

The Evolution of Hindu Law and the Conceptual Framework in Indian Constitution

C.L. Avadhani

Research Scholar, B.Sc., AMIE, MBA, M.Phil, MMM, PGDFM, PGDMM, PGDBA, PGDHRM, PGDPM&IR, PGDIPR, DLL, LLM, Project Consultant, Ph.D. Research Scholar, Department of Business Administration, Annamalai University

ABSTRACT: Compared to the laws that are prevailing in the entire world in different parts of the globe the Ancient Hindu Law is considered to be the oldest form of law and is about 6000 years old according to Historians. In Ancient India, the Hindu Law is mainly carved out on religious, social, legal and spiritual obligations. In Ancient India, this Hindu Law born out of customs and became a customary law to satisfy every need and welfare of the people. It is believed that the source of the Hindu Law are from Shruti (words of God), Smriti (Texts), Customs (age old practices), commentaries and digests.

During the course of time, the Ancient Hindu law was mainly divided into Dayabhaga and Mitakshara and of which the Dayabhaga School of Hindu Law is being practiced in West Bengal and Assam and the rest of country is following the Mitakshara School of Hindu Law and Hindu Law is also derived its main principles from four Vedas namely Rig Veda, Sama Veda, Yajur Veda and Atharvana Veda and Dharma Sutras (prose) and Dharma Sastra (Poetry). Many sages have written many Smritis and of which, Manusmriti, Yajnavalkiya Smriti, Narada Smriti are more popular. Customary Law as is known in the ancient India for any type of law including Hindu Law is derived from the principles and practice of customs and customary functions continuously over a period of years by a group of people and recognized by the scholars and elders who are proficient in Hindu Customs. In this article, an attempt is made to bring out the crux of Ancient Hindu Law with the help of numerous analytical reports and exhaustive research to show that the Hindu religious culture and the rights and duties of every person are so literally knitted between person's life, his duties towards himself or herself and the persons duty to the society at large are well balancedly knitted and are being practiced hundreds of years continuously, those principles became laws and of which Hindu Law is more predominant because it deals with the Hindu Social, religious and legal obligations of a person that are customaries into Customary Law and accepted by the implementers including the rulers like King. Like in the present judicial system where the Hon'ble Supreme Court is highest judiciary in terminating the legal phenomena into pronouncements that are final but in those days every single person is having a right to approach the King, if the person is not satisfied with the deliberations in the lower hierarchy. The aim of this article is to trace the evolution of Hindu Law and the conceptual framework in the present Indian Constitution and the objective is in line with the aim of the article a thorough was conducted to bring out the cream of the Ancient Hindu Law, the principles of which are still applicable now a days and the different branches that have come due to customary changes because India is a diversified country. All the above mentioned points are narrated in the Literature Review part with the help of commentaries, texts and digests of the luminaries who have churned the subject and brought the essence for the benefit of mankind. Finally, it can be concluded that has already mentioned Hindu Law is considered to be the most Ancient and Prolific laws in the world, because the Ancient Hindu Law has dwelt at length. All the branches of customs that are in practice in those days and have been recognized as customary law to be followed by one and all including the King. The Customary Hindu Law that is prevailing in Ancient India though in a divided forms with respect to the practices of different areas because of countries diversity but still the main principle called "Dharma" is prevailing in all the branches. It is also believed that the Ancient Hindu Law is nothing but the "**Words of God**" according to the Sages and Rushis who are instrumental in making this Hindu Law for benefit of mankind. Even today the modern Hindu Law is amended without touching the main principles so that the law can be enforced in the present environment. Finally, to conclude the dynamic nature of Hindu Law shaped by customs and social changes and the environment in which the people are living and to satisfy their want needs and to enforce the discipline in the public towards their rights and duties and to make the society a closely knitted social fabric.

KEYWORDS: Rta is a Rig Vedic Concept, Dharma, Mitakshara school of Law, Dayabhaga School of Law, Joint Hindu Family, Coparcener, Customary Law.

AIM: The aim of this article is to trace the evolution of Hindu Law and the conceptual framework in the present Indian Constitution.

OBJECTIVE: In line with the aim of the article a thorough was conducted to bring out the cream of the Ancient Hindu Law, the principles of which are still applicable now a days and the different branches that have come due to customary changes because India is a diversified country

I. INTRODUCTION:

When one can go deep into the evolution of Law in India, it is surprising to know that our ancestors right from the Vedic period have evolved certain principles that are to be followed by every human being so that everyone can live with harmony. The evolution of law or legal procedures are primarily evolved from customary practices and religious prescriptions in India and that is the basis for our modern well codified Acts and Laws based on the Indian Constitution in the Republic of India. When one can go through the evolution of law and the various stages in Ancient India and can be classified into four segments namely Vedic period, Islamic Period, the British Period and Post Independence.

Hindu Law claims one of the longest continuous histories of any legal system in the World and the Indian Law evolved 2500 years back with the primary source of Vedas, Sanskrit Texts, Sastras and Dharma Sastras that were time to time evolved from the great Sages and Maharshis to see that every human being will live and act in accordance with some defined principles, so that the life of a person and the acts can be regulated to a certain defined principles. It is the belief of the every Hindu that the Vedas are originated from divine power (Words of God) and are eternal. From Seventh Century til the Eighteenth Century, the basic texts became the objects of numerous commentaries and with their intellect and interpretation of Sastras each author integrated the often contradictory Dharma Sastras into coherent systems.

The evolution of Indian Law that started from Vedic period drawn from Vedas and Sastras unlike the western legal system owes its Origin to **Rta, the Cosmic Order** and **Dharma**, the rule of law and life to uphold and sustain. The main principle that embedded in Vedas and Sastras and the main philosophy behind it is,

“a man must grow into a full human being through ethical and moral standards acceptable to the community free from coercion. This philosophy of the relevance of Rta and Dharma, form the basic source of all Laws.”

Rta is a Rig Vedic Concept.

“Rig Veda is the oldest record of intellectual excellence. The Sruthis (what is revealed or heard) and Smritis (what is retold, remembered and written). On the other hand Dharma Sutras and Dharma Sastras form the primary source of law and it is believed that they are of divine origin, or immemorial, eternal and timeless”.

It is the belief of Indian Legal thinkers that,

“Dharma is beyond Law and the process of determining what is good is self oriented than cohesive”.

During Vedic Period, it is identified that there are three stages of the concept of law. The early Vedic Period that is correlated to the concept of **Rta**, the middle and later Vedic Period is correlated to **Satya** and the Post Vedic Period is correlated to **Dharma**.

It is believed that the word Rta, is derived from the root

“rta meaning to move, and signifies the dynamic principle which is inherent in the Universe and is defined as that which moves and changes the natural order.”

In other words

“Rta is nothing but the Vedic Legal Concept and can be narrated as the Law of Nature ruled by Super Human Power that controls the entire Universe according to Hindu Philosophy. The scholars and intellectuals and thinkers of the Vedic Period are deeply impressed by the forces and powers of nature like the Sun, the Moon, the Rains, the Storms and they realized that these forces are in existence much earlier

than Greeks and Romans. During the Vedic Period, this concept of Rta was described in Vedas as Rta for Universal Order and Harmony”.

Thus Rta is described as the fundamental and inherent law of nature (RV4.24-8-9); and also it is the controlling and sustaining power of the nature and it controls and administers the Laws of the Physical World that regulates the Laws of Birth, growth and decay in nature (RV 2.25.4). One can draw an inference from the Vedas that are eternal,

“Rta controls balances all natural forces in environment, moral order, it emphasizes that law also must be certain, firm and immutable and that the purpose of the law is ethical in nature.”

Many of our ancient texts on Vedas is, how a human being has to live and let live in this Universe are written in Sanskrit between 500 B.C.E and 500 C.E. and these writings (Texts) on Sastras and Dharma Sastras are part of eternal and unchangeable. However, due to the passage of time and invasion of the country by foreign rulers especially during 1772 when the British put their foot on the soil and around 1772, these foreign rules (British) decided to,

“apply the law of the Dharma Sastras to Hindus in the newly established Anglo-Indian Courts of Law”.

but unfortunately the ignorance of Sanskrit language and lack of familiarity with the Hindu Culture, customs and traditions, and in addition, the lack of common law background of British Judges led to fundamental changes and developments. After Independence during 1955-56, the Indian Parliament in the independent India over ruled most of traditional Hindu Laws with modern four acts on Marriage Succession, Minority and Guardianship and Adoption and Maintenance.

