

# Indian Legal System

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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.

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- A first important consequence of the concept of **dharma** is that, in Hinduism, law, religion, and all other topics dealt with in the dharma~dstras are inextricably intertwined.
  - The source of Dharma is the Veda, as well as the tradition [Smriti], and practice of those who know the Veda. – Gautama Dharma-sutra
  - The Dharma is set forth in the vedas and the Traditional Texts [Smriti]. When these do not address an issue, the practice of cultured people becomes authoritative. – Vāsiṣṭha Dharma-sūtra 1.4-1.5, *The Spirit of Hindu Law*

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- The *Smritis*, such as Manusmriti, Naradasmriti, Yajnavalkya Smrti and Parashara Smriti, expanded this definition,
  - The whole Veda is the (first) source of the sacred law, next the tradition and the virtuous conduct of those who know the (Veda further), also the customs of holy men, and (finally) self-satisfaction

# Smriti as a source of law

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- Smriti is derived from “smri” which means to remember. Smritis are those parts of shrutis which the sages forgot to tell in their original form and therefore wrote down in the language which they were familiar with, therefore shrutis are considered to be the basis of smritis. There are 2 kinds of smritis first is Dharmasastras and the other is Dharmasutras. Dharmasastras contains the rules regarding the moral code of conduct for Hindus, whereas Dharmasutras contains the rules regarding government, caste, the relationship between people, economic affairs, eating habits, etc. There are many smritis that one can not count but the two famous smritis are Yajnavalkya smriti and manusmriti. Manusmriti is also considered to the first law book written by Manu.

# Shruti as a source of law

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- Shruti means to hear, it is derived from the word “shur” which means to hear. Shrutis are considered to be the major source of Hindu law. Another term for Shruti is Veda. according to Hindu law, there are four Vedas namely, Rigveda, Samveda, Yajurveda, Atharveda. The brahmins used to pronounce what is written in these Vedas to the people. Since brahmins were considered to be knowledgeable people whatever they said was of supreme importance and it was considered to be the law of the land, therefore shrutis contain what is written and pronounced by the brahmins. Brahmins also tell us about the duties that the individual has to follow and how to perform these duties. The Upanishads contain the essence of these duties.

# Digests and Commentaries

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- The third most important source of law is the digests and the commentaries written by various authors of Hindu law. Commentaries generally comment on the smritis, the area of commentaries is from the 7th century to 1800 AD. Commentaries also laid the foundation of various schools of Hindu law. Digests contain the important aspects of all the smritis and discussed their reconciling and contradictions. Various digests and commentaries have been written by various authors on the two most famous smritis that is manusmriti and yajnavalkya smriti namely.
  - On manusmriti
    1. Medhatithi has written Manubhasya.
    2. Govind Raja has written Manuka.
  - On yajnavalkya
    1. Vigneshwara has written the famous commentary on Mitakshara.
    2. Arpaka has written Aparaditya.

# Modern Hindu law

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- 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 still pervades the legal system, though efforts to modernize and increase the legal rights of the marginalized have been made.



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- 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.

# Legislation

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- Legislation, as created and implemented by the Indian government, is the strongest source of law in all Indian courts. In the case of two conflicting sources, legislation holds the highest jurisdiction. While it is not a traditional source of law for the Hindu legal system, it is the latest and most legitimate form.
- During colonial rule, the British codified several aspects of the Hindu legal tradition into the Indian legal system, based upon the large number of Hindus residing in British India. Thus upon gaining independence, many of the same laws that governed the country during colonial rule were maintained as such, making the Indian Constitution and legal system heavily influenced with Hindu legal traditions at its foundation.

# Case law

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- India is based on the British common legal system, thus the courts rely heavily on *stare decisis*, or precedent, when deciding cases. Any case decision made by a higher court is a source of law to all of the lower courts, in the prospect that the laws will be applied in a similar manner. The Hindu family courts are expected to follow laws handed down from previous cases.
- Modern Hindu law relies on the interpretation of judges and their ability to decipher mitigating factors within each legal situation. This is reflective of the ancient Hindu legal tradition of working out problems on a case specific basis in finding justice in each specific instance.

# Precedents

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- After the establishment of British rule, courts were established and the hierarchy was introduced. Precedent means following the decision of the higher courts by the courts below it, if a particular case has already been decided, it seems reasonable to follow the same decision if the facts of the case are similar to the decided case. In today's time, the decision of the supreme court is binding on all the made by other courts.

# Schools of Hindu Law

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- There are two schools of Hindu Law namely:
- 1.Mitakshara school
- Mitakshara school
- Mitakshara school derives its name from the commentary of Vijyaneshwara named Mitakshara. Mitakshara school contains rules regarding marriages, division of society into four castes, apart from this it contains rites and rituals that are to be performed during pregnancy, all these rites and rituals are considered sacred. Mitakshara school prohibits the marriage between a shudra and a brahmin, inter-caste marriages are allowed amongst the upper caste only.
- Mitakshara school is subdivided into four major schools namely:
- Banaras school

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- It is prevalent in North India except the rural areas of Punjab, where this school has been modified according to the customary laws.
  - Mithila school
  - This school is prevalent in some areas of Northern Bihar.
  - Bombay school
  - This school was prevalent in western parts of the country mainly Gujarat and Maharashtra.
  - The madras or Dravida school
  - This school covers the whole of southern India including Karnataka, Tamil Nadu, and Andhra Pradesh.

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- 2. Dayabhaga school

- Dayabhaga school is prevalent in Bengal and Assam. Dayabhaga school professes benefit for the governance of the rules of succession. The immediate effect of this school was that there was an inclusion of many new people in the list of heirs for succession which was not mentioned in Mitakshara school. Dayabhaga school preaches logic and reason rather than precepts and precedents. This school advocates for more practical and rational doctrines.

# Administration and practice

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- **Courts**

- The court system of India is essentially divided into three tiers, the Supreme Court of India at the apex of the hierarchy for the entire country, twenty-one High Courts at the top of the hierarchy in each State, and subsequent district courts that govern family, criminal and civil laws within the states. The High Courts have jurisdiction over a state, a union territory or a group of states and union territories. District courts are the courts of first resort. It is within the district courts that Hindu law and other religious laws are administered. State judges apply Hindu law on a case by case basis.

- **Judges**

- The judges that preside over the district courts in India are state bureaucrats, not religious priests or scholars. Thus it is possible for a Hindu judge to preside over a divorce case between a Muslim couple or for a Christian judge to preside over a case involving a Hindu family. With no formal education on the religious laws of the state, judges may not be well versed in the laws they are to adjudicate. They rely heavily on case precedent and scholarly works to guide them through the cases.<sup>[11]</sup>



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- **Lawyers**

- Lawyers in India are trained in general law schools and receive no formal and specific training on Hindu law, Muslim law, or any other personal religious laws. All lawyers are however required to take courses regarding personal law. These larger courses touch on the variety of personal laws that exist in India, including Hindu Law.

# Conclusion

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- In India, since there are so many religions it is not possible to have a common source for the personal laws of different communities and therefore different sources have to be approached while making laws for people who follow different traditions. Although my personal opinion is a bit different. When you have different laws governing people of the same nation it leads to nonuniformity. For a nation to develop you need uniformity and considering the various laws of different countries we find our law is much suited to the social conditions of India.
- One of the major aims of law is to command obedience and there is no better way to demand obedience by making people follow their own traditions which they have been following for centuries.