COURSE MANUAL

Comparative Equality Laws (Elective)

2019-20

Instructor/s:

Sayan Mukherjee
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General Information

General Information on, ADMINISTRATIVE LAW & REGULATORY STATE, offered by Jindal Global Law School

Semester B of the AY 2019-20

The information provided herein is by the Course Instructor. The following information contains the official record of the details of the course.

This information shall form part of the University database and may be uploaded to the KOHA Library system and catalogued and may be distributed amongst law students for B.A.LL.B./B.B.A.LL.B.; LL.B.; LL.M. courses if necessary.

Course Code: ________________________________

Course Duration: ________________________________ One Semester

No. of Credit Units: 4 ________________________________

Level: ________________________________ Undergraduate

Medium of Instruction: ________________________________ English
PART II

α. Course Description

The right to equality and non-discrimination is ubiquitous in human rights instruments in jurisdictions throughout the world. Yet the meaning of equality and non-discrimination are contested. Is equality formal or substantive, and if the latter, what does substantive equality entail? Are there alternative, non-egalitarian, rationales that justify discrimination law? Which groups should be protected from discrimination and how do we decide? How do we capture conceptualizations of equality in legal terms and when should equality give way to other priorities, such as conflicting freedoms or cost?

The aim of this course is to examine these and other key issues through the prism of comparative law. Given the growing exchange of ideas across different jurisdictions, the comparative technique is a valuable analytic tool to understand this field. At the same time, the course pays attention to the importance of social, legal and historical context to the development of legal concepts and their impact. The first half of the course approaches the subject thematically, while the second half of the course addresses individual grounds, ending with a consideration of remedial structures. Theory is integrated throughout the course, and the relationship between grounds of discrimination and other human rights is explored. The course will be predominantly based on materials from India, the USA, Canada, South Africa, India, the UK, EU, and ECHR, although some materials from other Commonwealth countries or individual European countries will be included. International human rights instruments will also be examined. The Comparative Equality Law course does not require previous knowledge of equality or discrimination law.

There will be a take-home examination consisting of eight questions for end-term (70 marks) of which students must attempt three (3) questions. You will be expected to make comparisons between the jurisdictions we have studied where appropriate. Use concrete examples whenever possible, drawn from these different jurisdictions where appropriate. Equal time should be allocated to each question you attempt. Organization and clarity are very important. A shorter answer that is well organized and evidences a clear understanding of basic concepts and their interrelationships is better than a longer answer with disconnected fragments of information. Answers should be directed expressly to the question presented. Answers will be graded upon the reasons given and the underlying analysis, as well as the coherence of the conclusions drawn. If more than one reason is pertinent to an answer, state every reason. Identify and respond to potential objections to your arguments.

There will be tutorials consisting of 30 marks for the purpose of internal assessment. You should be aware that these tutorials are an opportunity for you to write about some of the topics that we will be considering in the classes, and discuss your writing intensively with your tutor. They will be excellent preparation for the examination in the subject, because we shall be using the same type of questions asked in end-term as the essay titles for each tutorial. Your work
will also be marked and returned to you, with comments. You should follow the instructions you will be given later about the timetable for these tutorials and when you will need to submit the written work by time. You must follow this timetable precisely; otherwise the essay you submit cannot be marked. You must also attend tutorials in time, and fully prepared.

b. Intended Learning Outcomes

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<th>Course Intended Learning Outcomes</th>
<th>Teaching and Learning Activities</th>
<th>Assessment Tasks/Activities</th>
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| ➢ Understand different models of discrimination laws, and how each model work in a particular socio-economic context, the merits and de-merits of each model and their possible applicability in the Indian context. | **Reading of case law and theoretical material**  
- Students will acquire knowledge of the perspectives pertaining to the topics to be covered in the syllabus.  
- Preparation outside of the class | **End of course examination**(Take-Home) (70% of marks)  
**Internal Assessment** (Tutorials) (30% of marks) |
| ➢ Ability to analyze and critique the concept of equality. | **Tutorials**  
- Students will be expected to defend their positions in their essays in light of the readings. This will give them a perspective as to the readings and will also allow them to develop their analytical skills and creativity and critical skills | |
| ➢ Engaging with theories of equality | | |
| ➢ Comparative analysis of case law and theory | | |
Assignments
Students may have to do research-based assignments

c. Grading of Student Achievement

To pass this course, students must obtain a minimum of 50% in the cumulative aspects of coursework, e.g. moot, and final examination. End of semester exam will carry 50 marks out of which students have to obtain a minimum of 15 marks to fulfil the requirement of passing the course.

