

## ROLE AND SIGNIFICANCE OF COMPARATIVE PUBLIC LAW

Somesh Nathrani,

Sachin Tripathi

Symbiosis Law School Nagpur Affiliated to Symbiosis

International (Deemed) University, Pune (India)

Corresponding Author: snalyzer11@gmail.com

### **Abstract**

In the modern era of internationalism, democratization and economic globalization the comparative public law received considerable importance and acceptance. The relations between individuals and the state are studied under the domain of public law. Therefore, the domain of law intensively focused on comparing the individual state relationships of various countries with the individual state relationships of the states of India is known as comparative public law. India is among those country which legal system has changed several times since it acquired a wisdom of improvisational legislation with a more individualistic approach. The in-depth knowledge of comparative public law enables to reader of this article to understand the subject particularly legal system in the wider socio-political. Presently, the significance of comparative public law has received the great interest of researchers across the globe due to the gradual raise in globalization where legal things, authority structures including the legal concepts migrate. Therefore, the present research article is primary attempt towards to analyze the role and significance of comparative public law. Further, this article provides insight into the key problems, methods involve, shortcomings associated with the comparative public law.

**Keywords:** Public Law; Comparative Interest; Comparative Systems; Individual-state Relations

### **1. Introduction**

Comparison is the logical and inductive approach which assist to empirically categorize the advantages and disadvantages of any legal system links to others or own legal system. It is a general tendency of people for betterment of society and nation, they use comparison approach in their daily deals such as buying groceries, facilities, participation in property deals, voting to the efficient leader in election. Simply, the comparative analysis is a term which assist to people or government to arrive at a particular decision. The comparative analysis of legal system of various countries/states is called as comparative law. In present, due to rapid globalization and liberalization responsible for the flourishing in the trade relations of different country, which results into the establishment of healthy relationships among the several sectors of many nations. That why comparative public law becomes the crucial term in present time. The character of comparative public law is very apparent in the constitution of India. The development and drafting process of constitution of India is based on comparative study of the constitutions of several nations such as USA, UK, Canada, Ireland, Australia etc.

The significance of comparative public law is the formation of acts and new codes in parliament produces serval hypothetical and real-world questions. Notwithstanding the working of new laws and codes, the understanding of these laws gives clear vision which are as follows,

- ❖ In the evolution process of the civil law codification, use comparison approach as basis.
- ❖ Comparison approach must be practical and in position to solve real world problem.
- ❖ Comparison approach must cover the evaluation of financial and legal-system of respective nation.

## **2. Basis of the Comparative Public Law**

The basis of contemporary comparative public law was first time coined into the Latin language book entitled as *New Methods of Studying and Teaching Jurisprudence*, which authored by Gottfried Wilhelm Leibniz in 1667.

Similarly, the comparative public law in United States of America was outcome of the feeling of the legal researchers stressed in Republic of Germany during the world war.

But presently the key functioning of States is based on the welfare of society and it is observed from the approaches of the government are shifting.

The forthcoming future of comparative public law be subject to the worldwide slant of permissions of the various classes involve in the legal system.

Some evidences of the basis of comparative public law found into the middle of the 19<sup>th</sup> century. Also, some evidences indicates that the ancient institute of thought was not support to the expansion or education of comparative public law.

Further, the period of systematization also did not significantly improve the situation. But some initiatives were ended in Federal Republic of Germany by Feuerbach, Gans, and Thibaut.

Some milestones in the developments of Comparative Public Law are listed below,

- ❖ The lawful evaluation designated to the education of foreign law was commenced in 1829 by Mittermaier and Zachariah.
- ❖ In France, the college named as de France started the education of comparative public law around the 1832.
- ❖ Around the 1846, the university of Paris also initiated the education of comparative criminal law.

