

# INDEX

<b>CHAPTER 1</b> <b>INTRODUCTION</b>	<b>2-12</b>
---	-------------

<b>CHAPTER 2</b> <b>HINDU MARRIAGE ACT, 1955</b>	<b>13-61</b>
i. <b>CONDITIONS FOR VALID OF A HINDU MARRIAGE</b>	
ii. <b>CEREMONIES OF MARRIAGE</b>	
iii. <b>VOID MARRIAGE OR VOIDABLE</b>	
iv. <b>REGISTRATION OF HINDU MARRIAGE</b>	
v. <b>RESTITUTION OF CONJUGAL RIGHTS</b>	
vi. <b>JUDICIAL SEPARATION AND DIVORCE DECREE</b>	
vii. <b>MAINTENANCE</b>	
viii. <b>JURISDICTION AND PROCEDURE</b>	

<b>CHAPTER 3</b> <b>HINDU SUCCESSION ACT, 1956</b>	<b>62-132</b>
ix. <b>HINDU JOINT FAMILY AND HINDU UNDIVIDED FAMILY</b>	
x. <b>PROPARTIES</b>	
xi. <b>KARTA</b>	
xii. <b>PARTITION</b>	
xiii. <b>COPARCENARY</b>	
xiv. <b>INHERITANCE</b>	

<b>CHAPTER 4</b> <b>HINDU ADOPTION AND MAINTENANCE ACT</b>	<b>133-146</b>
---	----------------

<b>CHAPTER 5</b> <b>HINDU MINORITY AND GUARDIANSHIP ACT, 1956</b>	<b>147-153</b>
--	----------------

<b>PRACTICE PAPER</b>	<b>154-166</b>
-----------------------	----------------

## CHAPTER - 1

### INTRODUCTION

Law is a system of rules that describes the right procedure or behavior of living in a society. India is a secular State where many religions like Hindu, Muslim, Sikh, Christian and Parsi live together. Hindu law is a personal law, which is applicable upon all Hindus. Personal law may be defined as that branch of law which deals with matters pertaining to a person and his or her family. Personal Law is the law by which an individual is governed in respect of various matters such as, principles relating to marriage, divorce, maintenance, adoption, inheritance, guardianship, succession, etc. The word Hindu is extremely popular and famous term. In modern times important Hindu laws are –

- ❖ Hindu Marriage Act 1955,
- ❖ Hindu Adoption and Maintenance Act 1956,
- ❖ Hindu Minority and Guardianship Act 1956, and
- ❖ Hindu Succession Act 1956.

### **NATURE OF HINDU LAW**

It is believed that Hindu law is a divine law. It was revealed to the people by God through Vedas. Various sages and ascetics have elaborated and refined the abstract concepts of life explained in the Vedas. It proceeds on the theory that Hindu law was revealed to the sages who had attained great spiritual heights and they were in communication with supreme power i.e. God.

- According to Dharmaśāstra writers, law was taken to be dynamic i.e. it should respond to the needs and requirements of the given period. Hindu law is not a king made law unlike the concept given by Austin. Under Hindu law the sovereign or the King is not immune from Dharma. Hindu law is not lex-loci but personal law.
- According to Hindu jurists, law is the enforceable part of Dharma. Dharma does not emanate from sovereign. It generally includes all kinds of rules, religious, moral, legal, physical, metaphysical, in the same way as the law does, in its widest sense.
- According to Mayne, Hindu law is the law of ‘Smritis’ as expounded in the Sanskrit Commentaries and Digests, which as modified and supplemented by custom, is administered by the courts.

### **ORIGIN OF HINDU LAW**

The word Hindu ‘came into existence through Greeks who called the residence of the Indus Valley nation as Indoi’. Later it became Hindu. 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. There are mainly two views

regarding the origin of Hindu law i.e.

