

Cambridge University Press

978-0-521-88786-1 - Hinduism and Law: An Introduction

Edited by Timothy Lubin, Donald R. Davis and Jayanth K. Krishnan

Frontmatter

[More information](#)

HINDUISM AND LAW

Covering the earliest Sanskrit rulebooks through to the codification of “Hindu law” in modern times, this interdisciplinary volume examines the interactions between Hinduism and the law. The authors present the major transformations to India’s legal system in both the colonial and postcolonial periods and their relation to recent changes in Hinduism. Thematic studies show how law and Hinduism relate and interact in areas such as ritual, logic, politics, and literature, offering a broad coverage of South Asia’s contributions to religion and law at the intersection of society, politics, and culture. In doing so, the authors build on previous treatments of Hindu law as a purely text-based tradition and, in the process, provide a fascinating account of an often neglected social and political history.

Timothy Lubin is Professor in the Department of Religion, and Lecturer in Law and Religion in the School of Law at Washington and Lee University. His publications concern classical Hindu ritual and doctrine, and their relation to legal precepts and practices in India.

Donald R. Davis, Jr., is Associate Professor in the Department of Languages and Cultures in Asia at the University of Wisconsin, Madison. His previous publications include *The Spirit of Hindu Law* (2010) and *The Boundaries of Hindu Law: Tradition, Custom and Politics in Medieval Kerala* (2004).

Jayanth K. Krishnan is Professor of Law and the Charles L. Whistler Faculty Fellow at Indiana University, Bloomington, Maurer School of Law. Krishnan’s academic interests focus on the legal profession and law-and-globalization, with a special emphasis on how these areas intersect in India. His publications on these subjects have appeared in reputed law reviews and peer-reviewed journals.

Cambridge University Press

978-0-521-88786-1 - Hinduism and Law: An Introduction

Edited by Timothy Lubin, Donald R. Davis and Jayanth K. Krishnan

Frontmatter

[More information](#)

HINDUISM AND LAW: AN INTRODUCTION

EDITED BY

TIMOTHY LUBIN

Washington and Lee University

DONALD R. DAVIS, JR.

University of Wisconsin, Madison

JAYANTH K. KRISHNAN

Maurer School of Law, Indiana University, Bloomington



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press

978-0-521-88786-1 - Hinduism and Law: An Introduction

Edited by Timothy Lubin, Donald R. Davis and Jayanth K. Krishnan

Frontmatter

[More information](#)

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore,
São Paulo, Delhi, Dubai, Tokyo, Mexico City

Cambridge University Press
The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org

Information on this title: www.cambridge.org/9780521887861

© Cambridge University Press 2010

This publication is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without the written
permission of Cambridge University Press.

First published 2010

Printed in the United Kingdom at the University Press, Cambridge

A catalog record for this publication is available from the British Library

Library of Congress Cataloging in Publication data

Hinduism and law : an introduction / [edited by] Timothy Lubin, Donald R. Davis, Jr.,
Jayanth K. Krishnan.

p. cm.

ISBN 978-0-521-88786-1 (hardback)

1. Hindu Law. 2. Hindu law – History – Sources. 3. Law – India – History.
4. Hinduism. I. Lubin, Timothy, 1964– II. Davis, Donald R., Jr., 1970– III. Krishnan,
Jayanth K., IV. Title.

KNS122.H564 2010

349.54–dc22

2010015147

ISBN 978-0-521-88786-1 Hardback

ISBN 978-0-521-71626-0 Paperback

Cambridge University Press has no responsibility for the persistence or
accuracy of URLs for external or third-party internet websites referred to
in this publication, and does not guarantee that any content on such
websites is, or will remain, accurate or appropriate.

