

# T02P06 / Interface of Law and Public Policy

**Topic :** T02 / Comparative Public Policy sponsored by Journal of Comparative Policy Analysis

**Chair :** Sony Pellissery (National Law School of India University)

**Second Chair :** Babu Mathew (National Law School of India University)

**Third Chair :** Avinash Govindjee (Nelson Mandela Metropolitan University)

## GENERAL OBJECTIVES, RESEARCH QUESTIONS AND SCIENTIFIC RELEVANCE

### Transformative Constitutionalism and Public Policy

Our research is focused on a comparative question of differences in Public Policy orientation between countries following 'Liberal Constitution' and 'Transformative Constitution'.

The nature of the formation of the State is critical to the role and function of public policy for those contexts. The process of the State formation is hugely different in Global North and Global South. Enlightenment and subjugation of feudal forces to democratic and capitalist process explain the origin of the modern state in Global North (Moore 1966). In most of the Global South, where colonialism was critical to the State formation, what brought the society together is through two processes: a) mobilisation against colonial forces, and b) process of the making of the Constitution. The second aspect is what makes Law inseparable from Public Policy question in the countries of Global South.

Western Liberal Democratic Traditions (where the discipline of Public Policy originated) gave shape to traditional Liberal Constitutions, which emphasized negative rights (Nussbaum 2006). Within this framework, typically the judiciary is engaged in an adjudication process involving private interests. The relevance of judgements for public interest is incidental. On the other hand, new Constitutions in the Global South gave space for positive action from the state. The literature on Transformative Constitutionalism (Vilhena, Baxi and Viljoen 2013) show that 'public interest' was deliberately built into legalism in those constitutions. Interestingly, in Global South where impunity is high, largest number of court cases are against the State.

Thus, in public problem solving, the role of judiciary is hugely different in contexts where Liberal Constitution is followed compared to Transformative Constitution. Pro-active judiciary in various countries of Global South have directed and monitored how the State deals with public policy questions of education, health, food security, access to land and water, corruption etc. This line of inquiry takes us to area which is less studied, namely the interface of law and public policy (Kreis and Christensen 2013). This inquiry could reveal some of the unique features of public policy in Global South and countries of transitional development. Such finding would challenge the dominant models of public policy conception as emanating from the Western world, and would have great relevance to contextualise the discipline for teaching, research and practice.

### References

Kreis, A. M. and Christensen, R. K. (2013) "Law and Public Policy", Policy Studies Journal Vol. 41 (s1) pp. S38-S52.

Moore, B. (1966) Social Origins of Dictatorship and Democracy. London: Beacon Press.

Nussbaum, M. C. (2006) "Poverty and Human Functioning: Capabilities as fundamental entitlements", in Poverty and Inequality (eds. David B. Grusky and Ravi Kanbur), Stanford: Stanford University Press. Pp. 47-75.

Vilhena, O., Baxi, U. and Viljoen, F. (2013) Transformative Constitutionalism. Pretoria: Pretoria University Law Press.

## CALL FOR PAPERS

Judiciary has played a critical role in Global South while defining the Public Policy agenda. This is because countries in the Global South primarily have 'Transformative Constitution' (TC) that empowers the citizens while dealing with the State. Yet, in the study of public policy, the intersectionality of law and policy is astonishingly under researched. Very often law is treated as an instrument to gain compliance to policies through sanctions. Beyond this instrumental function, many judges functioning with the framework of TC, have acted as 'norm entrepreneurs' and directed the State to design policies to enhance citizens' quality of life. These developments have been backed up by global institutions (e.g. OHCHR, ILO, WHO, UNICEF) that have monitored the nation-states to adopt global standards.

We are looking for papers that demonstrate how public policy and law are interfacing while dealing with public

problems. Though not exhaustive, following are the tentative questions to which authors could respond while proposing a paper as part of this panel.

