

Hindu Law

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Plan

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Introduction

- Law in India primarily evolved from customary practices and religious prescription to the modern well codified acts and laws based on a constitution. Though the recorded history of law starts only in the Vedic period, it is widely believed that ancient India had some sort of legal system in place even during the Bronze Age and the Indus Valley civilization. The various stages of evolution of Indian law is classified as that during the Vedic period, the Islamic period, the British period and post-independence.
- 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. But this is only an assumption and no concrete proof for the same is shown that the sages could communicate with God (whose very existence is challenged by atheists). Due to this, many communities are also suffering from the misapprehension or delusion that their forefathers and messiahs had revelations from God.

Classical Hindu Law

- Hindu Law is a body of principles or rules called 'Dharma'. It lays down the laws which regulated Hindu nationals, social, family and individual obligations. Dharma is considered as the law in the Hindu philosophy. Hindu law has its own place in history and as well as in modern era. Hindu philosophy is based on Dharmashashtra and these dharmasastras have been taken as a tool for justice. Hindu law has been studied on the basis of school i.e. Mitakshara school and Dayabhaga school. These schools have different concepts of property. Sources of Hindu law such as smriti, shruti, customs, commentaries and digests are the ancient or primary sources of Hindu law whereas legislations, precedent, etc. are taken as modern sources of law. The Nepalese legal system has adopted some principles of Hindu jurisprudence and the judiciary has also given importance while deciding cases.

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. The first phase of Anglo-Hindu law started in 1772, and lasted till 1864, where translation of some ancient Indian texts along with textual interpretation provided by British court appointed Hindu Pandits were the basis of Anglo-Hindu law, mirroring Anglo-Muslim law extracted from Quran and interpreted by Muslim Qadis for Indian Muslims. The second phase of Anglo-Hindu law started in 1864, and ended in 1947, during which a written legal code was adopted, and the Hindu Pandits along with Muslim Qadis were dismissed due to growing inconsistencies in interpretation of texts and suspicions of corruption. 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.

Modern Hindu Law

- The codified law and uncodified law are two types of Modern Hindu Law. Codified law administers every Hindu. The concepts of schools of Hindu Law does not exist in codified law, however, it exists in uncodified Hindu Law. Vedas and Smritis were the form of sources in which, many scholars all around India, wrote the commentaries which formed the basis for schools of Hindu Law.
- With the development of the Smriti came the disparity in opinion amongst commentators and interpreters. There was no authoritative position of law, although various codes were developed.

Modern Hindu Law

- An authority could be accepted in one part of India and totally rejected in other parts of India. Persons who accepted one authority were likely not to accept other authorities. Thus, different schools of thought emerged.

The two major schools of Hindu law are as follows:

- Mitakshara
- Daya Bhaga
- Mitakshara and Dayabhaga are the two important schools of Hindu Law which have given us the required information about the present legislated laws.

Ancient sources of Hindu Law

- **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).

Ancient Sources

- **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).

Ancient Sources

- **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.

- **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.

Modern sources of Hindu Law

- **i) Justice, equity and good conscience-**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. The Courts cannot refuse to 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.
- **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.

Modern Sources

- **1) Supreme legislation** – Constitution is Supreme Legislation in India. Authority cannot be challenged by other legislative power. All acts of parliament are thus enacted by highest law making body.
- **2) Subordinate legislation** – also known as delegated legislation, when internal legislation is not possible to be supervised at all times by Parliament, only then Subordinate Legislation steps in.
- **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.

Followers of Hinduism

- Hinduism is one of the world's most ancient religions. It is the third largest religion. There are many subjects involved in the Hinduism, such as: Hindu religious structure, art, artifacts, and the different time periods. Hindus practice strict religious beliefs and customs. Hinduism consists of a 1,000 religious groups that have evolved in India since 1500 B.C.

Followers of Hinduism are known as Hindus. Hindus live their lives by following the religious guidance of the Vedic scripture. The Hindu scriptures consist of two sacred types of writing: the Shruti and the Smriti. The Shruti is heard, while the Smriti is memorized. Before being recorded, these scriptures were passed down from generation to generation orally.

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.

Conclusion

- There are many Smritis which are yet to be found according to Historians and many conflicts of opinions and interpretations have arisen for the existing ones, thus creating a window of ambiguity under Hindu law. There are also several areas where Hindu law is silent.

Most of the ancient sources of Hindu law is written in Sanskrit and it is well known that in the present times there is a dearth of Sanskrit scholars. There is hardly any importance left of the ancient sources since the time the modern sources have emerged and been followed.

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.