The details of the grades as well as the criteria for awarding such grades are provided below.

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<tr>
<th>Letter Grade</th>
<th>Percentage Of marks</th>
<th>Grade Definitions</th>
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<tr>
<td>O</td>
<td>80% and above</td>
<td>Outstanding, Outstanding work with strong evidence of knowledge of the subject matter, excellent organizational capacity, ability to synthesize and critically analyse and originality in thinking and presentation.</td>
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<tr>
<td>A+</td>
<td>75 to 79.75%</td>
<td>Excellent, Sound knowledge of the subject matter, thorough understanding of issues; ability to synthesize critically and analyse.</td>
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<tr>
<td>A</td>
<td>70 to 74.75%</td>
<td>Good, Good understanding of the subject matter, ability to identify issues and provide balanced solutions to problems and good critical and analytical skills.</td>
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<tr>
<td>A-</td>
<td>65 to 69.75%</td>
<td>Adequate, Adequate knowledge of the subject matter to go to the next level of study and reasonable critical and analytical skills.</td>
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<tr>
<td>B+</td>
<td>60 to 64.75%</td>
<td>Marginal, Limited knowledge of the subject matter.</td>
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PART III

a. **Keyword Syllabus**


b. **Course Policies:**

**Academic Integrity and Plagiarism**

Learning and knowledge production of any kind is a collaborative process. Collaboration demands an ethical responsibility to acknowledge who we have learnt from, what we have learned, and how reading and learning from others have helped us shape our own ideas. Even our own ideas demand an acknowledgement of the sources and processes through which those ideas have emerged. Thus, all ideas must be supported by citations. All ideas borrowed from articles, books, journals, magazines, case laws, statutes, photographs, films, paintings, etc., in print or online, must be credited with the original source. If the source or inspiration of your idea is a friend, a casual chat, something that you overheard, or heard being discussed at a conference or in class, even they must be duly credited. If you paraphrase or directly quote from a web source in the examination, presentation or essays, the source must be acknowledged. The university has a framework to deal with cases of plagiarism. All form of plagiarism will be taken seriously by the University and prescribed sanctions will be imposed on those who commit plagiarism.
Disability Support and Accommodation Requirements

JGU endeavors to make all its courses accessible to students. All students with any known disability needing academic accommodation are required to register with the Disability Support Committee dsc@jgu.edu.in. The Committee has so far identified the following conditions that could possibly hinder student’s overall well-being. These include: physical and mobility related difficulties; visual impairment; hearing impairment; medical conditions; specific learning difficulties e.g. dyslexia; mental health.

The Disability Support Committee maintains strict confidentiality of its discussions. Students should preferably register with the Committee during the month of June/January as disability accommodation requires early planning. DSC will approve of and coordinate all disability related services such as appointment of academic mentors, arranging infrastructural facilities, and course related requirements such as special lectures, tutorials and examinations.

All faculty members are requested to refer students with any of the above-mentioned conditions to the Disability Support Committee for addressing disability-related accommodation requirements.

Safe Space Pledge

This course may discuss a range of issues and events that might result in distress for some students. Discussions in the course might also provoke strong emotional responses. To make sure that all students collectively benefit from the course, and do not feel disturbed due to either the content of the course or the conduct of the discussions. Therefore, it is incumbent upon all within the classroom to pledge to maintain respect towards our peers. This does not mean that you need to feel restrained about what you feel and what you want to say. Conversely, this is about creating a safe space where everyone can speak and learn without inhibitions and fear. This responsibility lies not only with students, but also with the instructor.