II. REVIEW OF LITERATURE:

According to Wikipedia, about history of Indian Law,

“Law in India primarily evolved from customary practices and religious prescriptions in the Indian Sub Continent, to the modern well codified Acts and Laws based on the Constitution in the Republic of India. The various stages of evolution of Indian Law is classified as that during the Vedic Period, Islamic Period, British Period and Post Independence”.

An article written by Abhishek Raj titled ‘**Source of Hindu Law**’ published in Legal Services India.com we can draw many fascinating facts about Hindu Law in Ancient India.

“Hindu Law is the oldest pedigree of any known system of jurisprudence and even now it shows no science of decrepitude – Henry Mayne.”

The meaning of source of Law is, “**an authority that issues norms of conduct that are considered binding by courts**”; also the term source of law refers to “**the person who creates the legislation and it could also refers to the materials from which the rules and Law are derived**”.

As a whole, the source of law can be defined as a legal evidence and it is in this context that the term source of law is acknowledged in jurisprudence. In Ancient India, especially during Vedic period and subsequently those people who have been living their lives by complying with the rules and concepts laid down in Vedas because in Ancient India during Vedic Period, the Vedas are the source of information for anything and one such is the norms and traditions, an Hindu has to observe while dealing with himself/herself and others, so that a harmonious life can be formed in the society. These principles that are enunciated in Vedas are the foundation stones for the Hindu Law where from in due course of time with additions and deletions, the present Hindu Law has come into existence. Due to passage of time and want needs of the people are changing and since cultural and habits are changing, to suit that particular environment, some amendments have been made to the ancient Hindu Law and some of the most important amendments are, **The Hindu Marriage Act 1956, Hindu Adoption and Maintenance Act, 1956 and finally the Hindu Succession Act, 1956.**

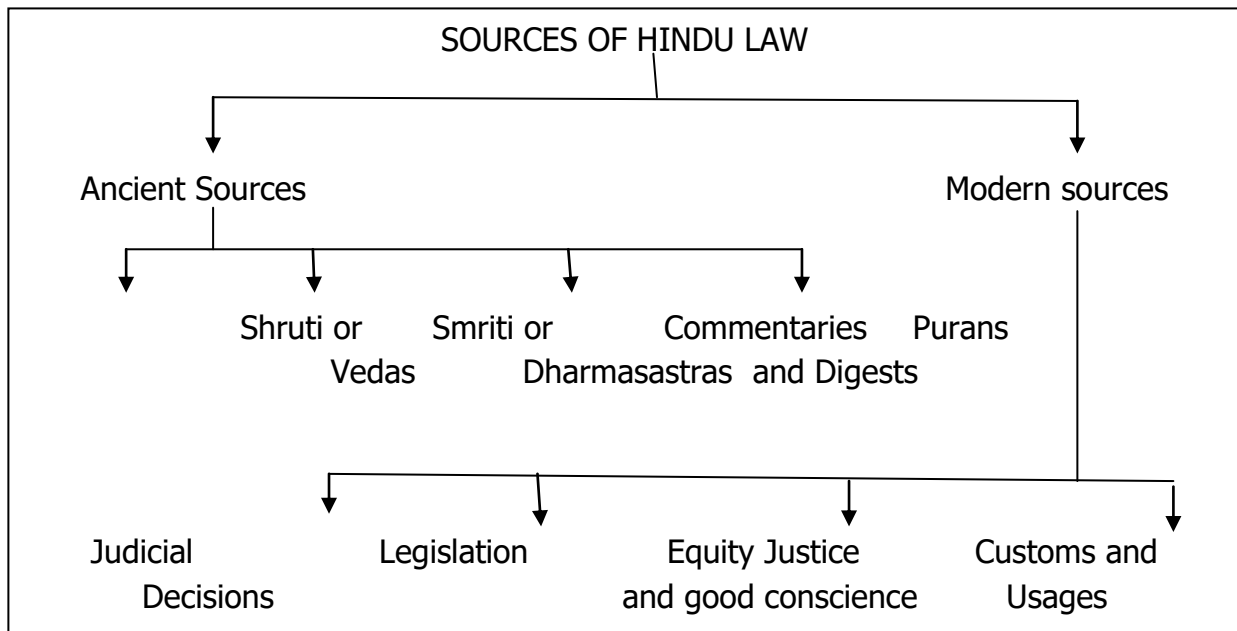
It is believed by the Ancient Indians that the origin of Hindu Law is from the Gods and not a true customary law as is the case of England’s Common Law because in Ancient India Hindu Law consists of set of norms and laws that are being followed for centuries and are described in Sanskrit Texts in those days. One can see the rulers of

India namely the Kings in those days followed these norms and laws effectively until British Rule came into existence. The one main thing in Hindu Law is the Laws/principles are dynamic in character, encompassing religious, moral and civil systems of law. In Ancient Hindu Law, the term **Dharma** is predominant because our Ancestors are very particular about **Dharma** and **Adharma** and they encouraged **Dharma** for a peaceful living and discouraged **Adharma** with serious punishments who violates **Dharma** and follows **Adharma**. When one can go to the mythology and the ancient scripts about religion, religious gods etc. they used the word **Dharma** meaning it is an "**Obligation**" but the word **Dharma** is being used differently in different contexts. This word **Dharma** according to the Ancient Indians has different meanings depending upon the situations such as social, legal and spiritual responsibilities. When one can come to the Ancient Hindu Law, the word **Dharma** is being used in the context of "**Nyaya**"; as such one can say with authority that Hindu Law is nothing but a divine Law, meaning Gods revealed to the Humans through the Vedas, "**how one has to live harmoniously in the society and the persons responsibility to himself/herself to their family and to the society as a whole.**"

The Ancient texts have not defined appropriately "**who is Hindu and as such one can define an Hindu in the negative sense as who is not Hindu**". In the Amended Act of Hindu Law especially Hindu Marriage Act 1956 there it is specified about who is Hindu. An individual is regarded as a Hindu if he/she practices any of the following religions Hindu, Jain, Buddhist or Sikh.

The Hon'ble Supreme Court ruled in, *Sastri v. Muldas*[10] that Hindu sects such as the Swaminarayan, Arya Samaj, and Satsangis are also Hindus. Furthermore, when individuals convert to Hinduism or perhaps even return to it, they are labelled a Hindu. In *Perumal v. Ponnuswami*, a significant decision, held that "**people could become a Hindu if he or she shows a willingness to do so and performs Hindu practices to prove that desire.**"

- **By Birth:**
A child is Hindu by birth if he or she is born to Hindu parents. When one of the parents is Hindu, a child is also a Hindu if raised in a Hindu household.
- If a person is not a Muslim, Jew, Parsi, or Christian, he or she is a Hindu. When an individual is not subject to any other law, he or she is subject to Hindu law.



It is befitting to refer the article title "**Role of Customs in moulding Hindu Laws**" written by J. Suparna Rao from Rammaiah Institute of Legal Studies and published in Ipleaders website, comprehensively narrated, "**the Customs that shaped Ancient Hindu Law**". As for the Ancient Literature Customs are mainly four types and are a. Local Customs, b. General Customs, c. Family Customs, and finally d. The Class or Caste Customs.

LOCAL CUSTOMS:

Local Customs means “Customs or Practices that are binding on people belonging to the Hindu Community of a particular geographical area. Thus the major part of that particular place is Culture.”

Regarding General Customs, Customs or practices that prevail in the Country as a whole. Example Indian Customs and traditions are the major attraction of tourists. Some of them are the **Namaste**, which is used to greet people, **Tilak** a ritual remark which is a sign of blessings or suspiciousness regarding family customs it is ‘a family tradition or family culture’, which they are following from a long time which was given by their ancestors long back. It can also be stated as the environment in which a person is born and brought up by their parents and ancestors.

As far as Class or Caste Custom refers to “the customs for a particular caste or sector or class of people such as traders, agriculture, business etc. Every caste or class has different traditions to be followed which they have been following for a long time.”

To make Custom as a Customary Law the essential ingredients that are required are,

“Customs can be anything which explains the behavioural pattern of a certain group of people, it can be an act on the basis of which group of people can be classified. There are one of the earliest source of law. It can alternatively be called as traditions, cultural ideology and cultural philosophy”.

When Custom is converted into a customary law, “the custom should be ancient and that has been followed continuously for a longer period uniformly without any break and it must be a valid custom and it must be followed by people from time immemorial.”

To make any custom as a customary law, “the evidence of custom should be very clear unambiguous and there should be an evidence that a group of people who are following that particular custom should prove it through their actions/acts or its existence at the time when it was recognized as a customary law”.

