Case Study #1: Indian Family Law

Read the sections on Hinduism and Islam in our text and the attached article from the Association for Practical and Professional Ethics. You should also read the Malhotra article “Family Law And Religion -The Indian Experience,” published in the International Association of Matrimonial Lawyers Law Journal¹ and, you can preview the first chapter from Agrawal’s book, Family Law in India, Kluwer Law International, 2010 on Google books.² Once you have gotten sufficient background, answer the following questions. Focus solely on Hindu & Muslim issues (disregard the Christian aspect).

The completed assignment should be two pages long, using one inch margins, 12 pt. fonts and single spacing. This study is worth a total of 90 points. Your completed assignment is due on the 27th of March.

Keep scrolling down after the background for further instructions, general suggestions, grading rubrics, and a sample completed assignment!

Answer the following questions thoughtfully and as completely as space allows:

1. **What are the core relevant philosophical issues for this case?** (I’m giving these to you!)
   a. Does justice require uniformity in protecting the social, political and economic rights of individuals regardless of their religion & culture?
   b. Can and should justice in India be defined in a secular fashion, independently of religious & cultural diverse beliefs?

2. **What further research information would assist you in formulating a response to these issues?** Pose in question form. For this assignment, you do not have to do the research but you need to raise the kind of questions that would drive such a project. These should be research questions and as such should be concrete and

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answerable. Think about facts that, if known might help determine how one should or could respond to the issues identified. This is where the attached article and suggested references should be especially useful. (20 points)

3. **India is currently in the long process of evaluating this section of their laws.** Pending the acquisition of the research information, what recommendations would you give to the Indian government as they review this body of law? Be sure to provide at least one citation each from primary Hindu and Islamic texts to support your answer (a primary source *does not* include secondary commentary from Koller. You may use works of Gandhi, Sri Aurobindo and Mohammed Iqbal from Chapter 13 in our text). In citing the quotes, all you need do is indicate the page from the text or if from the Sourcebook, just indicate “Sourcebook” and then indicate the page number (see example below). If the quote comes from any other source besides our text or the Sourcebook, then full citation must be supplied. Note that this question carries the highest weight in points. (50 points)

4. **Identify some objections or counter considerations to your proposed solution identified in the third section.** In this section you should be identifying counter-arguments to your proposed solution. (10 points)

5. **Reply to the counter-considerations identified in #4.** It is not sufficient to just raise objections – one must also think about possible responses to those objections. (10 points)
Indian Family Law

India is among the world’s largest nations, is home to the second largest population (over 1 billion people), and has incredible religious diversity. Article 44 of the Indian Constitution requires a uniform civil code throughout India, but at present much of Indian civil law is based on traditional case law. A key element of Indian civil law includes the separation of some elements of personal or family law (marriage, divorce, child custody, inheritance, alimony, etc.) into three separate streams of jurisprudence: Hindu, Muslim, and Christian. The effect of this tradition is that Hindus, Muslims, and Christians are each governed by a distinct set of legal rules with respect to civil family institutions, though they share a criminal code which also affects family life.

During the English colonial period of India’s history, Warren Hasting, a British legislator who helped mold India’s civil justice system, attempted to integrate cultural sensitivity into India’s family law system. Hasting acknowledged that Hindu and Muslim traditions were integral to Indian identity and spearheaded the integration of traditional religious texts and leaders into the Western legal system. Arguably, Hasting’s aim was to acknowledge and respect the indigenous traditions of India. Similarly, feminist scholars in the West have argued that impartial justice is an inappropriate standard in the evaluation of family affairs, preferring more personal standards of care.

The Indian legal system’s sensitivity to religious faith stands in stark contrast to the legal system of the United States, which is ostensibly religiously neutral. The U.S. system is inspired by a longstanding western ideal of impartiality in the administration of justice represented by the Greek Goddess, Themis, blindfolded holding a sword in one hand and scales in the other. In this tradition, impartiality is thought to be the best method for reaching justice. As a result, in the U.S. personal legal disputes such as marriage and divorce are governed by a secular legal system insulated from the various religious traditions widely affiliated with personal and family matters.

