

## SCHOOLS OF HINDU LAW

\*TANMAY ANIL SUBRAMANIAM<sup>1</sup>

### Firstly we will understand what are Hindu law and its background

As we know that Hindu law has a very old ancestry, it is said that it evolved by the Hindu seers and Sages who after their long penance and meditation discovered certain rules of conduct which, according to them are necessary for peaceful co-existence of society. The principles of law developed by these ancient seers who were sociologists in the true sense, have great relevance even today. It was correctly observed by Sir Henry Maine that Hindu Law has the oldest pedigree of any known system of jurisprudence and has not shown any signs of decrepitude even today. Law was identified as Dharma and was supposed to have its origin in God itself. Hindu seers and sages regarded the law as revelations of God and therefore it was given the highest respect in the society.

The ultimate aim of life, according to Hindu philosophy is to get salvation from this world i.e., to attain *Moksha* from this physical world. The human body is mortal but the soul is immortal. When a person dies, his soul remains in a free state and acquires a new human body at rebirth. Thus, the chain of birth and death continues until and unless the soul attains *Moksha* from this world.

Hindu social structure is the outcome of Hindu philosophy. According to Hindu philosophy, the attainment of salvation (*Mukti*) is the ultimate goal of life. This goal can be obtained by performing good deeds. A person gets pain and pleasure in life according to accumulated good or bad *karma* of past life. Hindu social structure was based on *Varna Vyavstha* i.e. caste system. There are four classes, namely, ***Brahmin, Kshatriya, Vaishya & Sudras***, the first three of which were supposed to be regenerate class. Since in the Vedic period, there was no restriction on one's choice of occupations and *karma* men were free to do whatever they liked. Thus the group of persons who engaged themselves in the study, *Jap-Tapa*, making of sacrifices, etc were termed as *Brahmans* and were regarded as superior to other classes. The group of people who engaged themselves in the protection of people, study, war, etc, were called ***Kshatriyas***. They were considered inferior to the ***Brahmans*** because they have lesser power to self-control. They constituted the class of warriors. The group of people who have engaged themselves in the occupation of trade and commerce came to be known as ***Vaishyas***. Their main work was trade and business. The fourth and final class of persons whose only duty was to serve people from three castes was ***Sudras***.

---

<sup>1</sup> B.A.LLB 2<sup>nd</sup> Year Student

Now let's know the Hindu Concept of Law:- Hindu law is considered divine. The Almighty God reveals it to our great sages, philosophers, and jurists who had attained spiritual heights through their *Tapasya* and *Yog*. Hindu Law, according to our *Dharmashastras*, is sacrosanct, inviolable, and immutable. It means that its violation is deemed as (*pap*). Since it is divine law, it cannot be changed by any human agency. It is enforceable at all times, it's the eternal law. its validity cannot be challenged because it has the sanction of the supreme power.

### **Now let us come to the main subtopic which is what is Hindu Law**

Law, according to Hindu jurists, is the enforceable part of *Dharma*. Law is *Dharma* itself. It is unlike the **Austinian** concept of law where law is taken to be the command of sovereign in a political society. His function was defined by the law contained in the *Smritis*, and he was bound to obey the law equally along with his subjects. The word 'Dharma' generally includes all kinds of rules, religious, moral, legal, physical, metaphysical, or scientific, in the same way as the law does, in its wildest sense<sup>4</sup>. The word Dharma is derived from the root '*Dhri*' to hold, support, or maintain, and it means law or duty, or the essential quality of a person or things. The term *Dharma* is understood as the rule which governs the whole of mankind. *Dharma* has been defined as " what is followed by those learned in the *Vedas* and what is approved by the conscience of the virtuous who are exempt from hatred and inordinate affections." Thus *Manu* says that "the *Vedas*, the *Smriti*, the approved usage, and what is agreeable to one's soul or good conscience when there is no other guide the wise have declared to be quadruple direct evidence of *Dharma* or law and other means of securing the good."

*Yajnavalka* says that "the **Sruti**, the **Smriti**, the approved usage, what is agreeable to one's soul (or good conscience) and desire sprung from deliberation are ordained the foundation of **Dharma (Law)**".

