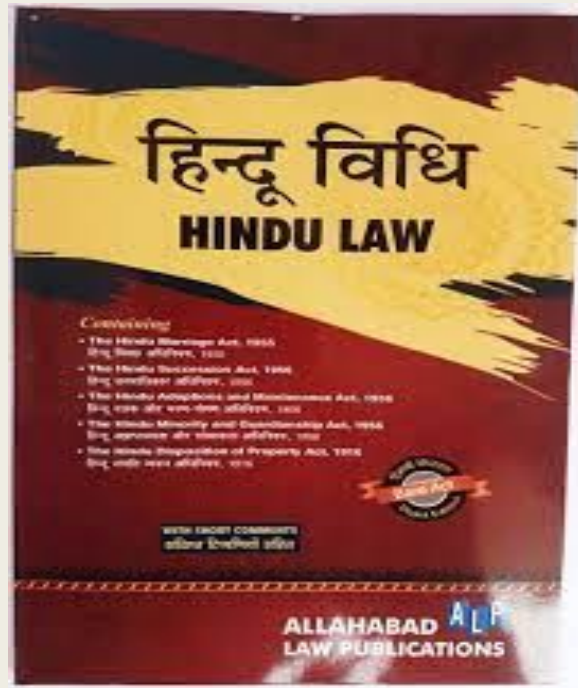


HINDU LAW



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PLAN

- INTRODUCTION OF INDIAN LAW-GENERAL CHARACTERISTIC
- HISTORY OF ITS DEVELOPMENT
- STRUCTURE OF HINDU LAW
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INTRODUCTION

Hindu law is considered to be the most ancient and prolific law in the world. It has been around every phase. It is about 6000 years old.

- Hindu law has been established by the people, not for the purpose of removing any crime or transgression from society but it was established so that the people will follow it in order to attain salvation.
- Originally Hindu law was established so that the need of the people gets fulfilled. The concept was initiated for the welfare of the people. Hindu law is a set of personal laws governing the social conditions of Hindus.
- India has a recorded legal history starting from the Vedic ages.
- Origination of Indian law: Vedas , Upanishads other religious texts.
- which preceded the current scheme of common law in India.
- The main intention of Indian law is to preserve "dharma" Hindu law is divided into three categories:
 - 1. The Classical Hindu Law
 - 2. The Anglo Hindu Law
 - 3. The Modern (Hindu Law)

History and development

With the formal independence of India from Great Britain on August 15, 1947, India acquired a new [constitution](#) as well as a complex legal system. While a Western influence is apparent in this system, it is not an exact replication. The Indian legal system has characteristics of [common law](#), but is codified and thus is actually more similar to [civil law](#) in nature. The modern Hindu legal system is applied to strictly personal law, including issues of marriage, inheritance and adoption, whereas India's secular legal system is applied to issues of criminal law and civil law.

India's first prime minister, [Jawaharlal Nehru](#) and the then law minister [Dr. Babasaheb Ambedkar](#) worked to unify the newly independent India by proposing the reformation and codification of Hindu personal law. Nehru's efforts led to contentious debates over the so-called [Hindu Code Bill](#), which he offered in the Indian parliament, as a way to fix still unclear elements of the Anglo-Hindu law.



The [Hindu Code Bill](#) was initially and continues to be very controversial within and outside of the Hindu community. Criticism of the document is based on the belief that the laws in the Hindu Code bill should apply to all citizens regardless of religious affiliation.^[1] Though a small minority suggested some kind of return to classical Hindu law, the real debate was over how to appropriate the Anglo-Hindu law. Nehru completed codification and partial reform, but overall the legal system only slightly changed. In the end, a series of four major pieces of personal law legislation were passed in 1955-56 and these laws form the first point of reference for modern Hindu law: [Hindu Marriage Act \(1955\)](#), [Hindu Succession Act \(1956\)](#), [Hindu Minority and Guardianship Act \(1956\)](#), and [Hindu Adoptions and Maintenance Act \(1956\)](#). Though these legislative moves purported to resolve still unclear parts of the Anglo-Hindu law, the case law and interpretive tradition of British judges and Indian judges in the British employ remained and remains crucial to the application of modern Hindu law.



STRUCTURE OF HINDU LAW

1. Classical Hindu law

It includes the diverse legal practices connected with the Vedic traditions in some ways and existing from the Vedic times until 1772.

It was decentralized and diverse in practice and differed between communities, based on locations, vocational groups and castes.

It was based on dharmasastra and dharma which was traditionally delineated by learned people or scholars of vedas.

It originates from community, not a state polity.



