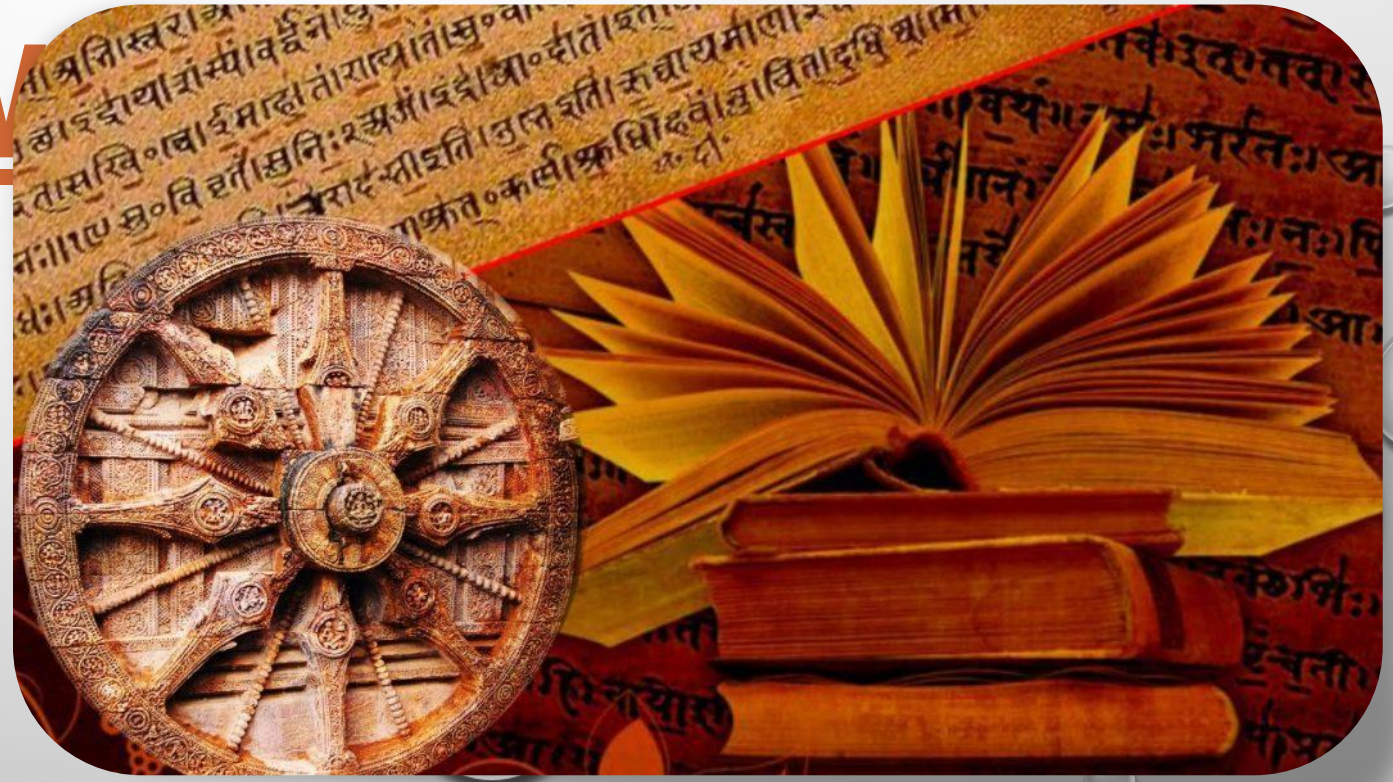
HINDU LAW

NAME : GAURAV PATIL

GROUP: 20LL6(A)



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.[6] 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 NĀRADASMṚTI.

- THE TERM “HINDU LAW” IS A COLONIAL CONSTRUCTION, 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” (SHARIA).
- THE SUBSTANCE OF HINDU LAW IMPLEMENTED BY THE BRITISH WAS DERIVED FROM A DHARMAŚĀSTRA NAMED MANUSMRITI, ONE OF THE MANY TREATISES (ŚĀSTRA) ON DHARMA.