PART IV

a. Weekly Course Outline

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<td>Week 2</td>
<td>Theory of Equality-I</td>
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<td>Theory of Equality-II</td>
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<td>Week</td>
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**b. Readings:**

**Week 1: Introduction to discrimination Law and comparative methodology**

**Essential Readings:**
- S Fredman, *Discrimination Law* (2nd edn, Clarendon Series 2011) chs 1, 2
- S Fredman, *A Comparative Study of the Anti-Discrimination and Equality Laws of the USA, Canada, India and South Africa* (European Communities 2012)

**Suggested Readings:**
- J Fudge, ‘The Supreme Court of Canada, Substantive Equality and Inequality at Work’ in O Dupper and C Garbers (eds), *Equality in the Workplace: Reflections from South Africa and Beyond* (Juta & Co, Ltd. 2009) 41
 S Fredman, *A Comparative Study of the Anti-Discrimination and Equality Laws of the USA, Canada, India and South Africa* (European Communities 2012)
 N Bamforth, ‘Legal Protection of Same-Sex Partnerships and Comparative Constitutional Law’ in Ginsburg and Dixon (eds), *Comparative Constitutional Law* (Elgar 2011) 551 [Note: see for use of comparative law]
 O Kahn-Freund, 'The Uses and Misuses of Comparative Law' [1973] 37 *MLR* 1
 J Waldron, *Partly Laws Common to Mankind: Foreign Law in American Courts* (Yale University Press 2012) ch 1

Week 2: A theory of Equality-I

**Essential Readings:**

- D Hellman, ‘Equality and Unconstitutional Discrimination’ in D Hellman and S Moreau (eds), *Philosophical Foundations of Discrimination Law*
- D Réaume, ‘Dignity, Equality and Comparison’ in D Hellman and S Moreau (eds), *Philosophical Foundations of Discrimination Law*
- S Segall, ‘What is so bad about Discrimination?’ (2012) 24 *Utilitas* 82

**Suggested Readings:**

- B Hepple, ‘The aims of equality law’ [2008] 61 *Current Legal Problems* 1
Fiss, ‘Groups and the Equal Protection Clause’ (1976) 5 Philosophy and Public Affairs 107
R Dworkin, A Matter of Principle (OUP 1985) 205-213

Week 3: A theory of Equality-II

Essential Readings:
- S Moreau, ‘In Defense of a Liberty-based Account of Discrimination’ in D Hellman and S Moreau (eds), Philosophical Foundations of Discrimination Law
- D Hellman, When is Discrimination Wrong, chs 1, 2, 3 (Ch 1 on Weblearn)

Suggested Readings:
- A Sen, Development as Freedom (OUP 1999) ch 3
- J Raz, The Morality of Freedom (OUP 1986) chs 14, 15
- D Feldman, ‘Human Dignity as a Legal Value’ [1999] Public Law 682
- C McCrudden, ‘Human Dignity and Judicial Interpretation of Human Rights’ [2008] EJIL 655
Week 4: Grounds of Discrimination

Essential Readings:

Primary Sources:
- *United States v Carolene Products Co* 304 US 144, 58 S Ct 778 (1938), fn 4
- *Andrews v Law Society of British Columbia* [1989] 1 SCR 143
- *Egan v Canada* [1995] 2 SCR 513
- Navtej Singh Johar v. Union of India (2018) 1 SCC 791
- *Goodwin v UK* (1996) 22 EHRR 123
- *Ladele v London Borough of Islington* [2009] EWCA Civ 1357 (on appeal to ECtHR)
- *MEC for Education: Kwazulu-Natal and Others v Pillay* [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 para 50 (South Africa)
- *Mandla v Lee* [1983] 1 All ER 1062
- *United States v Virginia* (1996) 116 S Ct 2264
- *EU Defrenne (No 2)*, Case 43/75 [1976] ECR 455
- *Danmark v Experian A/S (Beskæftigelsesministeriet, intervening)* [2014] 1 CMLR 42
- *Prigge v Deutsche Lufthansa* [2011] IRLR 1052
- *Corbiere v Canada (Minister of Indian and Northern Affairs)* [1999] 2 SCR 203
- *Hoffmann v South African Airways* [2000] ZACC 17; 2001 (1) SA 1 (CC) (South Africa)
- *DeGraffenreid v General Motors Assembly Division* 413 F Supp 142 (US Federal Court of Appeals)
- *Bahl v Law Society* [2004] EWCA Civ 1070
- *Bhe and Others v Magistrate, Khayelitsha and Others* 2005 (1) SA 563 (CC) (South Africa)
- *Hall v Bull* [2013] UKSC 73