*Raghavachariar* says that "Hindu Law as understood by the term **Dharma** very nearly fits in with these definitions, and elaborate rules of such procedural and substantive laws have been laid down in the ancient Sanskrit texts with a method and system which may evoke the envy and the admiration of the modern law-givers"

Mayne said that Hindu Law is the Law of "Smritis" as expounded in the Sanskrit commentaries and digest which is now modified and supplemented by custom, is administered

by the courts. It was observed by the Madras High Court, “*What ordinarily understood as Hindu Law is not like the customary law of the country like the common law of England. Neither is it a statute law in the sense that some King or Legislature framed the Law and enforced its acceptance by the people. Hindu Law as is commonly understood is a set of rules contained in several Sanskrit books which the Sanskritists consider as books of authority on the law governing the Hindus.*”

As per Austin’s definition Hindu law cannot strictly be said to have been promulgated by any sovereign within the meaning.

### **Now let's move to our main topic schools of Hindu Law**

Schools of Hindu Law came into being when different commentaries appeared to the ‘*Smritis*’ with reference to local customs in vogue in different parts of India. In *Rutcheputty vs Rajendra*, it has been observed by the privy council that the different local customs prevailed in different provinces of India. The commentators of the *Smritis* could not ignore the local customs and usages and while interpreting the texts, they eventually incorporated different local customs. The local conditions and customs of the different provinces have, therefore gone to mould the principles of law prevailing in each province.

Processes of development in *Collector of Madura vs Mottoo Ramalinga*, the privy council has held that: “*The remoter sources of Hindu Law (that is Smritis)* are common to all the different schools. The processes by which those schools have been developed seem to have been of this kind. Works universally or very generally received to become the subject of subsequent commentaries. The commentator puts his gloss on the ancient text, and his authority have been received in one and rejected in another part of India, thus the schools with conflicting doctrines arose.

**Schools Of Hindu law** - In Hindu Law there are mainly two Schools Mitakshara and Dayabhaga Schools. It later prevails in Bengal and the former in other parts of India. Mitkakshara is a running commentary on the code of Yajnavalkya and was written by Vijnaneshwara in the later part of the eleventh century. The Dayabhaga is not a commentary on any one code but proposes to be a digest of all codes. It was written by Jimutavahana.

The Mitakshra is of Supreme authority Throughout India except in Bengal. The Dayabhaga use of Supreme authority in Bengal. But even in Bengal the Mitakshara is still regarded as a very high authority all questions in respect of which there is no conflict between it and the Dayabhaga.

Dayabhaga permitted the women to let the coparcenary whereas Mitakshara has discarded this very notion. The former accepted the rule of religious efficiency whereas the latter propounded the doctrine of consanguinity. Dayabhaga is more dynamic and is an improvement from Mitakshara. The only justification for the claim is that the Dayabhaga was written about two centuries later than the Mitakshara head of the former law was less complicated than that of the latter. The persons who accepted the authority of Mitakshara came to be further divided into several schools. Thus Mitakshara School is subdivided into four main schools Banaras Mithila Bombay aur Maharashtra and Dravida aur Madras School. To these four, one more school, namely, the Punjab school is added which recognizes the authority that the Mitakshara as well as Viramitrodaya.

### **The Dayabhaga is the leading authority in Bengal School**

School is divided into 5 - forces that differ in Some matters of detail during particular Li adoption and inheritance all these acknowledge the supreme authority of the method but give preference to certain treatises and to comment trees which control the total passage of the mitakshara

### **The five schools namely are**

The Banaras School Mithila School Govinda aur Madras School Bombay aur Maharashtra School Punjab School Mayne writes that the variations between the division of mitakshi schools are comparatively few and slight. Except in respect of the Maharashtra School this division serves a useful purpose nor does it rest upon any true or scientific basis. It is to a certain extent misleading as it concealed the identity of the dog train between the so-called Nikhila Banaras Maharashtra and Madras School suggesting that there are differences that do exist.

Banaras School accepts in Mithila and Punjab this school prevails in the whole of northern India including Orissa the lex loci Central provinces love Madhya Pradesh is the Banaras School of Hindu Law.

The Mithila School this school prevails in Tirhoot and North Bihar. Of course, the mitakshara is the law of the school except in a few matters first it was observed private Council in a recent case that the lock of the Mithila School is the law of the wit Akshara except in a few metals in respect to which the law of Mithila School law of the metal sir.

Madras School the Old Madras state is governed by the Madras School of Hindu law this school was once subdivided into a Tamil Karnataka and an Andhra school forget however there is no justification

The Bombay aur Maharashtra School the Bombay or Maharashtra School of Hindu law prevails in almost the whole of the state of Bombay including Gujarat Kanara where the Marathi language is spoken as a local language.

