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# **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.

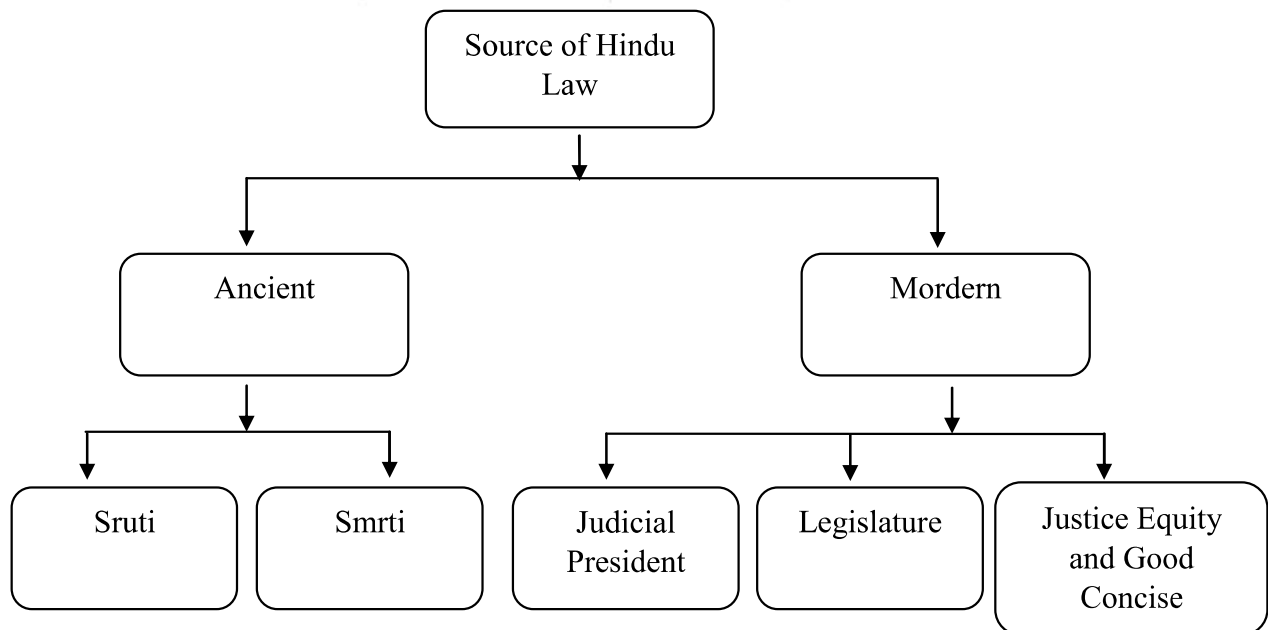
According to Hindus, Hindu law has been derived from Vedas, the Upanishads, the Geeta, or any other Hindu scripture which are relatively from the almighty. As per this view, law was independent of state and it was binding on the sovereign as well as on its subjects. Hindu law is considered “Apauruseya”. 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, Upanishads, 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 Bhauser 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. Before the codification of Hindu Law, the ancient literature was the only source of

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the law. It include religious text such as Shrutis and the Smritis, aside from that this source includes Commentaries & digest and Custom.

### **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. Smrities
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 “shur”. 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 Athravaveda. The brahmins used to pronounce whatever was written in these Vedas to the people. Since brahmins were considered to be 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 “smri” 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 contains the principles regarding the moral code of conduct for Hindus, whereas Dharmasutras contains the principles regarding the government, caste, the connection between people, economic affairs, eating habits, etc. Technically smrities mean those works which are created by the virtue of memory of sages. The basis of smrities is shruties. Smrities can be referred to as a step ahead of smrities.

There is a very thin line of difference between the two. The basic difference lies in the fact that dharamsutras are written in the form of prose, in short maxims while dharamshastras 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 smrities. However, there are some notable Smriti writers, enumerated by yajanvalkya are Manu, Attri, Vishnu, Harita, Yama, katyana, Brihaspati, Parashar, Vyas, etc.