In addition to make a custom into a customary law, the other ingredients that are required are “reasons for following the customs, not opposed to morality or public policy, not oppose to any law in existence, not opposed to Dharmasastras and finally not be forbidden any laws or enactment of the legislature and that it is necessary that customs are collateral with the laws”.

To make use of any customary law the person who utilizes the customary law must prove the proof of customs as laid down previously and the judicial notice of a custom as a custom and usages under codified Hindu Law. In this context, some of the principles that are already explained previously are “Right of inheritance of women before the Act, Stridhan, Non Stridhan, women estate etc.”

In the customary law Ancient India before amendment **Stridhana** meaning **Stri** means women and **Dhana** means property in total **Stridhana** meaning property of women in Ancient India. In the **Stridhana**, the following gifts are also added that are worth mentioning here a. **Adhyangni** – gift received by women at the time of nuptial fire, b. **Adhyavaharika** – meaning gift received by a bride on her marriage, c. **Pratidatta** – gift received by the daughter-in-law of love and affection by father-in-law and mother-in-law, d. **Padvannadanika** – meaning gifts received from elders while wishing them, e. **Anvadhvevaka** – meaning gifts received by the women from her husband, f. **Adhivedanika** – meaning gift that the first wife receives when the second wife is brought into the house. g. **Shulk** – meaning money which a women receives for marriage, h. **Bhandudatta** – meaning gifts received by a woman from mother and father and relatives, i. **Vritti** – meaning which the woman received for maintenance and from that money the property she purchased. j. **Vyavataka** – meaning gifts to the wife during the marriage by the guests.

There are certain limited rights on certain kinds of properties and are

“a. Women estate, b. Before the codification of Hindu Law, c. The property acquired by the Widow,”

To ascertain these facts in a case law the Hon’ble Court opined that “woman character with regard to the property in a woman estate is that of the owner but the powers vested in it are limited. It could be stated as she holds such an estate of property to herself and the after her the husband heirs”.

Accordingly, the position of **Stridhana** before the codification of Hindu Law according to Manusmriti, **“a woman cannot acquire property all the property which belongs to a woman or son or the slave belongs to the person to whom the woman or slave belongs are stays with. It does not mean that woman cannot own property rather it means that they can own but they cannot transfer or alienate the property. She was not allowed to alienate the Stridhana in which her husband also had right without the consent of her husband.”**

On this context, some of the judicial decisions about Stridhana are, a. In **Pratibha Rani vs Sooraj Kumar and another**, it was mentioned in the Hon'ble Court that one Pratibha Rani married to Sooraj Kumar according to Hindu Rituals. During the marriage, Pratibha Rani's family gave Rs. 60,000/- as dowry including the Gold Ornaments, Clothes etc. after the marriage Pratibha Rani's husband namely Sooraj Kumar started beating her physically and abusing her and finally she was thrown out of the house with her children and even refuse to give back all the valuables that were given to her by her parents side by the relatives and others at the time of marriage are also categorized by the Hon'ble Court as Stridhana. The Hon'ble Court also held that, **“husband, brother, nor son nor the father cannot alienate any property on which she has absolute right or Stridhana without the woman's consent. If such property is alienated without the woman's consent such a person will be liable to pay back the value with interest”**.

b. In another important judgment **“The Bhai Sher Jang Singh vs Smt. Virendar Kaur, the facts are the respondent was married to Bhai Sher Jang Singh and at the time of marriage the respondent was given various valuables such as clothes, ornaments, furniture by her parents, husband and relatives. When the husband was going out on a business trip he asked the wife to give all the valuables that she is holding to his parents and she complied the same. After some time she came to know that it is plan of her husband to dissert her and her in-laws did not allow her to wear ornaments that were gifted at the time of marriage; in addition she was not given permission to secure them back and her in-laws misused the ornaments without her consent.”**

After hearing and verifying the facts, the Hon'ble Court has come to the conclusion that the husband and the wife have joint rights on the gifts received at the time of marriage but certain things like ornaments are meant to be used by the wife only and that no other person can exercise any right over the gifts received during her marriage other than herself and her husband.

Everything excluding the above things which are offered to the bride on her marriage by the brides relatives and others are her **Stridhana**, and that the grooms side is bound by law to return all such property, ornaments, money and such other belongings.

c. In another landmark judgment in **Vinod Kumar Sethi vs Punjab State**, the Hon'ble Supreme Court gave a very important ruling with regard to Stridhana, **“the Hon'ble Supreme Court said the gifts which are received during the marriage are classified as Stridhana; the Hon'ble Supreme Court also divided Stridhana into three categories namely a. the gifts which are for her own use in which she will have absolute ownership, b. gifts on which she and her husband have a joint right and that ownership of wife will not be disregarded even if marriage breaks or dissolves her rights over those gifts will exist. Finally those gifts which are given for the use of husband and in-laws, her right won't be there over such gifts”**. According to the Hon'ble Supreme Court with this clarification the Stridhana will falls under the above two categories only.

d. **Deivanai Achi vs Chidambaram** (1954 AIR Madras 677): In this instant case the Hon'ble Madras High Court 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.”**

e. In another landmark judgment the Hon'ble Supreme Court of India held in **Lakshmi vs Bhagwant Bua** (AIR 2013 SC 1204), in this instant case the Hon'ble Supreme Court stated that **“A custom becomes legally enforceable when the majority of people make the continuous use of such practice.”**

f. In **Munnalal vs Rajkumar** (AIR 1972 SC 1493), the Hon'ble Supreme Court of India in this case stated that, **“A custom brought before a court several times, the court might hold that such custom has been enforced in the law with the necessity of its proof.”**

Onus: "When a custom attains the judicial recognition no further proof is required; however in certain cases where the customary practices do not attain the judicial recognition, the burden of proving lies on the person who alleges its existence"

However Hindu Law did not specify any particular period or time in judging what is a custom but English Law fixed year of 1189 to test the authority of the custom.

India with a rich culture and heritage when the west has not opened their eyes. The scholars and eminent Maharshis, who are responsible in writing such unparalleled books on Dharma, Culture, tradition living with harmony and ahimsa and in addition their inscriptions has become a torch bearer to the mankind on live and let live principle. When we compare the present modern legal system that is blended with British Laws because they ruled this country more than 200 years and during that period adopted their British Legal System in India we lost some of the valuable information on Hindu Law. According to the Historians Hindu Law was a peculiar Legal System because our ancestors, while drafting and adopting Legal System the main principles they have adhered to are **"a unique arrangement of Law and polity with a unique scheme of values. Ancient India represented a distinct tradition of Law and had a historically Independent School of Legal Theory and Practice. The main aim of the Law in the Vedic Period was to preserve Dharma which means righteousness and duty. Dharma consists of both legal duties and religious duties. It not only includes Laws and Court procedures, but also a wide range of human activities like ritual purification, personal hygiene regimes and modes of dress. Dharma provided the principle guidance by which one endeavored to lead his/her life"**. (Wikipedia - The Free Encyclopedia).

During Vedic period in Ancient India, Administration of Justice was done through Kings Courts which highest judiciary of the Country like the present system of Hon'ble Supreme Court but the main difference being the Kings Court has two important functions namely it acts as a court of original jurisdiction and an Appellate Court and it depends upon the importance of the subject that was brought to the kings court. Just like the present form of number of judicial officers in the present Hon'ble High Courts and Hon'ble Supreme Courts where depending upon the nature and indepth discussions to find out the true value of the justice in accordance with the Legal System so that an innocent cannot be punished and at the same time a guilty was let free. As we have seen in the modern system of Hon'ble High Courts and Supreme Courts where they used to conduct the proceedings when a single judge to a constitution bench in the present modern system. In the Ancient India also the King is being advised by number of advisors depending upon the intensity and the nature of the problem. These Kings advisors are not only the learned Brahmin community who relentlessly pursued and spend the life for keeping the king and kingdom flawless. As mentioned by Brhispati considered to be the highest learned noble person having thorough knowledge on all the subjects who can express views with authority as divided the administration of justice in Vedic Period under four divisions; namely tribunals that are stationary, movable courts held under the control of Royal Signet in the absence of the King and Commissions under the King's presidency. As he seen in the modern judicial system of having magistrate courts to the highest Court of Hon'ble Supreme Court, the Vedic period there was hierarchy of Courts in a different form. In Villages, the Village Councils (Kulani), dealt with simple civil and criminal cases next to this at higher level that is in towns and district head quarters the courts were presided over by Government Officers appointed by the King and under the authority of the King to administer justice. The other form of administration of justice is that includes, **"problems among members of Artisinal Class, traders etc trade guilts for authorized to exercise and effective jurisdiction over their members. In another form of administration of justice family courts were established. Puga Assemblies made up of groups of families in the same village used to decide civil cases/civil disputes among family members. Likewise minor criminal cases were resolved by the judicial assemblies in Villages (the modern Village Panchayati System). On the other hand major criminal cases of serious in nature were brought to the Central Court that are being held under the King or the designated Royal Authority as is in the present form of appealable courts in Vedic Period also this Appeal System is being practiced and the King was the highest body of Appeal that can be compared to present Hon'ble Supreme Court."**

The notable difference in the present Legal System and the Legal System in the Vedic period is there were no Lawyers as is the case presently to represent the affected parties on both sides but the judicial officers or the King and the advisors are used to elicit the truth and true facts from the parties in deciding the cases/disputes. In another notable comparison is as we are having different benches ranging from single Judge to number of Judges presently in Vedic Period also number of administrators are being appointed to decide the disputes ranging from one single Administrators to number of Administrators.