Secondary Sources:
- S Fredman, *Discrimination Law*, chp 3 (about intersectionality on 139-143)
- Fiss, ‘The Fate of an Idea whose Time Has Come’ (1974) 41 *University of Chicago Law Review* 742, esp section titled ‘The Proliferation of the Protectorate’ (p 748 onwards)
- Crenshaw, ‘Demarginalising the Intersection of Race and Sex’ (1989) *University of Chicago Legal Forum* 139

Suggested Readings:
- *Massachusetts Board of Retirement v Murgia* 427 US 307
- Vriend v Alberta [1998] 1 SCR 493
- Marshall v Southampton and South West Hampshire Area Health Authority (Teaching) No 1 C-409/95 [1986] ECR 723
- Hassam v Jacobs NO and Others [2009] ZACC 19; 2009 (11) BCLR 1148 (CC)
- Hodge v Canada (Minister of Human Resources Development) [2004] 3 SCR 357, paras 17-48

Week 5: Direct Discrimination

Essential Readings:

Primary sources:
- James v Eastleigh BC [1990] 2 AC 751
- R (on the application of E) v Governing Body of JFS and the Admissions Appeal Panel of JFS [2009] UKSC 15
- Law v Canada [1999] 1 SCR 497
- Withler v Canada (Attorney General) [2011] 1 SCR 396
- Centrum voor Gelijkheid van Kansen en voor Racismebestrijding v Firma Feryn NV Case C-54/07 [2008] IRLR 733
- Janzen v Platy Enterprises Ltd [1989] 1 SCR 1252
- Bahl v Law Society [2004] EWCA Civ 1070
- Canada (Attorney General) v Bedford (2013) SCC 72
- Washington v Davis 426 US 229; 96 S Ct 2040, esp at 2048
- Ricci v Stefano, 129 S Ct 2658 (2009) at 2664, 2673
- City Council of Pretoria v Walker 1998 (3) BCLR 257, para 43
- Geduldig v Aiello 417 US 484
- Dekker Case C-177/88 [1990] ECR I-394
- Air India v. Nargesh Meerza AIR 1981 SC 1829
- Brookes v Canada Safeway Ltd (1989) 1 SCR 1219
- Konstantin Markin v Russia (Application no 30078/06) (ECHR 2012)
- Roca Álvarez v Sesa Start España (Case C-104/09) ETT SA [2011] 1 CMLR 28

Secondary Sources:
- S Fredman, Discrimination Law, ch 4
- B Eidelson, ‘Treating People as Individuals’ in Hellman and Moreau (eds), Philosophical Foundations of Discrimination Law (OUP 2013)
- Equal Rights Trust, Declaration on Principles of Equality [link]
- D Réaume, ‘Harm and Fault in Discrimination Law’ (2001) 2 Theoretical Inquiries in Law 349
Suggested Readings:

- Ahmad v ILEA 8160/78 (1982) 4 EHRR 126
- Volks v Robinson [2005] ZACC 2; 2005 (5) BCLR 446 (CC)
- Coleman v Attridge Law Case C-303/06 [2008] 3 CMLR 27
- D Hellman, *when is Discrimination Wrong?* (HUP 2010) ch 6