For decades, women and women’s groups in India and abroad have objected to the use of traditional religious laws such as Sharia and Dharmaśāstra. Under Sharia law, Muslim women have been denied divorce, child custody, and maintenance because of misogynistic gender norms within traditional Islam. For example Shah Bano, a 62-year-old Muslim woman, was divorced by her husband and was initially awarded maintenance or alimony payments available to women of other faiths under the Indian criminal code. However, subsequent legislation and courts held

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3 Please note that you are not limited to the background offered – you may feel free to use any credible/reliable source as evidence for your arguments. Please provide full citation for all research.

that as a Muslim woman, Bano was only eligible for three months of alimony after which it was expected that she would be cared for by relatives.  

I. **Focus & Relevance**
Be sure that you understand the assignment and have understood each question. Your responses should be focused on the questions I’ve asked & not the questions you wish I had asked! It is important to weed out all irrelevant considerations or concerns that an economist or historian or political scientist might have but are not strictly speaking, ethical concerns. Look at the completed sample case study for some ideas.

II. **Format**
You should copy & paste or re-type only the first part of the question (the portion in bold type). Please number each response corresponding to the assigned questions. Papers should be 2 pages, using 12pt. fonts and 1 inch margins all around. There should be an extra space separating your responses to each question. Again, please reference the completed sample case study and follow the format exemplified.

III. **Tone/Voice**
Ever since George Carlin pointed out that “using your own words” would result in a private and hence meaningless expressions, I’ve had to give up on the phrase, however a certain degree of originality is still important. Your task is to explain a concept as if you were the Teaching Assistant for this class. If you simply repeat the text or my lecture, you haven’t helped your imaginary student. You need to clarify the argument/concept in a way that demonstrates that you really understand it and can express the same ideas in a way that is different than has already been explained by the text or by me.

IV. **Adequate and Balanced Defense of Your Argument**
In question three, you are asked to make an argument using the theories & traditions we’re studying. You should be clear in your thesis early in the paragraph. It is important to ensure that your application is consistent with the

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6 Please note that these guidelines are for my class assignments. Individual instructors may have other format preferences and you should consult with your teacher for the details before completing your assignment.
philosophers’ theories and that you support that application with a wellthought-out argument. An argument requires not only a conclusion but also a reasoned defense. Your defense should reflect a good understanding of not only the theories we have studied but also of the context of the case.

V. Quotes & Citations
Quoting is a good way of supporting your interpretation of an argument or theory. Relevance to your response and to the question asked is critical. Quotes can be edited but be careful not to take the quote out of context, thus altering the intent of the author. The length of the quote must be appropriate to the length of the assignment: short papers require shorter quotes. In this assignment, in addition to any quotes used from research or the referenced sources listed in the prompt, I am requiring at least one quote from a Hindu text and one from an Islamic text. These quotes must come from the primary sources, neither from the secondary commentary of the author of our text nor from my lectures or power points. If they come from our assigned text or the optional Sourcebook, quotes need only be cited with “Text, page, xx” or “Sourcebook, page yy” (xx or yy should be filled in with the appropriate page where the quote was found). Remember, more is not always better; your response should not just become a parade of quotes.

VI. Length
Part of the criteria for success is efficient use of the space allowed. If you write a single sentence for a one/third page assignment, you have not satisfied this criterion. However, this is not an invitation to use the additional space for stream-of-consciousness or irrelevant information not pertinent to the assigned issue. If you are having difficulties with the length, it is usually because you have not recognized or developed sufficiently the various issues involved. Conversely, if your draft is too long, you need to whittle it down to just the relevant essentials, perhaps editing out the anecdotes or redundancies; more is not always better! I am very willing to help if you submit drafts sufficiently before the due date.

VII. Rough Drafts
I have invited all of you to bring rough drafts of your completed assignment in for a preview reading. I do not offer re-writes after I have graded your papers. Rough drafts are brought in during my office hours or by appointment and I only read them in person - with the student present. Please do not submit rough drafts electronically nor should you drop them off in my box.

If your work satisfies my criteria (see rubrics following) for “A” level work, and if the draft is formatted and printed in final draft format, I will sign off on the draft, guaranteeing those students somewhere between 100% and 90% of the points possible for this assignment. I will read no rough drafts within 24 hours prior to the due date.

Keep scrolling down for rubrics and a sample completed assignment!
Standards (Rubrics) for Grading Case Studies

The excellent paper (100-90% of points) will exhibit the following qualities:

Question 2:
- All items are listed as normatively neutral questions. No immediate bias is evidenced.
- All critical questions have been raised given the space allowed.
- Questions are relevant to the case and to the issues identified in the first section and would be likely to be relevant to the philosopher/theory being applied to the case in the third section.
- Questions are likely to drive effective and informative research. The questions should be answerable (at least in terms of probabilities or projections backed up with historical data).

