

Invitation

Séminaire international
Organisation scientifique Livia Holden

South Asian Culture *à la barre*: Words of Experts in Transnational Case-Law

Vendredi 20 Novembre 2009, de 9h30 à 17h30

Salle Lombard

EHESS, 96 Boulevard Raspail, Paris 6^e

« **South Asian Culture *à la barre*** » est la première réunion d'une section du projet ANR « JUST-INDIA » consacrée aux conflits de droit dans les cas judiciaires transnationaux. Elle est coordonnée par Livia Holden. Les participants à la journée examineront comment les tribunaux de différents pays s'approprient la notion de *culture* lorsqu'ils sont amenés à se prononcer dans des cas impliquant des ressortissants d'Asie du Sud, et quel est le rôle de cette notion dans les procédures judiciaires correspondantes.

Les exposés et les discussions seront en anglais.



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Programme

9.30-10.00: Introduction

Daniela Berti and Livia Holden

10.00 - 10.45: *An Overview of the Nature and Patterns of Resolution of South Asian Muslim Marital Disputes in the American Courts*

Sylvia Vatuk (University of Illinois at Chicago)

As increasing numbers of Indians and Pakistanis go abroad to study or work in the United States, marital conflicts involving immigrants from the subcontinent often end up in either the American courts, courts in their homelands or both. The legal problems they encounter are many and are aggravated by the major differences that exist between the codes of family law to which they are subject in India or Pakistan, on the one hand, and in the U.S. This paper will focus specifically on South Asian Muslim immigrants to the United States, who in their home country would be subject to some form of Muslim family (or “personal”) law in matters of marriage, divorce, maintenance, child custody and inheritance. In America, by contrast, they are governed by the applicable state laws in matrimonial matters, regardless of their religious faith, citizenship status or national origin. The paper is based on a review of published case law (at the appellate level), interviews with representatives of organizations providing legal aid to South Asian immigrant women in the Chicago area and a review of the secondary literature dealing with questions of how Islamic legal concepts in the sphere of personal status are handled when they come before members of the American judiciary. I will outline the kinds of legal cases that most commonly arise from within the South Asian Muslim population, point out some major differences in patterns of litigation between the civil family courts at the lowest level of the system and the state-level appeals courts, and highlight a number of specific recent cases to illustrate some more general issues of access to justice for South Asian Muslim immigrants, especially women, who experience marital difficulties while domiciled in the United States.

10.45 - 11.00: Coffee /tea break

11.00 - 11.45: *Expert Witnessing and Cultural Misunderstanding in British Asylum Procedures*

Anthony Good (Edinburgh University)

When presenting their claims, most asylum applicants cannot produce documentary corroboration of their ill-treatment, and certainly cannot call as witnesses those who have persecuted them. Asylum decisions are therefore heavily dependent upon assessments of the credibility of their accounts, presented to the Home Office and the courts mainly in the forms of asylum interview transcripts and witness statements. The danger is, however, that such decisions may display prejudice or lack of understanding when the persons whose credibility is being assessed come from cultural backgrounds very different from that of the assessor. This paper looks at the various constraints, which may prevent those narratives from being effectively given or properly understood in the procedure of British asylum courts, and at the role of expert witnesses in helping overcome such misunderstandings.

11.45-12.30: *Life and Law and the Story of H: Advocacy and Legal Process in the UK*

Werner Menski (School of Oriental and African Studies)

The story of H, presented here as a fairytale with a nightmarish flavor but a happy end, shows not only terrible confusions in the British management of cultural diversity but also indicates that nobody really cares to remedy injustice perpetrated toward South Asian communities. Through the story of H, a hard working divorced Gujarati, who endured 5 years of ordeal before getting permission for his second wife to join him in the UK, I will question what has happened to our commitment to human rights and ask why relevant expert evidence is not taken more seriously in English law and is itself in constant danger of being treated as dodgy.

12.30 - 2.00 pm: Lunch break

2.00 - 2.45: *Transnational Hindu Law Adoptions: Recognition and Treatment in Britain* Prakash Shah (Queen Mary University of London)

This communication examines how the adoption of children under Hindu law in India is regarded by British private international law and immigration law. Through an analysis of case law, it focuses particularly on how British judges regard the legitimacy of exclusion by the British immigration control system of children who have been adopted under a 'foreign' legal system which essentially permits private adoption arrangements. Examining the background to the regime of Indian Hindu law adoptions (which applies to Sikhs as well as Hindus), and the private international law and immigration rules which apply to such adoptees in the UK, the article finds some evidence in the judicial decisions of a more activist, human-rights-based, plurality-conscious position being taken. However, tracking the case law further, the article concludes that such activism has not been followed through in more recent decisions leaving the conflictual position between transnational adopters and British legal systems largely unresolved.

