

HINDU LAW



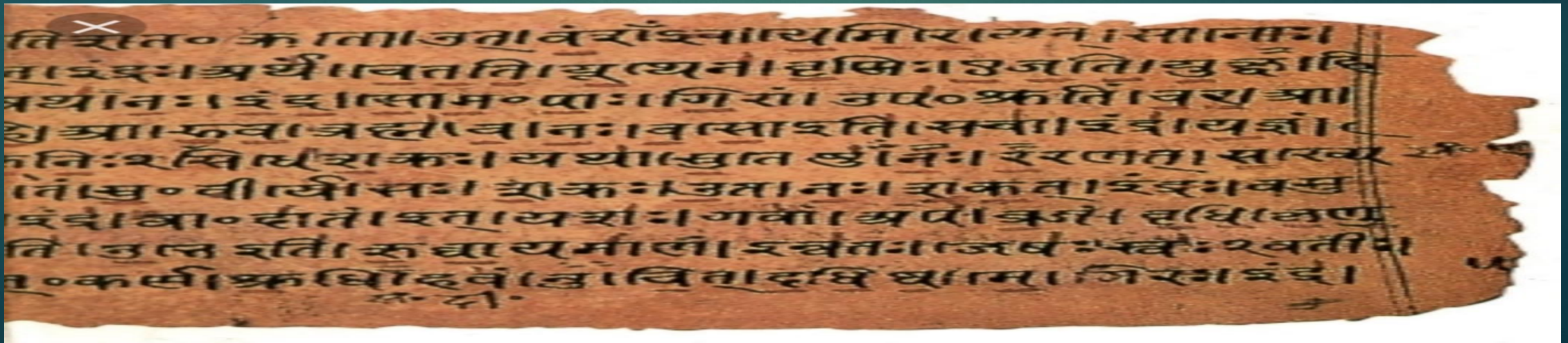
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SUBJECT :- LAW

INTRODUCTION OF HINDU LAW

Hindu law, as a historical term, refers to the code of laws applied to Hindus, Buddhists, Jains and Sikhs in British India. ... 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 Nāradaśmṛti.

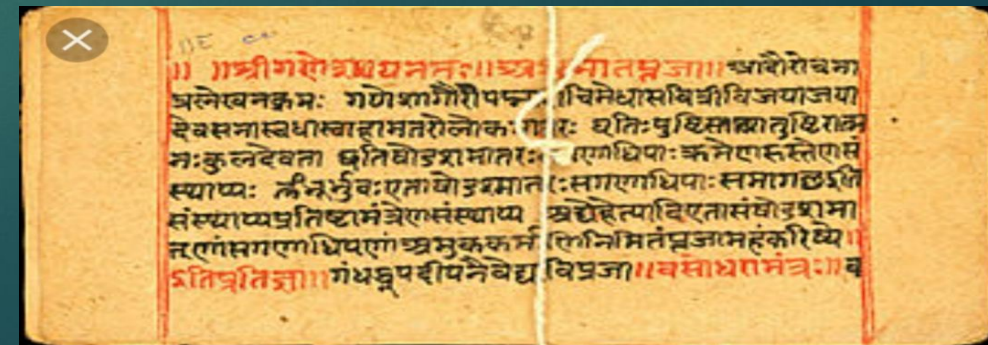


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- ▶ The substance of Hindu law implemented by the British was derived from a Dharmaśāstra named Manusmriti, one of the many treatises (śāstra) on Dharma. The British, however, mistook the Dharmaśāstra as codes of law and failed to recognise that these 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.

ORIGIN OF HINDU LAW

- ▶ The origin of Hindu law is believed to be divine. The key ideal before a Hindu has always been the achievement of the *moksha*, the attainment of salvation. Hindu law, over five thousand years has gone through phases. It is regarded that the origin of Hindu law is based on religious texts like the *Vedas*, the *Upanishads*, the *Geeta*, or any other Hindu scripture. A view emerging from these texts leads to the recognition of the law as *Dharma*. The term *dharma* can be loosely translated as “duty”. Many Hindu Jurists believe that Law is an enforceable part of *Dharma*. Thus, the *Law is Dharma*.

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CLASSICAL OF HINDU LAW

- ▶ **Classical Hindu law in practice** originates from community, not a state polity. In this way, particular groups of society began to gain influence in the creation and administration of law. Primary corporate groups, Kingships, and Brahmins were the factions, which conveyed Hindu jurisprudence in practice. Corporate groups were responsible for legislating law through the conception of social norms; kingships were responsible for the administration of punishment and the worldly Hindu system; and Brahmins were responsible for ritual, penance, and the maintenance of a spiritual Hindu system.

MERRAIGE LAW

- ▶ In systems in which females are legally and economically dependent within a family hierarchy, the juridical essence of marriage is the transfer of the female from control by her own family to control by her husband. Marriage customs of many times, countries, and religions exhibit this principle in a variety of forms—for example, in certain kinds of Roman marriage, in marriages among the Japanese samurai, in the traditional Chinese marriage, in the [Hindu](#) marriage based on the joint family, in [rabbinical law](#), in Islamic law, and in [Germanic](#) and [Celtic](#) customary law. The Germanic traditions were imported into England, where they combined with Norman concepts to become the basis of the English common law of marriage.