Question 3:
- A clear thesis statement is made at the beginning of the response.
- Argument is focused on the key issues and is clear and well organized.
- Answer is texturally correct and consistent with the philosopher’s theory referenced.
- Argument is effectively supported with relevant reasons.
- Argument is effectively supported with quote from primary work & quotes are cited properly.
- Argument is balanced and includes counter-considerations that would weigh the final position.

Question 4:
- Core critical barriers are identified.
- All critical barriers raised are reflective of real-world practical considerations.

Question 5:
- All barriers raised in the fourth section have responses.
- Solutions proposed should be reasonably and humanly applicable (e.g. not asking for divine intervention).
- Solutions proposed should be well supported given the space allowed.

Overall Impressions:
- Study presents evidence of a thoughtful and deliberative approach.
- Language is clear and explanations/arguments are original
- Effective use has been made of space allowed
- Study reflects careful consideration of background material provided.
- There is good logic flow from one response to another – issues raised in earlier questions must link logically with responses to later questions.
- The study is scholarly, with effective use of the essays and relevant philosophical theory. All quotes and references are properly cited.
- Assignment format has been followed.
Good (89-80% points)
The good paper will demonstrate all the above qualities but perhaps to a lesser degree or, will demonstrate some of the above qualities excellently, but not all of the qualities will be presented at a consistently high level.

Satisfactory (79-70% points)
The satisfactory paper will present all of the above qualities but not as strongly as the good paper or, some qualities may be stronger with some not as strong. Insight is not usually present.

Needs Work (69-60% points)
This paper is weak on many of the desired qualities.

Really Needs Work – Pretty Much Unacceptable (59-0% points)
This paper presents few if any of the desired qualities.

Keep scrolling down for a sample completed assignment!

Context for the Sample Case:
The sample case asked students to look at the working conditions at the Foxconn plants in China. Foxconn is the largest contract electronics manufacturer in the world, whose clients include Apple, Hewlett-Packard and Microsoft. In 2010, there was a wave of suicides by distraught workers at several of Foxconn’s Chinese sites. The company, which is controlled by Hon Hai Precision Industry of Taiwan, has been accused of forcing workers to endure long hours and harsh working conditions for little pay.

On Jan 10, 2012, Rebecca Greenfield of The Atlantic Wire wrote, “As American consumers ogle over shiny new gadgets at this week’s Consumer Electonic's Show, the workers that make those products are threatening mass suicide for the horrid working conditions at Foxconn. 300 employees who worked making the Xbox 360 stood at the edge of the factory building, about to jump, after their boss reneged on promised compensation, reports English news site Want China Times. It's not like this is the first time working conditions at Foxconn have made news outside China. But iPhone and Xbox sales surely haven't lagged in the wake of those revelations and neither Apple nor Microsoft has done much of anything to fix things. Instead of the raise they requested, these workers were given the following ultimatum: quit with compensation, or keep their jobs with no pay increase. Most quit and never got the money. That's when the mass suicide threat came in. The incident actually caused a factory wide shutdown, reports Record China.”

Sample Case Study: Confucius, Apple & Foxconn

1. **What are the relevant ethical considerations for this case?**
   a. Do the Chinese and American governments and companies have an obligation to maintain safe and humane working conditions?
   b. How should Chinese workers respond to their working conditions?
   c. What role should consumers play in ensuring the safety and comfort of the workers who produce their products?

2. **What sort of further information would assist you in formulating a response to these issues?**
   a. The article cited that a significant number of the factories failed their audits in areas of work hours, hazardous substance management and employee safety; how many workers have been negatively or harmfully impacted by Foxconn’s policies and to what degree?
   b. How many people worldwide benefit and to what degree from Apple (& other companies) products produced at Foxconn’s plant?
   c. Do the workers have reasonable alternatives for employment other than Foxconn?
   d. What would it cost to upgrade the work environment to acceptable levels and how would the cost of such upgrades affect Foxconn, Apple and Apple consumers? Could this result in the reduction in workforce or even closure of the Shenzhen and Wuhan Foxconn plants?
   e. As Foxconn moves production to other sites in central and western China, how many workers are displaced by robots and are these workers able to find alternative employment? Are the new human workers in the central and western China plants treated to better working conditions than those who worked in Shenzhen?

