

Hindu law



HINDU LAW

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LEGISLATION

- LEGISLATION, THE PREPARING AND ENACTING OF LAWS BY LOCAL, STATE, OR NATIONAL LEGISLATURES.
- IN OTHER CONTEXTS IT IS SOMETIMES USED TO APPLY TO MUNICIPAL ORDINANCES AND TO THE RULES AND REGULATIONS OF ADMINISTRATIVE AGENCIES PASSED IN THE EXERCISE OF DELEGATED LEGISLATIVE FUNCTIONS.



Hindu Law

- **Origin:** guidelines given in the Vedas (divine nature of law);
 - **Codified law:** Hindu Marriage Act 1955, Hindu Adoption and Maintenance Act 1956, Hindu Minority and Guardianship Act 1956, and Hindu Succession Act 1956.
- Law Application:** Hindu by religion; Hindu by birth; persons who are not Muslim, Christian, Jew, or Parsee by religion; persons who are not governed by any other religious law

HISTORY OF HINDU LAW

CLASSICAL PERIOD - 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.

BRITISH PERIOD - IT WAS NOT UNTIL THE 1770S, WHEN THE BRITISH EMPIRE CAME TO

COLONIZE INDIA, THAT THE CONCEPT OF LAW CAME INTO PRACTICE. COLONIAL HINDU LAW MARKS A LONG SPAN OF NEARLY 200 YEARS, BEGINNING IN 1772 AND ENDING IN 1947. THIS PERIOD MAY BE SPLIT INTO TWO MAIN PHASES. THE FIRST PHASE (BEGINNING IN 1772 AND ENDING IN 1864) IS MARKED BY THREE MAIN EVENTS: TRANSLATION OF THE DHARMAŚĀSTRAS BY BRITISH SCHOLAR-ADMINISTRATORS, THE USE OF COURT PANDITS TO DEFINE LAWS AND RULES, AND THE RISE OF CASE LAW. THE SECOND PHASE (FROM 1864 TO 1947) IS MARKED BY THE DISMISSAL OF COURT PANDITS, THE RISE OF LEGISLATIVE PROCESSES, AND A CODIFIED LAW SYSTEM.

MODERN PERIOD - 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

SOURCES TYPICAL FOR COMMON LAW IN INDIA

- . THE FACT THAT THE PARTIES GOVERN THE CONTRACTS IS A COMPONENT OF COMMON LAW WHEREAS THE REQUIREMENT OF OVERALL COMPLIANCE WITH THE INDIAN CONTRACT ACT IS A CHARACTERISTIC OF CIVIL LAW.
- . HENCE, IN ORDER TO CONCLUDE, IT CAN BE CONVENIENTLY ARRIVED AT THAT INDIA IS A COMMON LAW COUNTRY WITH TRACES OF CIVIL LAW IN IT.

Sources of Hindu Law

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graph TD; A[Sources of Hindu Law] --> B[Ancient Sources]; A --> C[Modern Sources]; B --> D[Shruti]; B --> E[Smiriti]; B --> F["Digest & Commentaries"]; B --> G[Custom & Usage]; C --> H["Equity, Justice & Good Conscience"]; C --> I[Precedent]; C --> J[Legislation]
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Ancient Sources

Shruti

Smiriti

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Modern Sources

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Precedent

Legislation

TYPES OF HINDU LAW

CONSTITUTIONAL AND ADMINISTRATIVE LAW

— THE CONSTITUTION PRESCRIBES A FEDERAL STRUCTURE OF GOVERNMENT, WITH A CLEARLY DEFINED SEPARATION OF LEGISLATIVE AND EXECUTIVE POWERS BETWEEN THE FEDERATION AND THE STATES. EACH STATE GOVERNMENT HAS THE FREEDOM TO DRAFT ITS OWN LAWS ON SUBJECTS CLASSIFIED AS STATE SUBJECTS. LAWS PASSED BY THE PARLIAMENT OF INDIA AND OTHER PRE-EXISTING CENTRAL LAWS ON SUBJECTS CLASSIFIED AS CENTRAL SUBJECTS ARE BINDING ON ALL CITIZENS. HOWEVER, THE CONSTITUTION ALSO HAS CERTAIN UNITARY FEATURES, SUCH AS VESTING POWER OF AMENDMENT SOLELY IN THE FEDERAL GOVERNMENT, THE ABSENCE OF DUAL CITIZENSHIP, AND THE OVERRIDING AUTHORITY ASSUMED BY THE FEDERAL GOVERNMENT IN TIMES OF EMERGENCY.