- THE BRITISH, HOWEVER, MISTOOK THE DHARMAŚĀSTRA AS CODES OF LAW AND FAILED TO RECOGNISE THAT THESE SANSKRIT TEXTS WERE NOT USED AS STATEMENTS OF POSITIVE LAW UNTIL THE BRITISH COLONIAL OFFICIALS CHOSE TO DO SO. RATHER, DHARMAŚĀSTRA CONTAINED JURISPRUDENCE COMMENTARY, I.E., A THEORETICAL REFLECTION UPON PRACTICAL LAW, BUT NOT A STATEMENT OF THE LAW OF THE LAND AS SUCH. SCHOLARS HAVE ALSO QUESTIONED THE AUTHENTICITY AND THE CORRUPTION IN THE MANUSMRITI MANUSCRIPT USED TO DERIVE THE COLONIAL ERA HINDU LAW.

HISTORY OF DEVELOPMENT OF HINDU LAW.

• IN COLONIAL HISTORY CONTEXT, THE CONSTRUCTION AND IMPLEMENTATION OF HINDU LAW AND ISLAMIC LAW WAS AN ATTEMPT AT "LEGAL PLURALISM" DURING THE BRITISH COLONIAL ERA, WHERE PEOPLE IN THE SAME REGION WERE SUBJECTED TO DIFFERENT CIVIL AND CRIMINAL LAWS BASED ON THE RELIGION OF THE PLAINTIFF AND DEFENDANT. LEGAL SCHOLARS STATE THAT THIS DIVIDED THE INDIAN SOCIETY, AND THAT INDIAN LAW AND POLITICS HAVE EVER SINCE VACILLATED BETWEEN "LEGAL PLURALISM – THE NOTION THAT RELIGION IS THE BASIC UNIT OF SOCIETY AND DIFFERENT RELIGIONS MUST HAVE DIFFERENT LEGAL RIGHTS AND OBLIGATIONS" AND "LEGAL UNIVERSALISM – THE NOTION THAT INDIVIDUALS ARE THE BASIC UNIT OF SOCIETY AND ALL CITIZENS MUST HAVE UNIFORM LEGAL RIGHTS AND OBLIGATIONS".

- HINDU LAW CLAIMS ONE OF THE LONGEST CONTINUOUS HISTORIES OF ANY LEGAL SYSTEM IN THE WORLD. FOR ABOUT 2,500 YEARS IT WAS BASED ON THE SAME PRIMARY SOURCES, SANSKRIT TEXTS COMPOSED BETWEEN CA. 500 BCE AND 500 CE. THESE TEXTS (DHARMAŚĀSTRAS) WERE CONSIDERED TO BE REVEALED, AND WERE PART OF THE ETERNAL, UNCHANGEABLE VEDA. FROM ABOUT THE SEVENTH UNTIL THE EIGHTEENTH CENTURY THE BASIC TEXTS BECAME THE OBJECT OF NUMEROUS COMMENTARIES, IN WHICH EACH AUTHOR INTEGRATED THE ENTIRE BODY OF OFTEN CONTRADICTORY DHARMAŚĀSTRAS INTO COHERENT SYSTEMS. IN 1772 THE BRITISH DECIDED TO APPLY THE LAW OF THE DHARMAŚĀSTRAS TO HINDUS IN THE NEWLY ESTABLISHED ANGLO-INDIAN COURTS OF LAW. YET, IGNORANCE OF THE SANSKRIT LANGUAGE, LACK OF FAMILIARITY WITH HINDU CULTURE, AND THE COMMON LAW BACKGROUND OF BRITISH JUDGES LED TO FUNDAMENTAL DEVELOPMENTS. IN 1955–6 THE INDIAN PARLIAMENT OVERRULED MOST OF TRADITIONAL HINDU LAW WITH FOUR MODERN ACTS—ON MARRIAGE, SUCCESSION, MINORITY AND GUARDIANSHIP, AND ADOPTIONS AND MAINTENANCE.

THE STRUCTURE OF HINDU LAW.

