rao in great words put forth the idea of adoption of principles from other jurisdictions and their constitutions to ensure that we pick the best of those, suited to the needs and demands of Indian demography and leave the rest which do not seem applicable in the Indian context. He said:

“Our Constitution was not written on a clean slate. Many of the concepts were borrowed from the government of India Act or from other Constitutions and adapted to suit the conditions of our Constitution. We cannot ignore the fact that the Constitution was drafted by persons some of whom had a deep knowledge of the Constitutional problems of other countries, and, therefore, they must be assumed to have had knowledge of the interpretation put upon certain legal concept by the highest tribunals of those countries.

At the same time, it can be reasonably assumed that they have made a sincere attempt to accept the good and to avoid the defects found by experience in the other Constitutions, and also to mould them to suit our conditions. Further, a brief survey of the relevant provisions of those Constitutions, which form the background of this article, and the interpretation put on them by the highest tribunals of the respective countries would not only be relevant but also be necessary for appreciating the correct scope of Article 301 of our Constitution.”

Any analysis of constitutional law would remain incomplete without making a reference to the historic and one of the most important case of Indian legal history, *Keshavananda Bharti v. State of Kerala*<sup>20</sup>. The context of the case, the setting and the weight of the judgment made is one of the most important cases of Indian legal history. Justice S M Sikri, writing the judgment relied extensively on the foreign judgements, law etc. while concluding on limiting the powers of the court. while propounding the “doctrine of basic structure”, extensive references were made by the Constitutional Bench in this case to the judgments of various courts and

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<sup>18</sup> AIR 2020 SC 1308 (38).

<sup>19</sup> Subba Rao, J., in *Automobile Transport v. State of Rajasthan*, AIR 1962 SC 1406 (1426-27).

<sup>20</sup> AIR 1973 SC 1461.

jurisdictions about limits and restrictions on the power of the legislature by referring to Australian case, British cases, American cases etc. (paragraphs 110 to 400<sup>21</sup> extensively refer and discuss judgments from outside to decide on to limits of the Parliament).

In the case of *Maneka Gandhi v. Union of India*,<sup>22</sup> the Court evolved a liberal and broader approach in human rights jurisprudence by injecting and importing the U.S. ‘due process of law’ into Article 21 by overruling the judgment passed in the case of *A.K. Gopalan v. Union of India*,<sup>23</sup> and subjecting enacted law to due process of law in order to be just, fair, and reasonable and not fanciful, oppressive and arbitrary. This approach was then subsequently applied in *Hussainara Khatoon v. Home Secy.*<sup>24</sup> and *Sunil Batra v. Delhi Admn.*<sup>25</sup>, to interpret the scope and ambit of Article 21. This offers “the most striking instance of how foreign juristic concepts have influenced the interpretation of the Indian Constitution, even though ‘due process’ is not to be found anywhere throughout the length and breadth of the Indian Constitution.”<sup>26</sup>

While giving new life and breath to the rudimentary interpretations of constitutional provisions, the courts have often invoked remarkable references from other countries. In *Common Cause (A Regd. Society) v. Union of India*<sup>27</sup>, while interpreting Article 21, striking down Section 303 IPC and legalizing passive euthanasia in India adopted a comparative approach and referred to UK decision of *Airedale*<sup>28</sup>, the legal position in the United States<sup>29</sup>, Australian Jurisdiction<sup>30</sup>, the legal position in Canada<sup>31</sup> and other jurisdictions<sup>32</sup>.

While discussing the federal structure of India and the importance of a national capital in *Govt. of NCT of Delhi v. Union*<sup>33</sup> comparative approach was adopted to observe how it is different from that of USA. In *Joseph Shine v. Union of India*,<sup>34</sup> references were made to countries that have done away with adultery as a crime, to strike down Section 498A. In *Indian Young*

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<sup>21</sup> <https://main.sci.gov.in/jonew/judis/29981.pdf>

<sup>22</sup> AIR 1978 SC 597.

<sup>23</sup> AIR 1950 SC 578.

<sup>24</sup> AIR 1979 SC 1360.

<sup>25</sup> AIR 1978 SC 1675.

