

# Legal History I

## Part I: Hindu law:

### Module 1: Ancient India I: Definition and Relevance of Hindu Law

1. What is History: [a] Subject matter of history; [b] history as antiquarianism; [c] history as a living subject; [d] the purpose of history; [e] the relationship between history and its neighbours; [f] the relationship between history and law.
2. What is Hindu Law: [a] Definition; [b] the relevance of Hindu law in the study of legal systems in India; [c] Reasons for the neglect of Hindu law.

### Module 2: Ancient India II: State in Hindu Law

1. Kingship in Hindu Law: [a] Definition of Kingship; [b] the Royal Function; [c] Councillors and officials; [d] Oligarchies and republics.
2. The Role of the State in Hindu Law: [b] State formation in Ancient India; [b] the Mauryan polity; [c] Polity in the post-Mauryan period; [d] Satavahana Polity; [e] the Kushana Polity; [f] the Gupta Polity; [g] the structure of polity between 700-1200 A.D.; [h] Quasi-Feudalism and Feudalism; [i] Local administration.
3. The Role of the Community in Hindu Law: [a] tribal polity in the Rig Veda; [b] tribal assemblies: Vidatha, Sabha, Samity.
4. The Legal System in Ancient India I: [a] Legal literature, such as the Smritikaras: *Manusmriti*, *Brihaspatismriti*, *Yajnavalkasmriti*, *Naradasmriti*, *Katyayanasmriti*; [b] Sources of Hindu Law; [c] the history and definition of the concept and branches of *Dharma* and *Rajadharma*; [d] Rights and duties in Hindu law; [e] Human Rights; [f] Lawmaking and the law interpreting process; [g] Law and custom; [h] Human law and divine law.

### Module 3: Ancient India III: Legal System in Hindu Law:

- 4.2. The Legal System in Ancient India II: Judicial Institutions; [b] Types of Courts; [c] Courts of the Guilds; [d] Role of the village panchayats; [e] Initiation of the procedures; [f] the trial; [g] Witnesses; [h] Pleaders; [i] Secret Agents; [j] Concluding Stage of the Judicial Procedure; [k] Punishments; [l] the role of the judges in Hindu law.

### Module 4: Ancient India IV: Society and Market in Hindu Law:

5. The Role of Social Institutions in Hindu Law: [a] the Varna System, [b] the Gotra and Pravara; [c] Varna and Jati; [d] the Untouchables [*Panchamas*], [e] Family in Hindu law; [f] Marriage in Hindu law, especially the two laws of inheritance, namely *Mitakshara* and *Dayabhaga*; [g] the Asramas [the four stages of life]; [h] the System of Slavery.
6. The Economic Structure in Hindu Law: [a] Pastoralism; [b] the peasant phase; [c] Village, agriculture and stockbreeding; [d] Origin and types of property; [e] Urban

centres, guilds, trade and finance; [f] Maritime trade; [g] Role of the market; [h] Property rights in Hindu law.

## **Part II: Muslim Law:**

### **Module 5: Medieval India I: Definition, Origin and Schools of Muslim Law**

1. What is Muslim Law: [a] Definition; [b] Origin of Muslim law in India.
2. Sources and Schools of Muslim Law: [a] Sources, character and schools of Islamic law, [b] ancient and more modern schools; [c] Definition of *fiqh* and the role of a *faqih*; [c] Place of the non-Muslims in Muslim Law.

### **Module 6: Medieval India II: State and Polity in Medieval India:**

1. The Administrative apparatus in Muslim Law: [a] Law of succession; [b] the administrative officers; [c] the administrative divisions.
2. Muslim Law during the Sultanate Period: [a] Alauddin Khilji and his reforms, especially his market regulations; [b] Muslim law during the rule of Muhammad bin Tughlaq.
3. Muslim Law during the Mughal Period: [a] Departmental administration under the Mughals, especially the administrative divisions; [b] The Mansabdari system; [c] Akbar's revenue reforms.

### **Module 7: Medieval India III: Society and legal institutions in Muslim Law**

1. Social transformation in Muslim society and the role of Muslim law in it: [a] The Bhakti Movement; [b] Akbar and his social reforms.
2. The Role of Social Institutions in Muslim law: [a] Marriage and the status of women in Muslim law.

