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Menaka Guruswamy, D.Phil.

Advocate

New Delhi

Born in 1974 in Hyderabad, India

Studied Law at Oxford University, Harvard Law School and the National Law School of India

PROJECT

Navigating Power and Fear: Enduring Constitutionalism in South Asia

Constitutions conceive, craft and define nations. This is especially true when countries have emerged from colonialism or conflict. Often, the new constitution and the constitution-making process act as ends of civil wars and revolutions. The constitution-making process must enable the regulation of power and the mitigation of fears. The crafting of the constitution must also facilitate conversations around a vision for a new country. For instance, the Indian Constitution, more than any other constitution, epitomises how a constitution can conceive of a "new" society, even if a people and a culture have existed for thousands of years.

This project, by examining the experiences of India, Pakistan and Nepal amongst other South Asian countries, hopes to contribute to an understanding of why certain "people" make enduring constitutions. It also seeks to appreciate the role that forms of constitution-making processes, religion, the military, the choice of government and the judiciary play in the successful constitutional democracies of South Asia. By doing so, it hopes to contribute to an understanding of what enables South Asian countries to craft enduring constitutionalism.

Recommended Reading

Guruswamy, Menaka. "Assembly and Association." In *Oxford Handbook of Indian Constitutional Law*, edited by Sujit Choudhury, Madhav Khosla and Pratap Bhanu Mehta. New York: Oxford University Press, 2016.

- "Crafting Constitutional Values: An Examination of the Supreme Court of India." In *An Inquiry into the Existence of Global Values*, edited by Dennis Davis, Alan Richter and Cheryl Saunders. Oxford: Hart/Bloomberg, 2015.

- "In Wake of Peshawar, India Must Resist Demands to Step Towards the Darkness of Dogma." *Scroll.in* (December 19, 2014).

Romancing Power While Courting a Constitution: Constituent Assemblies, Parliaments, Courts, and Militaries of South Asia

Traditionally, most scholarship in comparative constitutional law comprises single-country chapters in isolation from each other or compares a "new" or "post-colonial" country in the "Global South" with a "well established constitutional democracy" in the "West". Yet, given the enormous differences in constitutional histories and values, jurisdictional particularities, and variation in institutional arrangements (for instance, separation of power dynamics or design between the executive, legislature, and judiciary), such scholarship poses methodological challenges.

Further, even more rigorous comparative conversations inter se between countries are located in stand-alone, single-themes analysis, for example a comparative analysis of judiciaries or courts. However, constitutionalism is formed by an assortment of interrelated phenomena - including nationalist politics, political parties, constituent assemblies, legislatures, courts, and even militaries.

Therefore, my work, a book project, examines South Asian constitutionalism (specifically in India, Pakistan, and Nepal) from a cross-thematic perspective - by studying constituent assemblies, founding political parties, parliaments, courts, and militaries. With intertwined histories, often partitioned pasts, civil wars, shared experiences of decolonization, or even dissolution of monarchies and robust militaries that operate at the edge of constitutionalism, South Asia presents new ways of appreciating the potential of comparative constitutional law. For instance, with judiciaries that dramatically redefine Westminster-style parliamentary government and parliaments that reimagine constitutional identities through frequent amendments that are subsequently tested in court, the study of this region presents the opportunity to examine the disciplinary assumptions made about constitutionalism and the conditions under which it flourishes. By locating this intimate constitutional conversation between these three countries, this colloquium invites you to reimagine constitutions and constitutional law.

PUBLICATIONS FROM THE FELLOWS' LIBRARY

Guruswamy, Menaka (192014)

In wake of Peshawar, India must resist demand to step towards the darkness of dogma

<https://kxp.k10plus.de/DB=9.663/PPNSET?PPN=864447884>

Guruswamy, Menaka (2015)

Crafting constitutional values : an examination of the Supreme Court of India

<https://kxp.k10plus.de/DB=9.663/PPNSET?PPN=864398271>

Guruswamy, Menaka (2014)

Recounting the idea of India : the legacy of Granville Austin

<https://kxp.k10plus.de/DB=9.663/PPNSET?PPN=864397607>

Guruswamy, Menaka (2010)

Accessing injustice : the Gram Nyayalayas Act, 2008

<https://kxp.k10plus.de/DB=9.663/PPNSET?PPN=891493522>

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