- CRIMINAL LAW - THE INDIAN PENAL CODE FORMULATED BY THE BRITISH DURING THE BRITISH RAJ IN 1860, FORMS THE BACKBONE OF CRIMINAL LAW IN INDIA. THE CODE OF CRIMINAL PROCEDURE, 1973 GOVERNS THE PROCEDURAL ASPECTS OF THE CRIMINAL LAW.

- JURY TRIALS WERE ABOLISHED BY THE GOVERNMENT IN 1960 ON THE GROUNDS THEY WOULD BE SUSCEPTIBLE TO MEDIA AND PUBLIC INFLUENCE. THIS DECISION WAS BASED ON AN 8-1 ACQUITTAL OF KAWAS NANAVATI IN K. M. NANAVATI VS. STATE OF MAHARASHTRA, WHICH WAS OVERTURNED BY HIGHER COURTS.

- CONTRACT LAW - THE MAIN CONTRACT LAW IN INDIA IS CODIFIED IN THE INDIAN CONTRACT ACT, WHICH CAME INTO EFFECT ON 1 SEPTEMBER 1872 AND EXTENDS TO ALL INDIA. IT GOVERNS ENTRANCE INTO CONTRACT, AND EFFECTS OF BREACH OF CONTRACT. INDIAN CONTRACT LAW IS POPULARLY KNOWN AS MERCANTILE LAW OF INDIA. ORIGINALLY INDIAN SALES OF GOODS ACT AND PARTNERSHIP ACT WERE PART OF INDIAN CONTRACT ACT, BUT DUE TO NEEDED AMENDMENT THESE ACTS WERE SEPARATED FROM CONTRACT ACT. THE CONTRACT ACT OCCUPIES THE MOST IMPORTANT PLACE IN LEGAL AGREEMENTS IN INDIA.

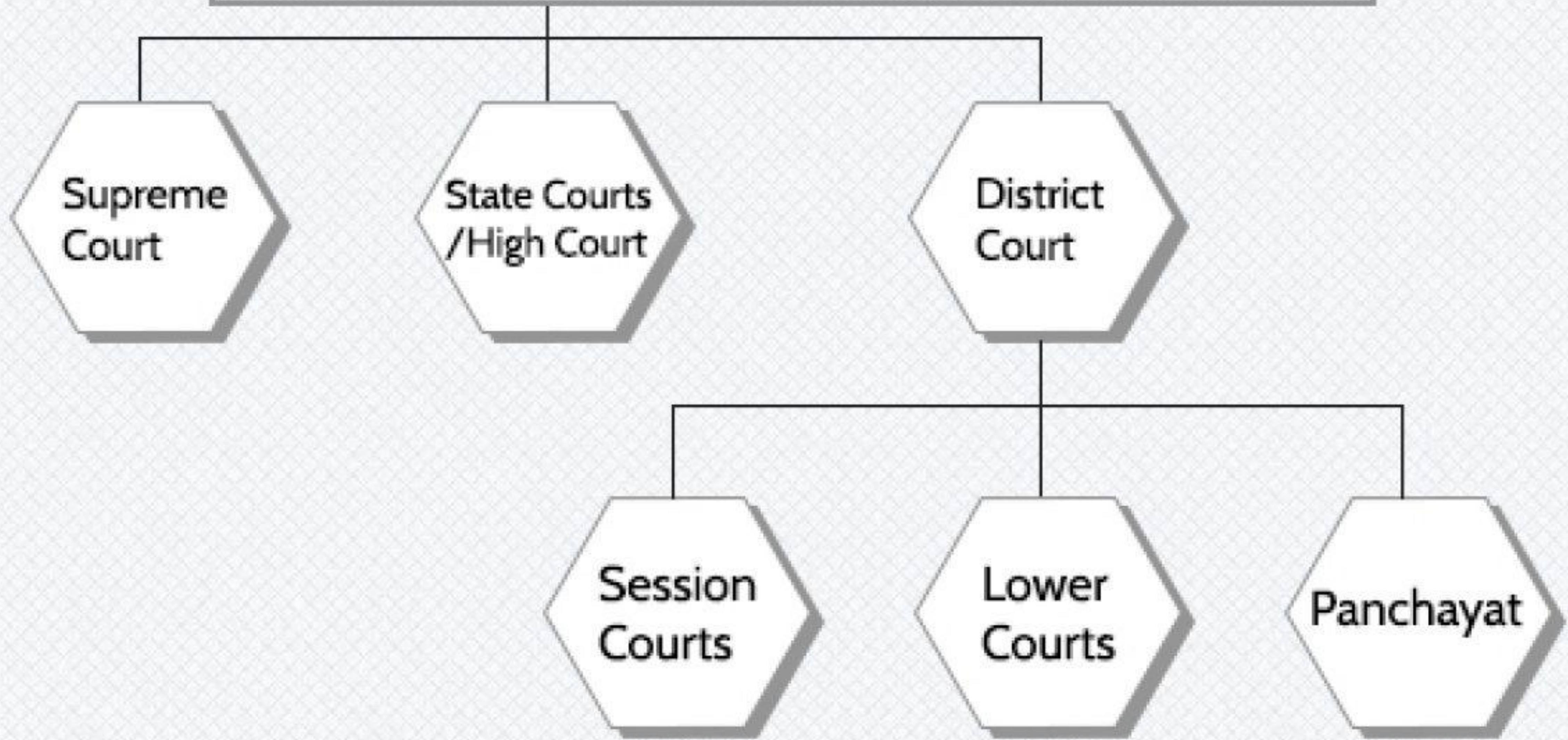
- LABOUR LAW - INDIAN LABOUR LAW ARE AMONG THE MOST COMPREHENSIVE IN THE WORLD. THEY HAVE BEEN CRITICISED BY THE WORLD BANK, PRIMARILY ON THE GROUNDS OF THE INFLEXIBILITY THAT RESULTS FROM GOVERNMENT NEEDING TO APPROVE DISMISSALS. IN PRACTICE, THERE IS A LARGE INFORMAL SECTOR OF WORKERS, BETWEEN 80 OR 90 PER CENT OF THE LABOUR FORCE, TO WHOM LABOUR RIGHTS ARE NOT ACTUALLY AVAILABLE AND LAWS ARE NOT ENFORCED.