Another notable feature in the Indian Legal System during Vedic Period that one can notice from the Ancient writings and scriptures that “the conception of justice and the concept of a Legal System owe their origin to the concept of Rta. The aim of Law is to maintain Social Order and that the social order is envisaged by the Legal Order. The Legal Order follows an evolution Order through which a social aim or ideal is conceived which a society envisages to achieve through a Legal System. It comes down to the fact that Rta is the highest end in the spiritual domain and through the system of Obligatory rules which cannot be altered. Justice is the highest secular aim which can be achieved by a Legal System. Thus Rta has a direct bearing and contributed to be idea of justice in the Social Order (Indian Conception of Law-Rta and Dharma – Advanced Jurisprudence – www.ebooks.inflibnet.ac.in)”.

As we all know Hindu Law is the Ancient Law of the Globe and this Law was established in Ancient India to satisfy the needs and welfare of the Society and people thereon. As already mentioned above Hindu Law was derived from the Laws of Sruthi, Smriti, Customs, practices and commentaries. When we compare the present system of Hindu Law one can notice there are two types of modern Hindu Law namely the codified and uncodified laws and the codified Law administers each Hindu. However when we observe the existing codified Hindu law the administration of each Hindu does not exist but it exists in uncodified Hindu Law. As already mentioned above Vedas Smritis and Sruthis are the source of information for the Ancient Hindu Law as well as to a certain extent the present Hindu Law and the commentaries written by many scholars has finally shaped the Hindu Law. Due to these differences among the commentators and writers, mainly two types of schools of Hindu Law have emerged and among them one is **Mitakshara** and the other one is **Davabhaga**. Let us discuss about the two schools of Hindu Law with the help of the available Literature and the commentaries by the scholars.

✚ **Mitakshara School of Law:**

While going through the Literature and Commentaries on Hindu Law, one can define the Mitakshara School of Law as “a short compendium and a running commentary on the code of Yajanavalkya 187 and a veritable digest of Smriti Law. This was written in the later part of the eleventh century by Vijnaneshwara. In Mitakshara School of law, that can be compared to present form of Legal digest than a commentary on Hindu Law, this School of Law is more elaborative. This Mitakshara School of Law is a comprehensive treatment of all vital important topics of the Law and a comprehensive thesis of Smritis. This Mitakshara School of Law is considered to be Supreme Authority in India except Bengal in Northern India where the Dayabhaga School of Law adopted and written by Jimuthavahana is more predominant. This may be with different Customs, Acharas, Vyavaharas that are practiced may be because Bengalis are used to worship Shakti, the Goddess.”

However in Ancient India, the Mitakshara School of Law (Hindu Law) is regarded as one of the main sources of Hindu Law in Ancient India. However, as already mentioned earlier Ancient Indian Legal System partly depends upon Dharma, Customs, Achara, Vyavahara. This Mitakshara School of Law was subdivided into four School of Law namely

- ✚ Banaras Hindu Law School
- ✚ Mithila Law School
- ✚ Maharashtra Law School
- ✚ Dravida or Madra Law School

However, these sub divisions of Law of Mitakshara School, the supreme authority is Mitakshara school of Law only.

✚ **Banaras Hindu Law School:**

This Banaras Law of School is under the control and authority of Mitakshara Law School and covers the northern India including Orissa. Viramitrodaya Nirnasindhu Vivada are some of the commentaries on Banaras Law School and it is considered to be more orthodox compared to other sub divided schools of Law of Mitakshara.

✚ **Mithila Law School:** Mithila Law School is predominantly adopted in those days in the territorial parts of Tirhoot and not Bihar and covering mostly in parts of Northern India. The major and available commentaries on Mithila Law School are Vivada Ratnakar, Vivada Chintamani, Smritisara, the other notable work namely the Kalpataru by Lakshmidhara is freely cited by the practitioners and exponents of Mithila School of Law:

✚ **Maharashtra or Bombay Law School:**

This sub division of Law School is being exercised in the territorial jurisdiction of parts of Gujarat Kharana and the parts of Maharashtra where the Marathi language is proficiently spoken. The main authorities of Maharashtra or Bombay Law School are Vyavahara Mayukha and Virmirodaya.

✚ **Madras Law School:** This sub division of Mitakshara School namely Madras Law School is to cover and predominantly adopted the whole of Southern India and in addition to this, this part of India is also used to practice under Mitakshara Law of School. The notables are Devannabhata's, the Smritichandrika till the close of 20th century. This Madras Law of School or the Smritichandrika of Devannabhata is an authority on the 'Law of Inheritance' and was considered by Colebrooke, a work of unparalleled excellence equal if not superior to Parashara Madhaviya, who is also a leading personality in South India when one can look into the Mitakshara School of Law. This Madras Law of School derived its authority on Hindu Law from Smritichandrika, Vijayanti and some other works.

Let us examine with the available material under Mitakshara School of Law,

- ✚ What is joint Hindu Family and the composition of Hindu family?
- ✚ What is meant by coparcenary according to Mitakshara Law of School?
- ✚ Is women as coparcener?
- ✚ What is meant by Coparcenary/Co-ownership – Partition – Rights of Women – Rights of Widow?
- ✚ What is meant by Sapindas?
- ✚ What is meant by Survivorship?

1. What is joint Hindu Family and the composition of Hindu family?

During the Ancient Period when there is no amendments to Hindu Law as of now, a joint Hindu family consists of "all male members descended lineally from a common male ancestor together with their mothers, wife's or widows and unmarried daughters. However an unmarried daughter after her marriage ceases to be a part of the fathers Hindu Joint Family and takes the new position in her husband's joint family. In a second incidence of daughter becoming widow of a joint Hindu Family are deserted by her husband and returns to the fathers house permanently she becomes again member of her father's joint family". However, the widow or the deserted daughter of the erstwhile Hindu Joint Family when he comes to the author's house though she becomes member of joint Hindu Family her children cannot become members of her father's joint Hindu Family but the children continues to be members of their father's joint Hindu family. In addition it is also mentioned in Ancient Hindu Law that "an illegitimate son of a male descendent would be a member of his father's joint Hindu family. Also a child in the womb of a mother till it is born is a not a member of joint Hindu family for taxation purposes but is treated as in existence for certain purposes that are to be fulfilled under Hindu Law."

2. What is meant by coparcenary according to Mitakshara Law of School?

A coparcenary in Hindu law is an important concept and has immense importance in joint Hindu family of any School when we consider the word Mitakshara Coparcenary it is more or less spiritual in nature because Hindu Religious Customs and beliefs are different from other religions and a male member of a Hindu family has certain duties to do such as a Coparcener and a Mitakshara coparcenary in relation to father is a person who can offer funeral rituals at the time and after the demise of the father. This kind of ritual of the coparcenary after the death of his father which is customary has to do the funeral rights by the son or his son or grandson of the deceased or great grandson of the deceased is compulsory and that is why such rights are conferred or obtained by Birth in the property of the deceased father. This religious practice that is associated primarily with relationships and spiritual benefits and not merely from the property perspective was kept aside later by legal aspects. In those days, this kind of relationship and Mitakshara coparcenary is a tool to be applied by the revenue officers to record the holders of the property in Revenue Records which is in the name of the deceased.