Cambridge University Press

978-0-521-88786-1 - Hinduism and Law: An Introduction

Edited by Timothy Lubin, Donald R. Davis and Jayanth K. Krishnan

Frontmatter

[More information](#)*Contents*

<i>List of contributors</i>	<i>page</i> vii
<i>Acknowledgements</i>	x
<i>Chronology</i>	xi
<i>Abbreviations</i>	xiv
<i>Map</i>	xvi
Introduction	
<i>Timothy Lubin, Donald R. Davis, Jr., and Jayanth K. Krishnan</i>	I
PART I HINDU LAW	15
1 A historical overview of Hindu law	
<i>Donald R. Davis, Jr.</i>	17
2 Dharmaśāstra: a textual history	
<i>Patrick Olivelle</i>	28
3 The practice of classical Hindu law	
<i>Axel Michaels</i>	58
4 The creation of Anglo-Hindu law	
<i>Rosane Rocher</i>	78
5 Marriage and family in colonial Hindu law	
<i>Rachel Sturman</i>	89
6 Hindu law as personal law: state and identity in the Hindu Code Bills debates, 1952–1956	
<i>Rina Verma Williams</i>	105
PART II LAW IN ANCIENT AND MEDIEVAL HINDU TRADITIONS	121
7 Hindu jurisprudence and scriptural hermeneutics	
<i>Lawrence McCrea</i>	123

Cambridge University Press

978-0-521-88786-1 - Hinduism and Law: An Introduction

Edited by Timothy Lubin, Donald R. Davis and Jayanth K. Krishnan

Frontmatter

[More information](#)

vi	<i>Contents</i>	
8	Indic conceptions of authority <i>Timothy Lubin</i>	137
9	<i>Śūdradharmā</i> and legal treatments of caste <i>Ananya Vajpeyi</i>	154
10	Law, literature, and the problem of politics in medieval India <i>Whitney M. Cox</i>	167
11	Hindu law as performance: ritual and poetic elements in <i>Dharmaśāstra</i> <i>Robert A. Yelle</i>	183
	PART III LAW AND MODERN HINDUISM	193
12	Temples, deities, and the law <i>Richard H. Davis</i>	195
13	In the divine court of appeals: vows before the god of justice <i>Aditya Malik</i>	207
14	Contemporary caste discrimination and affirmative action <i>Laura Dudley Jenkins</i>	215
15	Law and Hindu nationalist movements <i>Smita Narula</i>	234
16	Legally and politically layered identities: a thumbnail survey of selected Hindu migration patterns from South Asia <i>Jayanth K. Krishnan</i>	252
	<i>Glossary</i>	266
	<i>Bibliography</i>	271
	<i>Index</i>	298

Cambridge University Press

978-0-521-88786-1 - Hinduism and Law: An Introduction

Edited by Timothy Lubin, Donald R. Davis and Jayanth K. Krishnan

Frontmatter

[More information](#)

List of contributors

EDITORS

TIMOTHY LUBIN is Professor in the Department of Religion, and Lecturer in Law and Religion in the School of Law at Washington and Lee University. His publications concern classical Hindu ritual and doctrine, and their relation to legal precepts and practices in India. He is at work on a volume entitled *Authority, Law, and the Polity in Premodern India*.

DONALD R. DAVIS, JR., is Associate Professor in the Department of Languages and Cultures in Asia at the University of Wisconsin, Madison. His previous publications include *The Spirit of Hindu Law* (2010) and *The Boundaries of Hindu Law: Tradition, Custom and Politics in Medieval Kerala* (2004).

JAYANTH K. KRISHNAN is Professor of Law and the Charles L. Whistler Faculty Fellow at Indiana University, Bloomington, Maurer School of Law. Krishnan's academic interests focus on the legal profession and law-and-globalization, with a special emphasis on how these areas intersect in India. His publications on these subjects have appeared in reputed law reviews and peer-reviewed journals.

CONTRIBUTORS

WHITNEY COX is Lecturer in Sanskrit at the School of Oriental and African Studies, University of London. His research interests include Sanskrit and Tamil literature and literary theory, and the history of Śaivism. He is at present working on a reinterpretation of the accession of the Cola emperor Kulottuṅga I.