1. Origin is based on divine aspect
2. Origin is based on custom and usage.

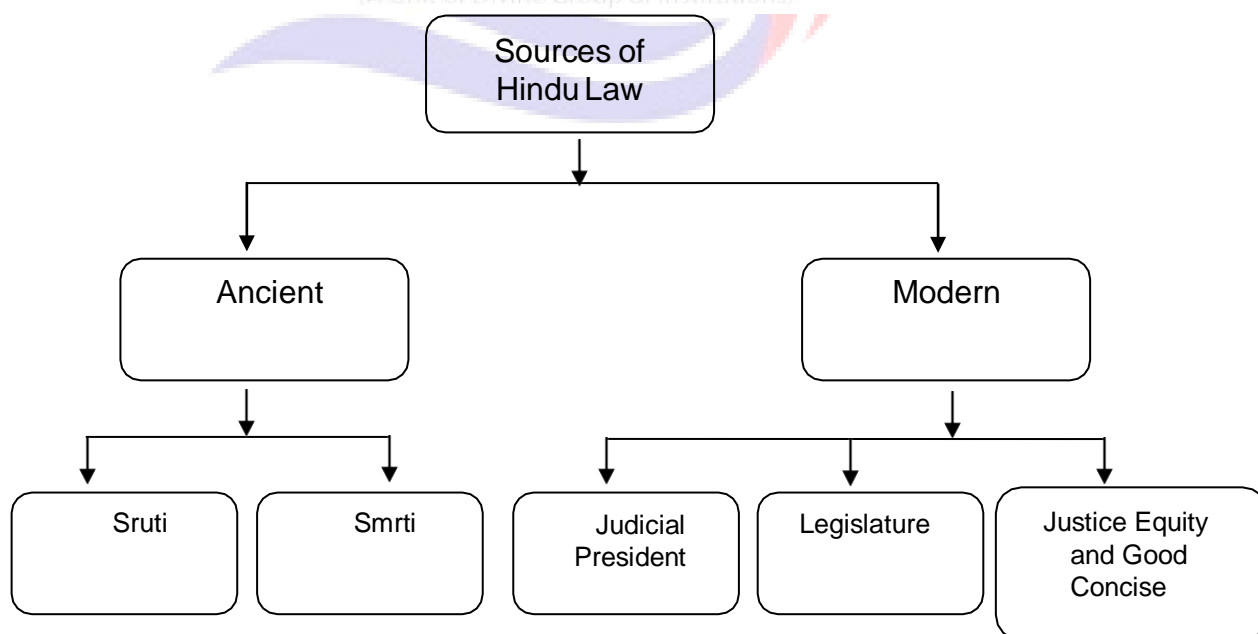
According to Hindus, Hindu law has been derived from Vedas, the Upanishads, the Geeta, or any other Hindu scripture which are relatively from the almighty. As per this view, law was independent of state and it was binding on the sovereign as well as on its subjects. Hindu law is considered -Apauruseya. 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.

According to the Second opinion Hindu law is based upon immemorial customs, which existed prior to and independent of Brahmanism. At the time of Aryans there was number of usages and Brahmins modified their customs by introducing the religious element in legal concepts.

Thus the belief is that the primary sources of Hindu laws are Shrutis, Smritis, Upnishads, customs, digests, and commentaries. The Hindu Laws practiced during the colonization were based on Manusmriti. However, the genesis of Hindu law cannot be determined accurately owing to its centuries-old origin.

***Manohar Joshi v/s Nitia Bhausher Patil, 1996*** explain the term Hinduism related to Hindu as the life style and mentality of this continent.

### **SOURCES OF HINDU LAW**



It is believed that Hindu Law is a Divine Law and had been revealed by the God through the Vedas to the people. Sources of Hindu Law can be divided into two parts - Ancient and Modern.

## **ANCIENT SOURCES OF HINDU LAW:**

According to the traditional source of Hindu law, there are 4 sources of Hindu law, which are as follows:

1. Shruti (Vedas)
2. Smritis
3. Digest and commentaries.
4. Customs

### **1. Shruti**

Shruti is claimed to be the major source of Hindu law. The word is derived from the root -shru. The word Shruti means 'what was heard' and Hindu law is considered as revelation by God, which is contained in Shruti. Shruti is divided into Vedas, Brahmanas, Aranyak and Upanishad. Another term for Shruti is Veda. It includes 4 Vedas – Rigveda, Yajurveda, Samveda and Atharvaveda. The Brahmins used to pronounce whatever was written in these Vedas to the people. Since Brahmins were considered to be the most knowledgeable people, whatever they said was of supreme importance; therefore, Shrutis contain what's written and pronounced by the Brahmins. It contains theories about sacrifices, rituals, customs.

### **2. Smriti**

This Smriti is the oldest and most vital of all. Smriti provides supplementary exposition of the rules contained in Vedas. Smriti is derived from the word -smrill which means to remember. Smritis are those parts of Shrutis which the sages forgot to put in their original form and thus Shrutis are considered to be the basis of Smritis. There are 2 kinds of Smritis – Dharmasastras and Dharmasutras. Dharmasastras contain the principles regarding the moral code of conduct for Hindus, whereas Dharmasutras contain the principles regarding the government, caste, the connection between people, economic affairs, eating habits, etc. Technically, Smritis mean those works which are created by the virtue of memory of sages. The basis of Smritis is Shrutis. Smritis can be referred to as a step ahead of Shrutis.