Week 6: Indirect Discrimination & Reasonable Accommodation

**Primary sources:**

- S v Jordan (CCT31/01) [2002] ZACC 22; 2002 (6) SA 642 (CC)
- Ontario Human Rights Commission v Simpsons-Sears Ltd [1985] 2 SCR 536
- Mandla v Lee [1983] 2 AC 548
- Chief Constable of West Yorkshire Police v Homer [2012] UKSC 15 (UK Supreme Court)
- Washington v Davis 426 US 229; 96 S Ct 2040, esp at 239
- Ricci v DeStefano 129 S. Ct. 2658 (2009)
- Bilka Kaufhaus Case 170/84 [1986] ECR 1607
- Napoli v Ministero della Giustizia [2014] ICR 486 (CJEU), esp [35]
- DH and Others v The Czech Republic App no 57325/00 (ECtHR Grand Chamber, Nov 2007)
- R (on the application of E) v Governing Body of JFS and the Admissions Appeal Panel of JFS [2009] UKSC 15
- Prince v President of the Law Society of the Cape of Good Hope (CCT36/00) [2002] ZACC 1; 2002 (2) SA 794 at paras 76; 146 – 148; 170-172; (South Africa)
- MEC for Education: Kwazulu-Natal and Others v Pillay [2007] ZACC 21; 2008 (1) SA 474 (CC)
- Oršuš and Others v Croatia App no 15766/03 (ECtHR GC 2010)

**Secondary sources:**

Week 7: Standard of Review

Essential Readings:

Primary sources:

- United States v Virginia 116 S Ct 2264 (1996), esp 531-546
- British Columbia (Public Service Employee Relations Commission) v BCGEU (1999) 3 SCR 3, esp [54]-[55] et seq
- Ontario (Human Rights Commission) v Ford Motor Co. of Canada [2002] OJ No 3688
- Smith and Grady v UK (1999) 29 EHRR 493, esp [72]-[75], [87]-[89]
- Bilka-Kaufhaus [1986] ECR 1607
- Belgian Linguistic Case (merits) Series A No. 6 (23 July 1968)
- Dudgeon v United Kingdom (1982) 4 EHRR 149 [on margin of appreciation]
- Harksen v Lane NO and Others 1997 (11) BCLR 1489 (CC); 1998 (1) SA 300 (CC)
- Anuj Garg v Hotel Association of India AIR 2008 SC 663
- Ashoka Kumar Thakur v Union of India 2008 (6) SCC 1
- R (on the application of Carson) v Secretary of State for Work and Pensions [2005] UKHL 37
- R (on the application of Hooper) v Secretary of State for Work and Pensions [2005] UKHL 29

Secondary Sources:

- S Fredman, Discrimination Law, ch 4

Suggested Readings:

- R v Oakes [1986] 1 SCR 103 (Canada)
- Hatton v United Kingdom (2003) 37 EHRR 28
- Dudgeon v United Kingdom (1982) 4 EHRR 149
- Prinsloo v Van der Linde 1997 (6) BCLR 759 (CC) (South African)
- Ajay Hasia v Khalid Mujib Sehravardi 1981 SCR (2) 79 at 102
- R (on the application of E) v Governing Body of JFS and the Admissions Appeal Panel of JFS [2009] UKSC 15
- R (Williamson) v Secretary of State for Education and Employment [2005] UKHL 15, [2005] 2 AC 246
Week 8: Race & Caste

Primary sources:

- *United States v Carolene Products Co* 304 US 144, 58 S Ct 778 (1938), fn 4
- *Korematsu v United States* 323 US 214, 65 S Ct 193 (1944) at 216b
- *Brown v Board of Education* 347 US 483 (1954)
- *Sweatt v Painter* 339 US 629 (1950)
- *RAV v City of St Paul, Minnesota* 505 U.S. 377; 112 S. Ct. 2538 (1992)
- *Mandla v Lee* [1983] 1 All ER 1062
- *Minority Schools in Albania, Greece v Albania. Advisory Opinion* 26
- *Belgian Linguistics Case (No 2)* (1968) 1 EHRR 252
- *DH and Others v The Czech Republic* App no 57325/00 (ECtHR Grand Chamber, Nov 2007)
- *Oršuš v Croatia* App no 15766/03 (ECtHR GC 2010)
- *R v Keegstra* [1990] 3 S.C.R. 697 (Canada)
- *Aksu v Turkey* App no. 4149/04 (ECHR GC, 2013) 56 EHRR 4
- *Washington v Davis* 426 US 229; 96 S Ct 2040
- *East African Asians v UK* (1981) 3 EHRR 76