- 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).
- HINDU LAW CAN BE DIVIDED INTO THREE CATEGORIES: THE CLASSICAL HINDU LAW; THE ANGLO HINDU LAW AND MODERN HINDU LAW.

CLASSICAL HINDU LAW

- JOHN MAYNE, IN 1910, WROTE THAT THE CLASSICAL HINDU LAW HAS THE OLDEST PEDIGREE OF ANY KNOWN SYSTEM OF JURISPRUDENCE.[5] MAYNE NOTED THAT WHILE BEING ANCIENT, THE CONFLICTING TEXTS ON ALMOST EVERY QUESTION PRESENTS A GREAT DIFFICULTY IN DECIDING WHAT THE CLASSICAL HINDU LAW WAS. AS MORE LITERATURE EMERGES, AND IS TRANSLATED OR INTERPRETED, MAYNE NOTED THAT THE CONFLICT BETWEEN THE TEXTS ON EVERY MATTER OF LAW HAS MULTIPLIED, AND THAT THERE IS A LACK OF CONSENSUS BETWEEN THE WESTERN LEGAL SCHOLARS RESIDENT IN INDIA.

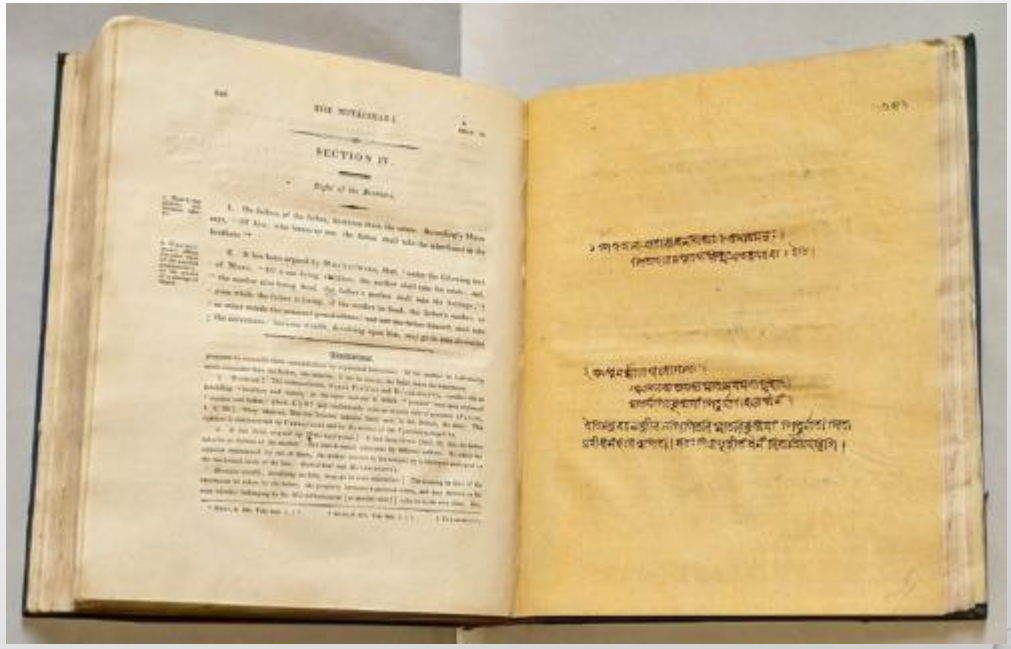
Ludo Rocher states that Hindu tradition does not express law in the sense of ius nor of lex.[6] The term “Hindu law” is a colonial construction, and emerged when the colonial rule arrived in South Asia, and when in 1772 it was decided by British colonial officials in consultation with Mughal rulers, 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

- HOWEVER, HINDU LAW WAS NEITHER MENTIONED, NOR IN USE, NOR CODIFIED, DURING THE 600 YEARS OF ISLAMIC RULE OF INDIA. AN ATTEMPT WAS MADE TO FIND ANY OLD SURVIVING SANSKRIT TEXT THAT MENTIONED ELEMENTS OF LAW, AND THIS IS HOW WESTERN EDITORS AND TRANSLATORS ARRIVED AT THE EQUATION THAT "DHARMA SHASTRA EQUALS LAWBOOK, CODE OR INSTITUTE", STATES ROCHER.
  SCHOLARS SUCH AS DERRETT, MENSKI AND OTHERS HAVE REPEATEDLY ASKED WHETHER AND WHAT EVIDENCE THERE IS THAT THE DHARMASASTRAS WERE THE ACTUAL LEGAL AUTHORITY BEFORE AND DURING THE ISLAMIC RULE IN INDIA.