1. What are the similarities and differences in the orientation towards the concept of justice from the discipline of Law and Public Policy? Papers that could answer this question by presenting evidence using case laws and substantive public policies from the contexts of Liberal Constitution and Transformative Constitution are specifically welcomed.
2. Is there any evidence for policy convergence among nation-states due to the work of International agencies, multi-lateral and bi-lateral agreements? Or does the evidence support the convergence of sectoral laws (e.g. labour laws) across nation-states since there is convergence of economic policies across border?
3. What are sub-domains of Law (e.g. administrative law, planning law, regulatory law) that have shown high intersectionality with the questions of Public Policy? Among these sub-domain and other cases, under what conditions have judiciary acted for policy change? What are the situations in which law has been an impediment for policy change?

These questions are suggestive. Any paper that addresses the issue of interface of Law and Public Policy is relevant for this panel.

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## Session 1 Social Rights: Interface of Law and Public Policy

Thursday, June 29th 08:15 to 10:15 (Manasseh Meyer MM 3 - 5)

### **Discussants**

Suzanne Bevacqua (La Trobe University)

ANSARI SALAMAH (Indian Institute of Management- Kozhikode)

### **Constitutionalisation, Liberalisation and Public Health in the European Union**

Benjamin Hawkins (University of Cambridge)

### **The constitutional 'right to health' and the difficulty of regulating publicly funded health services – experience from Germany**

Stefanie Ettelt (London School of Hygiene and Tropical Medicine)

### **Making Space for Rehabilitation and Recovery: Examining India's Legal Policies Against Human Trafficking**

Deya Bhattacharya (Swasti Health Resource Centre)

Shama Karkal (Swasti)

### **Interactions of pro-poor policy and Constitutional jurisprudence in Sri Lanka**

RASIKA MENDIS (University of Colombo)

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## Session 2 Constitutionalism: Interface of Law and Public Policy

Thursday, June 29th 10:30 to 12:30 (Manasseh Meyer MM 3 - 5)

### Discussants

Stefanie Ettelt (London School of Hygiene and Tropical Medicine)

PRAVEEN TRIPATHI (National Law School of India University )

### Labor constitutionalism and liberal constitutions: The rise of an anti global doctrine and a constitutional right to strike

Lilach Littor (Tel Aviv University)

### CONSTITUTIONALISM, PUBLIC POLICY, AND GROUP INEQUALITY IN SOUTH ASIA

mushtaq malla (National Law School of India University)

Hassan Mohammad Sajjad (Centre for Equity Studies – Misaal, )

### Development Genocide and International Law: Curtailing Development induced Displacement through prohibition of Genocide?

Khushboo Chauhan (O.P. Jindal Global University)

### Judiciary in the Global South: Transgressing the Domain of Legislature in matters of Public Policy

Abhimanyu Singh (Jawaharlal Nehru University)

Arushi Bajpai (National University of Study and Research in Law, Ranchi)

### Indian Constitutionalism and Public Policy: A Case of Eminent Domain Law in India

Ramratan Dhumal (University of Delhi)

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## Session 3 Changing Role of the State: Interface of Law and Public Policy

Thursday, June 29th 13:30 to 15:30 (Manasseh Meyer MM 3 - 5)

### Discussants

mushtaq malla (National Law School of India University)

RASIKA MENDIS (CENTRE FOR THE STUDY OF HUMAN RIGHTS )

### Contextualizing Public Policy & Foreign Direct Investment in India

PRIYA MISRA (National Law School of India University )

PRAVEEN TRIPATHI (National Law School of India University )

### SCRUTINY OF OPERATION SOVEREIGN BORDERS ‘OPERATIONAL MATTERS’ – A NEW POLITICAL ROLE FOR AN OLD LEGAL DICHOTOMY IN AUSTRALIA?

Suzanne Bevacqua (La Trobe University)

John Bevacqua (La Trobe University)

### Sovereign Debt Restructuring: Locating Indian Law and Jurisprudence in the contemporary international legal order

ANSARI SALAMAH (Indian Institute of Management- Kozhikode)

### The end of banking secrecy? Comparing legal and policy evolution in Singapore and Switzerland

Yvonne Guo (Lee Kuan Yew School of Public Policy, National University of Singapore)