

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 times.
- Origination of Indian law: Vedas , Upanishads other religious texts.
- which preceded the current scheme of common law in India.



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.



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

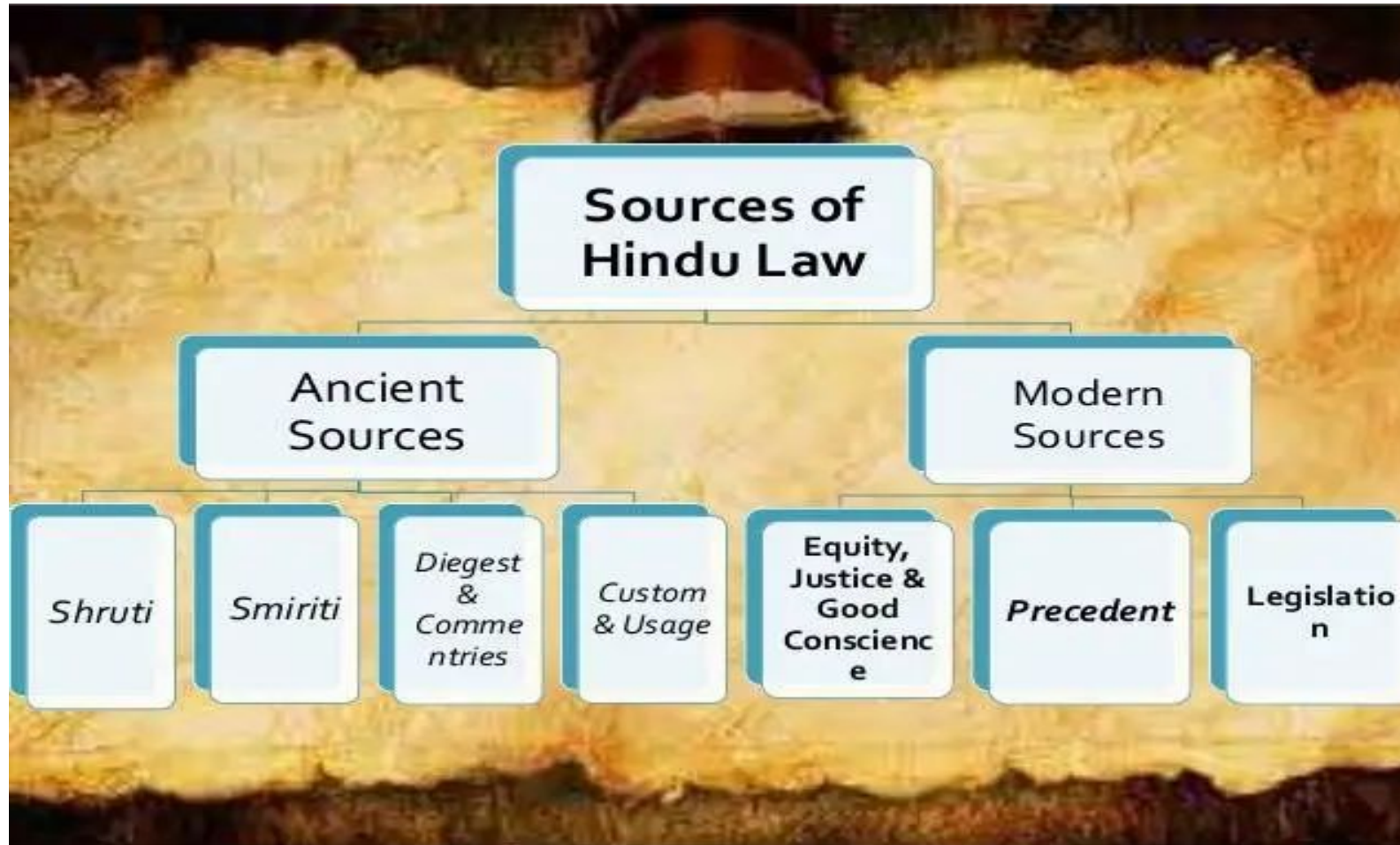
- It has two Phases.
- 1st phase: (1772-1864)
- 3 main developments:
 - 1. Dharmashastra translated by various British administrator-scholars.
 - 2. Use of court pandits in british courts for interpretation of law.
 - 3. Establishments of case laws.
- 2nd phase: (1864-1947)
- Departure from the Dharmashastra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



3. MODEM 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).





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.



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.

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.



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.

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.



Thank you