Presently the exponents of Law and legal acumen opined that the rights and obligations of the members of joint Hindu family properties are otherwise called as Ancestral Property or the coparcenary property. In Mitakshara coparcenary, these rights and obligations are conferred as a right by birth to the property of the father. On the otherhand if a person acquires some property by himself becomes the exclusive owner of that self acquired property and no one else including his family members has any legal right or power to contain his rights over such property as a like a joint Hindu family property or coparcenary property. However, in a case where the self acquired property of the father is derived wholly or partly or a portion of it is obtained from the profits or otherwise of the ancestral property this property also becomes ancestral because a portion of Ancestral Properties revenue is being utilized in acquiring this property and hence it becomes ancestral. In such cases the sons, grandsons, great grandsons gets right in such property as that of an ancestral property. A look at the formation of mitakshara coparcenary, a single person cannot form a coparcenary; on the other hand they should be atleast two male members to constitute mitakshara coparcenary and like a Hindu Joint family a senior most male member is a must to be a coparcenary. It clearly shows formation of Mitakshara coparcenary there should be minimum two male members and their relationship like father and son, father and grandson is essential.

3. Can be a women be a coparcener in Mitakshara coparcenary?

Under Mitakshara coparcenary school of law women cannot be a coparcener. Under the Hindu Law, though a wife has a right of maintenance out of her husband's property yet she is not a coparcener with him (Husband); that means a widow of a deceased coparcener is not a coparcener and cannot be treated as Karta of the family, consequently an alienation made by her will not be binding on the family members but will bind her own share in the property. Under Hindu women's right to property act, 1937 since he is not a coparcener though the widow is succeeding to her deceased husband's share in the joint family, though she cannot be a manager or karta but she can be assessed as head of the joint family for the purpose of income tax. In addition, a mother is neither a coparcener with her sons nor with her daughters/daughter even if they happened to be devadasis similarly a mother-in-law cannot be a coparcener with her daughter-in-law. Let us examine the different schools of law namely the Mitakshara School of Law and Dayabhaga School of Law. As already mentioned above, Hindu Law is being professed under two schools of law namely Mitakshara and Dayabhaga. There are differences between the two schools of law when it comes to joint family, co-owner, coparcenary, partition and rights of the member etc. Under Mitakshara School of Law, a joint family can be referred to only the male members of the family and its extension includes to son, grandson and great grandson etc and they collectively become co-owners / coparceners of the joint Hindu family. So to say the son by birth acquires an interest in the ancestral property of the joint family and is also called inheritance under Mitakshara Law of School.

However, under Dayabhaga Law of School of Hindu Law, the son has no automatic ownership right by birth, to say he cannot acquire right by birth as that other school of law but under Dayabhaga acquire such right on the demise of his father so to say acquisition of right by birth to the son, grandson and great grandson there are two different aspects one differs from other and compared to Mitakshara School of Law and Dayabhaga School of Law.

As far as coparcenary rights are concerned under Mitakshara School of Law, the coparceners enjoy their rights during the fathers life time but on the other hand in Dayabhaga School of Law when the father is alive the sons do not have any coparcenary rights but acquires them only on the demise of their father and the Mitakshara School of Law, the coparceners share is not defined and cannot be disposed off. On the other hand in Dayabhaga School of Law, each coparceners share is well defined and the coparceners have the right to dispose of their share of property.

4. What is meant by Coparcenary/Co-ownership – Partition – Rights of Women – Rights of Widow?

When the partition of the property of a coparcener is concerned the test being, though the intention of separation is clear but both the schools have different ways. In Mitakshara School of Law in a Partition, the intention is holding the property is defined and the shares are defined whereas Dayabhaga School of Law in a partition, there has to be a physical separation of the property into a specific proportion and assigning of such separate share to each of the coparcener. Otherwise in Mitakshara School of Law no coparcener can claim a definite physical share of the joint property. That means unlike the Dayabhaga system where each of the coparceners has a definite share in the joint family property even the family joint and undivided and the position is common. Hence, the partition of a joint Hindu family property under one system physical separation into separate shares of the coparceners and assigning the same to the coparceners, on the other hand it is other way in the other

system. That means none of the coparceners can claim a definite physical share of the joint family property in Mitakshara system.

Rights of a women in Ancestral Property: As already mentioned above wife cannot demand partition in the Mitakshara School of Law but the right to share in any partition affected between her husband and her sons, where as in Dayabhaga School of Law this right does not exist for the women because the sons cannot demand partition because the father is absolute owner. However in both the systems in any partition between the sons the mother is entitled to a share equal to that of a son.

What are the rights of a widow under both the systems?

Under Dayabhaga School of Law, in a joint family when one brother dies his widow can succeed his share of property where as under Mitakshara School of law her rights are excluded by the rights of survivorship of the brothers. So to say the widow of the deceased brother can have only right to maintenance but not right to property.

5. What is meant by Sapindas - heirship?

According to Mitakshara School of Law, the relationship of Sapinda arises by propinquity or community of blood. Under Dayabhaga School of Law, the question arises when the offerings of the Pinda to deceased ancestors arises. Under the Dayabhaga School of Law, the spiritual benefits is a criterion for heirship whereas blood relationship is the guiding principle under Mitakshara School of Law.

6. What is meant by Survivorship?

Under Ancient Hindu Law, the question of Survivorship arises among the brothers who have inherited property from their father will automatically get survivorship as far as Mitakshara School of Law is concerned whereas in Dayabhaga School of Law, the brothers who inherited does not respond to any right of survivorship and the brothers hold in quasi-severalty with the full power of alienation. As already it is well defined in history that Hindu Law is the most ancient law in the world, and the Law was enacted originally to satisfy every need and welfare of the people in those days and these ideas of Hindu law are Sruthi and Smriti and the commentaries and digest from luminaries.

On the other hand, in the modern Hindu Law, the two laws namely codified and uncodified of which codified law administers each Hindu but in the present system of Law this codified Law does not exist at all but it exists in uncodified Hindu Law. These different schools of law have come into play because many commentaries and interpretations have come to light on the Original Hindu Law and making all the difference. These two schools of Hindu Laws namely Mitakshara and Dayabhaga and subsequent sub division of Mitakshara School of Law are the outcome of divided opinions on the subject matter. On the otherhand as the time passes and many changes in society, the want needs of the people are changing because the expansion of the society, families sometimes joint families sometimes nuclear families and the different scholars expressed different opinions on the subjects, the necessity of changes in the Hindu Law has become inevitable.

As already mentioned above, the evolution of Hindu Law dates back to Vedic Period and the main source of law that was adopted and implemented are drawn from Sruthi, Smriti and Acharas. Sruthi consists of the four eternal Vedas namely the Rig Veda, the Yajur Veda, the Sama Veda and Atharva Veda. These four Vedas that are eternal, most sacred, deal with religious duties, practices and customs. The other source of **Ancient Law** is from Smriti and referred to "tradition" and contains the collection of traditions in Ancient India.

Some of the most important Smritis are

"Dharma Sastras that includes Manusmriti (200 B.C.-200C.E.), Yajnavalkya Smriti (200-500 C.E.), Narada Smriti (1000 B.C. – 400 C.E.) Vishnu Smriti (700 – 100 C.E.) Brhaspati Smriti (200-400 C.E.) and Katyayana Smriti (300-600 C.E.). These texts were often used and referred for legal judgments and opinions in that period, because these Smritis dealt with that of Dharma and Books of reference with respect to the rules of Dharma, conduct and rites"

Out of the four texts on Smriti, the dharma Sutra deals and discusses with the rules for duties for all the Ashramas meaning the student hood, the house holdership, the retirement or forest dwelling and renunciation. In addition, these Smritis provide the rights and duties of Kings/Rulers and the court proceedings in their Kingdoms; in addition the other issues that are embedded in Dharma Sutras includes Rules about one's duties,

crimes and punishments, daily sacrifices and funeral practices. These Dharma Sastras also contain Acharya meaning Rules, daily rituals, life cycle rites, specific duties and proper conduct that each of the four casts (Varnasrama Dharma), they have to follow and that includes daily sacrifices kind of food to eat and how to procure them and who can give and who can accept religious gifts; in addition the Acharas include the life cycle rites, rules and regulations for all Asramas, that is the four stages of life includes Brahmacharya (Student life) Grishastha (married life) Vanaprastha (the forest dweller). The other concept is Vyavahara means the legal procedures. Legal procedures in Ancient India includes Raja Dharma (duties and obligations of a Ruler), to organize court, listen and examine witnesses, decide and enforce punishment and pursue justice. The other category namely, Prayaschitta includes and lays down rules for punishment and penance for violating the Law of Dharma. These punishments are prescribed to remove the sin of committing which is forbidden by Dharma Sastra. During Vedic Period in Ancient India, the legal procedures that are followed includes the modern system of filing cases namely Vyavahara and is called Purvapaksha, the present form of filing case namely Plaintiff/Petition and the reply to it namely the Written Statement, in modern legal system is called as Uttara. And the modern form of Trial conducted in the courts is called Kriya and the judgment/verdict/order is called in those days Nirnaya. But the present system of Advocates/Vakils/Legal Professionals are not known in Ancient India. In those days, the trials are conducted and punishments are awarded under two different types namely imprisonment, mutilation and death.

