

## Legal History I<sup>1</sup>

### Objectives

The study of legal history has developed exponentially in the twentieth century. It is aimed at exploring the history of intellectual developments in law-making in the last two millenniums in both Europe and South Asia. The exploration of Indian legal history is meant to be a study of an independent body of laws belonging to both Hindu and Muslim legal thought in the subcontinent from the Vedic period to the present. Indian legal history may be divided into three periods: ancient or the period of Hindu law, medieval or the period of Muslim law and modern or the period of Common law brought to the India by the British. Such a periodisation is indeed a simplistic one, because in both medieval and modern periods Hindu law has continued to grow as well as retain its integrity in spite of its complexities. However, due to time constraints and for maintaining clarity in dealing with the periods, I propose to deal with the ancient period in the present course, i.e. Legal History [I], which I will offer to 2<sup>nd</sup> year BA LLB students as a compulsory course in the monsoon semester. The Muslim and British period in Indian legal history will be discussed subsequently in Legal History [II] which I will offer to the 2<sup>nd</sup> year BA LLB students in the winter semester.

In Legal History [I], I will give an overview of the history of the Indian legal system in the last two thousand years, especially the multiple histories of Hindu law. I will discuss the emergence of the twin concepts of *dharma* and *rita* in Hindu law and the role of the king in their preservation. One objective of this course is to demonstrate that Hindu law is and will continue to remain a very independent system of laws. It has evolved and developed on its own, although it has borrowed from and contributed in equal measure to other legal systems prevalent in the subcontinent, especially Muslim law. Hindu law, based on its own independent sources, such as *Manusmriti*, *Dharmasastra* and *Arthasastra*, is original and has always provided an alternative mode of judicial governance to the new systems of law-making in the Indian subcontinent, such as Muslim law and Common law. *Manusmriti* is indeed one of the main sources of Hindu law in spite of being one of the most conservative and retrograde source books in Hinduism, with a clear gender bias informing much of its judgments and pronouncements.

This leads us to the second objective of this course, which will be an attempt to retrieve Hindu law from the clutches of reaction and chauvinism and the perception that it is still, for reasons not entirely justifiable, viewed as excessively conservative and misogynist. I will attempt to represent it as a system of laws that have and still has the potential to emerge as being thoroughly progressive and secular in nature, fully capable of bringing within its broad fold diverse cultural and religious influences, such as the groups that broke away from it over the centuries, for instance, the Buddhists, Sikhs, Jains and Brahmos. In discussing the existence of assimilative tendencies in Hindu law I will explain the relationship between *dharma* in the Hindu context and *dhamma* in the Buddhist context and seek to suggest that the body of laws that have come to be called Hindu law is really an assimilation of laws belonging to all these different cultural and political groups, that have over the years adjusted to each others' legal and political imperatives.

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A third objective is to show that Hinduism and its legal system are noted for their flexibility and adaptability to new currents of thought. Hindu legal history amply demonstrates that over the last two thousand years Hindu society and polity and modes of governance have been very adaptive and tolerant to winds of change blowing not only from West Asian countries, but also from countries and civilizational groups belonging further to the west. South Asian historians have shown that the term Hinduism has emerged only in the medieval period. In the period of our study, i.e. the ancient period, dating from before the birth of Gautama Buddha to the arrival of the Muslim rulers in the Indian sub-continent, there was a religion that can be called Brahminism. Through an exchange of ideas with other religions, most notably Islam, and due to the melting down of caste barriers in the early middle ages, Brahminism emerged in a new garb called Hinduism, i.e. the religion of those people who lived in the Indian sub-continent. In this course I will seek to explain the premises and postulates of laws that governed these Hindus, whose emergence as new class of people can be attributed to the rise of plurality towards the end of the ancient period.

### **Syllabus:**

1. **What is History?** [a] The subject matter of history; [b] Knowability of the past; [c] Purpose of history; [d] Relationship between history and its neighbours; [e] Relationship between history and law.
2. **Evolution of Hindu law:** The stages of Hindu law in Indian history.
3. **Dharma:** [a] Definition and meaning of *purusharthas*; [b] Definition and meaning of *dharmas*; [c] Branches of *dharmas*.
4. **Role of the State in Ancient Indian Society:** [a] Early experiments, [b] Tribal polity; [c] Tribal assemblies; [d] Later-Vedic developments, especially the concept of kingship; [e] Royal functions; [f] Councilors and officials; [g] Oligarchies and republics.
5. **Feudalism:** [a] Quasi-feudalism; [b] Feudalism; [c.] Local administration; [d.] Working of the *Mahasabhas*.
6. **Social organizations in ancient India:** [a] Varna system; [b] *Gotra* and *pravara*; [c] *Varna* and *jati*; [d] Family; [e] Status of women.
7. **Economic Structure of Ancient India:** [a] Pastoralism; [b] Peasant phase; [c] Village; [d] Agriculture and stockbreeding; [e] Origin and types of property; [f] Urban centres; [g] Guilds; [h] Trade and finance; [i] Maritime trade.

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