Secondary Sources:

- M Martha, *In Brown’s Wake* (OUP 2010) chs 1, 7
- Galanter, *Competing Equalities: Law and the Backward Classes in India* (University of California Press 1984) chs 1, 3
- Tariq Modood and Fauzia Ahmad, British Muslim Perspectives on Multiculturalism [link]

**Week 9: Sex & Gender**

**Essential Readings:**

**Primary sources:**

- Newfoundland (Treasury Board) v Newfoundland Association of Public Employees (NAPE), (2004) 3 SCR 381 (Canada)
- Hodge v Canada (Minister of Human Resources Development) [2004] 3 SCR 357
- Reed v Reed, 404 U.S. 71 (1971)
- President of the Republic of South Africa and Another v Hugo [1997] ZACC 4 (South Africa)
- Volks NO v Robinson and Others [2005] ZACC 2; 2005 (5) BCLR 446 (CC)
- Anuj Garg v Hotel Association of India AIR 2008 SC 663
- Abdulaziz, Cabales and Balkandali v United Kingdom 7 EHRR 471
- Konstantin Markin v Russia ECHR
- Bilka-Kaufhaus [1986] ECR 1607 EU
- Defrenne v Sabena 1976 ECR 455
O Roca Alvarez v Sesa Start Espana ETT SA (C-104/09) [2011] 1 CMLR 28
O Association belge des Consommateurs Test-Achats ASBL v Conseil des ministres [2011] 2 CMLR 38
O Bhe and Others v Magistrate, Khayelitsha and Others 2005 (1) SA 563 (CC) (South Africa)
O Shilubana and Others v Nwamitwa, [2008] ZACC 9; 2009 (2) SA 66 (CC)(South Africa)
O Weller v Hungary App no 44399/05 (ECHR, 31 March 2009)
O Equal Remuneration Act 1976 (India)
O Air India v Nargesh Mirza (1981) 4 SCC 335
O Indian Young Lawyers Association v. State of Kerala 2018 SCCOnline SC 1690
O Khan v Shah Bano Begum 1985 AIR 945, 1985 SCR (3) 844
O Dumfries and Galloway v North [2013] UKSC 45 (UK)

Secondary Sources:
O OR MacKinnon Feminism Unmodified (Harvard University Press 1987) ch 1
O S Fredman, Women and the Law (OUP 1997) ch 1
O H Charlesworth, C Chinkin and S Wright, ‘Feminist Approaches to International Law’ (1991) 85 American Journal of International Law 613-45
O I M Young, Justice and the Politics of Difference (Princeton UP 1990)

Suggested Readings:


D Rosenblum, ‘Unsex CEDAW or What’s Wrong with Women’s Rights’ (2011) 20 Columbia Journal of Gender and the Law 98 [ssrn link]


Week 10: Sexual Orientation

Essential Readings:

Primary sources:

- *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1998 (12) BCLR 1517 (CC)
- Navtej Singh Johar v. Union of India (2018) 1 SCC 791
- *Schalk and Kopf v Austria*, App no. 30141/04 (ECHR, 24 June 2010)
- *Karner v Austria* (Application No. 40016/98). First Section, July 24 2003
- *United States v Windsor* 133 S.Ct. 786 (U.S.)
- *Reference re Same-Sex Marriage* [2004] 3 SCR 698 (Canada)
- *Dudgeon v United Kingdom* (1982) 4 EHRR 149 (ECHR)
Suggested Readings:

- Lewis v Harris 188 N.J. 415; 908 A.2d 196 (2006) (Supreme Court of New Jersey)
- Kerrigan v Commissioner of Public Health 188 N.J. 415; 908 A.2d 196 (N.J. 2006) (Supreme Court of Connecticut) [link]
- Grant v United Kingdom App no. 32570/03, judgment 23 August 2006
- M Foucault, History of Sexuality, Vol 1 (Introduction/Will to Knowledge), ch 1
- R Kapur, Erotic Justice: Postcolonialism, Subjects and Rights (2005), chs 1 and 2
- L Green, ‘Sex-Neutral Marriage’ (2011) 64(1) Current Legal Problems 1

Week 11: Religion & Belief

Essential Readings:

Primary sources:
o Eweida v British Airways Plc [2010] EWCA Civ 80 (see also ECHR case Eweida and others v UK App no 48420/10 (ECHR 2013)

o R (on the application of E) v The Governing Body of JFS and the Admissions Appeal Panel of JFS [2009] UKSC 15

o Ladele v London Borough of Islington [2009] EWCA Civ 1357 (on appeal to ECtHR)

o Hall v Bull [2013] UKSC 73

o Wisconsin v Yoder 92 S Ct 1526 (1972) (US)

o Employment division, department of human resources of Oregon v Smith 110 S. Ct. 1595 (1990)

o Ontario (Human Rights Commission) v Ford Motor Co. of Canada [2002] OJ No. 3688

o Lautsi v Italy, 30814/06, 18 March 2011

o Dahlab v Switzerland decision of 15 February 2001 (no. 42393/98, ECHR 2001-V)

o Sahin v Turkey [GC], no. 44774/98, § 107, ECHR 2005-XI)

o Redfearn v UK, ECHR 2012 Application no. 47335/06

o SAS v France App no 43835/11 (ECtHR GC, 1 July 2014)

o Bijoe Emmanuel v State Of Kerala 1987 AIR 748, 1986 SCR (3) 518 (India)

o MEC for Education: Kwazulu-Natal and Others v Pillay [2007] ZACC 21; 2008 (1) SA 474 (CC)

Secondary Sources:

o A McColgan, ‘Class Wars? Religion and (In)equality in the Workplace’ (2009) 38 Industrial Law Journal 1

o Haverkort-Speekenbrink, European Non-Discrimination Law (Intersentia 2012) ch 9


o Prince v President of the Law Society of the Cape of Good Hope 2002 (3) BCLR 231 (South African Constitutional Court)

o Christian Education South Africa v Minister of Education (CCT4/00) [2000] ZACC 11; 2000 (4) SA 757; 2000 (10) BCLR 1051

o Connolly v DPP Divisional Court [2007] EWHC 237 (Admin) (15 February 2007) (UK)


o Regina (Williamson and Others) v Secretary of State for Education and Employment [2005] UKHL 15

o Mba v London Borough Of Merton [2013] EWCA Civ 1562
Week 12: Affirmative Action

Essential Readings:

Primary Sources:

- C-409/95 Marschall v Land Nordrhein Westfalen [1997] ECR I-6363
- Case C-158/97 Badeck [2000] ECR I-1875
- Case C-476/99 Lommer [2002] ECR I-2891
- Regents of the University of California v Bakke, 438 US 265
- Parents Involved in Community Schools v Seattle School District, 127 S. Ct. 2738; 168 L.
Ed. 2d 508 (2007)

- Fisher v University of Texas 570 US 2013
- R. v Kapp (2008) SCC 41 (Canada)
- Minister of Finance and Another v Van Heerden 2004 (11) BCLR 1125 (South Africa)
- Indra Sawhney v Union of India AIR 1993 SC 477
- Ashok Thakur v Union of India (2008) 6 SCC 1

Secondary Sources:

- S Fredman, Discrimination Law, ch 5

Suggested Readings:

- Gratz v Bollinger, 539 U.S. 244 (2003)
- Further cases:
  - Re Parsons' Application for Judicial Review [2002] NI 378 (Queen’s Bench Division) (Northern Ireland)
S Fredman, *A comparative Study of the anti-discrimination and equality laws of the USA, Canada, India and South Africa*

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