In these developments, the comparison of governments becomes the focus point which envisioned mainly to please brainy interest and partially to encourage change. Georg Jellinek, the father of a theory of the universalism of human rights develops this theory using comparative methodology. In France, Edouard Lambert started the civil law-based comparative law around the 1921. Additionally, the Lambert's clarification of the USA jurisprudence regarding the labor, which considered as segment of society for the progress of foreign constitutional law as a key part of the comparative law system. As an outcome of legal positivism, the comparative approach becomes the real-world requirements of public law modification and constitution development. Similarly, the presence of a comparative inquisitiveness in theoretical constitutional law, the contemporary comparative law instigated as the output of spending energy and time by the private-law experts. Some concepts of comparative public law display the thoughts and thoughts of private-law and it is observed that constitutional law was repeatedly neglect the comparative education. The problems in finding of universal elements in constitutional-law results into the

small outline of constitutional-law in comparative public law. After the second world war, comparative constitutional-law recognized as a distinct academic subject.

### **3. Relevance of Comparative Public Law**

Comparative-law is a tool of continuous learning and creation of knowledge. The key objective of the comparative public law is to produce capacity of suppling progressive knowledge and skill that will empower them to:

- Advise to the public sector on modern public law issues.
- Study domestic legal instruments according to new policies.
- Start research and teach on modern legal issues related to public law.
- Contribute in coordination of law.
- Understanding in own legal system.

Due to the rapid liberalization and privatization results in the increasing globalization, traditional power structures are reconstructing and continuously regimes are becoming increasingly powerful.

Presently, comparative public law is arising as a separate academic subject and research area, which also comprises the education of legal organizations in that country. Many education areas are evolved as distinct domain of comparative law, such as comparative constitutional law, comparative organizational law, comparative public law, comparative commercial law and comparative criminal law.

Therefore, some key determinations regarding the of comparative public law are as follows,

- ✓ To accomplish in-depth information of law.
- ✓ To make law system flawless.
- ✓ Potential to contribute in unification of law systems.

Hence, the comparative public law is also a very crucial area of study in public administration. Further, the study of comparative public law helps to improve administrative systems by making them more useful and efficient for public.

### **4. Methods Involve in Comparative Public Law**

#### **4.1 Law-in-Context Method**

Majority of the legal jurists are agreed on the fact that the comparative exploration cannot be meticulous to unadulterated black-letter comparison of the legal perceptions, directions or organizations. The laws-in-context is a way which cannot be isolated from other approaches, as it carries approximately traces of logical approaches which supported to the more intellectual and intangible level, somewhat receiving disengaged from the real world. But it is not lawful ways of assessments. Here is a huge scope of research in the laws-in-context approach. Others uses the data provided by the various researches such as anthropological, historical, sociological, psychological etc. The outcome of such projects be subject to the emphasis of the investigation and the acquaintance accessible with the participation of investigators, where the picking the category and scope of law-in-context approach matters.

#### 4.2 Common-Core Method

This method is principally grounded on the practical system and to roughly extent to collective with the laws-in-context system. The chief purpose of the common-core approach is that to exploration for resemblances and variances between the several lawful schemes in belief of the question, to what degree coordination is conceivable between the associated legal systems.

#### 4.3 Functional Method

In the functional method, comparability of primary rules is compared, but it focused on to the comparison of solutions to real-world difficulties with contradictory interests. It is observed that here are numerous general and social insolences to specific situations such as loving to offspring, respecting properties rights, rewarding in one way or other ways to the compensations triggered by one's unlawful behavior etc. Thus, the real-world explanations to the glitches of comparable nature in that domain, in dissimilar lawful systems will meet the legal system used to reach the desired results.

#### 4.4 Historical Method

In every traditional legal policy, almost all books encompass the historical chapter associated to the basis of few legal ideas, lawful construction, legal rules etc. A past study likewise includes sociological, political, psychological, economic or other context data. Past assessment method effectively clarifies the basis and cause for the present-day law in a specific civilization and it also exposes that analogous regulations and methods to the law which are originate in a specific legal system were also existed in the past <sup>1</sup>.

