Hindu Legal System

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**Introduction**

For any community, society, religion or country, it is important that it follows a certain set of rules and regulations which ensure keep law and order within the people and the society. Law and order is also necessary to keep peace. A legal system is a practice of deducing the law and making sure that people follow it at every level. There are many different kinds of legal systems for example, civil legal system, common legal system and religious legal system. In all of the legal systems, variations are made by the people according to the requirements, keeping in mind that there is no unjust alteration in the law which will be unfair for the innocent.

In this paper, we are going to analyze the Hindu Legal System which comes under the category of religious legal system. Religious law is a legal system which ensures that people follow the moral and ethical values taught by the religion.

Hindu Legal System is also known as the Hindu Law. Hindu Legal System is a system that includes personal laws such as; inheritance, adoption, marriage and such like that were derived from the Hindu traditions and that influenced positively the social practice of the Hindu communities. During the time of Vedic, the Hindu Legal System was fully described in Dharmasastra texts.

The classical Hindu Legal System combined both the legal practice of the people and also the tradition of the Dharmasastra. In short, the Hindu legal system is defined as the combination of both the legal classical system and also the medieval system that affected positively the Dharmasastra tradition (Menski, 2013).

The laws of the Dharmasastra impacted the practical law indirectly. Dharma is a term that was used to describe the legal system but the concept of law and dharma are two different things. According to the Hindu tradition, dharma is a term that refers more to a broad range of activities of human beings than the legal system (Mula, 2016).

Dharma includes; personal hygiene regimens, ritual purifications and dress codes. According to court procedures of the Hindu, inheritance and contract laws are legal issues. This is how the dharma and the Hindu law relate. Hindu laws are connected to the legal systems of other religions such as Jewish laws and also the Islamic laws.

As described in the above paragraph, dharma is concerned with both legal duties and also religious duties, and it puts so much effort in separating legal and religious duties that exist in the Hindu tradition (Derret, 2013).

**History of the Hindu Legal System**

The Hindu Legal Systems has gone through many different stages of growth starting from the ancient Hindu Law (early India), following the Dharmasastra, then the Anglo-Hindu Law colonial appropriations and lastly to establishment of the legal system which are personal (the Modern Hindu Legal System).

**Ancient and Classical periods**

The available evidence concerning the practice of law in India during the eighteenth century is very little. There are some regions in India such as Maharashtra where both Islamic legal system and hybrid Hindu legal systems were used.

This was according to their king Maratha. In other regions for instance South India, temples were used to administer laws. Records of courts are the things that did not exist in the in both medieval India and classical India. Because of absence of such records, there are other types of evidence that were used to put together an outline of classical Hindu law.

Those evidence are; inscriptions that record legal transactions such as; contracts, gifts, decrees and such like. The inscription also included the transactions that involved temples, political rulers, and corporate groups.

In the pre-modern India, there was no any formal hierarchy of court system, because the temple acted as both court of appeal and also court of first instance. The panchayats (ruler's court), local tribunals had the responsibility of handling the criminals. Personal law did not exist in the pre-modern India instead regional laws prevailed.

There were very many aspects of laws that were under the authority and control of castes and other groups which were corporate for instance; traders, military groups, religious orders and also the merchant guilds. Caste panchayats were responsible for handling disputes and practices that concerned both structured and unstructured marriage.

There are some castes panchayats who allowed both remarriage and divorce, and there are other castes panchayats who did not support remarriage and divorce. Polygamy was allowed in the pre-modern India. Ninety percent of the castes discouraged and outlawed inter-caste marriages. People were punished if they breached the rules that were provided by the castes panchayats.

**British period**

The British colonial system consisted of the Hindu law as part of its legal system. The Hindu law was officially established as part of the legal system of the British colonial in the year 1772 and by Governor- General Hastings Warren. The plans of this Governor- General were to ensure that justice was being administered in India. In all the Indian activities such as marriage, caste, inheritance, religious rules and institution rules, justice was supposed to prevail. These are activities that needed justice in them for instance, inheritance. When justice is not applied during inheritance, this means that a person or a party is going to suffer so, justice is very important because it ensures that every individual is treated fairly during the process of inheritance.