According to J. Rama Jois,

“The Ancient Indian and Constitutional System had established a duty based society. It postulated that everybody from the king to the lowest of society is bound to fulfil his/her duty towards the society. This was same for the whole of India, notwithstanding the existence of larger and smaller kingdoms and the supremacy of Dharma (Law) over the kings as described in the authoritative texts was respected in letter and spirit. Thus, there were no absolute monarchies. The Dharma Sastras asked the kings to look upon the people as God (Praja Vishnu) and serve them with love and reverence. The doctrine of ‘King do no wrong’ was not accepted and the King himself was subject to Law”.

III. DISCUSSIONS AND ANALYSIS:

It is a known fact that Hinduism is one of the oldest form of religion in the world and that the Indian Civilization is also one of the oldest Civilizations. It is believed that Hindu Law is said to be of divine origin in nature, according to one theory and on the other hand it is also believed that Hindu Law is derived from Vedas but the westerners believes that Hindu Law is based on Customs and Usages.

In the words of Mayne,

“Hindu Law is the Law of Smritis as expounded in the commentaries and digests which are modified and supplemented by customs. Hindu Law has the oldest pedigree of any known system of jurisprudence and even now it shows no sign of decrepitude”.

It is also well established and a known factor that Hinduism in Ancient India

“did not differentiate between religion, law and morality; and all these things together is called Dharma; and these things are derived from Shruti (Vedas), Smriti means the memorized word and finally Sadachara means the standards of morality and justice.”

The word Shruti is derived from two words namely Shru which means to hear and is considered to be the primary source of Hindu Law; Shrutis are the sacred pure utterances that has been enshrined in Vedas and Upanishads and since no written material is available in those days, the knowledge is being communicated orally by the Maharshis to their Shishyas or disciples, and this phenomena is being adopted from one generation to other generation. The main source of these Shrutis are the four Vedas namely Rig Veda, Yajur Veda, Sama Veda and Atharvana Veda.

On the other hand Smritis meaning which is remembered, is another source of Hindu Law in Ancient India. The main difference between Smriti and Shruti is, former one is authorless because they were transmitted and supplemented solely through generations. The word Smriti is further classified into Dharma Sutra (Pros) and Dharma Sastras (Poetry). From the available literature and the ancient source of information, though there are many Smritis, only Manusmriti, Yajnavalikya Smriti and Narada Smriti have become popular.

After the era of **Shrutis** and **Smritis**, the era of commentaries and digests came into existence. Commentary is nothing but the **Bhashya** and the digests are **Nibandhas** and this era of commentaries and digests covered more than 1000 years from 7th Century to 1800 A.D. and the 1st part of the period, majority of the commentaries written on **Smritis that contained Law**. The main problem with the law derived from Smriti is there are number of variations as mentioned above in Smritis and each one differed in their thought and explanation especially with the rights of a women and the Sudras are concerned. Some of the Smritis that are mentioned above, “**mentioned the rights of various personnel in the community**”, and as the time passes when the digests era came into existence, the scenario has changed. These digests containing “**a synthesis of the various Smritis and explaining and reconciling the various contradictions.**” These digests have done a remarkable job by bringing together the different narrations of Smritis and the explanations given thereon and narrowing the differences. After this era, the Hindu Law that existed so far has taken a new dimension and brought into existence based on the customs, religious practices and beliefs that existed in various parts of the country and some are being adopted in Western India, some are in Eastern India, some are in Southern India. Of these evolution of different schools of Hindu Law, there are two main schools of Hindu Law namely **Mitakshara and Dayabhaga** and both have well knitted commentaries and digests.

IV. JUDICIAL DECISIONS:

The Judicial Decisions that are based on the Laws, Customs and religious practices and **Acharya Vyavaharas** are the main ingredients of the present modern system of law, because judicial decisions in whatever form they were pronounced (already discussed) are the authoritative source of law and binding on everybody. In the early period of British, the Courts that were established by the British is to follow and apply the Shruti and Smriti Laws and the commentaries and digests that are available and by adding their own interpretations in line with existing situations and environments they used to pronounce judgments. This is nothing but judicial precedent that is being used in the present modern law nomenclature. These decisions that have been pronounced based on the earlier decisions is continuous even after the introduction of modern law by the British and even after independence the amendements that have come into play but still the main source of Hindu law is based on the Ancient Hindu Law system.

As mentioned above number of legislations have come based on the Indian Constitution and the interpretations given by the Hon’ble Supreme Court, the highest judiciary of India from time to time and the guidelines given by them and the Indian Parliament after the independence has brought in number of legislations to make omissions and commissions in the ancient Hindu Law to make it more powerful and applicable as situation demands in the independent India.

Some of the legislative attempts made by the parliament are to make a uniform Hindu Law that is applicable in the entire territory of India irrespective of which region they belong to. However, the legislatures while bringing in legislation kept in mind uniformity throughout the country in application and practice of Hindu Law so that no custom, religious belief, **Acharavyavahara** are affected.

Some of the amendements that are made in Pre-Independent era (British Period), **The Caste Disabilities Removal Act, 1850**, to protect rights over property of a person who has converted his/her religion or expelled by the elders of the caste or community.

The Hindu Widow Remarriage Act, 1856 to give Hindu Widows a right to remarry which is prohibited in Ancient India.

The Hindu Wills Act, 1870, that allowed persons to make a Will of his/her choice about their fixed and movable assets (property).

The Special Marriage Act, 1872, this Act allowed inter-religious, inter-caste or intra-caste marriages.

In 1944 , a Hindu Law Committee was made under the chairmanship of **Sir Benegal Narsinghrai** for the purpose of

“**to make a uniform code for Hindus and bring all these Hindus under one code.**”

This Committee submitted a draft code in 1948, but majority of Hindus did not agree because this new code namely “**New code is an attack to their sacred law**” and thus the then Prime Minister of India Jawaharlal Nehru dropped this idea of new code, but Dr. Ambedkar did not agree to the closing of this matter and he resigned

from the committee as a protest in 1951; however this new code was later implemented under four legislations namely a. Hindu Marriage Act, 1955, b. Hindu Succession Act, 1956, c. Hindu Minority and Guardian ship Act, 1956, d. Hindu adoption and Maintenance Act, 1956. These four laws in independent India changed the face of Hindu Law to suit the then environment in the country but the legislatures are very cautious in retaining the fundamental framework but refining the framework to certain degree that is needed in the changed independent India.

In Ancient India, that was followed even today they used to follow the principles of ***equity, justice and good conscience*** as important source of Hindu Law. If there is any conflict between the different sources of Hindu Law or the rules between Smritis and Commentaries, the difference is solved or resolved by applying the principles of equity, justice and good conscience.

As one can observe no law on this earth is exhaustive and complete but unless one can apply the principles of equity, justice and good conscience then only a law can be interpreted or created. As already discussed above the concept of ***Dharma*** includes ***Nyaya (Justice) Yukti (Equity)*** .

In this context, the Hon'ble Supreme Court of India in, ***Gurunath vs Kamalabai ,1951*** held that, in the absence of any existing law, ***"the rule of justice, equity and good conscience was applied"***.

In another case, in ***Kanchava vs Girimalappa***, (1924 51 IA 368), in this case the Privy Council ***"barred the murderer from inheriting the property of the victim"*** .