### 5. Role & Function of Comparative Public Law

As discussed earlier, the role of comparative law is to determine the principle which is common to all civilized systems of law. Broadly, the role of Comparative Public Law divided under two categories <sup>2</sup>,

1. Scientific
2. Practical

The scientific approach adopted to discover origin, development and destruction of certain legal institutions. This terminology known as comparative legal history.

In the practical approach adopted for creating an international law common for the same standard of civilization.

Further, comparative public law can be divided into three categories on the basis of function –

- 1. Universalist Approach:** In this approach, the finding of principles common to all systems of law is key function.
- 2. Informative Approach:** In this approach, knowing the principles of international law is key function.

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<sup>1</sup> <https://www.legalserviceindia.com/legal/article-5063-64-comparative-law-conceptual-study.html>

<sup>2</sup> <https://www.lawyersclubindia.com/articles/comparative-public-law-1406068.asp>

This terminology known as 'Descriptive Comparative Law'. This approach provides comparative statements and not results into the directed solution of any problem.

**3. Practical Approach:** This approach enables legislation to improve they're of laws. This terminology known as 'Applied Comparative Law'.

Even today the comparative public law is in development stage. The key objectives of this branch is to assist,

- The legislature processes.
- Knowing one's own legal systems.
- Practicing lawyers.
- To improve mechanism of the courts.
- To improve foreign trade and economic relations.

## **6. Importance of Comparative Public Law**

### **6.1 Industrial and Technological Development**

The importance of the research area of comparative public law attaining wide interest due to the rapid industrialization, globalization and liberalization. But still this domain of law is in its budding stage. Due to these rapid developments, every country has interdependence on other countries in the world. In the light of above discussion, it is observed that many countries faced similar problem related to the social, economic and legal type. Here is the role of comparative public law starts by primarily investigation of the stance taken by other authorities with respect to the matter. To resolve the issues of nations by comparative approach, strong studies of laws are very much necessary.

### **6.2 Understanding of Laws**

Comparative public law provide assistance to judiciary system to understand their function effectively by following approaches-

#### ***Necessity to understand specific characteristics of law?***

If the legal system of nation come across a condition where there is a need to study the law, but the purpose of the assembly is blur, the bench can depend on on the comparative analysis of laws in diverse authorities to receive an understanding and which decision will be advantageous for peoples. In such cases, it applies the similar explanation or change it by adding appropriate things as it will be useful in present situation including the needs of future and society.

#### ***When a shortcoming associated with the current law?***

It is assumption that all the nations/states across the globe have comparatively analogous type of problem linking to public law and hence the study of comparative law in diverse country is key solution for them, which found supportive in resolving the problem met in various authorities.

If the condition created, where the legal system of the country unable to address legal-problems, the legal system of that country have option of the comparative public law study for deciding which slant is appropriate and suitable for the nation/states.

Numerous occasions available in the Indian judiciary, in which the comparative approach was used as the stand of diverse authorities for a specific legal-problem, to come at a verdict.

For example: -

1. The judgement of Justice K S Puttaswamy Vs Government of India emphasized on the situation that the topic of proportionality for the equilibrium rights and competing interests, the European law was used to resolve the issue. In addition to that complete section with the dominancy of view is keen to comparative public law study for the allowing the right of privacy as an essential aspect in diverse legal system across the globe.

### **6.3 Understanding the Different Legal Systems in World**

The historic advances in any country plays vital part in the advancement of public-law of that country, the type of issues that nation/states they faced. In such situations, it is very importance what kind of tactic they used to resolve the issues and find out the effective solution.

Thoughtful study of the developments in past of that nation's legal system, the entry of authority with dominance in the legal-systems assist to analyze how commonly the fairness and other things are released with an ethical expectation, social backgrounds, experiences in past, historical knowledge and financial deliberations are keeping in mind for the said society's behavioral approach to the issue of peoples in that country.

### **6.4 Adopting the Best Practices**

The comparative public-law motivates to adopt the best practices by providing the elucidation of the perceptions, situation, and substitutes to other societies for make safe and improves the democratic values. The adoption of comparative public law helps in identifying and its implementation as best practices in the legal system across the globe with necessary legal framework. This is the need of modern era.