The laws and rules of the Koran regarding the Mohamedans and those of Shasters were supposed to be followed and to be adhered to. The Hindu legal system that was implemented by the British was borrowed from the early translations of texts of Sanscrit. The text was known as what is mentioned in the first paragraphs, Dharmasastra.

Dharma refers to the legal duties while the Sastras refers to the religious duties. Dharmasastra was mistaken by the British as they took it as codes of law. They did not recognize that the Sanskrits were not supposed to be used as statements of positive law unless it has been allowed by the castes.

According to the Hindu tradition, Dharmasastra contained jurisprudence. Jurisprudence refers to a theoretical reflections based on the practical laws and not the law’s statements. This means that the British mistook the Dharmasastra and its meaning.

The Anglo-Hindu laws existed between the years (1772-1864). The Anglo-Hindu laws were characterized by three major features;

1. The translations and the collection of the Dharmasastra texts by British scholars such as; Sutherland, Jones, Borrodaile and Colebrook. The main goal of exercising these rules of Dharmasastra text was for expanding British political rules in India.
2. There were court pundits in the British courts. Their presence was very important because they helped the British judges to interpret and understand the Hindu classical laws concerning matters that were presented before the court.
3. Lastly, the case laws that resulted from the judicial decisions in the British courts were not used in the court of pundits. This is because the British judges did not fully understand the Classical Hindu laws and they could not use any Hindu classical law before it was being interpreted by the caste panchayats.

In the year 1864, immediately after India agreed to be part of the British Empire, the Anglo-Hindu laws also evolved to a second period. That was in the years 1864-1947. This period started when all the court pundits were dismissed from working in the courts. They were no longer needed in the courts because of the existence of the extensive court laws. This extensive court laws existed on every law of the classical Hindu laws. This means that there was no need for the court pundits as their work of interpreting the Hindu laws no longer existed. Therefore, they were dismissed from working in the courts.

Many acts of parliament were passed during this time in order to bring back the Anglo Hindu law and give it back its legislative foundations. From this period onwards, the Anglo Hindu law was codified by the actions of parliament the case concerning the diminishing of Dharmasastra continued to grow. The interest and the relevance of the Dharmasatra began to go down.

Regional customary laws that determined by the British officials led to a widening of the gap that existed between Dharmasastra and the customary laws of the British. Indians were forced to follow the customary rules that were implemented by the British. The only advantage that they had is that they were employed in the courts.

The most interesting part of the Anglo-Hindu law is the hospitality that it received in India. This law was accepted and warmly received by the Indians. The greatest gift that was given to India by the British was the rational system of law, and that is why it was agreed by the majority of the Indians. The colonial legacies did not have laws that were meant to remove the Indian laws.

**Post-independence period**

The Anglo Muhamadan law (Islamic Law) was under the constitutional authority of the new India. The independence of India from Britain in the year 1947 led to revival of the Anglo Hindu law and other personal law system. In early 1950’s, there were the debates that concerned the Hindu Code Bill which was offered in the Indian parliament. This acted as a way of fixing the Anglo Hindu laws which were very complicated and unclear. There are some people who suggested the return of classical Hindu law and that led to a real debate over how the Hindu law supposed to be corrected.

There were four major pieces of legislation that that were passed between the years 1955-1956. These laws were the first laws to become the modern Hindu law. The four pieces of legislation includes;

1. Hindu Marriage Act (1955)
2. Hindu Succession Act (1956)
3. Hindu Minority and Guardianship Act (1956)
4. Hindu Adoption and Maintenance Act (1956)

Even though these four pieces of legislation were passed in order to make the Anglo-Hindu law less complicated and clearer, it was difficult for the Indian Judges and the British Judges to use these four pieces of legislation in the application of the modern Hindu law.

**Sources of the Hindu Legal System**

The Hindu legal system has a total of three sources;

1. Sruti
2. Smrti
3. Acara

Sruti refers to what is heard but according to Vedic literature, it is the praise hymns that were sung during the ancient Hindu period. Smrti on the hand means what is remembered but according to the texts of Dharmasastra and Sanskrit, it means epics. Lastly, the literal meaning of acara is practice but according to the norms and standards that were implemented by elites means knowing how to live and what pleases somebody.

