

Course Title: *Religion and Law*

Proposal:

Course Description

This course investigates the intersection of religion with modern law. It investigates the question that how secular courts encounter religious or mythical question which is foundationally disavowed by modern institutions. The question of religion is understood as relegated to ‘private sphere’ in classical liberal philosophy. This course questions such private public dichotomy with respect to the question of religion. It argues that in ex-colonial societies like India, the courts need to work through and engage with the ‘religious’ as any other approach only leads to its repression and is unfruitful. It demonstrates how such an approach is effective in struggle against alliance of religion with nation-state project that has seen a resurgence in the contemporary times.

Teaching Methodology

The teaching methodology will be interdisciplinary. The elective will use various texts throughout the semester from the disciplines of history, critical theory, philosophy, literature, religious studies, theology, and storytelling. In the study of legal texts, the principal focus is on the judgments of the Supreme Court of India. The choice of judicial verdicts as the major archive is premised on the assumption that legal interpretation provides a glimpse into the tradition of —living law. This elective understands law as not merely constituted and inscribed in notifications, rules, statutes, codes or the Constitution but as something protean which reformulates itself continually when confronted with new situations that arise with changing times.

The elective borrows from the historical method proposed by Quentin Skinner in his preference for context – social, political, historical and biographical – in opposition to —text without context. But being unmindful of the context, in this elective, we will try to understand the ideological underpinnings of the judicial discourse through —intertextual contexts within judicial precedents. This method helps to trace interpretive patterns within the text of judgments as they interpret legal provisions. This approach of “moderate contextualism” is what I have adopted to read legal cases. Technically, the method of teaching will be based on classroom lectures and ensuing discussions. The lectures and discussions will be based on readings circulated in advance.

Pre-requisites

None

13 weeks of lecture design

Week I: Introduction to Religion, Mysticism and Theologico-political

Broad introduction to the course

Week II: Deconstruction and religion: *Another Theology*

This week will explore the theological underpinnings of deconstruction.

Week III-VI: Ram Janam Bhumi Babri Masjid Controversy

Ram Janam Bhumi Babri Masjid Controversy

In these weeks we will dwell upon the Ayodhya – Ram Janambhoomi controversy. This controversy is central to the Indian republic as it arose (in the Indian courts) immediately after the partition of the country. The history of the dispute goes back to nineteenth century. In this module we will trace the history. Along with the Supreme Court judgment, the effort will be to acquaint the students of Law and Religion with the dispute historically and theoretically. Some responses to the judgment by prominent writers will be discussed. The primary objective of this module is to appreciate the controversy in legal terms without abdicating the historical context and sociological undertones of the issues.

Week VII-VIII: Alternative Imaginations of Vedantic History: Rethinking ‘Time’ and ‘Identity’

The inquiry will shift to the alternative registers of thinking “religion”. By alternative we mean to the other side of liberal or Eurocentric imagination. Primarily we will turn to the Advaita Vedānta (non-dualism), an early philosophical tradition of Hindu canon. This non-dual imagination dates to various thinkers (Yājñavalkya, 700 BCE) and texts (*śrīmadbhagavadgītā*). However, its most dominant formulation appears in the writings of Ādi Śaṅkarācārya, 8 CE). Ratna Kapur chapter will be the pivot of our discussion on this topic. However, in the lectures we will critique and develop the idea forward.

Week IX-X: Religious Symbols & Speech during Elections

Religious Symbols & Speech during Elections

Lectures in this module will evaluate s. 123 a unique Indian provision in *The Representation of Peoples’ Act, 1951*. Section 123 (3) prohibits the use of, *inter alia*, ‘religious appeal’ during the election campaign by any candidate. The discussion will highlight the specific Indian historical context of this legal prohibition. A similar prohibition may offend the constitutional free speech clause in a country like United States. The aim of this module is to show how the Indian courts delve in interpreting religion and significance of religious symbolism.

Week XI-XII: Eternal Return: Memory & Identity

In this module, we will investigate how memory plays an important part in thinking ‘religion’ politically as well as conceptually. The idea of past or history is central to the Ayodhya controversy in India. Memory boom has been central to much of the Holocaust literature. On the religious conceptual register, the notion of ‘Dhyan’ (meditation) or Zen has associations with memory. So is there a centrality of memory as legal precedent in modern law.

Week XIII: Cow and Constitutionalism

This module looks at the debate of cow protection legislations arising from the constitutional mandate for protection of the cow in Article 48. It charts out the coexistence of the sacred (myth) and secular (modernity) infused in the constitutional provision through the debates of the Constituent Assembly and the interpretive labour of the Supreme Court. It traces the trajectory of the Supreme Court’s reasoning and the way in which it has dealt with the issue.

10 Essential Readings

1. Jacques Derrida, *THE DEATH PENALTY Vol. I* (Chicago, Univ. of Chicago Press, 2014). [Session 1]
2. RATNA KAPUR, *GENDER ALTERITY & HUMAN RIGHTS: FREEDOM IN A FISHBOWL* (2018: London, Edward Elgar) Prologue, *xi-xiii* & Chapter 7, 210-238.
3. JONARDON GANERI, *THE LOST AGE OF REASON: PHILOSOPHY IN EARLY MODERN INDIA 1450-1700* (2011: New York, Oxford University Press) Introduction, 1-10 & Chapter 2, 22-30.
4. Edward Said, ‘Freud and the Non-European’ (Verso, London, 2004).
5. Upendra Baxi, “Award of Five Acres for Masjid in Ayodhya is an Effort to do Complete Justice” *The Indian Express*, November 12, 2019.
6. Margaret Davies, ‘The Future of Secularism: A Critique’, Nadirsyah Hosen and Richard Mohr (eds.), *LAW AND RELIGION IN PUBLIC LIFE* (New York: Routledge, 2011).
7. ROHIT DE, *A PEOPLE’S CONSTITUTION: THE EVERYDAY LIFE OF LAW IN INDIAN REPUBLIC* (Princeton University Press, New Jersey, 2018) Chapter 2.
8. Amit Bindal, ‘Constitutionalism and the sacred cow: the secular mythology of the Indian Supreme Court (2023) Oxf. Univ. Comm. L. J.
9. JEFFERY J. KRIPAL, *THE SUPERHUMANITIES: HISTORICAL PRECEDENTS, MORAL OBJECTIONS, NEW REALITIES* (2022, Univ. of Chicago Press). SELECT EXCERPTS
10. Karl H. Potter, ‘Advaita Vedanta up to Shankar and his Pupils’, *Encyclopedia of Indian Philosophies, Vol. III* (2015, Motilal Banarasidas)