2.45 - 3.30: *Litigants of South Asian Origin in French Law Courts. A Preliminary Report* Véronique Bouillier (CNRS)

Presentation of a preliminary research focusing on the attitudes of French law courts regarding South Asian litigants, the reciprocal incomprehension, the misunderstanding of what the court calls "cultural characteristics". The few cases presented will concern marriage and family matters and will insist on the importance of the part played by "cultural translators", interpreters as well as lawyers from South Asian origin.

3.30 - 3.45: Coffee/ tea break

3.45 - 4.30: *Hindu Divorce in California: the Shifting Arguments of Custom* Livia Holden (LUMS)

Through a qualitative case study concerning a South Asian Brahman migrated to the USA I analyze the exportation of Hindu divorce and its accommodation within the legal procedure of an immigration law court in California. My attention is directed on the co-constructed discourse between the lawyer, the client and the socio-legal expert asked to provide a report in the appeal case deciding on the opportunity to grant citizenship to Savitri - allegedly a bigamist and of bad character. I will point out the specific elements of custom that have been mobilized, left out, or reformulated within the legal reasoning of the immigration officer. I will elaborate on the argumentative devices that are reshaping customary Hindu divorce within the official legal settings beyond India and will formulate questions for discussion on the role of the expert report in the legal procedure.

4.30- - 5.30

The workshop will conclude with an open discussion about the role of the socio-legal expert as mediator in transnational cases.

Véronique Bouillier is a senior research fellow in Anthropology at the National Centre for Scientific Research (CNRS) and is a member of the Centre for Indian and South Asian Studies. Her main research interests bear on the ascetics castes and sects in Nepal and India -she published two books on the Saiva ascetic order of the Nath Yogis. She has recently started a study of the interaction between the French judicial system and people from South Asian origin.

Anthony Good is Professor of Social Anthropology in Practice at the University of Edinburgh, and Head of its School of Social and Political Science. His principal field research was in Tamil Nadu (South India) and more briefly, Bangladesh, Vietnam, and Cambodia. He has carried out ESRC- and AHRC- funded research on the uses of expert evidence in the British asylum courts and in France. He has more than thirty years experience in Sri Lanka, as a University lecturer and latterly a researcher. He is currently extensively involved as an expert witness in asylum appeals in the UK, mainly involving Sri Lankan Tamils, and has published *Anthropology and Expertise in the Asylum Courts*, Routledge-Cavendish 2007.

Livia Holden is Assistant Professor in Anthropology (LUMS – Lahore). She is carrying out fieldwork since 1995 in Central India on non-state jurisdiction and their relationship with state- jurisdiction, especially regarding practices of divorce among Hindus. She has extended her fieldwork to Southern Italy since 2003, and then to California (USA). Her current focus is on lawyering, especially regarding socio-legal expertise and fee regimes. She is the scientific coordinator for the section "Conflict of Laws in Transnational Cases" within the ANR project Governance and Justice in South Asia.

Werner Menski: Since 1981 he has taught South Asian Laws, Comparative Legal Theory, Ethnic Minorities and the Law, and Family Law, and is Professor of South Asian Laws at SOAS (University of London) since 2004. He has carried out research on legal pluralism, South Asian cultures and diasporic communities specifically focusing on the management of cultural diversity in family law, and on the reciprocal expectations of community and state law in the UK. He has provided expert reports for South Asian communities in the UK, especially from India, Pakistan and Bangladesh, in relation with citizenship, right of entry, welfare rights, and adoption.

Prakash Shah specializes in research and teaching about immigration, refugee and nationality law, ethnic minorities and diasporas in law, and comparative law with special reference to South Asians, and has published widely in those fields. He was Lecturer at SOAS, University of London from 1993, and Lecturer at the University of Kent at Canterbury from August 2000, before joining Queen Mary, University of London in 2002, where he is now a Senior Lecturer. He is also the managing editor of the *Journal of Immigration, Asylum and Nationality Law* and is on the editorial board of the *International Journal of Discrimination and Law*. His current research on the modalities of adjustment to British legal procedures by the different South Asian communities is funded by the ANR (section "Conflicts of Laws in Transnational Cases").

Sylvia Vatuk is Professor Emerita of Anthropology in the University of Illinois at Chicago, USA, and has been carrying out research and publishing on issues of family, kinship and marriage, and gender in India since the mid-1960s. In recent years her research has focused on the administration of Muslim Personal Law -- both in the civil courts and in various religious venues--, with an emphasis on the way women access and are impacted by that code of law.