2. The Anglo-Hindu Law

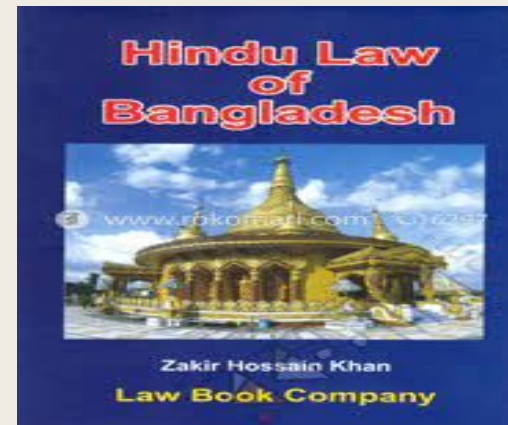
- It has two Phases.
- 1st phase: (1772-1864)
 - 3 main developments:
 - 1. Dharmashastra translated by various British administrator-scholars.
 - 2. Use of court pandits in british courts for interpretation of law.
 - 3. Establishments of case laws.
- 2nd phase: (1864-1947)
 - Departure from the Dharmashastra tradition.
 - The system of court pandits ended.
 - Acceptance of codified law system.

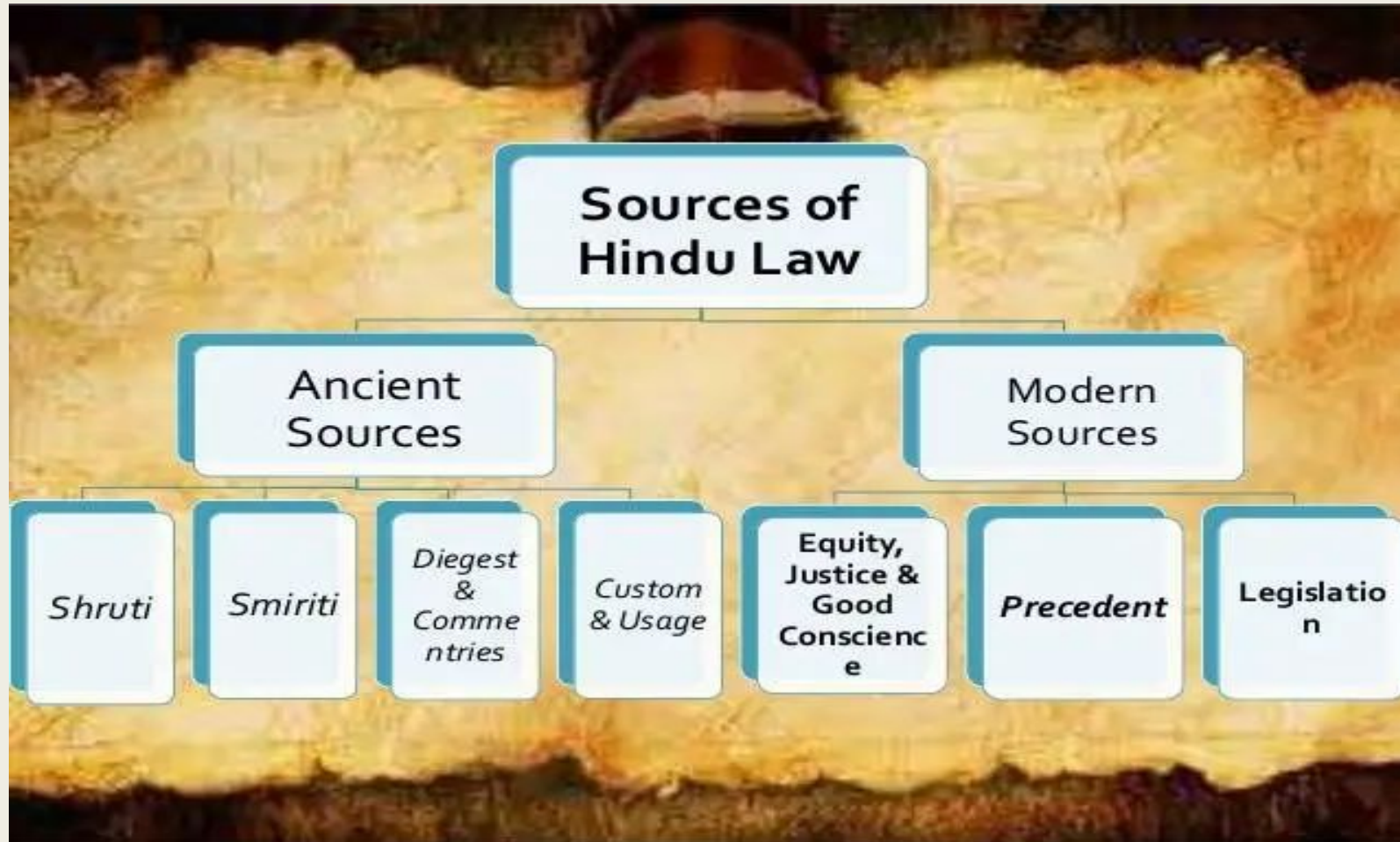
3. Modern Hindu Law

- Family law or the personal law applicable to Hindus is the Modern Hindu Law.
- The British adopted (especially during 1864 and 1947) the modern law or the English legal system.
- These four codified laws are the first points of reference for the modern Hindu law.
- 1. Hindu Marriage Act (1955),
- 2. Hindu Succession Act (1956),
- 3. Hindu Minority and Guardianship Act (1956),
- 4. Hindu Adoptions and Maintenance Act (1956).

