

Hindu Law

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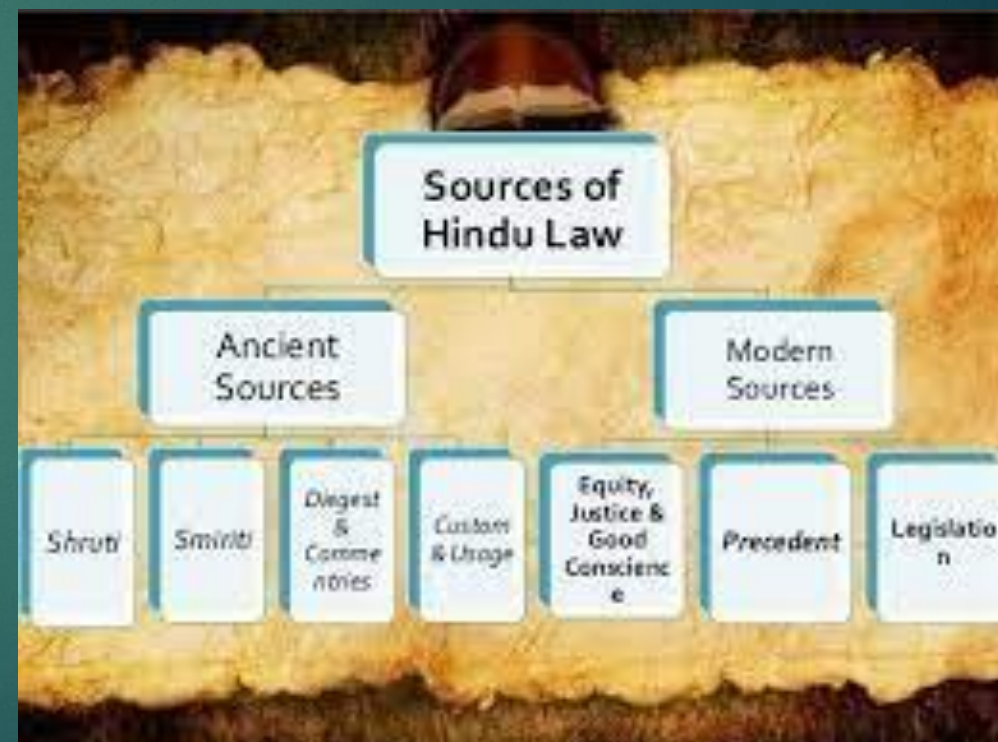
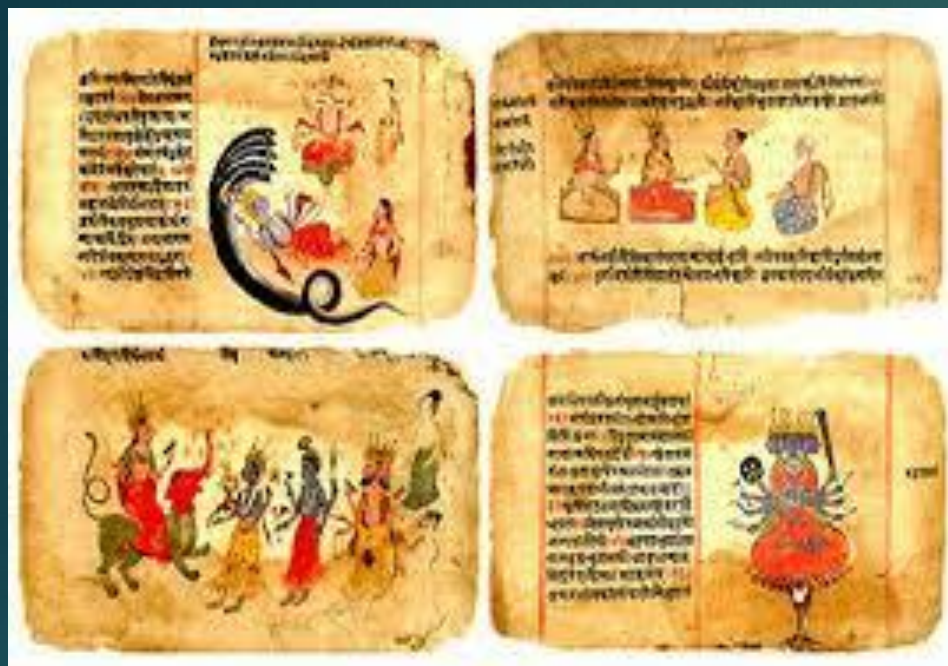
- ▶ General Characteristics of Hindu Legal System
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General Characteristic Of Hindu Legal System:

- ▶ 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.
- ▶ It is one of the oldest known jurisprudence theories in the world.
- ▶ Hindu tradition, in its surviving ancient texts, does not universally express the law in the canonical sense of *ius* or of *lex*.
- ▶ The ancient term in Indian texts is *Dharma*, which means more than a code of law, though collections of legal maxims were compiled into works such as the *Nārada-smṛiti*.
- ▶ "Hindu law" is a colonial construction,[9] and emerged after the colonial rule arrived in South Asia, and when in 1772 it was decided by British colonial officials, 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 "Muslim law"

Hindu Classical 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.
- ▶ These laws were dictated by various corporate groups such as merchant leaders, heads of caste, and kings, and because of the diverse leadership, these laws were particular to a set place.
- ▶ Records of classical Hindu law can be found in the Manu Smṛiti and other smṛiti literature; although, actual court records during this time period are rare.




Sources of Classical Hindu Law:

- ▶ Classical Hindu law was theologically based on the Dharmasastras. Traditionally these texts established the rules of dharma which could be found through three sources.
- ▶ Theologically the most important source for dharma was from the śruti or Veda, because it was acknowledged to be of divine origin. If one could not find a particular idea in the Vedas, the Dharmasutras instructed him or her to consult the next source of authority: smṛti followed then by ācāra and in some cases ātmatuṣṭi.
- ▶ The Law is set forth in the Vedas and the Traditional Texts. When these do not address an issue, the practice of cultured people becomes authoritative.
- ▶ However, ācāra was the law that was conveyed in actual practice.

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, and the Hindu Pandits along with Muslim Qadis were dismissed due to growing inconsistencies in interpretation of texts and suspicions of corruption.
- ▶ Anglo-Hindu law was expanded with a series of British parliament Acts between 1828 and 1947, that was based on political consensus rather than religious texts.



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- ▶ Anglo-Hindu Law can be divided into two phases. The first phase is the period between 1772 and
 - ▶ 1864. This phase starts in 1772 when the British adopted rules for administration of justice in
 - ▶ Bengal. The second phase is the period between 1864 and 1947. After 1864, India was formally
 - ▶ part of the British Empire, and in 1947, India became independent of the British.

History:

- ▶ In 18th century, the British East India Company, which started out as an agent of the Mughal emperor, soon took over the political and administrative powers in India, it was faced with various state responsibilities such as legislative and judiciary functions.
- ▶ The administration pursued a path of least resistance, relying upon co-opted local intermediaries that were mostly Muslims and some Hindus in various princely states.
- ▶ The British exercised power by avoiding interference and adapting to law practices as explained by the local intermediaries. The colonial state thus sustained what were essentially pre-colonial religious and political laws for resolving conflicts, well into the late nineteenth century.
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- ▶ The arrival of William Bentinck as the Governor-General of British India in 1828, marked a shift towards universal civil code, whose administration emphasized preference for the same law for all human beings, individualism and equal treatment to help liberate, empower and end social practices among Hindus and Muslims of India that had received much public coverage in Britain through the publications of Christian missionaries and individuals such as Thomas Macaulay.
 - ▶ Governor-General Dalhousie, in 1848, extended this trend and stated his policy that the law must "treat all natives much the same manner". Over time, between 1828-1855, a series of British parliamentary acts were passed to revise the Anglo-Hindu and Anglo-Muslim laws, such as those relating to the right to religious conversion, widow remarriage, and right to create wills for inheritance.

Sources:

- ▶ Hindu law was codified by the British in multiple ways: translation, case law, and enactment of various laws based on debate rather than texts. Legislation came to be the strongest source of law in India in so far as it held the highest jurisdiction when sources conflicted.

Modern Law:

- ▶ 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 (especially with the historical tradition of the caste system) still pervades the legal system, though efforts to modernize and increase the legal rights of the marginalized have been made (most notably with the passage of the Hindu Code Bills and the establishment of notable legal precedents).

Sources:

- ▶ The sources of the Modern Hindu law include:
- ▶ 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.

Conclusion:

- ▶ 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.
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