RICHARD H. DAVIS is Professor of Religion and Asian Studies at Bard College. His most recent books are *A Priest's Guide for the Great*

Cambridge University Press

978-0-521-88786-1 - Hinduism and Law: An Introduction

Edited by Timothy Lubin, Donald R. Davis and Jayanth K. Krishnan

Frontmatter

[More information](#)

viii

List of contributors

Festival: Aghorasiva's Mahotsavavidhi (2009) and *Global India circa 100 CE: South Asia in Early World History* (2010).

LAURA DUDLEY JENKINS is Associate Professor of Political Science at the University of Cincinnati. Previous publications include her book on affirmative action, *Identity and Identification in India: Defining the Disadvantaged* (2003, 2009), as well as articles on religious freedom and conversion, competing minorities' claims for affirmative action, colonial and contemporary government anthropology, the role of social science in anti-discrimination law, and reserved legislative seats for women.

ADITYA MALIK is Associate Professor/Reader in Indian Religions in the School of Social and Political Sciences at the University of Canterbury, New Zealand. His publications on pilgrimage, oral narratives, and ritual performance in Rajasthan and Uttarakhand include *Nectar Gaze and Poison Breath: An Analysis and Translation of the Rajasthani Oral Narrative of Devnarayan* (2005).

LAWRENCE McCREA is Assistant Professor of Sanskrit Studies at Cornell University. His research focuses mainly on traditional Indian poetics, hermeneutics, and language theory. He is the author of *The Teleology of Poetics in Medieval Kashmir* (2008) and (with Parimal Patil) of *Buddhist Philosophy of Language in India: Jñānaśrimitra's Monograph on Exclusion* (2010).

AXEL MICHAELS is Professor of Classical Indology in the South Asia Institute, Heidelberg University. His publications include *Hinduism: Past and Present* (2004), *The Price of Purity: The Religious Judge in 19th Century Nepal* (2006), and *Śiva in Trouble: Rituals and Festivals at the Paśupatinātha Temple of Deopatan, Nepal* (2008).

SMITA NARULA is Associate Professor of Clinical Law at New York University School of Law. She is Faculty Director of the law school's Center for Human Rights and Global Justice and its International Human Rights Clinic. Narula has published extensively on human rights issues in South Asia, with a special emphasis on caste-based discrimination and the rise of Hindu nationalism.

PATRICK OLIVELLE is Professor in the Department of Asian Studies at the University of Texas at Austin. His focus in recent years has been the early textual development of the Dharmaśāstras. Besides the four early Dharmaśūtras, he has critically edited and translated the Dharmaśāstras

Cambridge University Press

978-0-521-88786-1 - Hinduism and Law: An Introduction

Edited by Timothy Lubin, Donald R. Davis and Jayanth K. Krishnan

Frontmatter

[More information](#)*List of contributors*

ix

of Manu and Viṣṇu. He has also completed a new translation of Kauṭilya's *Arthaśāstra*.

ROSANE ROCHER is Professor Emerita of South Asia Studies at the University of Pennsylvania. Many of her publications concern the intellectual exchange between India and the West in the late eighteenth and early nineteenth centuries. They include analytical articles and three biographies (the most recent in press) of British Indologists.

RACHEL STURMAN is Assistant Professor of History and Asian Studies at Bowdoin College. Her work focuses on the history of law, political economy, and affective relations in colonial and postcolonial India. She has recently completed a manuscript entitled "The Properties of Subjects: Economic Governance and the Family in Colonial India."

ANANYA VAJPEYI teaches South Asian history at the University of Massachusetts, Boston. She was educated at the Jawaharlal Nehru University, Delhi, at Oxford University, where she read as a Rhodes Scholar, and at the University of Chicago. Her first book, *Righteous Republic: The Political Foundations of Modern India*, is in press.

RINA VERMA WILLIAMS is Assistant Professor of Middle Eastern and South Asian Languages and Cultures, and of Studies in Women and Gender, at the University of Virginia. Her research interests focus on the politics of women and gender, religion, law, and nationalism in South Asia and comparative contexts. She is the author of *Postcolonial Politics and Personal Laws* (2006).