- CLASSICAL HINDU LAW, STATES DONALD DAVIS, “REPRESENTS ONE OF THE LEAST KNOWN, YET MOST SOPHISTICATED TRADITIONS OF LEGAL THEORY AND JURISPRUDENCE IN WORLD HISTORY. HINDU JURISPRUDENTIAL TEXTS CONTAIN ELABORATE AND CAREFUL PHILOSOPHICAL REFLECTIONS ON THE NATURE OF LAW AND RELIGION. THE NATURE OF HINDU LAW AS A TRADITION HAS BEEN SUBJECT TO SOME DEBATE AND SOME MISUNDERSTANDING BOTH WITHIN AND ESPECIALLY OUTSIDE OF SPECIALIST CIRCLES.”
- THE SMRITIS, SUCH AS MANUSMRITI, NARADASMRITI, YAJNAVALKYA SMRTI AND PARASHARA SMRITI CONTRIBUTE TO THE EXPOSITION OF THE HINDU DHARMA BUT ARE CONSIDERED LESS AUTHORITATIVE THAN ŚRUTIS .

ANGLO-HINDU LAW.

As East India Company obtained political and administrative powers, in parts of India, in the late 18th century, it was faced with various state responsibilities such as legislative and judiciary functions.[55] The East India Company desired a means to establish and maintain the rule of law, and property rights, in a stable political environment, to expedite trade, and with minimal expensive military engagement.



- TO THIS END THE COMPANY PURSUED A PATH OF LEAST RESISTANCE, RELYING UPON LOCAL INTERMEDIARIES THAT WERE MOSTLY MUSLIMS AND SOME HINDUS IN VARIOUS INDIAN STATES. THE BRITISH EXERCISED POWER BY AVOIDING INTERFERENCE AND ADAPTING TO LOCAL LAW PRACTICES, AS EXPLAINED BY THE LOCAL INTERMEDIARIES. THE COLONIAL STATE THUS SUSTAINED WHAT WERE ESSENTIALLY PRE-COLONIAL RELIGIOUS AND POLITICAL LAW AND CONFLICTS, WELL INTO THE LATE NINETEENTH CENTURY. THE COLONIAL POLICY ON THE SYSTEM OF PERSONAL LAWS FOR INDIA.

- 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.

MODERN HINDU LAW.

- AFTER THE INDEPENDENCE OF INDIA FROM THE COLONIAL RULE OF BRITAIN IN 1947, INDIA ADOPTED A NEW CONSTITUTION IN 1950. MOST OF THE LEGAL CODE FROM THE COLONIAL ERA CONTINUED AS THE LAW OF THE NEW NATION, INCLUDING THE PERSONAL LAWS CONTAINED IN ANGLO-HINDU LAW FOR HINDUS, BUDDHISTS, JAINS AND SIKHS, THE ANGLO-CHRISTIAN LAW FOR CHRISTIANS, AND THE ANGLO-MUSLIM LAW FOR MUSLIMS. ARTICLE 44 OF THE 1950 INDIAN CONSTITUTION MANDATES A UNIFORM CIVIL CODE, ELIMINATING ALL RELIGION-BASED CIVIL LAWS INCLUDING HINDU LAW, CHRISTIAN LAW AND MUSLIM LAW THROUGHOUT THE TERRITORY OF INDIA. WHILE HINDU LAW HAS SINCE BEEN AMENDED TO BE INDEPENDENT OF ANCIENT RELIGIOUS TEXTS, ARTICLE 44 OF THE INDIAN CONSTITUTION HAS REMAINED LARGELY IGNORED IN MATTERS OF MUSLIM LAW BY SUCCESSIVE INDIAN GOVERNMENTS SINCE 1950.