The Punjab School if he was in the part of the country called east Punjab chiefly governed by customs.

### **Reasons for differences between various schools of mitakshara**

As we have seen that the variations between the sub-division of the Mitakshara school are comparatively fewer and of lesser significance following are the reasons for these differences.

One reason we choose to be given for this division is that the glosses and commenters upon the M Chehra are received by some of the schools but are not received by all.

Another reason given for this division of school is that the commentaries in the particular provinces which follow the mitakshara add a particular class to it and agree to it collectively.

### **Dayabhaga**

The schools prevail in West Bengal as well as in Assam victim variation based on the authority of custom.

Also, there is Amit Akshara School in Tu Banaras Mithila Davida Maharashtra and Punjab School get there is a fundamental identity between those subdivided schools, and variances between schools are a few the common trees that generally followed the m r not the particular property of any one school they have big and can be cited in all the schools according to Mayne except in respect of Maharashtra School the division serves no useful purpose not it was upon any time on scientific basis properly speaking only two principal schools and dayabhaga

**Difference between Mitashkara and Dayabhaga**

Mitashkara	Dayabhaga
<p><b>1. As regards joint property</b></p> <p>Right to property arises by birth (of the Claimant) hence the son is a co-owner of the father’s ancestral property.</p> <p>Father has restricted the power of pollination and son can claim partition against the father the interest of a member of the Grand family would on his death pass to the other members by survivorship</p>	<p><b>1, As regards joint property</b></p> <p>Right to the property by the death of the last owner hence son has no right to the ancestral property during the father's lifetime.</p> <p>Father had absolute power of a nation and son cannot claim partition or even maintenance</p> <p>The interest of every person would be on his death passed by inheritance to his hair like video or daughters</p>
<p><b>2. As a regard Alienation</b></p> <p>Members of a joint family cannot be disposed of while divided.</p>	<p><b>2. As a regard Alienation</b></p> <p>Any member of a joint family may sell or give away his share even after when and undivided</p>
<p><b>3. As regards inheritance</b></p> <p>The principle of inheritance is consanguinity (i.e. blood relationship)</p> <p>But cognate is the agnates</p>	<p><b>3. As regards inheritance</b></p> <p>The principle of inheritance is spirit veryefficiency offerings pindaSome cognates like sisters on a preferred to many agnates</p>

Besides the above point, the other basis of the difference between Mitakshara and Dayabhaga arose out of the differences in the meaning of the word Spinda

According to Dayabhaga Spinda means the same as Pinda and Pinda means a bowl of rice secured to the deceased ancestors the term Spinda thus connotes those related by the duty of one to offer the Pinda to the other. On the other hand, Vigneshwar define the Spinda relationship as the relationship arising between two persons through their being connected by particles of one body. The fundamental difference in the term Pinda resulted in the formulation of the rules of law in material respects quite distinct from each other

### **Migration School of Law**

On migration, the family continues to be governed by the law of loyalty of origin and the burden is heavy on the party alleging otherwise. Where Hindu Marwadi governed by the Banaras School of Law migrated from Jodhpur to India very tight In 1942 it was held that the Hindu Women's right Property Act 1947 plate to his state on the ground that there is no warranty in law for holding that a migrating family which is immune from changes introduced in the law of its origin after its migration please with it into the new territory pics of its side community any changes affected by status governing all the Hindus domiciled in the new territory

It is a settled law that there is a presumption that parties in the receding area are governed by Lex loci unless the migration is proved. The burden of proving that the family came from some other tract and is, therefore governed by some other branch of Hindu Law is on the party which asserts it.

The ordinary Presumption is that a Hindu is governed by the law of the land where he resides. This presumption is, however, not based on the theory of lex loci but on the ground of its being a personal law.

