

Washington & Lee University
Law 314 / Rel. 335
Fall 2007

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:

Robert Lingat, *Classical Law of India* (U. Cal. P., 1974).

Donald R. Davis, Jr., *The Boundaries of Hindu Law* (Torino: CESMEO, 2004).

Timothy Lubin, Jayanth Krishnan, and Donald R. Davis, Jr., eds., *Law and Hinduism: An Introduction* (Cambridge U.P., draft) (L&H).

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](#))

Winnifred Sullivan and Robert Yelle, “Law and Religion: An Overview,” *Encyclopedia of Religion*, vol. 8, 2nd ed. (Detroit: Macmillan Reference USA, 2005), pp. 5325–5332.

Richard Lariviere, “Law and Religion in Hinduism,” *Encyclopedia of Religion*, vol. 8, 2nd ed. (Detroit: Macmillan Reference USA, 2005), pp. 5343–5347.

Lingat, *The Classical Law of India*, pp. 28–51.

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).

Ludo Rocher, “Law Books in an Oral Culture: The Indian Dharmaśāstras,” *Proceedings of the American Philosophical Society* 137(2), 1993, pp. 254–267.

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-Gṛhya-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.

Olivelle, selections from *Manu’s Code of Law* (New York: Oxford UP, 2005), pp. 3–18, 37–50, 62–70.

27 Sept.

Olivelle, *Manu*, pp. 154–155, 160–161, 167–205.

T.b.a.

Week IV: The Classical Codes of Dharmaśāstra: Punishment and Expiation

2 Oct.

Lingat, pp. 232–256.

Lubin, “Punishment and Expiation: Overlapping Domains in Brahmanical Law,” *Indologica Taurinensia* 33, 2007.

4 Oct.

Olivelle, *Manu...*, pp. 216–229.

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.

Legal documents from the *Lekhapaddhati* (*Manual of Documents*, 12–14th c. Gujarat).

Translated excerpts of from the legal records (*daftars*) of the Maratha state (17th c.).

Ch. 89 of the *Mulukī Ain* (Nepali ‘Royal Law Code’) of 1854, “On the Duties of the Dharmādhikārin [Religious Judge],” trans. by Axel Michaels in *The Price of Purity* (Torino: CESMEO, 2005).

Week VII: Hindu Law in the Colonial Era

23 Oct.

Rosane Rocher, “The Creation of Anglo-Hindu Law” (L&H).

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

Short selections translated from: *Jugements du tribunal de la Chauderie de Pondichéry, 1766–1817*, edited by Jean-Claude Bonnan (Pondicherry: Institut français de Pondichéry/EFEO, 1999).

25 Oct.

Ludo Rocher, "Indian Response to Anglo-Indian Law." *Journal of the American Oriental Society* 92.3 (1972): 419–424.

Derrett, J. Duncan M. 1961. "The Administration of Hindu Law by the British." *Comparative Studies in Society and History* 4.1: 10–52.

Supplementary source:

Ludo Rocher, "'Lawyers' in Classical Hindu Law," *Law and Society Review* 3: 383–402.

Week VIII: The Constitution of 1950 and the Indian 'Personal Law' Code

30 Oct.

The Indian Constitution of 1950 (excerpts).

Alexander Fischer, "Hinduism and the Constitution of India" (L&H).

Marc Galanter, "The Aborted Restoration of 'Indigenous' Law in India," *Comparative Studies in Society and History* 14:53-70 (1972).

1 Nov.

Rina Verma Williams, "Hindu Law as Personal Law" (L&H).

The Hindu Marriage Act of 1955.

Günther-Dietz Sontheimer, "Recent Developments in Hindu Law," *International and Comparative Law Quarterly Supplement* 8: 32–45 (1964).

Week IX: Legal Progressivism

6 Nov.

Anand Yang, "The Criminalization of Disapproved Hindu Practices" (L&H).

Laura Dudley Jenkins, "Communities, 'Reservations' and Women" (L&H).

8 Nov.

The Commission of Sati (Prevention) Act, 1987 (No.3 of 1988).

Lata Mani, "Contentious Traditions: The Debate on Sati in Colonial India," *Cultural Critique* 7: 119–156 (1987).

Paul B. Courtright and Namita Goswami, "Who Was Roop Kanwar? Sati, Law, Religion, and Postcolonial Feminism," in Gerald James Larson, ed., *Religion and Personal Law in Secular India: A Call to Judgment* (Bloomington: Indiana University Press, 2001).

Week X: Indian Constitutional Secularism and Its Opponents

13 Nov.

Amartya Sen, "Secularism and Its Discontents," in *The Argumentative Indian*.

Marc Galanter, "Hinduism, Secularism and the Indian Judiciary," *Philosophy East & West* 21: 467–487.

Marc Galanter, "Secularism East and West" (review article on Smith, *India as a Secular State*), *Comparative Studies in Society and History* 7: 133-59 (1965). [Reprinted in V.K. Sinha (ed.), *Secularism in India*. Bombay: Lalvani, 1968; R. Bhargava, ed., *Secularism and Its Critics*. New Delhi: Oxford University Press, 1998].

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.

Richard Davis, "Temples, Deities, and the Law" (L&H).

C.J. Fuller, "Hinduism and Scriptural Authority in Modern Indian Law," *Comparative Studies in Society and History* 30: 225–248 (1988).

Marc Galanter, "Temple-Entry and the Untouchability (Offences) Act, 1955," *Journal of the Indian Law Institute* 6.2–3: 185–195 (Apr.–Sept. 1964).

29 Nov.

Jayanth Krishnan, "Law and the Hindu Diaspora" (L&H).

Robert D. Baird, "Traditional Values, Governmental Values and Religious Conflict in Contemporary India," *Brigham Young University Law Review* 1998, 337–357.

Week XII: Law and Religion in Comparative Perspective

4 Dec.

Gary Jacobsohn, *The Wheel of Law* (Princeton, 2005) (selections).

6 Dec.

Winifred Sullivan, "Comparing Religions, Legally" (The 57th John Randolph Tucker Lecture, September 23, 2005), Washington and Lee School of Law.

Lingat, "Conclusion."

RESEARCH PAPER DUE ON FRIDAY AT 5 pm