Countries following Indian Law

- India
- Nepal
- Sri Lanka
- Bangladesh
- Indonesia





SOURCES OF HINDU LAW

1) Ancient Sources :

- a) **Sruti** : Manu has defined Sruti as follows— “By *Sruti* or what was heard from above (from God) is meant the *Veda*”. *Sruti* or *Veda* are believed to contain the very words of Deity (God). They are supposed to be the divine utterances to be found in the four Vedas, the six vedangas and the eighteen Upanishads.

- b) **Smriti** : They are utterances and precepts of the Almighty, which have been heard and remembered and handed down by the Rishis (sages) from generation to generation. The smritis are divided into Primary and Secondary Smrities contained in Dharma Sutra (Prose) and Dharmashastras (Poetry).

- c) **Digests and Commentaries** : After the Smrities, the next step in the development of Hindu Law was the composition of a number of commentaries (tika) and Digests (Nibandha) based upon the Smrities. The commentaries are to interpret the law as laid down in the Smrities.

- d) **Custom** : When human beings came to live in groups, it was but natural that they should, for harmonious group life, conform to certain patterns of human behaviour.

Modern sources of Hindu Law.

Modern sources of Hindu law refers to those sources which are comparatively new sources that emerged over time and evolved in the present form. Following are the main source of Hindu law:

1. Equity justice and good conscience
2. Legislation
3. Precedent

Equity justice and good conscience-

Equity means being fair and implies fairness in dealing. Impartiality is the main attribute of modern judicial systems. True justice can be delivered through equity and good conscience. Where no rule is given, unreasonableness would prevail.

Sometimes it happens when a problem comes before the court for resolution, it cannot be settled by prevailing laws. Such a situation may be rare but might occur. In such a situation, courts can not refuse to provide a remedy, and also they are under obligation to decide such a case. In such cases, the courts are guided by the principle of reasonableness, basic values, and fair play.

So this principle is known as equity, justice, and a good conscience and it is also known as Natural law.

This principle of natural law was prevalent in India since the British era.

So wherever conflict arises in the interpretation of Hindu law this principle is used by the courts either to formulate a new law or to carry forward existing laws.

Legislation

The legislation is an act of parliament that plays an important role in the formation of Hindu law. The legislation is often regarded as a tool for social change. The legislation provides a base and authenticity to the laws. After the independence of India, there has been a steep increase in legislation regarding the codification of personal laws.

After codification, any point dealt with by the codified law is final. The enactment overrides all prior law, whether based on custom or otherwise unless an express saving is provided for in the enactment itself. In matters not specifically covered by the codified law, the old textual law continues to have application.

In modern society, this is the only way to bring in new laws. The parliament, in accordance with the needs society, constitutes new laws. For example, a new way of performing Hindu marriages in Tamil Nadu that got rid of rituals and priests was rejected by the SC on the basis that new customs cannot be invented. However, TN later passed an act that recognized these marriages.

Examples of legislations include the Hindu marriage act, 1955, Hindu succession Act, Hindu minority and guardianship act, Hindu adoption and maintenance act, etc

Also, most of the Hindu laws have now been codified as mentioned in the beginning.

Precedents

The doctrine of stare decisis started in India from British rule. All cases are now recorded and new cases are decided based on existing case laws.

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 judgment of SC is binding on all courts across India and the judgment of HC is binding on all courts in that state, except where they have been modified or altered by the Supreme Court whose decisions are binding on all the Courts except for itself.

Precedent is called to be a source of Hindu law in two senses –

First – practically all the important principles and rules of Hindu law have now been embodied in case law. In such matters, recourse to the source is not necessary. Reference to a leading decision is enough.

Secondly, – Precedent is a source of law in the sense that by the purpose of judicial interpretation, doctrines, principles, and rules of law stand modified or altogether new principles, doctrines, and rules have been introduced in the body of Hindu law. For these principle doctrines and rules, the sources of authority are Precedent.

In this way, various sources cumulate and unite in one to form a wide and dynamic Hindu law.

Conclusion

- In the arena of personal laws, Hindu law plays vital role and it governs the persons who comes with in the preview of Hindu.
- In ancient period Hindu law had only its divine nature (law of God), but nowadays its mature has totally changed.
- Its divine nature has been seized by its interpretation , enacting laws & also by the judicial precedents.
- By the interpretation of the ancient sources of Hindu law, its scope has became very wide.
- Modern sources of Hindu law has a colossal importance, in the evolution of modern Hindu law.

Thank you