

School of Law, Governance & Citizenship

Ambedkar University Delhi

Course Outline

Time Slot-_____

Course Code: SLG2FC003

Title: Law and the Making of Modern India

Cohort for which it is compulsory: M.A. Law Politics and Society

Cohort for which it is elective:

No of Credits: 4

Semester and Year Offered: 1st semester (Monsoon Semester 2017)

Course Coordinator and Team: Javed Iqbal Wani

Email of course coordinator: javed@aud.ac.in

Pre-requisites: None

Aim:

The aim of this course is to provide an alternative narrative of modern Indian history by locating the development and influence of law in colonial India.

A brief description of the Course:

The development of law had significantly contributed in the making of modern India. The legitimacy of colonial rule was continually reframed by the dialectic of experimenting with law in the colonies and drafting law for the colonies. This course introduces students to the often-ignored history of the development of Law in the history of India. The course will engage with the history of legal regime in India by utilising texts from the discipline of history and infuse them with insights from Critical Legal Studies. Furthermore, engagement with historical studies/debates on legal regime in colonial and postcolonial India will be supplemented by insights from political science, sociology, criminology and other disciplines.

Course Objectives

The course is designed to introduce students to the other side of law which legal formalism often tends to ignore. The tendency to ignore multidimensional aspects of law necessitates the urge to take a fresh look at the establishment of institutions, origins of legal reasoning, and tactics of managing population(s) etc in India. This course will enable the student to examine the relationship between state, law and society in India that shaped the social and political life the way we experience it today. The course will explore how law in India established and influenced issues of sovereignty, modernity, class, caste, gender and religion. It will provide a historical foundation for students interested in substantive topics mentioned above as well as those who are interested in exploring possibilities of legal reform in India.

There will be three modules:

Module 1: What is 'colonial' about Colonial Law?

Module 2: Racism and colonial subjectivity

Module 3: The colonial legacy

Syllabus with List of Readings	
Module 1:	Topics to be Covered: What is 'colonial' about colonial law?
Week 1 Orientation Lecture Why law in history: Significance of doing legal history	Hay, Douglas. "Property, Authority and the Criminal Law," <i>Albion's Fatal Tree</i> (1975), pp. 17-63 Langbein, John. "Albion's Fatal Flaw," 98 <i>Past and Present</i> (1983), pp. 96-120 Linebaugh, Peter. "(Marxist) Social History and (Conservative) Legal History: A Reply to Professor Langbein," 60 <i>New York University Law Review</i> (1985), pp. 212-243 Gordon, Robert W. "Critical legal histories." <i>Stanford Law Review</i> (1984): 57-125.

<p>Week 2 & 3 Metropolis and the colony: legacy of the empire</p>	<p>Benton, Lauren. <i>Law and colonial cultures: legal regimes in world history, 1400-1900</i>. Cambridge University Press, 2002.</p> <p>Mommsen, Wolfgang J., and Jaap de Moor, eds. <i>European expansion and law: the encounter of European and indigenous law in 19th-and 20th-century Africa and Asia</i>. Oxford: Berg, 1992.</p> <p>Snyder, Francis. "Colonialism and Legal Form," <i>Journal of Legal Pluralism</i>, 1981.</p> <p>Chanock, Martin. <i>Law, custom, and social order: The Colonial Experience in Malawi and Zambia</i>. Cambridge: Cambridge University Press, 1985.</p> <p>Moore, S. F. 1986 <i>Social facts and fabrications" Customary" law on Kilimanjaro, 1880-1980</i>. Cambridge: Cambridge University Press.</p> <p>Mamdani, Mahmood. <i>Citizen and subject</i>. Princeton: Princeton University Press, 1996.</p> <p>Merry, S. E., <i>Colonizing Hawai'i: The Cultural Power of Law</i></p> <p>Chanock, M. 1991 A Peculiar Sharpness: An Essay on Property in the History of Customary Law in Colonial Africa. <i>The Journal of African History</i> 32(1):pp. 65-88.</p> <p>Rudolph, Lloyd I. and Rudolph, Susanne Hoeber. 1965. Barristers and Brahmins in India: Legal Cultures and Social Change, <i>Comparative Studies in Society and History</i>, Vol. 8, No. 1, (Oct., 1965), pp. 24-49</p>
<p>Week 4& 5 Law as a history of colonial ideas in India (and other colonies)</p>	<p>Law as a history of colonial ideas in India (and other colonies)</p> <p>(Henry Maine) Maine, Henry Sumner. <i>Ancient law, its connection with the early history of society and its relation to modern ideas</i>. J. Murray, 1906.</p>