ROBERT YELLE is Assistant Professor in the History Department and in the Honors Program at the University of Memphis. He earned a JD with Honors from the University of California at Berkeley and a PhD from the University of Chicago. He received a Guggenheim Fellowship for work on his second book, tentatively entitled *Modernity and Disenchantment: Christianity and the Secularization of Colonial India*.

Cambridge University Press

978-0-521-88786-1 - Hinduism and Law: An Introduction

Edited by Timothy Lubin, Donald R. Davis and Jayanth K. Krishnan

Frontmatter

[More information](#)

Acknowledgements

This volume would not have been possible without the support of many institutions and individuals. The editors' home institutions, Washington and Lee University, the University of Wisconsin, Madison, and Indiana University, Bloomington, have provided funds and other resources, and have allowed us to try out early drafts of some chapters in the classroom.

A Fulbright-Hays grant from the CIES allowed the first editor to carry out the last phase of work in India, under the auspices of the Institut français de Pondichéry.

The University of Wisconsin, Madison provided the means and the venue for a workshop, convened by Donald Davis in October of 2007, which brought together many of the contributors at an early stage in the process. John Stavrellis gave the script a very thorough final read through, and made useful suggestions.

The editors also collectively wish to thank their editors at Cambridge University Press, especially Kate Brett who initially proposed the idea for the book and shepherded it along as it took shape. Laura Morris, Joanna Garbutt, and Rosina Di Marzo ably guided it through the production process, with meticulous copyediting by Leah Morin.

Cambridge University Press

978-0-521-88786-1 - Hinduism and Law: An Introduction

Edited by Timothy Lubin, Donald R. Davis and Jayanth K. Krishnan

Frontmatter

[More information](#)

Chronology

c. 3rd century BCE	Rock and Pillar Edicts of King Piyadasi (Aśoka Maurya); <i>Āpastamba Dharmasūtra</i>
early 2nd century BCE	<i>Gautama Dharmasūtra</i>
mid–late 2nd century BCE	<i>Baudhāyana Dharmasūtra</i> (i.e., “Proto-Baudhāyana,” namely the early part consisting of the first and most of the second book)
1st century BCE	<i>Vasiṣṭha Dharmasūtra</i>
from early CE	South Indians involved in maritime trade settled on the coasts of Sumatra and Cambodia, and along the Straits of Malacca
c. 150	Sanskrit inaugurated as cosmopolitan language; incorporation of <i>artha</i> into Dharmaśāstra texts and the concomitant incorporation of regional legal norms into the early <i>smṛtis</i> (<i>dharmasāstras</i>)
c. 2nd century	<i>Mānava Dharmaśāstra</i> (<i>Manu Smṛti</i>)
c. 4th–5th century	<i>Yājñavalkya Smṛti</i>
c. 400–700	Inscriptions begin to indicate strong presence of corporate groups; production of <i>smṛtis</i> with more detailed and pronounced sections on legal procedure
c. 5th–6th century	<i>Nārada</i> and <i>Bṛhaspati Smṛtis</i>
c. 7th century	<i>Viṣṇu Smṛti</i>
c. 7th–8th century	<i>Kātyāyana</i> , <i>Parāśara</i> , <i>Vaikhānasa Smṛtis</i>
c. 700–900	Temple building increases; earliest commentaries
c. 900–1200	Monumental temples built by regional rulers; earliest digests

Cambridge University Press

978-0-521-88786-1 - Hinduism and Law: An Introduction

Edited by Timothy Lubin, Donald R. Davis and Jayanth K. Krishnan

Frontmatter

[More information](#)