The lordship of the privy Council said that when are Hindu family migrates from one part of India to another Prema suicide the carriage with them that personal law and if they are alleged to become subject to a new local custom this new custom must be affirmatively proved to have been adopted but when such a family immigrant country and being themselves Mohammedans, settle among Mohammedans, the presumption that they have accepted the law the people of the

people when they have joined seems to their Lordships to be one that should be much more readily made. The analogy is that property change of domicile on settling in a new country rather than the analogy of a change of custom on migration within India. Of course, it's nothing is known about a man except that he lived in a certain place. In such a case the domicile plays an important role

### **Conclusion :**

The principles of law developed by these ancient seers who were sociologists in the true sense, have great relevance even today. Hindu seers and sages regarded the law as revelations of God and therefore it was given the highest respect in the society. The ultimate aim of life, according to Hindu philosophy is to get salvation from this world i.e., to attain Moksha from this physical world. The human body is mortal but the soul is immortal. The group of people who engaged themselves in the protection of people, study, war, etc, were called Kshatriyas. They constituted the class of warriors. Now let's know the Hindu Concept of Law:- Hindu law is considered divine. Law is Dharma itself. The term Dharma is understood as the rule which governs the whole of mankind. Mayne said that Hindu Law is the Law of "Smritis" as expounded in the Sanskrit commentaries and digest which is now modified and supplemented by custom, is administered by the courts. Neither is it a statute law in the sense that some King or Legislature framed the Law and enforced its acceptance by the people. The commentators of the Smritis could not ignore the local customs and usages and while interpreting the texts, they eventually incorporated different local customs. The local conditions and customs of the different provinces have, therefore gone to mould the principles of law prevailing in each province. The processes by which those schools have been developed seem to have been of this kind. The commentator puts his gloss on the ancient text, and his authority have been received in one and rejected in another part of India, thus the schools with conflicting doctrines arose. It later prevails in Bengal and the former in other parts of India. Mitakshara is a running commentary on the code of Yajnavalkya and was written by Vijnaneshwara in the later part of the eleventh century. The Mitakshara is of Supreme authority Throughout India except in Bengal. Dayabhaga permitted the women to let the coparcenary whereas Mitakshara has discarded this very notion. The former accepted the rule of religious efficiency whereas the latter propounded the doctrine of consanguinity. The persons who accepted the authority of Mitakshara came to be further divided into several schools. The Dayabhaga is the leading authority in Bengal School. The five schools namely are. Mayne writes that the variations between the division of mitakshi schools are comparatively few and slight. Except in respect of the Maharashtra School this division serves a useful purpose nor does it rest upon any true or scientific basis. The Mithila School this school prevails in Tirhoot and North Bihar. The Bombay and Maharashtra School the Bombay or Maharashtra School of Hindu law prevails in almost the whole of the state of Bombay including Gujarat Kanara where the Marathi language is spoken as a local language. The Punjab School if



he was in the part of the country called east Punjab chiefly governed by customs. As we have seen that the variations between the sub-division of the Mitakshara school are comparatively fewer and of lesser significance following are the reasons for these differences. Another reason given for this division of school is that the commentaries in the particular provinces which follow the mitakshara add a particular class to it and agree to it collectively. Right to property arises by birth (of the Claimant) hence the son is a co-owner of the father's ancestral property. Right to the property by the death of the last owner hence son has no right to the ancestral property during the father's lifetime. Members of a joint family cannot be disposed of while divided. 2. As a regard Alienation. The principle of inheritance is consanguinity (i.e. 4. As regards the doctrine of factum valet . a fact cannot be altered by a hundred text. It is recognized to a very limited extent. 4. As regards the doctrine of factum valet. According to Dayabhaga Spinda means the same as Pinda and Pinda means a bowl of rice secured to the deceased ancestors the term Spinda thus connotes those related by the duty of one to offer the Pinda to the other. On the other hand, Vigneshwar define the Spinda relationship as the relationship arising between two persons through their being connected by particles of one body. On migration, the family continues to be governed by the law of loyalty of origin and the burden is heavy on the party alleging otherwise. It is a settled law that there is a presumption that parties in the receding area are governed by Lex loci unless the migration is proved. The burden of proving that the family came from some other tract and is, therefore governed by some other branch of Hindu Law is on the party which asserts it. The ordinary Presumption is that a Hindu is governed by the law of the land where he resides. The lordship of the privy Council said that when are Hindu family migrates from one part of India to another Prema suicide the carriage with them that personal law and if they are alleged to become subject to a new local custom this new custom must be affirmatively proved to have been adopted but when such a family immigrant country and being themselves Mohammedans, settle among Mohammedans, the presumption that they have accepted the law the people of the people when they have joined seems to their Lordships to be one that should be much more readily made. The analogy is that property change of domicile on settling in a new country rather than the analogy of a change of custom on migration within India.