	<p>Mantena, Karuna. <i>Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism</i>. Princeton University Press, 2010</p> <p>Cohn, Bernard S. "From Indian status to British contract" <i>The journal of economic history</i>. Vol. 21.1961, 4, p. 613-628</p> <p>(Utilitarianism) Stokes, Eric. 1959. <i>The English Utilitarians and India</i>. Oxford: Clarendon Press</p> <p>(Issue of Property)</p> <p>Guha, Ranajit. <i>A rule of property for Bengal: An essay on the idea of permanent settlement</i>. Orient Blackswan, 1982.</p> <p>Washbrook, David A. "Law, state and agrarian society in colonial India." <i>Modern Asian Studies</i> 15.03 (1981): 649-721.</p>
<p>Week 6 Locating colonial in the colonial law.</p>	<p>Hussain, Nasser. <i>The jurisprudence of emergency: Colonialism and the rule of law</i>. University of Michigan Press, 2003.</p> <p>Chatterjee, Partha. <i>The nation and its fragments: Colonial and postcolonial histories</i>. Vol. 11. Princeton: Princeton University Press, 1993.</p> <p>Scott, David. "Colonial governmentality." <i>Social Text</i> 43 (1995): 191-220.</p>
<p>Week 7 Power of the word (oral and written): Archival experiments in Indian legal history</p>	<p>Guha, Ranajit, "Chandra's Death" in <i>Subaltern Studies V</i>, Oxford University Press, 1987.</p> <p>Amin, Shahid, <i>Event, Metaphor, Memory, Chauri Chaura 1922- 1992</i>, Oxford University Press, 1995.</p> <p>Baxi, Upendra. "'The State's Emissary': The Place of Law in Subaltern Studies", in <i>Subaltern Studies VII</i>, pp. 247-264.</p> <p>Chatterjee, Partha. <i>A Princely Impostor?: The Kumar of Bhawal and the Secret History of Indian Nationalism</i>. Orient Blackswan, 2004.</p>

Module 2	Topics to be covered: Racism and colonial subjectivity
Week 8 Race, Crime and Justice in Colonial India	<p>Fisch, Jorg. <i>Cheap Lives and Dear Limbs: The British Transformation of the Bengal Criminal Law, 1769-1817</i></p> <p>Singha, Radhika. <i>A Despotism of Law: Crime and Justice in Early Colonial India</i> Delhi: Oxford University Press, 1998.</p> <p>Kolsky, Elizabeth. "Codification and the Rule of Colonial Difference: Criminal Procedure in British India," <i>Law and history review</i>, Fall 2005, Vol 23(3)</p> <p>Arnold, David. "The Colonial Prison: Power, Knowledge and Penology in Nineteenth Century India", <i>Subaltern Studies VIII</i></p>
Week 9 Quotidian legality in colonial India	<p>Sengoopta, Chandak. 2003. <i>Imprint of the Raj: How Fingerprinting was born in Colonial India</i>, Macmillan.</p> <p>Smith, R. 'Rule-by-records and rule-by-reports: complementary aspects of the British imperial rule of law', <i>Contributions to Indian Sociology</i> 19 (1985).</p> <p>Singha, Radhika. Settle, Mobilize, Verify: Identification Practices in British India, <i>Studies in History</i>, 2000; 16: 151-198</p> <p>Raman, Bhavani. <i>Document Raj: Writing and Scribes in Early Colonial South India</i>. University of Chicago Press, 2012.</p>
Week 10 Law and the subjects of law: The personal and the customary in colonial law	<p>Cohn, Bernard S. 1996. "Law and the Colonial State in India," <i>Colonialism and its Forms of Knowledge</i>. Oxford University Press, pp. 57-75.</p> <p>Anderson, M.R, "Islamic law and the Colonial Encounter in British India", Peter Robb & David Arnold (ed.), <i>Ideologies and Institutions</i>, pp.165-185</p>

