

DE JURE NEXUS LAW JOURNAL

Author:

Ananya

Symbiosis Law School, Noida

2nd Year, BA LL.B.**EVOLUTION OF HINDU LAW AND ITS SIGNIFICANCE****Introduction**

There is no such word as 'Hindu' in Dharmasastra. It comes from a different country. The word 'Hindu' was coined by the Greeks, who referred to the Indus Valley nation's dwelling as 'Indoi.' It thereafter became a 'Hindu' religion. This country was dubbed 'Hindustan,' and its people were dubbed Hindus. Throughout history, the term 'Hindu' has been used to refer to both a religion and a nation. The Hindu law has been amended over the centuries and has existed for over 5000 years, governing the social and moral figures of Hindu life by following the many parts of Hindu cultural life.

Dharma

"The word Dharma is associated with Hindu law, as we all know. Let me clarify. According to Hindu mythology, the word "Dharma" implies "obligation." Dharma has varied meanings depending on the context and religious allusions. For example, Buddhists feel that the word Dharma only refers to a global law that is very important, but Jains and Sikhs believe it only refers to a religious path for the victory of the truth. Dharma, according to Hindu law, refers

to a variety of responsibilities. Similarly, to societal, legal, or spiritual responsibilities. Dharma might be described as the concept of justice in this context.”¹

God, according to the "Bhagwat Geeta," builds a life based on Dharma principles. Patience, forgiveness, self-control, honesty, holiness (cleanliness of the mind, body, and soul), sense control, reasons, knowledge, truthfulness, and the absence of wrath are among them. According to Hinduism, salvation, also known as "Moksha," is the eternal Dharma for people. Dharma is mentioned in Hindu epics such as the Ramayana and Mahabharata. They say that following one's Dharma is the proper goal for everyone. The king was also known as Dharmaraj at the time since his main motivation was to follow the path of Dharma.

Unlike other systems of law, Hindu law places a greater emphasis on obligations than rights. The nature of these Dharmas differs from one individual to the next. Numerous people have many responsibilities in this world, such as the king's duty to preserve religious law and the farmer's duty to create food, the doctor's duty to cure the people, and the lawyers' obligation to fight for justice. Dharma is a multi-faceted term in nature, as it is a profoundly religious idea. It has a huge number of laws and customs covering a wide variety of topics that must be adhered to by everyone. Manusmriti, for example, covers religion, administration, economy, civil and criminal law, marriage, succession, and so on. We primarily study these in our law texts.

Sources of Hindu Law

Shruti

Shruti is a Sanskrit word that means "heard." It contains the god's precious words. This source is said to be the most vital and necessary of them all. The sacred pure utterances enshrined in the Vedas and Upanishads are known as Shrutis. They share a religious bond with a person and assist him in learning about salvation and incarnation.

Smritis

Smritis are texts that have been remembered and subsequently interpreted by rishis down through the generations. The term Smrities has a second classification, which is as follows:

¹ Available at: <https://blog.ipleaders.in/introduction-to-hindu-law-in-india/> (last visited 10th august 2021.)

- Dharma Sutra (Prose)
- Dharmashastras (Poetry).

Commentaries and summaries

Commentaries and digestives are the third oldest source of Hindu law. The scope of Hindu law has been broadened through commentaries and digests. It was instrumental in the development of Hindu law as a whole. It aided in the deciphering of the smritis. A commentary is a single interpretation of the smritis, whereas digestives are diverse readings of the smritis. The two most important commentaries are believed to be Dayabhaga and Mitakshara.

Customs

Customs is a social custom that has existed since the dawn of time. It is a form of practise that has been observed by the general public and followed by the general public.

Furthermore, the customs have been divided into two groups:

- Legal etiquette
- Customs of the past

Judicial Decisions

Modern sources are thought to be more valuable when it comes to judicial rulings. The decision of a judge is regarded authoritative and binding. The theory of precedent was developed, and it was applied in instances with facts and circumstances that were similar to those in a previously decided case.