There is a very thin line of difference between the two. The basic difference lies in the fact that Dharmasutras are written in the form of prose, in short maxims while Dharmashastras are written in the form of Shlokas (poetry).

There are many Smriti writers and it is impossible to determine how many authors are there of Smritis. However, there are some notable Smriti writers, enumerated by Yajñavalkya are Manu, Attri, Vishnu, Harita, Yama, Katyana, Brihaspati, Parashar, Vyas, etc.

### 3. **Manusmriti**

The name of the author of manusmriti is unknown as the author has formulated it under a hypothetical name of Manu, who was considered to be the first human. Maybe it was done to gain divine and authoritative status. Manusmriti has 12 chapters and 1294 slokes and it is a collection of rule of law. As per the Manusmriti king is subordinate to law but has divine powers with divine rights. It believed in stick rules. It is pro- Brahamins and harsh on Shudras and women. He holds customs to be of utmost importance and asks the king to follow customs and he cloaked the king with divinity.

### 4. **Commentaries and Digest –**

Digests and commentaries came after smrities during the 7th century to 1800 A.D. The evolution of different schools of Hindu law is a result of these digests and commentaries as these digests and commentaries are interpretations of the Smriti. They expanded the scope of Hindu law and played a serious role in developing the concept of Hindu law. Single interpretation of the smritis is called as a commentary whereas Digest contains all the important aspect of smritis. Dayabhaga and Mitakshara are considered to be the most important commentaries.

One of the most important digest is Jimutvahan's Dayabhaga that is applicable in Orissa and Bengal. Mitakshara is one of well known and supreme source of law in India. It is based on the commentaries written by Vijayneshwara on the code of yajanvalkyawhile Dayabhaga law school is based on the commentaries of Jimutvahana. Dayabhaga and Mitaksara are two main sources of Hindu law in India.

### 5. **Custom –**

Customs are the most important and the oldest sort of lawmaking, customs mean the traditions, practices, activities that has been practiced in society since past. This practice is under the continuous observations of individuals. Smritis has given importance to customs. It is superior to written law. Most Hindu law is based on the customs and it is recognized as a legit means of a source of law even in smritis also. Customs can be classified into 4 types:

- **Local customs:**

These customs are followed in a particular geographical area and its application is limited to that particular area only. For example in Rajasthan, there was a custom of child marriage prevalent.

- **Caste and community customs:**

These customs prevail in a certain community of people and the people of that particular community follow the custom. For example in Sikhs, marriage is solemnized by Anand Karaj.

- **Family customs:**

It refers to customs that exist in a particular family. They can be easily abandoned as compared to other forms of customs.

- **Guild customs:**

These customs are followed by a certain group of traders.

### **ESSENTIALS OF VALID CUSTOM:**

The following are the essentials of a valid custom:

- (1) Ancient,
- (2) Invariability and continuity,
- (3) Reasonableness,
- (4) Clarity and unambiguity,
- (5) Not opposed to morality or public policy,
- (6) Not opposed to express provisions of law,
- (7) Onus/Burden of proof- on the person who alleges it.
- (8) Judicial notice of a custom.

#### ***Deivanai Achi v. chidambaram (1954) Mad. 667.***

In the instant case it was held that in order to become legally sanctioned by law and binding on the people a custom must be continuous in practice, it should not be vague and ambiguous and should not oppose the well established public policy. A customary rule must be in the complete observation of society.

#### ***Laxmi v. bhagwantbuva AIR 2013 SC 1204***

In the instant case, the supreme court stated that a custom becomes legally enforceable when the majority of people make the continuous use of such practice.

### **6. Usage**

The words customs and usages are often used interchangeably but there is some sort of distinction between the two. Usage is the repetition of acts while custom is a law or general rule that arises from such repetition. A usage may exist without custom but custom can never exist without usage. Usage derives its authority from the parties to the transaction but custom where existing is binding on the parties.

### **MODERN SOURCES OF HINDU LAW–**

After the advent of British many changes were brought in the personal laws of Hindus and many legislations were also passed. Modern sources of Hindu law refer to those sources

which are comparatively new sources that emerged over time and evolved in the present form. Following are the main sources of Hindu law:

1. Equity justice and good conscience
2. Legislation
3. Precedent

### **1. Equity justice and good conscience**

Equity means fairness in dealing. These are the basic rules of law. This rule of law applies when an existing law doesn't apply in a case where there was no proper law to settle the disputes, then the judges used to give judgments according to the concept of Equity and Good Conscience. This doctrine played a major role in changing the personal laws of the Hindus.