An amendment to the constitution (42nd Amendment, 1976) formally inserted the word secular as a feature of the Indian republic.[74] However, unlike the Western concept of secularism which separates religion and state, the concept of secularism in India means acceptance of religious laws as binding on the state, and equal participation of state in different religions.

- SINCE THE EARLY 1950S, INDIA HAS DEBATED WHETHER LEGAL PLURALISM SHOULD BE REPLACED WITH LEGAL UNIVERSALISM AND A UNIFORM CIVIL CODE THAT DOES NOT DIFFERENTIATE BETWEEN PEOPLE BASED ON THEIR RELIGION. THIS DEBATE REMAINS UNRESOLVED. THE QURAN-BASED INDIAN MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT OF 1937 REMAINS THE LAW OF THE LAND OF MODERN INDIA FOR INDIAN MUSLIMS, WHILE THE PARLIAMENTARY, NON-RELIGIOUS UNIFORM CIVIL CODE PASSED IN THE MID-1950S APPLIES TO INDIANS WHO ARE HINDUS (ALONG WITH BUDDHISTS, JAINS, SIKHS AND PARSEES), AS WELL AS TO INDIAN CHRISTIANS AND JEWS.

THE 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.

- 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. THERE ARE FOUR VEDAS NAMELY, RIG VEDA (CONTAINING HYMNS IN SANSKRIT TO BE RECITED BY THE CHIEF PRIEST), YAJURVA VEDA (CONTAINING FORMULAS TO BE RECITED BY THE OFFICIATING PRIEST), SAMA VEDA (CONTAINING VERSES TO BE CHANTED BY SEERS) AND ATHARVA VEDA (CONTAINING A COLLECTION OF SPELLS AND INCANTATIONS, STORIES, PREDICTIONS, APOTROPAIC CHARMS AND SOME SPECULATIVE HYMNS).

- (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.
  THERE ARE TWO KINDS OF SMRITIS VIZ. DHARMASUTRAS AND DHARMASHASTRAS. THEIR SUBJECT MATTER IS ALMOST THE SAME. THE DIFFERENCE IS THAT THE DHARMASUTRAS ARE WRITTEN IN PROSE, IN SHORT MAXIMS (SUTRAS) AND THE DHARMASHASTRAS ARE COMPOSED IN POETRY (SHLOKAS). HOWEVER, OCCASIONALLY, WE FIND SHLOKAS IN DHARMASUTRAS AND SUTRAS IN THE DHARMASHASTRAS. IN A NARROW SENSE, THE WORD SMRITI IS USED TO DENOTE THE POETICAL DHARMASHASTRAS.

- (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 BUT IN THE LATER PERIOD THE WORKS WERE IN THE NATURE OF DIGESTS CONTAINING A SYNTHESIS OF THE VARIOUS SMRITIS AND EXPLAINING AND RECONCILING THE VARIOUS CONTRADICTIONS.

  THE EVOLUTION OF THE DIFFERENT SCHOOLS OF HINDU LAW HAS BEEN POSSIBLE ON ACCOUNT OF THE DIFFERENT COMMENTARIES THAT WERE WRITTEN BY VARIOUS AUTHORITIES. THE ORIGINAL SOURCE OF HINDU LAW WAS THE SAME FOR ALL HINDUS. BUT SCHOOLS OF HINDU LAW AROSE AS THE PEOPLE CHOSE TO ADHERE TO ONE OR THE OTHER SCHOOL FOR DIFFERENT REASONS. THE DAYABHAGA AND MITAKSHARA ARE THE TWO MAJOR SCHOOLS OF HINDU LAW. THE DAYABHAGA SCHOOL OF LAW IS BASED ON THE COMMENTARIES OF JIMUTVAHANA (AUTHOR OF DAYABHAGA WHICH IS THE DIGEST OF ALL CODES) AND THE MITAKSHARA IS BASED ON THE COMMENTARIES WRITTEN BY VIJNANESWAR ON THE CODE OF YAJNAVALKYA.

