Although the field of constitutional law has become increasingly comparative in recent years, its geographical focus has remained limited. South Asia, despite being the site of the world’s largest democracy and having a vibrant if turbulent constitutionalism, is one of the important neglected regions within the field. This book remedies this lack of attention by providing a detailed examination of constitutional law and practice in five South Asian countries: India, Pakistan, Sri Lanka, Nepal, and Bangladesh. Identifying a common theme of volatile change, it develops the concept of “unstable constitutionalism,” studying the sources of instability alongside reactions and responses to it.

By highlighting unique theoretical and practical questions in an underrepresented region, Unstable Constitutionalism constitutes an important step toward truly global constitutional scholarship.


Madhav Khosla is currently a Ph.D. candidate in the Department of Government at Harvard University. He is the author of The Indian Constitution (2012) and is currently co-editing the Oxford Handbook of the Indian Constitution.
Comparative constitutional law is an intellectually vibrant field that encompasses an increasingly broad array of approaches and methodologies. This series collects analytically innovative and empirically grounded work from scholars of comparative constitutionalism across academic disciplines. Books in the series include theoretically informed studies of single constitutional jurisdictions, comparative studies of constitutional law and institutions, and edited collections of original essays that respond to challenging theoretical and empirical questions in the field.

Volumes in the Series:


Presidential Legislation in India: The Law and Practice of Ordinances, by Shubhankar Dam (2014)

Constitutions in Authoritarian Regimes, edited by Tom Ginsburg and Alberto Simpser (2014)

Social Difference and Constitutionalism in Pan-Asia, edited by Susan H. Williams (2014)

Constitutionalism in Asia in the Early Twenty-First Century, edited by Albert Chen (2014)


Magna Carta and Its Modern Legacy, edited by Robert Hazell and James Melton (2015)
Unstable Constitutionalism

LAW AND POLITICS IN SOUTH ASIA

Edited by

MARK TUSHNET
Harvard Law School

MADHAV KHOSLA
Harvard University
Contents

List of Contributors ................................................................. ix

Part I: Introduction ........................................................................ 3

1 Unstable Constitutionalism ...................................................... Mark Tushnet and Madhav Khosla

2 How to Do Constitutional Law and Politics in South Asia .............. Sujit Choudhry

Part II: Forms and Sources of Instability ........................................ 18

3 The Locus of Sovereign Authority in Nepal .................................. Mara Malagodi

4 Competing Nationhood and Constitutional Instability: ............. Representation, Regime, and Resistance in Nepal
                Mahendra Lawoti

5 Constitutionalism and Extra-Constitutionalism in Pakistan ........ Mohammad Waseem

6 The Judicialization of Politics in Pakistan: The Supreme ............ Court after the Lawyers’ Movement
                Osama Siddique

7 Elections in “Democratic” Bangladesh ........................................ M. Jashim Ali Chowdhury

vii
## Contents

### Part III: Reactions and Responses to Instability

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Author</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>The Indian Supreme Court and the Art of Democratic Positioning</td>
<td>Pratap Bhanu Mehta</td>
<td>233</td>
</tr>
<tr>
<td>9</td>
<td>The Judicialization of Politics in Bangladesh: Pragmatism, Legitimacy, and Consequences</td>
<td>Ridwanul Hoque</td>
<td>261</td>
</tr>
<tr>
<td>10</td>
<td>Debating Federalism in Sri Lanka and Nepal</td>
<td>Rohan Edrisinha</td>
<td>291</td>
</tr>
<tr>
<td>11</td>
<td>Constitutional Form and Reform in Postwar Sri Lanka: Towards a Plurinational Understanding</td>
<td>Asanga Welikala</td>
<td>320</td>
</tr>
<tr>
<td>12</td>
<td>Constitutional Federalism in the Indian Supreme Court</td>
<td>Sudhir Krishnaswamy</td>
<td>355</td>
</tr>
</tbody>
</table>

*Index* | 381 |
List of Contributors

Sujit Choudhry is Dean and I. Michael Heyman Professor of Law in the School of Law at the University of California, Berkeley.

M. Jashim Ali Chowdhury is Assistant Professor of Law in the Department of Law at the University of Chittagong.

Rohan Edrisinha is International Project Manager of the United Nations Development Programme, Support to Participatory Constitution Building in Nepal in Kathmandu.

Ridwanul Hoque is Associate Professor of Law in the Department of Law at Dhaka University.

Madhav Khosla is a Ph.D. candidate in the Department of Government at Harvard University.

Sudhir Krishnaswamy is Professor of Law at Azim Premji University in Bangalore and Dr. Ambedkar Professor of Indian Constitutional Law at Columbia Law School in New York.

Mahendra Lawoti is Professor of Political Science in the Department of Political Science at Western Michigan University.

Mara Malagodi is British Academy Postdoctoral Fellow in the Law Department at the London School of Economics and Political Science.

Pratap Bhanu Mehta is President and Chief Executive of the Centre for Policy Research in New Delhi.

Osama Siddique is Associate Fellow in the Institute of Development and Economic Alternatives in Lahore, Pakistan, and Senior Faculty at Harvard Law School’s Institute for Global Law and Policy.
List of Contributors

Mark Tushnet is William Nelson Cromwell Professor of Law at Harvard Law School.

Mohammad Waseem is Professor of Political Science in the Department of Humanities and Social Sciences at Lahore University of Management Sciences.

Asanga Welikala is Economic and Social Research Council Teaching Fellow in the School of Law at the University of Edinburgh and Associate Director of the Edinburgh Centre for Constitutional Law.