

Hindu Law

Mayank R Bachhav
20116a

INTRODUCTION

- ▶ Hindu law, as a historical term, refers to the code of laws applied to Hindus, Buddhists, Jains and Sikhs in British India.
- ▶ Hindu Law is a body of principles or rules called 'Dharma'. 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.
- ▶ Hindu law is divided in to 3 categories:
 - ▶ 1. Classical Hindu Law
 - ▶ 2. Anglo-Hindu Law
 - ▶ 3. Modern Hindu Law Hindu Law in different Countries

- ▶ Hindu law, as a historical term, refers to the code of laws applied to Hindus, Buddhists, Jains and Sikhs in British India. Hindu law, in modern scholarship, also refers to the legal theory, jurisprudence and philosophical reflections on the nature of law discovered in ancient and medieval era Indian texts.
- ▶ A first important consequence of the concept of dharma is that, in Hinduism, law, religion, and all other topics dealt with in the dharma-sūtras are inextricably intertwined.
- ▶ The source of Dharma is the Veda, as well as the tradition [Smṛiti], and practice of those who know the Veda. - Gautama Dharma-sūtra
- ▶ The Dharma is set forth in the vedas and the Traditional Texts [Smṛiti]. When these do not address an issue, the practice of cultured people becomes authoritative. - Vāsiṣṭha Dharma-sūtra 1.4-1.5, The Spirit of Hindu Law

1. Classical Hindu Law

- ▶ John Mayne, in 1910, wrote that the classical Hindu law has the oldest pedigree of any known system of jurisprudence.
- ▶ The term “Hindu law” is a colonial construction, and emerged when the colonial rule arrived in South Asia, and when in 1772 it was decided by British colonial officials in consultation with Mughal rulers, that European common law system would not be implemented in India, that Hindus of India would be ruled under their “Hindu law” and Muslims of India would be ruled under sharia (Muslim law).
- ▶ However, Hindu law was neither mentioned, nor in use, nor codified, during the 600 years of Islamic rule of India.

2. Anglo-Hindu Law

- ▶ It has 2 phases:
- ▶ 1.(1772-1864)
- ▶ The early period of Anglo-Hindu Law (1772-1828) was structured along the lines of Muslim law practice. It included the extracted portions of law from one Dharmaśāstra by British colonial government appointed scholars (especially Jones, Henry Thomas Colebrooke, Sutherland, and Borrodaile) in a manner similar to Islamic al-Hidaya and Fatawa-i Alamgiri. It also included the use of court pandits in British courts to aid British judges in interpreting Shastras just like Qadis (Maulavis) for interpreting the Islamic law.
- ▶ 2.(1864-1947)
- ▶ In 1864, after the East India Company was dissolved and India became a formal part of the British Empire, Anglo-Hindu law entered into a second phase (1864-1947), one in which British colonial courts in India relied less on the Muslim Qadis and Hindu Pandits for determining the respective religious laws, and relied more on a written law.

Smriti as a source of law

- ▶ Smriti is derived from “smri” which means to remember. Smritis are those parts of shrutis which the sages forgot to tell in their original form and therefore wrote down in the language which they were familiar with, therefore shrutis are considered to be the basis of smritis. There are 2 kinds of smritis first is Dharmasastras and the other is Dharmasutras. Dharmasastras contains the rules regarding the moral code of conduct for Hindus, whereas Dharmasutras contains the rules regarding government, caste, the relationship between people, economic affairs, eating habits, etc. There are many smritis that one can not count but the two famous smritis are Yajnavalkya smriti and manusmriti. Manusmriti is also considered to be the first law book written by Manu.

Shruti as a source of law

- ▶ Shruti means to hear, it is derived from the word “shur” which means to hear. Shrutis are considered to be the major source of Hindu law. Another term for Shruti is Veda. According to Hindu law, there are four Vedas namely, Rigveda, Samveda, Yajurveda, Atharveda. The brahmins used to pronounce what is written in these Vedas to the people. Since brahmins were considered to be knowledgeable people whatever they said was of supreme importance and it was considered to be the law of the land, therefore shrutis contain what is written and pronounced by the brahmins. Brahmins also tell us about the duties that the individual has to follow and how to perform these duties. The Upanishads contain the essence of these duties.

3. Modern Hindu Law

- ▶ Legal recognition to civil marriage in Hindu society & inter-faith marriage in India
- ▶ Legal recognition to inter-caste marriage, abolition of polygamy & introduction of the concept of divorce in Hindu society.
- ▶ Mandatory enforcement of the protection of civil rights of SC and ST people by The Untouchability (Offenses) Act (1955)
- ▶ Legal recognition to adoption of Hindu children outside the family, community & caste of the adopter.
- ▶ Hindu Marriage Act (1955)
- ▶ Hindu Succession Act (1956)

- ▶ Modern Hindu law refers to one of the personal law systems of India along with similar systems for Muslims, Sikhs, Parsis, and Christians. This Hindu Personal Law or modern Hindu law is an extension of the Anglo-Hindu Law developed during the British colonial period in India, which is in turn related to the less well-defined tradition of Classical Hindu Law.
- ▶ The time frame of this period of Hindu law begins with the formal independence of India from Great Britain on August 14, 1947, and extends up until the present.
- ▶ While modern Hindu law is heralded for its inherent respect for religious doctrines, many still complain that discrimination still pervades the legal system, though efforts to modernize and increase the legal rights of the marginalized have been made.