	<p>Nair, Janaki. <i>Women and law in colonial India: a social history</i>. Kali for Women in collaboration with the National Law School of India University, 1996.</p> <p>Mani, Lata. Contentious Traditions: The Debate on Sati in Colonial India , <i>Cultural Critique</i>, No. 7, (Autumn,1987), pp. 119-156</p> <p>Bhattacharya, Neeladri. "Remaking custom: the discourse and practice of colonial codification.," <i>Tradition, Dissent, and Ideology: Essays in Honor of Romila Thapar</i>. Delhi: OUP (1996).</p> <p>Giunchi, Elisa. "The Reinvention of Sharī ‘a under the British Raj: In Search of Authenticity and Certainty." <i>The Journal of Asian Studies</i> 69.04 (2010): 1119-1142.</p> <p>Gilmartin, D. 1988. "Customary Law and Shari'at in British Punjab," in <i>Shari'at and Ambiguity in South Asian Islam</i>. Edited by K. P. Ewing, pp. 43-62. Berkeley: University of California Press</p> <p>Birla, Ritu. <i>Stages of capital: Law, culture, and market governance in Late Colonial India</i>. Duke University Press, 2008.</p>
<p>Module 3</p>	<p>Topics to be covered: The colonial legacy.</p>
<p>Week 11 Transfer of power and the transfer of law: postcolonial institutions and colonial foundations</p>	<p>De, Rohit. "Rebellion, Dacoity, and Equality: The Emergence of the Constitutional Field in Postcolonial India" <i>Comparative Studies of South Asia, Africa and the Middle East</i> (2014) 34(2): 260-278.</p> <p>Burra Arudra. "The Indian Civil Service and the nationalist movement: neutrality, politics and continuity" <i>Commonwealth and Comparative Politics</i>, Volume 48, 2010 - Issue 4 (POLITICS AND ADMINISTRATION IN INDIA IN COMPARATIVE PERSPECTIVE: ESSAYS IN HONOUR OF DAVID POTTER)</p> <p>Baxi, Upendra. "Accumulation and Legitimacy: The Indian Constitution and State Formation."</p>

	<p><i>Delhi Law Review</i> 12 (1991): 72–84.</p> <p>Gould, William, Taylor Sherman, and Sarah Ansari. “The Flux of the Matter: Loyalty, Corruption, and the ‘Everyday State’ in the Post-Partition Government Services of India and Pakistan c. 1946–1952.” <i>Past and Present</i> 219 (2013): 237–79.</p> <p>Menon, Nivedita. “Citizenship and the Passive Revolution: Interpreting the First Amendment.” In <i>Politics and Ethics of the Indian Constitution</i>, edited by Rajeev Bhargava, 189–211. New Delhi: Oxford University Press, 2008.</p>
<p>Week 12 Making sense of Law and the Making of Modern India (History and the contemporary)</p>	<p>Frank, A.G. “Emergence of Permanent Emergency in India,” <i>Economic and Political Weekly</i>, Vol. 12, No. 11 (Mar. 12, 1977), pp. 463-465+467-475</p> <p>Tarlo, Emma. “From Victim to Agent: Memories of Emergency from a Resettlement Colony in Delhi” Author(s): Emma Tarlo, <i>Economic and Political Weekly</i>, Vol. 30, No. 46 (Nov. 18, 1995), pp. 2921-2928</p> <p>Singh, Ujjwal Kumar. <i>State Democracy and Anti-Terror Laws in India</i>, Sage publications 2007, pages 346</p>

Background Books

General NCERT textbooks on Indian history.

Assessment Methodology:

A combination of a mid-term examination, a book review, a response essay, a presentation and, a final exam.

Book review: 20 %

Mid Semester Exam: 25 %

Term Paper (Essay)+ Presentation: 20% (15+5)

Final written exam: 25 %

Attendance & participation: 10%