- (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. IT IS SUPERIOR TO WRITTEN LAW. THERE ARE CERTAIN CHARACTERISTICS WHICH NEED TO BE FULFILLED FOR DECLARING CUSTOM TO BE A VALID ONE. THEY ARE:-

(I) THE CUSTOM MUST BE ANCIENT. THE PARTICULAR USAGE MUST HAVE BEEN PRACTISED FOR A LONG TIME AND ACCEPTED BY COMMON CONSENT AS A GOVERNING RULE OF A PARTICULAR SOCIETY.

(II) THE CUSTOM MUST BE CERTAIN AND SHOULD BE FREE FROM ANY SORT OF AMBIGUITY. IT MUST ALSO BE FREE FROM TECHNICALITIES.

(III) THE CUSTOM MUST BE REASONABLE AND NOT AGAINST ANY EXISTING LAW. IT MUST NOT BE IMMORAL OR AGAINST ANY PUBLIC POLICY AND

(IV) THE CUSTOM MUST HAVE BEEN CONTINUOUSLY AND UNIFORMLY FOLLOWED FOR A LONG TIME.

- 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.
  THE COURTS CANNOT REFUSE TO THE SETTLE THE DISPUTE IN THE ABSENCE OF LAW AND THEY ARE UNDER AN OBLIGATION TO DECIDE SUCH A CASE ALSO. FOR DETERMINING SUCH CASES, THE COURTS RELY UPON THE BASIC VALUES, NORMS AND STANDARDS OF FAIRPLAY AND PROPRIETY.
  IN TERMINOLOGY, THIS IS KNOWN AS PRINCIPLES OF JUSTICE, EQUITY AND GOOD CONSCIENCE. THEY MAY ALSO BE TERMED AS NATURAL LAW. THIS PRINCIPLE IN OUR COUNTRY HAS ENJOYED THE STATUS OF A SOURCE OF LAW SINCE THE 18TH CENTURY WHEN THE BRITISH ADMINISTRATION MADE IT CLEAR THAT IN THE ABSENCE OF A RULE, THE ABOVE PRINCIPLE SHALL BE APPLIED.

- (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.
  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 CONTAINS TO HAVE APPLICATION.
  (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.

CONCLUSION..

- IT HAS BEEN SEEN THAT HINDU LAW HAS BEEN CRITIQUED FOR ITS ORTHODOXY, PATRIARCHAL CHARACTER AND DOES NOT BEAR A VERY MODERN OUTLOOK OF SOCIETY. THERE ARE MANY AREAS WHERE THE HINDU LAW NEEDS TO UPGRADE ITSELF, FOR EXAMPLE, THE IRRETRIEVABLE BREAKDOWN THEORY AS A VALID GROUND FOR DIVORCE IS STILL NOT RECOGNISED UNDER THE HINDU MARRIAGE ACT, 1955, AND EVEN THE OF SUPREME COURT HAVE EXPRESSED THEIR CONCERN ON THIS.

  THE MOST VALID CONCERN IS THAT THE VERY DEFINITION OF A 'HINDU' IS STILL NOT GIVEN IN ANY OF THE SOURCES. STATUTES GIVE ONLY A NEGATIVE DEFINITION WHICH DOES NOT SUFFICE THE TEST OF TIME. THE VERY PROPONENT THAT HINDU LAW IS DIVINE LAW HAS BEEN CHALLENGED BY SCHOLARS AND ATHEISTS.

- IT CAN BE SAID THAT PROPER CODIFICATION OF HINDU LAW WITHOUT ROOM FOR AMBIGUITY IS THE NEED OF THE HOUR. IT CAN BE SAID THAT WHERE THE PRESENT SOURCES OF HINDU LAW ARE UNINVITING THE LEGISLATURE COULD LOOK INTO SOURCES AND CUSTOMS OF OTHER RELIGIONS AND INCORPORATE THEM INTO HINDU LAW IF IT CATERS TO THE NEED OF THE SOCIETY AND MEETS THE TEST OF TIME.