Sources of the Hindu Law

- ▶ Sources of Hindu law can be divided into ancient sources and modern sources.
- ▶ A. Ancient Sources:
- ▶ Shruti: Shruti means to hear, it is derived from the word “shur” which means to hear. Shrutis are considered to be the major source of Hindu law. Another term for Shruti is Veda. According to Hindu law, there are four Vedas namely, Rigveda, Samveda, Yajurveda, Atharveda. The brahmins used to pronounce what is written in these Vedas to the people. Since brahmins were considered to be knowledgeable people whatever they said was of supreme importance and it was considered to be the law of the land, therefore shrutis contain what is written and pronounced by the brahmins. Brahmins also tell us about the duties that the individual has to follow and how to perform these duties. The Upanishads contain the essence of these duties.

- ▶ Custom: Customs are the most important and the oldest form of lawmaking, customs mean the traditions, practices, activities, that people have been following for generations and overtime recognized as law. Indian law has recognized 3 types of custom namely:
- ▶ Local customs- These are the customs that are prevalent in a particular local area.
- ▶ Class customs- These are the customs that are prevalent amongst a particular class.
- ▶ Family customs- These are the customs that are binding on the members of the family.
- ▶ Digests and Commentaries: Digests contain the important aspects of all the smritis and discussed their reconciling and contradictions

- ▶ B. Modern Sources:
- ▶ Legislation: The legislation means the acts of the parliament, various Acts were passed by the legislature such as the Child Marriage Restraint Act, 1929, Hindu Succession Act, 1956, Hindu Marriage Act, 1955, Hindu Minority and Guardianship Act, 1956.
- ▶ Justice Equity and Good Consciousness: In cases where there was no proper law to settle the disputes nor there was an existing law, then the judges used to give judgments according to the concept of Justice Equity and Good Consciousness.

Precedents: After the establishment of British rule, courts were established and the hierarchy was introduced.

Schools of Hindu Law

- ▶ There are two schools of Hindu Law namely:
- ▶ 1.Mitakshara school
- ▶ Mitakshara school
- ▶ Mitakshara school derives its name from the commentary of Vijyaneshwara named Mitakshara. Mitakshara school contains rules regarding marriages, division of society into four castes, apart from this it contains rites and rituals that are to be performed during pregnancy, all these rites and rituals are considered sacred. Mitakshara school prohibits the marriage between a shudra and a brahmin, inter-caste marriages are allowed amongst the upper caste only.
- ▶ Mitakshara school is subdivided into four major schools namely:
- ▶ Banaras school

- ▶ It is prevalent in North India except the rural areas of Punjab, where this school has been modified according to the customary laws.
- ▶ Mithila school
- ▶ This school is prevalent in some areas of Northern Bihar.
- ▶ Bombay school
- ▶ This school was prevalent in western parts of the country mainly Gujarat and Maharashtra.
- ▶ The madras or Dravida school
- ▶ This school covers the whole of southern India including Karnataka, Tamil Nadu, and Andhra Pradesh.

- ▶ 2. Dayabhaga school
- ▶ Dayabhaga school is prevalent in Bengal and Assam. Dayabhaga school professes benefit for the governance of the rules of succession. The immediate effect of this school was that there was an inclusion of many new people in the list of heirs for succession which was not mentioned in Mitakshara school. Dayabhaga school preaches logic and reason rather than precepts and precedents. This school advocates for more practical and rational doctrines.

Administration and practice

- ▶ Courts
- ▶ The court system of India is essentially divided into three tiers, the Supreme Court of India at the apex of the hierarchy for the entire country, twenty-one High Courts at the top of the hierarchy in each State, and subsequent district courts that govern family, criminal and civil laws within the states. The High Courts have jurisdiction over a state, a union territory or a group of states and union territories. District courts are the courts of first resort. It is within the district courts that Hindu law and other religious laws are administered. State judges apply Hindu law on a case by case basis.

- ▶ Judges
- ▶ The judges that preside over the district courts in India are state bureaucrats, not religious priests or scholars. Thus it is possible for a Hindu judge to preside over a divorce case between a Muslim couple or for a Christian judge to preside over a case involving a Hindu family. With no formal education on the religious laws of the state, judges may not be well versed in the laws they are to adjudicate. They rely heavily on case precedent and scholarly works to guide them through the case

- ▶ Lawyers
- ▶ Lawyers in India are trained in general law schools and receive no formal and specific training on Hindu law, Muslim law, or any other personal religious laws. All lawyers are however required to take courses regarding personal law. These larger courses touch on the variety of personal laws that exist in India, including Hindu Law.

Conclusion

- ▶ In India, since there are so many religions it is not possible to have a common source for the personal laws of different communities and therefore different sources have to be approached while making laws for people who follow different traditions. Although my personal opinion is a bit different. When you have different laws governing people of the same nation it leads to nonuniformity. For a nation to develop you need uniformity and considering the various laws of different countries we find our law is much suited to the social conditions of India.
- ▶ One of the major aims of law is to command obedience and there is no better way to demand obedience by making people follow their own traditions which they have been following for centuries.

- ▶ Conclusion. Hindu Law is a law which is considered to be of divine nature as it is believed that it has been developed on the words of god, theories given by god.
- ▶ Hindu Law of Marriage Marriage is a union with a commitment to pursue Dharma, Artha (Property) and Kama (physical desires) together. Is Hindu marriage.
- ▶ Hindu Law of Marriage Marriage is a union with a commitment to pursue Dharma, Artha (Property) and Kama (physical desires) together. Is Hindu marriage.