<sup>26</sup> Durga Das Basu, Introduction to the Constitution of India, 18 Ed. (Prentice-Hall of India Private, 1982).

<sup>27</sup> (2018) 5 SCC 1.

<sup>28</sup> Id. at 58.

<sup>29</sup> Id. at 89.

<sup>30</sup> Id. at 96.

<sup>31</sup> Id. at 99.

<sup>32</sup> Id. at 104.

<sup>33</sup> (2018) 8 SCC 501 (35).

<sup>34</sup> 2018 SCC OnLine SC 1676 (28).

*Lawyers Association v. Union of India*<sup>35</sup>, while expounding the ‘essential religious practices test’, the SC made references to American and Australian cases relating to “Jehovah’s witnesses”.

Comparative approach of the study of law also helps the judges in expounding the contours of law and expanding it to meet the needs of the changing times. A remarkable facet of this is the judicial creativity employed by Justice P.N. Bhagwati in the case of *M.C. Mehta v. Union of India*,<sup>36</sup> on corporate liability of hazardous enterprises. His opinion to bring the private sector within the ambit of Article 12 of the Constitution and therefore subject to right to livelihood is of far reaching importance in the sphere of environmental jurisprudence. It has potentialities of generating new indigenous principles of law on corporate liability relegating the principles expounded over a century back in the case of *Rylands v. Fletcher*.<sup>37</sup> In this context, Justice Bhagwati observed that the rule of strict liability was evolved in the 19<sup>th</sup> century when science and technology had not revolutionized our industry and society and therefore, it could not afford any guidance in evolving any liability consistent with our constitutional norms and needs. He stated:

“We cannot allow our judicial thinking to be confined by references to law as it prevails in England. We have to build up our own jurisprudence.”

This caution was also duly recognised and noted in the contemporary landmark ruling in *Navtej Jauhar v. Union of India*<sup>38</sup> where it was observed:

“We are aware that socio-historical contexts differ from one jurisdiction to another and that we must therefore look at comparative law-making allowances for them. However, the overwhelming weight of international opinion and the dramatic increase in the pace of recognition of fundamental rights for same-sex couples reflects a growing consensus towards sexual orientation equality.”

### **Scope and Limitations of the Authoritativeness of Foreign Precedents**

While it is equally important, relevant and helpful to make a reference to foreign judgments

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<sup>35</sup> (2019) 11 SCC 1 (105).

<sup>36</sup> AIR 1987 SC 1086.

<sup>37</sup> (1868) LR HL 330.

<sup>38</sup> AIR 2018 SC 4321.

and laws, and indulge in a comparative study, however, this comes with its own limitations. For instance, the Indian Constitution provides for the federal division of powers, the power of judicial review, and “Fundamental Rights” which the legislature cannot abridge.<sup>39</sup> In these respects, it closely resembles the American system of government.<sup>40</sup> However, even inspite of the similarity, with respect to “freedom of press in the United States” and the “freedom of speech and expression in India”, Justice Jeevan Reddy in *R. Rajgopal v. State of Tamil Nadu case*, beautifully appreciated the borrowings in our Constitution, and at the same time acknowledged the subtle differences between our jurisprudence and that of other countries, in the following words:

“The sweep of the First amendment to the United States Constitution and the freedom of speech and expression under our constitution is not identical though similar in their major premises. All this may call for some modification of the principles emerging from the English and United States decisions in the application to our legal system.”<sup>41</sup>

Similarly, in the *Atiabari Case* as well, while interpreting the ambit of the “Freedom of Trade and Commerce” under the Indian Constitution which has been borrowed from the Australia, the court referred to Australian jurisprudence and speaking through Justice Gajendragadkar, the court observed that:

“It is commonplace to say that the political and historical background of the federal polity adopted by the Australian Commonwealth, the setting of the Constitution itself, the distribution of powers and the general scheme of the constitution are different, and so it would not be safe to seek guidance or assistance from the Australian decisions when we are called upon to construe the provisions of our Constitution.