DARSHN HINDUISM

- ▶ **darshan**, (Sanskrit: “viewing”) also spelled **darshana**, in Indian philosophy and religion, particularly in Hinduism, the beholding of a deity (especially in image form), revered person, or sacred object. The experience is considered to be reciprocal and results in the human viewer’s receiving a blessing. The Rathayatras (chariot festivals), in which images of gods are taken in procession through the streets, enable even those who in former days were not allowed to enter the temple to have *darshan* of the deity. *Darshan* is also imparted by gurus (personal spiritual teachers) to their followers, by rulers to their subjects, and by objects of veneration such as pilgrimage shrines to their visitors.

ANGLO HINDU LAW

- ▶ **Anglo-Hindu law** refers to the laws enacted during the British colonial era, which applied to the Hindus, Buddhists, Jains and Sikhs of British India.

Anglo-Hindu law was expanded with a series of British parliament Acts between 1828 and 1947, that was based on political consensus rather than religious texts.

MORDEN HINDU LAW

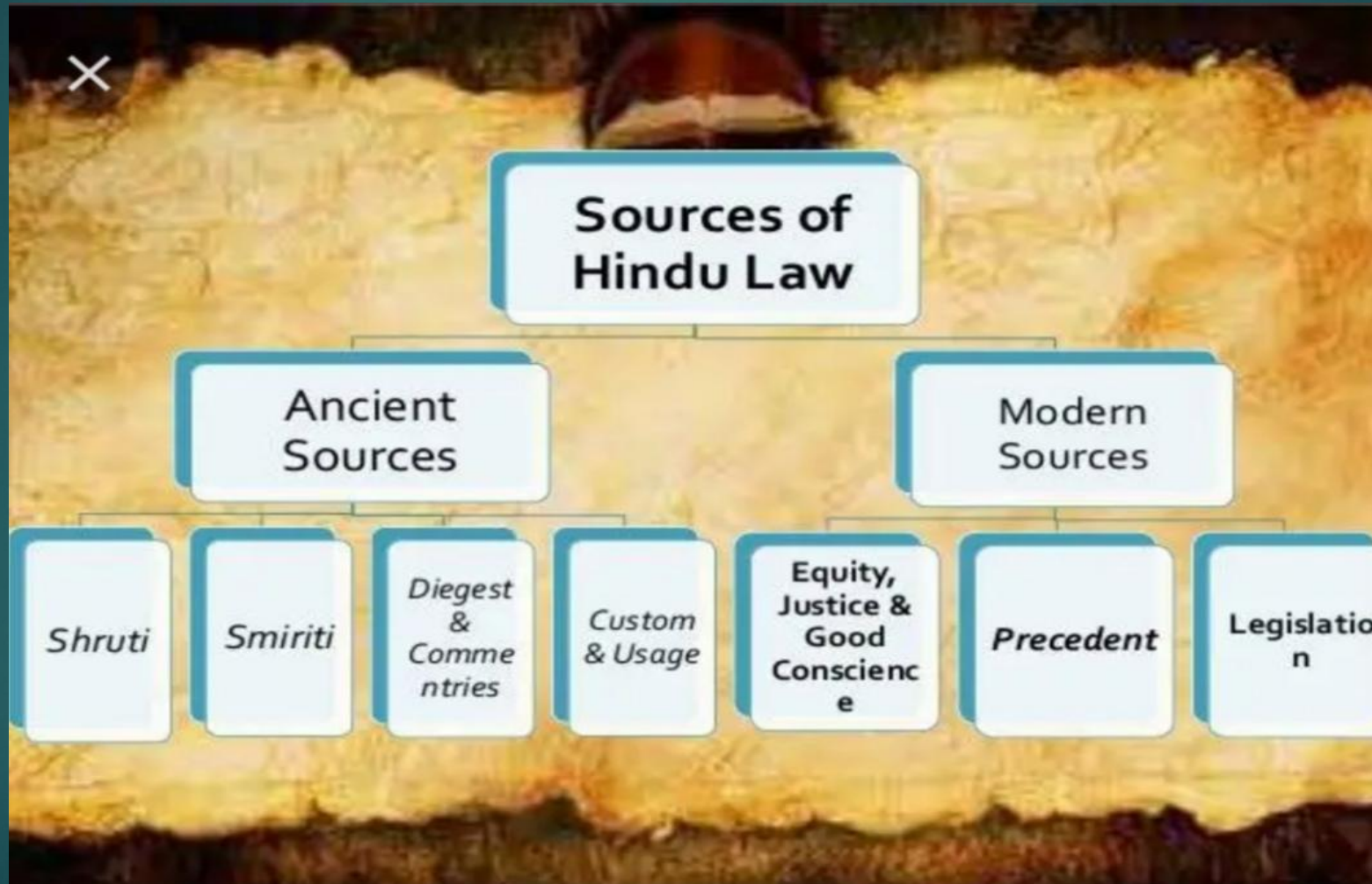
- ▶ **Modern Hindu law** refers to one of the personal law systems of India along with similar systems for Muslims, Sikhs, Parsis, and Christians. This [Hindu Personal Law](#) or modern Hindu law is an extension of the [Anglo-Hindu Law](#) developed during the British colonial period in India, which is in turn related to the less well-defined tradition of [Classical Hindu Law](#).