For example- a rule of law founded on the public policy that the murdered is to be disqualified from succeeding the properties of the victim found in the Hindu succession act 1956.

### **2. 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. After the independence of India, there has been a steep increase in legislation regarding the codification of personal laws. After codification, any point dealt with by the codified law is final. The enactment overrides all prior law, whether based on custom or otherwise unless an express saving is provided for in the enactment itself. In matters not specifically covered by the codified law, the old textual law continues to have application.

In modern society, this is the only way to bring in new laws. The parliament, in accordance with the needs of society, constitutes new laws. For example:

- The Hindu marriage act
- Hindu succession Act,
- Hindu minority and guardianship act,
- Hindu adoption and maintenance act, etc

Also, most of the Hindu laws have now been codified as mentioned in the beginning.

### **3. Precedents –**

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 decisions made by other courts.

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.

Thus, Hindu law has been critiqued for its orthodoxy, patriarchal character and does not bear a really modern outlook of society. There are many areas where the Hindu law must upgrade itself. It is often said that proper codification of Hindu law without room for ambiguity is that the need of the hour. There are many Smritis which are yet to be found consistent with Historians and lots of conflicts of opinions and interpretations have been arisen for the prevailing ones, thus creating a window of ambiguity under Hindu law. There are also several areas where Hindu law is silent. It is often said that where these sources of Hindu law are uninviting the Legislature could check out sources and customs of other religions and incorporate them into Hindu law if it caters to the necessity of the society and meets the test of the time.

## **SCHOOLS OF HINDU LAW**

Due to the emergence of various commentaries on SMIRITI and SRUTI, different schools of thoughts arose. School means rules and principles of Hindu Law which are divided into opinion. It is not codified. Schools of Hindu law are considered to the commentaries and the digestives of the smritis. These schools have widened the scope of Hindu law and explicitly contributed to its development. The two major schools of Hindu law are as follows-

1. Mitakshara
2. DayaBhaga

Mitakshara School prevails throughout India except in Bengal. It is a running commentary on the code of Yajnavalkya (Yajnavalkya Smriti). Mitakshara is an orthodox School whereas the Dayabhaga is Reformist School. The Mitakshara and Dayabhaga Schools differed on important issues as regards the rules of inheritance. However, this branch of the law is now codified by the Hindu Succession Act, 1956, which has dissolved the differences between the two. Now, the main difference between them is on joint family system. Mitakshara is further divided into five sub-schools namely:

### **1. Benaras law school**

This law school comes under the authority of the Mitakshara law school and covers Northern India including Orissa. Viramitrodaya Nirnyasindhu Vivada are some of its major commentaries.

## 2. Mithila law school

This law school exercises its authority in the territorial parts of tirhoot and north Bihar. The principles of the law school prevail in the north. The major commentaries of this school are Vivadaratnakar, Vivadachintamani, smritsara.

## 3. Maharashtra or Bombay law school

The Maharashtra law school has the authority to exercise its jurisdiction over the territorial parts including Gujarat Karana and the parts where there is the Marathi language is proficiently spoken. The main authorities of these schools are VyavharaMayukha, Virmitrodaya, etc.

## 4. Madras law school

This law school tends to cover the whole southern part of India. It also exercises its authorities under Mitakshara law school. The main authorities of this school are Smriti Chandrika, Vaijayanti, etc.

## 5. Punjab law school

This law school was predominantly established in east Punjab. It had established its own customs and traditions. The main commentaries of this school are viramitrodaya and it established customs.

## DAYABHAGA SCHOOL

This is also one of the most important schools of Hindu Laws. It exists in Bengal and Assam only. Its primary focus was to deal with partition, inheritance and joint family. The YagnaValkya smriti and some other Smrities are commented on by Jimutavahana under the title Dayabhaga. It has no sub-school. Dayabhaga School is based mainly on the code of yagnavalkya commented by Jimutuvahana, Inheritance is based on the principle of spiritual benefit. It arises by pinda offering i.e. rice ball offering to deceased ancestors. This school is followed in Bengal and some parts of Assam only.

