Hindu Law in Theory and Practice

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This course introduces Hindu law in both historical and comparative perspectives. We begin with introductory reflections on the nature and role of law in society, the relationship between religion and state in the law in general, and in India in particular. Other topics covered include the triple origins of Hindu law in priestly codes, political theory, and local custom; Dharma as religious law and as jurisprudence; actual legal practice before the modern period; colonial attempts to codify Hindu law; Hindu personal law in modern India; and the controversy over religion and secularism in the courts today. Attention is given to constitutional definition of the category ‘Hindu’, attempts to legislate against suttee (“widow-burning”) and other disapproved religious practices, and the role of the courts in disputes over sacred spaces. We close with some comparisons with legal reasoning about religion in America, Israel, and England, based on court cases.

The course is especially pertinent for students interested in comparative legal theory; the intersections of law, religion, and politics; religious practices and ethnic identity; and the role of law in shaping or reforming society.

Students will turn in a short (400-word) analyses of the material read and discussed each the week, guided by questions posed by the instructor. The grade for the course will be based on these analyses (50%) and a circa 3500-word research paper (50%). During the last three weeks, students will make 15-minute presentations in class on their research topic, based on a preliminary draft of the paper. Active participation in class discussions may raise the final grade; unexcused absences may lower it.

Books:

Course Reader

*A Hindu ‘courthouse’ in Indonesia*
Tentative Schedule (readings subject to change):

**Introduction**

6 Sept.
Overview of the subject and the course (slides)

**Week I: Foundations**

11 Sept. (slides)

13 Sept.
Handouts: “Sources for the Study of Early Hindu Law” and “Vedic Sages Speak of Right and Wrong”
Donald R. Davis, Jr., “Historical Overview of Hindu Law” (L&H).

**Week II: Origins: Priestly Ritual Codes and Kauṭilya’s ‘Political Science’**

18 Sept.
Patrick Olivelle, “Textual Sources of Hindu Law” (L&H).
Selections from *Baudhāyana-Grhya-Sūtra* and the *Dharmasūtras*.

20 Sept.
Kangle, selections from Kauṭilya’s *Artha-Śāstra* (ca. 2nd c. CE):
  - ch. 2.10 (on the royal edict).
  - ch. 3 (on procedure, marriage, inheritance, property, contracts, gifts, personal injury, and gambling).
  - ch. 4 (on regulation and oversight of manufacturing, commerce, and finance; on criminal process [detection, arrest, prosecution, punishment]; and on rape).

**Week III: The Classical Codes of Dharmaśāstra: Brahmanical Jurisprudence**

25 Sept.
Lubin, “Authority” (L&H).
Lingat, pp. 207–232.

27 Sept.
T.b.a.
Week IV: The Classical Codes of Dharmaśāstra: Punishment and Expiation

2 Oct.
Lingat, pp. 232–256.

4 Oct.

Supplementary source:
Lingat, pp. 135–206.

Week V: Legal Practice in Premodern India I: Inscriptions

9 Oct.
Axel Michaels, “Hindu Legal Practice in Premodern India” (L&H), first half.
Al-Biruni (in India 1017–1030), *Kitāb-i Hind* (Sachau, *Alberuni’s India*, abridged by Ainslie Embree, pp. 154–166 [on matrimony, lawsuits, punishment and expiation, and inheritance]). Selected inscriptions.

11 Oct.
No class; begin readings for Week VI.

Week VI: Legal Practice in Premodern India II: Kerala, Maratha & Nepali Records

16 Oct.
Davis, *The Boundaries of Hindu Law*.
Description of an inquest by a brahmin judge (*smārta-vicāra*) into a case of adultery: *Śāṅkara-Smṛti* 8.1.1–36 (from 16th/17th c. Kerala).

18 Oct.
Axel Michaels, “Hindu Legal Practice ...,” second half.
Translated excerpts of from the legal records (*daftars*) of the Maratha state (17th c.).

Week VII: Hindu Law in the Colonial Era

23 Oct.
Rachel Sturman, “Marriage and the Family in Colonial Hindu Law” (L&H).

Supplementary source:


30 Oct.
The Indian Constitution of 1950 (excerpts).
Alexander Fischer, “Hinduism and the Constitution of India” (L&H).

1 Nov.
Rina Verma Williams, “Hindu Law as Personal Law” (L&H).
The Hindu Marriage Act of 1955.

**Week IX: Legal Progressivism**

6 Nov.
Laura Dudley Jenkins, “Communities, ‘Reservations’ and Women” (L&H).

8 Nov.

**Week X: Indian Constitutional Secularism and Its Opponents**

13 Nov.
15 Nov.
Smita Narula, “Law and Hindu Nationalist Movements” (L&H).
Proposition on Behalf of the Appellant ... in the Supreme Court of India, Election Appeal no. 2836 of 1989 [“Re-Appeal on the basis of Hinduism/Hindutwa”].
Other cases (t.b.a.).

THANKSGIVING RECESS

Week XI: Law and Hindu Institutions Today

27 Nov.

29 Nov.
Jayanth Krishnan, “Law and the Hindu Diaspora” (L&H).

Week XII: Law and Religion in Comparative Perspective

4 Dec.

6 Dec.
Lingat, “Conclusion.”

RESEARCH PAPER DUE ON FRIDAY AT 5 pm