

Hindu law

Name : Vaibhavi Devare
Group: 20LL8a

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Introduction

Hindu law as a historical term refers to code of laws applied to Hindus, Buddhist, Jains and Sikhs in British India. It is modified through centuries.

It lays down the laws which regulated Hindu nationals, social, family and individual obligations. Dharma are considered as the law in the Hindu philosophy. ... Hindu philosophy is based on dharmasastra and these dharmasastras has been taken as a tool for justice.

Origin of Hindu law

It is regarded that the origin of Hindu law is based on religious texts like the Vedas, the Upanishads, the Geeta, or any other Hindu scripture. A view emerging from these texts leads to the recognition of the law as Dharma. The term dharma can be loosely translated as “duty”. Many Hindu Jurists believe that Law is an enforceable part of Dharma. Thus, the Law is Dharma.

The other view regarding the origin of Hindu law is that it is derived from customs and usages. The belief is that the primary sources of Hindu laws are Shrutis, Smritis, Upanishads, customs, digests, and commentaries

Classical Hindu Law

Classical Hindu law is a category of Hindu law (dharma) in traditional Hinduism, taken to begin with the transmittance of the Vedas and ending in 1772 with the adoption of “A Plan for the Administration of Justice in Bengal” by the Bengal government. Law during the classical period was theologically based on the dharmasastra, and dharma which was traditionally delineated by “learned people” or scholars of the Vedas. However, in reality, classical Hindu law was diverse in practice, varying between locations, vocational groups, and castes. Thus, the common source of classical Hindu law was the community and, therefore, laws on a whole were highly decentralized and diverse.

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Classical Hindu law in practice originates from the community, not state bodies. In this way, particular groups of society began to gain influence in the creation and administration of law. Primary corporate groups, kingships, and Brahmins were the factions which conveyed Hindu jurisprudence in practice. Corporate groups were responsible for legislating law through the conception of social norms; kingships were responsible for the administration of punishment and the worldly Hindu system; and Brahmins were responsible for ritual, penance, and the maintenance of a spiritual Hindu system.

Anglo - Hindu law

Anglo-Hindu law refers to the laws enacted during the British colonial era, which applied to the Hindus, Buddhists, Jains and Sikhs of British India.

The first phase of Anglo-Hindu law started in 1772 and lasted till 1864, where translation of some ancient Indian texts along with textual interpretation provided by British court appointed Hindu Pandits were the basis of Anglo-Hindu law, mirroring Anglo-Muslim law extracted from Quran and interpreted by Muslim Qadis for Indian Muslims. The second phase of Anglo-Hindu law started in 1864, and ended in 1947, during which a written legal code was adopted.

Modern Hindu law

The modern Indian legal system is very centralized. It presents a picture of justice administered from outside. Litigation is expensive and overbearing for the common people. Justice has become very dear. People increasingly feel that justice has become something that is arbitrarily granted by the state and that it is subject to manipulation. Justice has lost its humanity and has become impersonal. This could be remedied if we recapture the holistic and synthetic view of society and restore the self-regulatory character of the socio-economic institutions of society. We need to impart to the present system the spirit of ancient law.

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It is common experience that leaders in any walk of life become successful and achieve enduring success only when they practice what they preach. In the absence of effective leadership, however, it is the common man who becomes the victim. The Hindu legal practitioner has a great responsibility to uphold the laws of society. His ideals should be truth, justice, and the welfare of society. He should be free from fear and should cultivate a life of honor. He should maintain the ideal of high courage, straight-forwardness, helpfulness to people, selfcontrol, and self-confidence, unflinching resistance to injustice and oppression

Sources of Hindu Law

The sources of Hindu law can be classified under the following two heads:

I. Ancient Sources

Under this would come the following:

- (i) Shruti
- (ii) Smriti
- (iii) Digests and Commentaries and
- (iv) Custom.

II. Modern Sources

Under this head would come:

- (i) Justice, equity and good conscience
- (ii) Precedent, and
- (iii) Legislation.

Ancient Sources

(i) Shruti-

It literally means that which has been heard. The word is derived from the root “shru” which means ‘to hear’. In theory, it is the primary and paramount source of Hindu law and is believed to be the language of the divine revelation through the sages. The synonym of shruti is veda. It is derived from the root “vid” meaning ‘to know’. The term Veda is based on the tradition that they are the repository of all knowledge.

(ii) Smritis-

The word Smriti is derived from the root “smri” meaning ‘to remember’. Traditionally, Smritis contain those portions of the Shrutis which the sages forgot in their original form and the idea whereby they wrote in their own language with the help of their memory. Thus, the basis of the Smritis is Shrutis but they are human works.

(iii) Digests and Commentaries-

After Shrutis came the era of commentators and digests. Commentaries (Tika or Bhashya) and Digests (Nibandhs) covered a period of more than thousand years from 7th century to 1800 A.D. In the first part of the period most of the commentaries were written on the Smritis.

(iv) Custom-

Custom is regarded as the third source of Hindu law. From the earliest period custom ('achara') is regarded as the highest 'dharma'. As defined by the Judicial Committee custom signifies a rule which in a particular family or in a particular class or district has from long usage obtained the force of law. Custom is a principle source and its position is next to the Shrutis and Smritis but usage of custom prevails over the Smritis.

II. Modern Sources

(i) Justice, equity and good conscience-

Occasionally it might happen that a dispute comes before a Court which cannot be settled by the application of any existing rule in any of the sources available. Such a situation may be rare but it is possible because not every kind of fact situation which arises can have a corresponding law governing it.

(ii) Legislations-

Legislations are Acts of Parliament which have been playing a profound role in the formation of Hindu law. After India achieved independence, some important aspects of Hindu Law have been codified. Few examples of important Statutes are The Hindu Marriage Act, 1955, The Hindu Adoptions and Maintenance Act, 1956, The Hindu Succession Act, 1956, The Hindu Minority and Guardianship Act, 1956, etc.

(iii) Precedents-

After the establishment of British rule, the hierarchy of Courts was established. The doctrine of precedent based on the principle of treating like cases alike was established. Today, the decisions of Privy Council are binding on all the lower Courts in India except where they have been modified or altered by the Supreme Court whose decisions are binding on all the Courts except for itself.

A Critique on the Sources

It is significant to note that the term 'Hindu' is not defined anywhere in terms of religion or in any statute or judicial decisions. For the purpose of determining to whom Hindu Law applies, it is necessary to know who is a Hindu and none of the sources expressly state so. At most from statutes, we can get a negative definition of a Hindu which states that Hindu law shall apply to those who are not Muslim, Christian, Parsi, Jew, etc. And who are not governed by any other law.

Hindu Law is considered to be divine law as it is strongly believed that the sages had attained some spiritual dominion and they could communicate directly with God from whom we get the divine law.

Thank you

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. These shapes are primarily located on the right side of the frame, creating a modern, layered effect against the white background.