3. **Pending the acquisition of this information, how do you think Confucius would respond to this case?**
   It seems clear that Confucius would not support the actions of Foxconn nor would he support the current relationship between Foxconn and Apple (as well as other companies including Microsoft, Hewlett Packard, etc.). Though Confucius is no defender of individual liberties, there is little virtue in cheating and abusing the workers and threatening their welfare. Both the Chinese and American governments need to take the role of the good emperor and set the tone of wise leadership, demonstrating a commitment to the welfare of their people. In the Analects, Confucius shows a concern for workers when he admonishes the leaders to “employ the labour of the common people only in the right seasons.” (Sourcebook, p.409) The executives and the management of Foxconn, Apple and other associated corporations should fulfill the role of the _junzi_ and should be less interested in profit and more interested in the welfare of the people and the state. By punishing the workers who demand their due, Foxconn management has demonstrated neither _ren_ (benevolence) nor _li_ (propriety). Leadership is supposed to be most effective when the people are inspired and have respect for those above them. Again from the Analects, “Guide them by edicts, keep them in line with punishments and the common people will stay out of trouble but will have no sense of shame. Guide them by virtue, keep them in line with the rites, and they will, besides having a sense of shame, reform themselves.” (Sourcebook, p. 410) It would appear that increased employment and exports are good for
China and should be good for the Chinese people. Sadly, the means of securing the former seem to be at the expense of the latter.

Secondly, it is less clear what Confucius would say about worker protests other than he warned what would come of poor management based on greed. “If one is guided by profit in one’s actions, one will incur much ill will.” (Sourcebook, p.412) He did argue that one ought to “repay an injury with straightness.” (Sourcebook, p.418) The argument that terrible work conditions are better than starving presents an often tragically real but logically false dilemma; it is better to have humane work conditions for all than to force the choice between abusive work conditions or starving. I think in the face of such abuse, the workers should continue to work with the press and other media to call attention to their plight – perhaps a sense of shame will cause a reformation in their employers. I do not believe that Confucius would support violence – either directed towards others or to oneself.

Finally, though it would appear that consumers benefit from access to affordable electronics, Apple (and other companies') shareholders and its employees benefit from their use of low-cost labor thus higher profit expectations and the employees at the Foxconn Wuhan plant benefit from employment – over unemployment, it is ultimately a dangerous path to base an idea of happiness on material matters. Wealth is good but only if it is gotten in the right way. (Sourcebook, p.411) Confucius’ goal was to promote human harmony, a universal excellence in virtue and to resolve the kind of corruption he saw in his times. Inhumane working conditions leading one to become sufficiently desperate enough to commit suicide rather than submit to such abuse cannot be considered compatible with human excellence and excellence should not be limited by geo-political boundaries. Individual responsibility cannot be surrendered to corrupt external forces. Foxconn must be made to reform employment practices, and consumers worldwide can all play a role in effecting this reformation by refusing to purchase products that arise from abusive conditions.

4. Identify some objections or counter considerations to your proposed solution identified in the third section.
   a. China does not currently have a culture of employee Unions or employee activism – there are few if any venues in China for employees to collectively bargain and demand safe working conditions.
   b. Apple and other corporations contracting with Foxconn have very little direct power in the policies of Foxconn or in Chinese labor practices beyond taking their business elsewhere. China has become a dominant economic force and is a major market for Apple products.
   c. It is hard for the ordinary consumer to become fully informed about various labor practices, about the origin of goods – in part due to deceptive labeling practices, and importantly, in some markets it is nearly impossible to find alternate products that have not been produced under abusive conditions.

5. Reply to the counter-considerations identified in #4.
   a & b. As more attention is drawn to abuses, there will be sufficient economic and diplomatic pressure on governments to create and enforce safe worker practices worldwide. Further, Apple does have some alternatives, including moving plants back to the US where OSHA conditions are ensured. The NY Times reported that in terms of per hour productivity, US workers trail only Ireland and Norway.8
   c. New computer applications are being written to grade companies both in terms of worker’s treatment and environmental friendliness. Watchdog agencies do a good deal of work for us all.9 We can download these apps, use them, talk about the problems and share our results with others very effectively.

8 http://economix.blogs.nytimes.com/2011/01/26/even-more-productive-than-americans/
9 http://www.guardian.co.uk/environment/2011/feb/04/app-ethical-shopping