In Dayabhaga school various other commentaries were followed such as:

- Dayatatya
- Dayakram-sangrah
- Virmitrodaya
- Dattaka Chandrika

The main features of this School are as follows:

- Sapinda relation is by pinda offerings.

- The right to Hindu joint family property is not by birth but only on the death of the father.
- The system of devolution of property is by inheritance. The legal heirs (sons) have definite shares after the death of the father.
- Each brother has ownership over a definite fraction of the joint family property and so can transfer his share.
- The widow has a right to succeed to husband's share and enforce partition if there are no male descendants.
- On the death of the husband the widow becomes a co-parcener with other brothers of the husband. She can enforce partition of her share.

## **DIFFERENCE BETWEEN MITAKSHARA AND DAYABHAGA SCHOOLS:**

The differences between the Dayabhaga and the Mitakshara schools of law may be categorized under the following: –

### **1. Joint Family: –**

According to the Mitakshara law school a joint family refers only to the male member of a family and extends to include his son, grandson and great-grandson. They collectively have co-ownership/Coparcenary in the Joint Family. Thus, a son by birth acquires an interest in the ancestral property of the joint family. Under the Dayabhaga law school, the son has no automatic ownership right by birth but acquires it on the demise of his father.

In the Mitakshara school, the father's power over the property is qualified by the equal rights by birth enjoyed by a son, a grandson and a great-grandson. An adult son can demand partition during his father's lifetime or his three immediate ancestors. He has a say in the disposition of the family property and can oppose any unauthorized disposition of ancestral or family property. This is not possible under Dayabhaga school as the father has overall and uncontrolled power over the family property till death.

### **2. Coparcenary/Co-ownership: –**

Under the Mitakshara school of law all the members of the joint family enjoy coparcenary rights during the father's lifetime. Under Dayabhaga School when the father is alive the sons do not have coparcenary rights but acquire it on the death of the father. In the Mitakshara School of coparcener's share is not defined and cannot be disposed of. In the Dayabhaga the share of each Coparcener is defined and can be disposed of.

### 3. **Partition:-**

While both the Mitakshara and the Dayabhaga schools hold that the true test of partition is in the intention to separate the manifestation of this intention is different in each of the schools. In the case of Mitakshara School, the intention involves holding the property is defined definite shares while in the Dayabhaga School there has to be a physical separation of the property into specific portions and assigning of separate share to each coparcener.

In the Mitakshara system, none of the members of the coparceners can claim a definite physical share of the joint property. So, partition in this system involves in ascertaining and defining the share of the coparcener i.e. In the numerical division of the property. In the Dayabhaga system, each of the coparceners has a definite share in the joint family property even though the family is joint and undivided and the possession is common. So, partition in this system involves the physical separation of the joint property into the separate shares of the coparceners and assigning to each of the coparceners the specific portion of the property.

### 4. **Rights of Women: –**

In the Mitakshara system the wife cannot demand partition. She, however, has the right to a share in any partition effected between her husband and her sons. Under the Dayabhaga this right does not exist for the women because the sons cannot demand partition as the father is the absolute owner.

In both the systems, in any partition among the sons, the mother is entitled to a share equal to that of a son. Similarly, when a son dies before partition leaving the mother as his heir, the mother is entitled to a share of her deceased son as well as share in her own right when there is a partition between the remaining sons.

### 5. **Widow's rights: –**

When one of the brothers dies, his widow can succeed to his share under the Dayabhaga but under the Mitakshara her rights are excluded by the right of survivorship of the brothers. The widow can then have only a right to maintenance.

### 6. **Sapinda: Heirship: –**

The relationship of Sapinda arises according to Mitakshara by propinquity or community of blood. Under the Dayabhaga it arises utilizing Pinda offerings to deceased ancestors. The spiritual benefit is the criterion for heirship under the Dayabhaga while consanguinity (blood relationship) is the guiding principle under the Mitakshara.

### 7. **Survivorship: –**

Brothers who have inherited property from their father have a right of survivorship in

the Mitakshara joint family. The Dayabhaga does not response any right of survivorship and the brothers hold in quasi- severalty with the full power of alienation.

### **CONCLUSION**

The Hindu laws were made with the purpose of the welfare of people. Dayabhaga and Mitakshara both were made to fulfill everyone's needs but with the modernization of the world, these laws too have been through advancements and amendments through various acts. Thus the Mitakshara system is Conservative. It provides good security in difficult times as a member can rely on the joint family. The Dayabhaga system is more liberal. Among the two the Dayabhaga is more likely to last in modern times with the growth of individualism, individual enterprise and economic compulsions.