xii	<i>Chronology</i>
c. 1200	Delhi Sultanate introduces state administration of law in Persian
13th–early 16th century	Spread of South Asian populations in Indonesia
c. 1300	Vernaculars begin to be used for legal documentation
c. 1365–1445	<i>Prāyaścittaviveka</i>
1500	First European colonial presence; formalization of vernacular government documents
c. 1510–80	Raghunandana Bhaṭṭācārya
c. 1540–80	<i>Divyatattva</i>
1772	Judicial Plan of Warren Hastings, governor of Bengal; colonial administration becomes the central force in law; “personal law” institutionalized
1776	Publication of <i>A Code of Gentoo Laws</i>
1794	Publication of Jones’s translation of the <i>Laws of Manu</i>
1798	Publication of Colebrooke’s <i>A Digest of Hindu Law on Contracts and Successions</i>
1810	Publication of Colebrooke’s <i>Two Treatises on the Hindu Law of Inheritance</i>
1829	Abolition of suttee (<i>satī</i>)
1830	English replaces Persian as the administrative and diplomatic language
1833	Slavery Abolition Act passed (in the UK), ends slavery throughout most of the British Empire, leading to an increase in indentured servitude that encourages the spread of South Asians to Mauritius, Guyana, Surinam, Trinidad, Jamaica, South and East Africa, and Fiji
1850	Caste Disabilities Removal Act
1856	Hindu Widows Remarriage Act
1859	Code of Civil Procedure
1860	Indian Penal Code; Code of Criminal Procedure

Cambridge University Press

978-0-521-88786-1 - Hinduism and Law: An Introduction

Edited by Timothy Lubin, Donald R. Davis and Jayanth K. Krishnan

Frontmatter

[More information](#)

	<i>Chronology</i>	xiii
1864	Pandits cease to be employed as law officers to the courts	
1891	Age of Consent Act	
1899–1902	Boer War in South Africa	
1906	Zulu Rebellion	
1923	Publication of <i>Hindutva: Who is a Hindu?</i> by Vinayak Damodar Savarkar (alias “Mahratta”)	
1937	Hindu Women’s Right to Property Act (“Deshmukh Act”)	
after 1945	postwar diaspora of South Asians to the UK, the USA, Canada, Australia, New Zealand, continental Europe, and the Persian Gulf nations	
15 August 1947	India becomes independent	
1950	Constitution of India enacted	
1952–5	“Hindu Code” debates	
1955–6	“Hindu Code” Bills enacted	
1955	Hindu Marriage and Divorce Act	
1956	Hindu Succession Act	
1956	Hindu Minority and Guardianship Act	
1956	Hindu Adoptions and Maintenance Act	
1985	Shah Bano decision	
1986	Muslim Women (Protection of Rights on Divorce) Act	
mid-1990s	The “Hindutva Cases”	
1992	Destruction of the Babri Masjid (mosque) in Ayodhya as part of a campaign to reclaim the site for a temple commemorating the Hindu god Rāma’s birthplace	