Even so the reported decisions of this Court show that in dealing with constitutional problems reference has not infrequently been made to Australian and American decisions; and that, we think, brings out the characteristic feature of the working of judicial review. When you are dealing with the problem of construing a

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<sup>39</sup> Pradyumna K. Tripathi, *Foreign Precedents*, Columbia Law Review, Vol. 57, No. 3 (Mar., 1957), 319-347.

<sup>40</sup> *Id.*

<sup>41</sup> *R. Rajpal v. State of T.N.*, (1994) 6 SCC 632.

constitutional provision which is none-too-clear or lucid you feel inclined to inquire how other judicial minds have responded to the challenge represented by similar provisions in other sister Constitutions.”<sup>42</sup>

While there is an emerging consensus on the use of comparative approach by judges, however, this use has generally been limited to a narrow set of nations,<sup>43</sup> which typically includes Western liberal democracies.<sup>44</sup> Irrespective of this general ideology, however the Delhi High Court in *Naz Foundation v. Government of NCT of Delhi*<sup>45</sup>, while declaring Section 377 of the Indian Penal Code, 1860 which had criminalized homosexuality, to be unconstitutional, relied heavily on foreign law and cited decisions from conventionally ignored jurisdictions such as Fiji and Nepal.<sup>46</sup> This approach would seem surprising to most comparativists.

### **A Well-integrated or Ill-integrated Import of Principles?**

Citation of foreign law in domestic cases has raised important questions about both its legitimacy and value.<sup>47</sup> A comparative approach to constitutional law may give rise to three interpretations.<sup>48</sup> The first is the ‘universalist approach’ according to which, it is presumed that judges across the globe are interpreting similar laws and debating about their contours. According to the second approach, it is important for judges to look at other countries’ constitutional structures when they “have shared history”. The third approach entails that a comparative study enables judges to understand their own legal system better.

While these approaches may be relevant to conclude that comparative method’s approach may be adopted well, there may also stem the belief on the lines of Montesquieu’s observation that: “the political and civil laws of each nation ... should be so appropriate to the people for whom they are made that it is very unlikely that the laws of one nation can suit another.”<sup>49</sup> However, I am of the opinion that the legal problems most countries are faced with, are somewhat on similar lines, and even if other social, cultural and political circumstances vary, there can

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<sup>42</sup> *Atiabari Tea Co. v. State of Assam*, AIR 1961 SC 232 (257).

<sup>43</sup> Rosalind Dixon, *A Democratic Theory of Constitutional Comparison*, 56 Am. J. Comp. L. 947 (2008).

<sup>44</sup> Amartya Sen, *The Idea of Justice* 327-35 (2009).

<sup>45</sup> 160 DLT 277 (2009).

<sup>46</sup> 160 DLT 305 (2009).

<sup>47</sup> Sujit Choudhry, *Migration as a New Metaphor in Comparative Constitutional Law*, in *The Migration of Constitutional Ideas* 1, 1-35 (Sujit Choudhry ed., 2006).

<sup>48</sup> Sujit Choudhry, *Globalization in Search of Justification: Toward a Theory of Comparative Constitutional Interpretation*, 74 Ind. L. J. 819 (1999).

<sup>49</sup> Charles de Secondat, Baron de Montesquieu, *The Spirit of Laws* (Ann M. Cohler et. al. ed. and trans., 1989).

always be adjustments and modifications according to one's own needs.

### **Way Forward**

Adjustment of law to the social needs is a continuing process. It requires watchful legislature and alert judiciary for the law to always remain responsive to the social development. It is impossible to appreciate the growth of a globalizing world without “constitutional borrowing and transplantation of constitutional norms, structures, doctrines and institutions.” There may be ideological and theoretical objections to the purpose and role of the same, but its practical reliance and utility is sufficient to rebut this argument. Therefore, comparative study of constitutional law offers the principal benefit of its ability to highlight the specific needs of each jurisdiction, and to bolster one's expertise and perception about their legal structure.

*“The function of comparative analysis is the development of a more critical, reflexive analytical capacity.”<sup>50</sup>*

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<sup>50</sup> Gunther Frankenberg, ‘Critical Comparisons: Re-thinking Comparative Law’ (1985) 26 Harvard International Law Journal 411.