The often use of recognized best practices in legal framework results in to framing suitable regulations and strategies to handle the ongoing problems or any difficulty that might be appears over the period of time or in future. Such appropriate arrangements in legal system of nation are very necessary to make legal system effective for the peoples of that nation or state.

### **6.5 To Create Harmony in International World Order**

The key significance of comparative public law is that it enables to understand various countries in the light to reduce the world's tension. In that context, comparative public law is very useful for all country currently facing geo-political tensions. It is also useful in solving the difficulties and issues associated with the public-laws of various nations or states, which are at similar point of development. It is additionally helpful in resolving the figures of problems present between various country. It further useful in the creation of coordination of legal system and to fetch standardization with less variances.

## **7. Comparative Public Law as Academic Discipline**

The changeover from comparative analysis of various government and their legal system in the context of comparative constitutional law as separate research area indicates that the attention

in that area firstly demonstrated to be principally conceptual. The benefit of comparative public law as academic discipline strengthens to the liberal constitutionalism compared to totalitarianism. In that view, the expansion of this topic results into the displeasure as compared to the usual positivistic method in legal system to reduce the efforts and censored out a domain or sub-domain in that legal system. Comparison is a term which envisioned to underline hypothetical inclinations and the objective of the comparison process becomes the basic government practice as the origin of laws and importantly in formation of public law.

In light of above discussion, it is observed that in a worldwide background in the view point of nation and interrelationship very useful to the dispersal of many strong and novel reforms of constitutionalism. These kinds of inclinations produce new requirements from both system that is legal system and government, which linked in certain point with constitution lettering for the extraction of worldwide collaboration. It is also observed that the protection to the comparative public law in legal eco-system as a distinct research area or domain with complete practical significance needs constitutional reorganizations and clearances aligned to the comparison process. After the second world war, Europe's comparative constitutional law was in force. Similarly, the foreign constitutional system or legal system was most probably used to study the soviet legal system including the study of Western legal system.

The comparative public law was studied and analyze as foreign systems, through a substantial theoretical aspect. After the second world war period, worldwide human-rights revolution was start with different expectations including the reorganization of state or formation and democratization of states, jointly with snowballing judicialization of legal system constitutional-law. The awareness about the comparative approach gradually increases supplementarily and motivate to enhance fortification to the fundamental rights which allotted by the United States apex court preliminary implemented around the commencement of the 1940s<sup>3</sup>.

## **8. Weaknesses of Comparative Public Law**

Presently, the comparative law as a separate specialization of law is receiving huge interest from most of the legal systems across the globe.

But, critical analysis in all those things indicates some serious shortcoming associated with comparative public law are as follows,

- Comparative public law not flourish or develop due to the hinderance of existing rigid legal system.
- It is very difficult to compare the legal system of two nations. The difficulty is highlighted by many reasons such as non-availability of material, language, lack of aptitude etc.
- The collection of information of laws and legal institutions of different states need special kind of ability.
- The approach of comparative study of lawyers and academics may vary from nation to nation and extraction of conclusions becomes very difficult.

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<sup>3</sup> P. Ishwara Bhat, *Comparative Method of Legal Research: Nature, Process and Potentiality*, 57 J. INDIAN. LAW. INST., 145, 147-52 (2015).

- Finally, it is very important aspect of comparative public law is that incomparable cannot be compared. It is observed that the legal systems one country, one community, one culture may be completely parallel to each other but unacceptable to another.

## **9. Conclusions**

In summary, following things are concluded about the study of comparative public law,

- Comparative public law getting wide interest due to the rapid industrialization, globalization and liberalization. This domain of law is in its budding stage.
- Comparative law is an important tool of continuous learning and creation of knowledge, which results into the suppling progressive knowledge and skill that will empower legal system.
- Comparative Public Law found significant role in the globalization and development of technology, interpretation of laws, understanding the different legal systems in world, adopting the best practices and to create harmony in international world order.
- Currently, the comparative public law emerging as separate academic discipline.

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