Cambridge University Press

978-0-521-88786-1 - Hinduism and Law: An Introduction

Edited by Timothy Lubin, Donald R. Davis and Jayanth K. Krishnan

Frontmatter

[More information](#)*Abbreviations*

ABBREVIATIONS OF INDIC TEXTS

<i>ĀpDhS</i>	<i>Āpastamba Dharmasūtra</i> ; ed. and trans. Olivelle (2000).
<i>ArthaŚ</i>	<i>Arthaśāstra</i> of Kauṭilya; ed. and trans. Kangle (1969).
<i>BDhS</i>	<i>Baudhāyana Dharmasūtra</i> ; ed. and trans. Olivelle (2000).
<i>BSm</i>	<i>Brhaspati Smṛti</i> ; ed. Rangaswami Aiyangar (1941a).
<i>DhDN</i>	<i>Dharma Dvaita Nirṇaya</i> ; ed. Gharpure (1943).
<i>DhK</i>	<i>Dharmakośa</i> ; ed. Joshi (1937–41).
<i>DT</i>	<i>Divyatattva</i> of Raghunandana Bhaṭṭācārya; ed. and trans. Lariviere (1981a).
<i>GDhS</i>	<i>Gautama Dharmasūtra</i> ; ed. and trans. Olivelle (2000).
<i>Kāvyaḍarśa</i>	<i>Kāvyaḍarśa</i> ; ed. Thakur and Jha (1957).
<i>LDhP</i>	<i>Laghudharmaparakāśikā</i> ; ed. and trans. Unni (2003).
<i>LP</i>	<i>Lekhapaddhati</i> ; ed. and German trans. Strauch (2002); English trans. P. Prasad (2007).
<i>MA</i>	<i>Mulukī Ain</i> ; ed. Sarkāra (1965); ed. Fezas (2000).
<i>MDh</i>	<i>Mānava Dharmasāstra</i> ; ed. and trans. Olivelle (2005a); with the commentaries of Medātithi, Sarvajñanārāyaṇa, Kullūka, Rāghavananda, Nandana, and Rāmacandra: Mandalik (1886); with the commentary of Medhātithi and trans. G. Jha (1920–9); with the commentary of Kullūka: Vidyasagara (1874).
<i>MīmS</i>	<i>Mīmāṃsāsūtra</i> with Śabara's <i>Mīmāṃsā Bhāṣya</i> ; ed. Abhyankar and Joshi (1970–7).
<i>NirSindhū</i>	<i>Nirṇayasindhū</i> of Kamalākarabhaṭṭa; ed. Acharya (1991).
<i>NSm</i>	<i>Nārada Smṛti</i> ; ed. and trans. Lariviere (1989a).
Pāṇini	<i>Aṣṭādhyāyī</i> of Pāṇini; ed. Kielhorn (1880–5).
Patañjali	<i>Vyākaraṇa Mahābhāṣya</i> of Patañjali; ed. Kielhorn (1880–5).
<i>Psm</i>	<i>Parāśara Smṛti</i> ; ed. Tarkalankara (1893).

Cambridge University Press

978-0-521-88786-1 - Hinduism and Law: An Introduction

Edited by Timothy Lubin, Donald R. Davis and Jayanth K. Krishnan

Frontmatter

[More information](#)*List of abbreviations*

xv

<i>SmC</i>	<i>Smṛticandrikā</i> ; ed. Srinivasacharya (1914–21); trans. Gharpure (1948).
<i>TĀ</i>	<i>Taittirīya Āraṇyaka</i> ; ed. Mahadeva Sastri and Rangacharya (1985).
<i>TMB</i>	<i>Tāṇḍya Mahābrāhmaṇa</i> ; ed. Chinnaswami Sastri (1936).
<i>TV</i>	<i>Tantravārttika</i> of Kumārilabhaṭṭa; ed. Abhyankar and Joshi (1970–7).
<i>VDC</i>	<i>Vikramāṅkadevacarita</i> of Bilhaṇa; ed. Bühler (1875).
<i>VDh</i>	<i>Vaiṣṇava Dharmasāstra (Viṣṇu Smṛti)</i> ; ed. Jolly (1881); ed. Olivelle (2009); ed. with the <i>Keśavavaijayantī</i> commentary of Nandapaṇḍita: Krishnamacharya (1964).
<i>VDhS</i>	<i>Vasiṣṭha Dharmasūtra</i> ; ed. Olivelle (2000).
<i>YSm</i>	<i>Yājñavalkya Smṛti</i> ; ed. Stenzler (1849); with the <i>Mitākṣarā</i> commentary of Vijñāneśvara: Pandey (1967); with the <i>Balakriḍā</i> commentary of Viśvarūpācārya: Ganapati Sastri (1921–2).

EPIGRAPHICAL PUBLICATION SERIES
WITH ABBREVIATIONS

(citations by volume and record number)

CII	<i>Corpus Inscriptionum Indicarum</i> , Archaeological Survey of India.
EI	<i>Epigraphia Indica</i> , Archaeological Survey of India.
SII	<i>South Indian Inscriptions</i> , Archaeological Survey of India.

Cambridge University Press

978-0-521-88786-1 - Hinduism and Law: An Introduction

Edited by Timothy Lubin, Donald R. Davis and Jayanth K. Krishnan

Frontmatter

[More information](#)



South Asia: political divisions c. 1860 and today