Smrtis are usually metric texts. There are very many texts that fall under this category, and these texts are used when the issue presented concerns reasoning. The Smrti text acknowledges variability that existed in legal and religious practices. The major concern of this text is to explain more about dharma.

The earliest known Smrti is the most famous and is the laws of Manu. This law was edited in 2005 and translated in the same year by Patrick Oliville. The translation was very important because it made very many people understand that law and this means that the translation was the starting point of the law of Manu.

This is a very important piece in the Hindu law tradition, but that is not included in the translated piece. The texts of Manu looked like the scholastic tradition of the religious laws. The commentators of Dharmasastra explained the sacred text deeply as they were very keen on the meaning of words found in the texts, the structures of grammar and also principles of hermeneutics.

The three named above and explained sources of Hindu law was reduced to two texts, and it was practiced by the people. After that text was translated, it was well understood, and Indians adopted it as their Law.

Legal concepts in Dharmasastra.

**Believes**

Atman

The Hindu belief system explained the concept of moksha, karma and dharma. Atman means eternal self, the spiritual part that makes a person. It is neither the material possession that one has nor the body but it’s the spiritual part of a person. According to the Hindu, they believe that when a person dies, his/ her atman is reincarnated and will be housed in another temporary body.

Karma

In karma, the Hindus believe that an action of a person in life is what will determine their destiny in their next life. If a person is good, kind and generous, that person will be rewarded in his/ her next life, and the opposite of that also exists. If a person lives a very bad life today, a life of hurting others a selfish life, he/ she will have to pay for that in his/ her next life. The Hindus believe that what goes around (Agarwal, 2010).

Dharma

The Hindus also believe in dharma. Dharma is very important in the faith and the legal system of the Hindus. According to Hindus, Dharma refers to the moral force that controls the universe. It refers to the power that keeps the world moving and the society in motion. It is the force that ensures that the trees continue blooming and also keeps the grass growing.

According to the Hindus, Dharma is usually maintained through personal activities and responsibilities. In short, Hindus believe that it is the responsibility of ensuring that the world operates smoothly. Just like other faiths, Hindus believe that killing is a very wrong deed unless on the situation that would save other people, for example, a king can kill five people who could have killed more than a thousand people.

In general, dharma is the individual responsibility of a person in running of the universe. Dharma refers to the moral force that controls the universe. It refers to the power that keeps the world moving and the society in motion. It is the force that ensures that the trees continue blooming and also keeps the grass growing.

**Law System of the Hindu**

Law of India is the system of law that is being applied in the modern India. India uses a legal system which is common and which was inherited from both the legislations that were introduced by the British and the laws that were borrowed from the colonial era. When the Indian Constitution was being drafted, the Indian laws that concerned the guidelines of the United Nations were implemented, and these laws are adhered to right now. Such laws are environmental laws and the human rights laws.

The International trade laws were also implemented. International trade laws included; laws on intellectual properties of the Indians. The personal laws of Indians are a bit complex because it is known that different religions have got different personal laws.

There are different law systems in India. They are; constitutional and administrative laws, criminal law, contract law, labor law, company law, tort law, property law and tax laws just to mention a few. This paper will focus on three categories of laws in India. Those three are; company law, property law and tax law. They are discussed below.

The company laws of India were updated recorded and updated in the act of companies in the year 2013. The company laws of India have rules and regulations that should be followed by registered companies in India. Tort law was added in the Constitution of India in the year 1980. Tort law covers police atrocities, custodial deaths, illegal detention and also the encounter killings. Property law, on the other hand, is the laws that are found on the transfer of property act of the year 1882.

Many cases in the Modern India are presented before the court like any other modern country. This is where the fate of the case would be determined. The kinds of courts in India are divided into four categories. The four categories are; district and session courts, tribunals and appellate boards, high court and also the Supreme Court. The Supreme Court is the highest court in India with the power of judicial review.

The high court, on the other hand, is the highest court in states that are found in India and also in the union territory levels. The high court of India normally enjoys original jurisdictions. The judicial system of India has several tribunals that are used for purposes which are specific. Lastly, every state in India is divided into judicial districts. This judicial authority is the highest in the district level.

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