In Ancient India, in the evolution of Hindu Law, from time to time the ancient Indians have dealt with and clarified regarding

- ✚ **What does coparcener mean?**
- ✚ **What is a Hindu Undivided Family?**
- ✚ **What is coparcenary property in Hindu Law?**
- ✚ **Who is referred to as the Coparcener under Hindu Law?**
- ✚ **What are the rights and duties of a coparcener in HUF?**
- ✚ **Communal Interest and Position**
- ✚ **Share of the Coparceners, Right to demand partition, Right to alienation, Right to Joint Possession, Restraining improper use**
- ✚ **Why a coparcener can claim the partition of the HUF, but the member cannot do the same.**
- ✚ **Partition of Coparcenary property**
- ✚ **Who has the right to demand a partition.**
- ✚ **Modes of Partition**
- ✚ **Partition by father, Partition by Agreement, Partition by Suit, Partition by conversation, Partition by Arbitration, Partition by Conversion to another religion, Partition by Special marriage, Partition by notice.**
- ✚ **What are some important points to keep in mind about the alienation of coparcenary property**
- ✚ **Right of Maintenance, when a woman become coparcener**
- ✚ **Daughters to a property (Post 2005)**
- ✚ **A married daughter's right to property under Hindu Succession Act, 2005**

✚ Can a Hindu Widow's Parental – side kin inherit her property as per Supreme Court rules

✚ Impact on woman brought about by the 2005 Hindu Succession Amendment Act

As already mentioned above the judicial system in Ancient India, was mainly looked after by the King or the ruler and it seems the rule of law is derived from the epics like Mahabharata for example in Mahabharata the rule of law is laid down as **“a King who after having sworn that he shall protect his subjects fails to protect them should be executed like a mad dog”**.

“The people should execute a king who does not protect them, but deprives them of their property and assets and who takes no advice or guidance from anyone. Such a king is not a king but misfortune”.

The principles enunciated by Koutilya, the great personality who wrote number of books on how a King has to rule the country and an authority on any subject in those days has also derived inspirations for his writings from Ramayana and Lord Rama, the King of Ayodhya etc. At this juncture it is not uncommon to mention a situation from Mahabharata relating to

“a common fisherman refused to give his daughter in marriage to the King of Hastinapur unless he accepted the condition that his daughter's son and not the heir apparent from a former queen to succeed to the throne. The renunciation of the throne and vow of life-long Celibicy (Bheeshma Pratigna) by Prince Devavrata is one of the most moving episodes in Mahabharata but its significance for Juris is that even the sovereign was not above the Law. The great King of Hastinapur could not compel the humblest of his subjects to give his daughter in marriage to him could do what they liked regardless of the law or the rights of their subjects.”

This narration which is the source of Hindu Law gives an example that even the King has to abide by the Law and should set an example to an ordinary person. That is the judicial system prevailing in India coated in Arthashastra by Koutilya who is recognized as the Prime Minister of the 1st Mourya empire.

V. ANALYSIS OF ANCIENT LOCAL LAWS:

Many of the scholars who have toiled hard in bringing out the important local laws that existed in Ancient India and are still prominent in the existing legal system. The ancient Indians are so knowledgeable in thinking about the importance and necessity of laws that are needed in solving the grievances and such other legal situations that arise in various fields like political, economical and social issues. In this article, an attempt is made to bring out such laws that have prominence then and now also. It is brought to the notice by those scholars, that there are around sixty five local laws keeping in mind the high rich culture, tradition and diversity in Indian habits. These laws are so framed, but are easily understandable and put to practice by any common man in those days.

a. Ancient India is considered to be oldest judiciary of the world because when the west has not opened their eyes, the Ancient Indians with rich culture, tradition and ancient scriptures like Vedas, Dharmasastras, Arthasastras, Upanishads, it is followed and acted in spirit till the Muslim invasion, by all the people right from the king to the servant and without any discrimination every Indian is bound by that laws that existed in those days.

b. The meaning of the word Dharma is not defined nor found in any other literature but according to Ancient Indians it means,

“To sustain or to Nourish”. The seers often use it in close association with **“rta”** and **“satya”**. **Sri Vidvaranya** defines **“rta”** as the mental perception of God. **The Taittirivas Upanishad** also uses it with **Sathya** and **Dharma**.

The word **Sathya** means **truth** and **Dharma** means **mercy to donate and help others**.

It is also astonishing to note while going through the ancient literature that,

“India has unique legal history that sketched back to the Neolithic era (7000 BC to 3300 BC) even before the early Vedic ages.”

In Ancient India it is observed that there is mentioning of civil and criminal justification and the laws spanned from Bronze Age to the Indus Valley Civilization.

In all these local laws the main principle that is embedded in them is “**Dharma**”.

In Ancient India the legal procedure that is followed is “a Petition, a response, a proof and a judgment”.

In these categories the response consists of, Confession, denials, special plea, and reference to a previous judgment. As is presently followed in Legal System, “The evidence in those days is mentioned in three formats namely, documentation, ownership and witnesses”.

V. AN ANALYSIS OF ANCIENT INDIAN COURTS THEIR CATEGORIES AND FUNCTIONS:

The Kula (family counsel or groups):

In this type of **family counsel / group (the kula)** the elderly people who are knowledgeable and educated of the families, to take charge of the situation in handling the conflict inside the family and decide, the outcome of which is binding on everybody.

The **sherni** (trade or professional counsel), as said above it is also an assembly of old and knowledgeable persons and are recognized by group of traders, professionals and craftsman to report their conflict of interests in their respective areas for adjudication and the recognized group of people (**sherni**) use to deliver the judgment without any bias and is binding on both the parties.

The Dana (village assembly), compare to the above group of codes, this “**the Dana**” is nothing but huge process of gathering of village regarded knowledge, unbiased and trustworthy of the people in that region.

Sasita (Kings Court): This type of Court, is also the Kingdom’s highest court that can be compared to present Hon’ble Supreme Court and both are judiciaries in Ancient India and presently, and their deliberations are final and binding on warring groups. This type of Kings Court, the King is considered to be highest judicial officer presiding the court. At a Nutshell, when one can analyze the above system and functioning of the courts in Ancient India and the present system the knowledge takes place the important role and unlike the present system in Ancient India the legal system is more secure in a functional judiciary and at the same time the main principle behind their judicial activism is based on Dharma.

There is no literal meaning of Dharma in English, majority of the people use the word “**Dharma**” in different contexts, the most common meaning of Dharma is duty.

“a. The Law of Dharma is considered to be principal law in the Vedic Period in Ancient India and it means righteousness and duty.”

This law of Dharma is embedded with legal duties and in addition, to religious duties of every person.

“b. In ancient India there are three main systems of law and are recognized by the Courts in those days were a. Dharmasastra, b. Arthasastra and c. Charita”

“c. In addition to these sixty five main important laws more laws are also in existence in Ancient India that are still to be identified.”

Different religions in India like Jains, Buddhists and Sikhs used the word “**Dharma**” in accordance to their principles and practice. However, according to Hindu Jurisprudence, the word **Dharma** is largely used in the context of duty and this duty may be as a religious, social, legal and spiritual. However when it comes to the legal terminology “**the concept of justice as Dharma**”, is when one can go through the Ancient Indian texts that elaborately dealt with Dharma, the concept is being used in Law, justice and religion as the situation demands it. In a sense it appears that there is no distinction between Dharma and Law in general and with authority one can say that Dharma has a religious and moralistic basis. The word Dharma is also mentioned in Vedic texts and Vedic scriptures like Rigveda meaning “**the foundation of the Universe**”. As the years passed by the word “**the Dharma**” has taken a new dimension and got its importance to “**Hindu Legal Code**” like Manusmriti, wherein

Dharma is mainly emphasized the religious and legal duties of the people and this interpretation of Dharma in Manusmriti is traceable in the present modern Hindu Law.

Unlike other schools of jurisprudence, Hindu Jurisprudence has given more emphasis on duties over rights because they believed in Dharma which was explained earlier. As is referred there, Dharma is nothing but the duty of every Hindu, should follow the legal duty, the religious duty and social duty. This Dharma also reflects in "Natural Law Schools of Jurisprudence" because the Ancient Indians used to have highest regard and religious feeling towards nature namely the earth, the air, the water, the fire, the Ether.

While dealing with some of the decided cases with respect to law of Customs Jurisprudence etc. it is our responsibility to mention those decided cases,

a. Devianai Achi vs Chidambaram (1954 Madras 667):

In this 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 if the complete observation of society".

b. Lakshmi vs Bhagawant Buea (AIR 2013 SC 1204) – In this case, the Hon'ble Supreme Court explained that "a custom becomes legally enforceable when the majority of people make the continuous use of such practice".

c. Munnalal vs Rajkumar (AIR 1972 SC 1493) – In this case, the Hon'ble Supreme Court explained that "a custom brought before the court several times the court might hold that such custom has been enforced by the law with the necessity of its proof".

Generally the onus of proving a custom that attains the judicial recognition needs no further proof but in certain cases "where the customary practices do not attain the judicial recognition, the burden of proving lies on the person who claims the existence of such custom".