### **Module 8: Medieval India IV: Criminal law, the Court System and Judicial Officers in Muslim Law**

1. Criminal law and punishment: [a] Salient features of Islamic criminal law; [b] Judicial organization in Muslim law.
2. The Courts in Muslim Law: [a] The Royal Court; [b] the chief *qazi*, [c] the secular courts; [d] panchayats, especially with regard to defects in judicial administration; [e] punishments; [f] the process of investigation.

## **Course Booklist:**

### **Essential Readings:**

- Baxi, Upendranath, *Towards an Indian Sociology of Law*, [New Delhi, 1986]  
Derret, Duncan M., *Religion, Law and the State in India* [New Delhi, 1999]  
Fyzee, A.A.A., *Outlines of Mohammedan Law*, [Bombay, 1951]  
Jain, M.P., *Outlines of Indian Legal History* [Delhi, 1997]  
Jois, Justice M.Rama, *Legal and Constitutional History of India: Ancient Legal, Judicial and Constitutional System* [Delhi, 2001]  
Lingat, Robert, *The Classical Law of India* [New Delhi, 1998]  
Mathur, Ashutosh Dayal, *Medieval Hindu Law: Historical Evolution and Enlightened Rebellion* [New Delhi, 2007]  
Mensky, Werner, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* [Cambridge, 2006]  
Singh, M.P., *Outlines of Indian Legal and Constitutional History*, [New Delhi, 1969]  
Sreenivasa Murthy, H.V., *History of India Part I For Law Students*, National Law School of India, Bar Council of India, [Eastern Book Company, Lucknow, 2008]

### **Basic Readings:**

- Alschuler, Albert W., *Law without Values: The Life, Work and Legacy of Justice Homes* [Chicago: Chicago University Press, 2000]  
Embree, Ainslie T., (ed.), *Sources of Indian Tradition, Vol 1: From the Beginning to 1800* [New Delhi: Columbia Press, 1988]  
Gordon, Robert W., *The Legacy of Oliver Wendell Holmes, Jr.* [Edinburgh, 1992]  
Guha, Ranajit, *A Rule of Property for Bengal: An Essay on the Idea of Permanent Settlement* [Paris, 1963]  
Habib, Irfan, [ed.], *Medieval India I: Researches in the History of India, 1200-1750*, [New Delhi, 1992]  
Holmes, Oliver Wendell, *The Collected Works of Justice Holmes* [S.Novick, ed.], [Chicago, 1995]  
Posner, Richard A., *The Essential Holmes: Selections from the Letters, Speeches, Judicial Opinions and Other Writings of Oliver Wendell Holmes, Jr.* [Chicago, 1992]  
Pound, Roscoe, *Jurisprudence*, Vol. 1 [St. Paul, Minnesota, 1959]  
Kane, P.V., *History of Dharmasastra*, Vols. 1-5 [Poona, 1968]  
Kangle, R.P., *The Kautilya Arthasastra* [Bombay, 1969]  
Kulshreshtha, V.D., *Landmarks in India Legal and Constitutional History*, [Lucknow, 2005]  
Mahajan, V.D., *Jurisprudence and Legal Theory* [Lucknow, 2003]  
-, -, *Hindu Law: Beyond Tradition and Modernity*, [Delhi: Oxford University Press, 2008; first published in 2003]

Novick, Sheldon M., *Honourable Justice: The Life of Oliver Wendell Holmes*, [Chicago, 1989]

Raychaudhuri, Hemchandra, *Political History of Ancient India*, [New Delhi: Oxford University Press, 2006; seventh impression; first published in 1923]

Rizvi, S.A.A., *The Wonder that was India, Part II: A Survey of the History and Culture of the Indian Sub-Continent from the Coming of the Muslims to the British Conquest, 1200-1700*, [New Delhi, 1993]

Saharay, H.K., *Legal and Constitutional History of India [A Legal Study of the Constitutional Development of India]* [Calcutta, 1985]

Schacht, Joseph, *Introduction to Islamic Law*, [Oxford: Clarendon Press, 1993; first published in 1963]

Sharma, Arvind, *Hinduism and Human Rights: A Conceptual Approach*, [New Delhi, 2007]

Trautmann, Thomas R., *Aryans and British India*, [New Delhi: Yoda Press, 2004]

Qazalbash, Yawer, *Principles of Muslim Law*, Second Edition, 2005, [Allahabad: Modern Law House, 2005]