Justice equity and good conscience

The fundamental rule of law is one of justice, equity, and good conscience. When an existing law does not apply in a case, this rule of law applies before the court determines the case based on its rationality and the concepts of justice, equity, and good conscience.

This guideline is thought to be the most reasonable and fair option available to a person.

Legislation

The statute is regarded as Hindu law's most important source. It is regarded as a foundation for the development of Hindu law in the modern world. It has been said that codifying the law became necessary in order to match the current societal realities.

Significance

Hindu marriage

Hindu marriage is referred to as kanyadan, which refers to the gifting of a girl to a boy by the father, complete with all the rites and customs. Hindu marriage is an old institution that has survived from the Vedic era to the present day, with many changes. According to Section 2 of the Hindu Marriage Statute 1955, this act applies to anyone who is a Hindu by birth or has converted to one of its forms, such as Virashaiva, Lingayat, or a Brahmo, Prarthana, or Arya Samaj follower. This act applies to anyone who is a Buddhist, Jain, or Sikh. It also applies to anybody who lives outside of this region unless they are a Muslim, Christian, Parsi, or Jew by faith or it can be proven that they are subject to Hindu law. It is thought to be the most powerful link between husband and wife. It's an unbreakable tie that lasts beyond death. Marriage is not only important for one generation, but it is also an important Hindu belief. While performing any Hindu ceremonies, a person is considered incomplete without a wife. It is important to carry out all of the ceremonies with the wife.

“²Hindu marriage procedures have been changing for a long time in response to the changing requirements and conveniences of the people. It is the marriage between a husband and a wife. This sacrament is one of Hinduism's 16 sacraments, and it is considered one of the most significant. It's a holy bond that can't be severed. It's a holy bond that can't be severed. It is a link that exists from birth to birth, as well as after rebirth and death. A man, according to Veda, is not complete until he marries and meets his spouse.”

“A religious ceremony in which a man and a woman are bound in a permanent partnership for the physical, social, and spiritual needs of dharma, reproduction, and sexual pleasure,” according to Hindu definition. One of the most significant sacraments in Hinduism is marriage.

² Available at: <https://blog.ipleaders.in/introduction-to-hindu-law-in-india/> (last visited 10th august 2021.)

There was no requirement for the females' permission in ancient times. Fathers must choose the boy without consulting her or seeking her approval.

It is the father's entire responsibility to locate a suitable son. It was not regarded a void marriage if the individual was of unsound mind or a minor at the time of the marriage. However, in today's society, a person's permission and mental soundness are highly important parts of a Hindu marriage; without these elements, the marriage would be dissolved, invalid, or have no legal status. The Hindu Marriage Act of 1955 states that if one's permission is not acquired, the marriage is declared null and invalid. It demonstrates that, despite the bride's lack of consent, the marriage is lawful and legal.

Modern marriage is transactional in nature. As a result, it embraces the concepts of equality and liberty. It was adopted as a result of western ideas. There must be an agreement of voluntarily entering into it by both parties. As a result, Hindu marriage is neither a contract nor a sacrament. However, it may be stated that it resembles both.

Marriage, family issues, inheritance, and other social variables impacting the social well-being of followers of this faith are all governed by it. It's worth noting, however, that the law does not apply just to Hindus.

Hindu law under the fundamental rights

The Hindu Law is based on the following Fundamental Rights of the Indian Constitution:

- *“First and foremost, we'll look at Article 15 of the Indian Constitution, which deals with the right to equality. It mentions the ban of discrimination based on religion, race, caste, sex, or birthplace. Hindu law is linked to this issue of religious prejudice, as Hindu is also a religion.*
- *Under the right to freedom of religion, Article 25 refers to the freedom of conscience as well as the free profession, practise, and promotion of religion.*
- *The right to manage religious affairs is protected under Article 26.*
- *Article 27 refers to the freedom to pay taxes for the promotion of any religion.*
- *The preservation of minorities' interests is stated in Article 29.*
- *Minorities have the right to organise and administer educational institutions, according to Article 30.”³*

³ Available at: <https://blog.ipleaders.in/introduction-to-hindu-law-in-india/> (last visited 10th august 2021.)



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