- **TORT LAW** - **TORT LAW IN INDIA IS PRIMARILY GOVERNED BY JUDICIAL PRECEDENT AS IN OTHER COMMON LAW JURISDICTIONS, SUPPLEMENTED BY STATUTES GOVERNING DAMAGES, CIVIL PROCEDURE, AND CODIFYING COMMON LAW TORTS. AS IN OTHER COMMON LAW JURISDICTIONS, A TORT IS BREACH OF A NON-CONTRACTUAL DUTY WHICH HAS CAUSED DAMAGE TO THE PLAINTIFF GIVING RISE TO A CIVIL CAUSE OF ACTION AND FOR WHICH REMEDY IS AVAILABLE.**

. TAX LAW – INDIAN TAX LAW INVOLVES SEVERAL DIFFERENT TAXES LEVIED BY DIFFERENT GOVERNMENTS. INCOME TAX IS LEVIED BY THE CENTRAL GOVERNMENT UNDER THE INCOME TAX ACT 1961. CUSTOMS AND EXCISE DUTIES ARE ALSO LEVIED BY THE CENTRAL GOVERNMENT. SALES TAX IS LEVIED UNDER VAT LEGISLATION AT THE STATE LEVEL.

. THE AUTHORITY TO LEVY A TAX IS DERIVED FROM THE CONSTITUTION OF INDIA WHICH ALLOCATES THE POWER TO LEVY VARIOUS TAXES BETWEEN THE CENTRE AND THE STATE.

INDIAN LEGAL HIERARCHY



CHARACTERISTICS OF HINDU LAW

- . IN HINDUISM, LAW IS DISCUSSED AS A SUBSET OF DHARMA WHICH SIGNIFIES BEHAVIORS THAT ARE CONSIDERED IN ACCORD WITH RTA, THE ORDER THAT MAKES LIFE AND THE UNIVERSE POSSIBLE, AND INCLUDES DUTIES, RIGHTS, LAWS, CONDUCT, VIRTUES AND "RIGHT WAY OF LIVING".
- . THE CONCEPT OF DHARMA INCLUDES HINDU LAW.

INDIAN LEGAL SYSTEM

- . THERE ARE FIVE TYPES OF LEGAL SYSTEM I.E. CIVIL LAW; COMMON LAW; CUSTOMARY LAW; RELIGIOUS LAW AND MIXED LAW.
- . INDIA HAS A FEDERAL JUDICIAL SYSTEM WHICH LEGAL SYSTEM BASED ON MIXED LAW I.E. BASED ON PARLIAMENTARY LEGISLATURE, COURT LAWS, CUSTOMARY + RELIGIOUS LAWS AS WELL.



**Thank
You**