VI. ANCIENT INDIAN JURISPRUDENCE:

When one can study the ancient Indian Legal System specifically with respect to Hindu Law, the ancient Indian Jurisprudence belongs to the School of Jurisprudence and is known as "Historical Jurisprudence" and the German Jurist by name Savigny (1799-1861) and according to the scholar, "Law is not a consciously created phenomenon but was the gradual distillation of the Volks Geist (The spirit of the people). Law was found not made".

From his works on Ancient Jurisprudence we can draw the conclusion that, "Savigny believed that customary law is the main source of applying legal formalities than legislation." The main source of customary law for any legal scholar, to shape the findings of the customs that prevailed over a period of time and followed by number of people continuously.

While discussing about the ancient jurisprudence one can draw a distinction between the modern jurisprudence and the ancient jurisprudence. The Ancient Jurisprudence is not based on superficial rules imposed on the society but they are the outcome of the social system that was agreed and practiced by the majority of the people over a period.

Finally to conclude, the Hindu Jurisprudence has given more emphasis on the "duties and rights of a person". In Ancient India, those people use to have more faith in Dharma that brings out the duties of every person. However, the nature of duties may change but the main principles remain the same; because the features of Dharma is greatly resembles natural law School of Jurisprudence and in Ancient India people use to believe that the rights of a person are granted by the God and not by the human beings. In a word, it means, "the ultimate source of all social, legal, political and spiritual rights are divinity". Finally, Dharma is closely related to religious concept in nature but it contains laws and customs that regulate wide range of subjects. As an example, the books like Manusmriti deals with religion, administration, economics, civil and criminal laws, marriage, succession etc.

VII. CONCLUSION:

As already discussed above it is believed that Hindu Law in Ancient India has been regarded as a Divine code drafted by Sages who are confident in claiming that they have direct communication with divine power. However it is a known fact according to the historians that Hindu Law originated in Ancient India from Vedas / Shrutis. The other version is that Hindu Law originated from the books called **Smritis** and are **Manusmriti, Apastamba, Yajnavalkya Smriti and Vishnu Smriti, Narada Smriti, Parashara Smriti, Bashista and Gowtama etc.** Unlike in the present Parliamentary System in a democratic country like India, in ancient India the Smritis that are mentioned above are not acts made by any parliament or some legislature. These Smritis in Ancient India are written by some Sanskrit Scholars who are authority on the subject in those days. As an example, the commentary of **Vijnaneshwar** who authored the commentary called **Mitakshara** on the works of **Yajnavalkya Smriti**. The other commentary of **Jimutavahana** who wrote a book called **Dayabhaga** is a compendium of several **Smritis**. **Nanda Pandit** who wrote a commentary **Dattakmimansa** that especially deals with the law of adoption in those days and some other scholars wrote some commentaries on the commentaries such as **Viramitrodaya** is a commentary on the **Mitakshara** is the source for the foundation of Banaras School of **Mitakshara**. It is also observed that originally in Ancient India the laws originated from a customary practices and are called as customary laws and there was no statutory law in Ancient Laws.

As already discussed the main problem of customary law is the custom is to change according to their living conditions, social activities and religious beliefs in those days is to change keeping intact the main principle or spirit. For example, in those days, the property of a father automatically goes to the son after the demise of the father but it is not explained when there are no male issues to the deceased or if the son dies before the demise of the father; in such circumstances what happened to the property of father?

These things are not explained in any custom, forwarded by any group of people in those days; at this juncture to deal such situations the eminent scholars have brought out books on how to deal such situations in their subsequent commentaries. On such situations, Ancient Hindu Law has got divided in two branches as already mentioned above the **Mitakshara** and **Dayabhaga** and while **Dayabhaga** followed in Bengal and Assam and the **Mitakshara** was followed in the rest of the country and this difference arose because different interpretations given by different commentators. While we go through **Manusmriti** in which there is a **sloka** that mentions "**when a man dies his inheritance will go to his nearest sapinda**" (vide Manusmriti Chapter IX, Sloka 106 & 187). To understand the meaning of **Sapinda** one should go into the meaning of **Pinda Pradanam**. In the words of **Jimutavahana** who is an authority of such subjects, the word **Pinda** means "**the rice cake offered in the Sarddha Karma to the Ancestors (vide Dayabhaga Chapter XI, 32-33 & 40)**".

From this meaning according to Dayabhaga School of Hindu Law, "**The person who has a right to give Pindas to the deceased or who got right to perform Sarddha Karma to the deceased gets automatic rights to inherit the property of the deceased**". The question of right to perform **Sarddha Karma** to a deceased person is explained in a book called **Parvana Sarddha** in which list of persons who are authorized to do **Sarddha Karma** are mentioned. While going through the ancient books it was mentioned in a serial number who are authorized to inherit the property of a deceased person and in which the son comes first and next to him his son or grandson of the deceased and in that order the grandsons son. And thereafter the authority terminates on the other hand if the deceased is having more than one son their living son will have right for **Sarddha Karma** and inheritance of the property of the deceased. This is because in coparcenaries according to Dayabhaga "**there is inheritance at birth by the son in the Ancestral property of his father**". On the other hand, **Mitakshara and Vijnaneshwar** there is a different approach and according to **Vijnaneshwar** the meaning of **Pinda** has a different notion. On the other hand they believe that the mortal remains of the deceased after he was put into flame are considered to be the **Pindas** and that person who did that Kriya gets the inheritance of the property of the deceased.

As already mentioned above the basic structure of the ancient Hindu Law was laid down on the principles from **Smritis** and they are supplemented by different customs followed by the different regions of the people in Ancient India. However, as the things are going on a number of commentaries and digests have come into play with different notions in according to the changed circumstances and also the **Smritis** are in the form of slokas in Sanskrit and difficult to understand for a common man and lot of changes are taking place in the society as the customs are changing some scholars/jurists have changed the laws or modified the laws in consonance with the developments.

In the words of Mayne who wrote a treatise on Hindu Law and usage,

“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”.

These commentaries / Smritikaras has not mentioned any sovereign power to the king who is the final authority in disposing of the cases; however their authority was based on understanding respect of the writings in spite of all these commentaries and digests. Though the customs overwrite the written texts, but the principle made in the ancient Hindu Law is dynamic because the customs are changing in accordance with the developments and situations in society and the difference in the local customs.

To conclude, the subject is very vast and many authors expressed their views on Ancient Hindu Laws and majority of the scholars believed that the ancient Hindu Law which is considered to be of divine in nature and that has been developed on the “words of god/almighty” and considered to be most ancient laws and was written by various Rishis and Sages. One can find among the various sources of Ancient Hindu Law, customs and usages are regarded as the most important source of Ancient Hindu Law; customs and usages have played a major role in developing Ancient Hindu Law. The Ancient source of Hindu Law include Shruti, Smriti, commentaries, digests, customs and usages unlike modern source of Hindu Law that includes judgments, precedents, the legislation, justice, equity and good conscience.

REFERENCES:

1. What is Hindu Law? – www.sciencedirect.com
2. What is Vedic Concept of RTA? – Journal of East-West Thought – Written by Bhupendra Chandra Das
3. History of Indian Law – www.wikipedia.com
4. Sources of Hindu Law – www.legalserviceindia.com
5. Supreme Court Judgment on Inheritance – www.drishti.com
6. Mitakshara and Dayabhaga School – www.legalvidhiya.com
7. Mitakshara School of Law – www.wikipedia.com
8. Role of Customs in moulding Hindu Laws – www.blog.ipleaders.in
9. Types of Vedas – www.byjus.com
10. Dayabhaga School of Law – www.wikipedia.com
11. Understanding a Coparcener and Property Rights in a Hindu Undivided Family – www.thenobroker.in
12. Important Pointers about the Sources & Schools of Hindu Law – www.blog.ipleaders.com
13. Ancient Indian Jurisprudence – By Justice Markandey Katju, Judge, Supreme Court of India – Speech delivered on 27.11.2010 at Banaras Hindu University, Varanasi
14. How many Local Laws were there in Ancient India – www.school.careers360.com
15. Schools of Jurisprudence – Concept of Dharma – www.toppr.com
16. Difference between Joint Hindu Family and Coparcenary – www.blog.ipleaders.com
17. Chanakya – www.wikipedia.com
18. Kautilyan Legal System and Indian Judiciary System. How they are related? – www.linkedin.com
19. M.C. Chagla – www.wikipedia.com
20. Indian Conception of Law – Rta and Dharma – www.ebooks.inflibnet.ac.in
21. Mitakshara School of Law – www.legalserviceindia.com
22. Non-communicable diseases make private hospitals healthy – www.fortuneindia.com