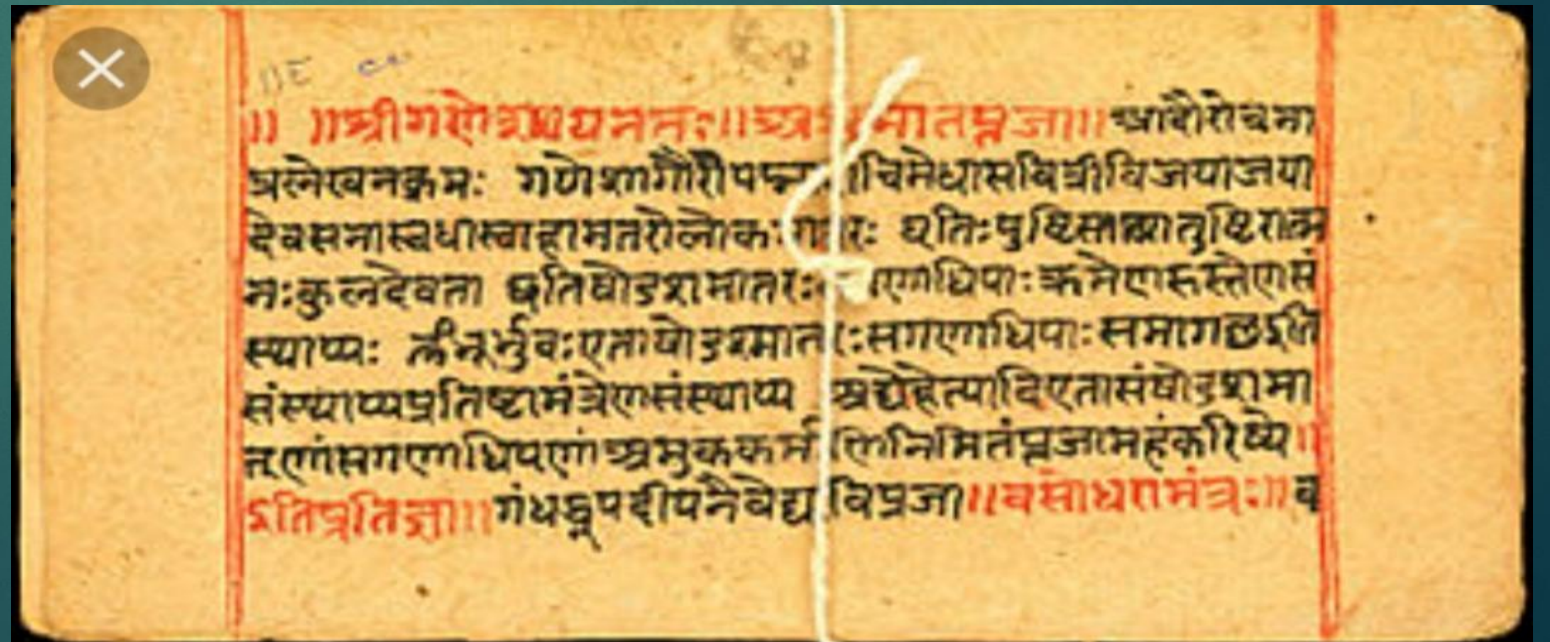
The time frame of this period of Hindu law begins with the formal independence of India from Great Britain on August 14, 1947, and extends up until the present. While modern Hindu law is heralded for its inherent respect for religious doctrines, many still complain that discrimination (especially with the historical tradition of the caste system) still pervades the legal system, though efforts to modernize and increase the legal rights of the marginalized have been made (most notably with the passage of the Hindu Code Bills and the establishment of notable legal precedents).



SOURCE OF HINDU LAW



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. 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.
- ▶ (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.

▶ (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.

▶ (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.

▶ 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.

(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.



▶ (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.

A Critique on the Sources

- ▶ It is significant to note that the term 'Hindu' is not defined anywhere in terms of religion or in any statute or judicial decisions. For the purpose of determining to whom Hindu Law applies, it is necessary to know who is a Hindu and none of the sources expressly state so. At most from statutes, we can get a negative definition of a Hindu which states that Hindu law shall apply to those who are not Muslim, Christian, Parsi, Jew, etc. And who are not governed by any other law.
- ▶ Hindu Law is considered to be divine law as it is strongly believed that the sages had attained some spiritual dominion and they could communicate directly with God from whom we get the divine law.



THANK YOU

