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Hindu Law

Sources

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Schools

By Anoop Upadhyay



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Article
246

SH-7

Family law : - Hindu Laws

(1) Hindu law is a personal Laws (परमिक्त) (Pse)

(2) Under the Constitution of India all aspects of family law are providing **Concurrent list.** (समन्वित)

(3) Hindu law is Considered to be of divine origin (हिंदू विधि को दैवीय उत्पत्ति माना जाता है।) (दा)

(4) Hindu law was revealed to be Sages who had attained great Spiritual heights and they were in Communication with Supreme power i.e. God

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(हिंदू विधि उन संतो के लिए प्रकट हुआ था जिन्होंने महान आध्यात्मिक ऊंचाई को प्राप्त किया था और वे सर्वोच्च शक्ति यानि भगवान के साथ संचार मे थे ।)

(5) हिंदू विधि का इतिहास 5000 से 6000 वर्ष पूर्व का हैं।

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Sources of Hindu Law (हिन्दू विधि के स्तौ स्रोत) :-

(1) Sources means the point from any law has originated. (स्रोतों का अर्थ उस बिंदू से है जहां से कोई कानून उत्पन्न हुआ है।)

(2) Source of law is basis which enables the Court to Interpret law.

(कानून का स्रोत एक आधार है जो कि न्यायालय को कानून के निर्वाचन में सहायता करता है।)

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It is the Rules
↓
(discovered/created)
औजा
↓
Source

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Hindu (हिंदू)

↓ ↓ विदेशी शब्द है।
(Foreign word)

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Subject

हिंदी फारसी / पारसी/ ईरानी भाषा का शब्द है

* सबसे प्राचिन नदी - सिंधु (ईरान के पास थी)

* ईरानी लोगों को उच्चारण

स - ह

सिंधु

त / थ - त

हिन्दु + उ - हिन्दू

द / ध - द

हिन्दू + ई - हिंदवी रुढ होकर हिंदी

प/फ - प

सिंधु नदी के पास का स्थान

सिंधु + स्थान = हिन्दुस्तान



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Hindu law (हिंदू विधि)
↓
5000 - 6000

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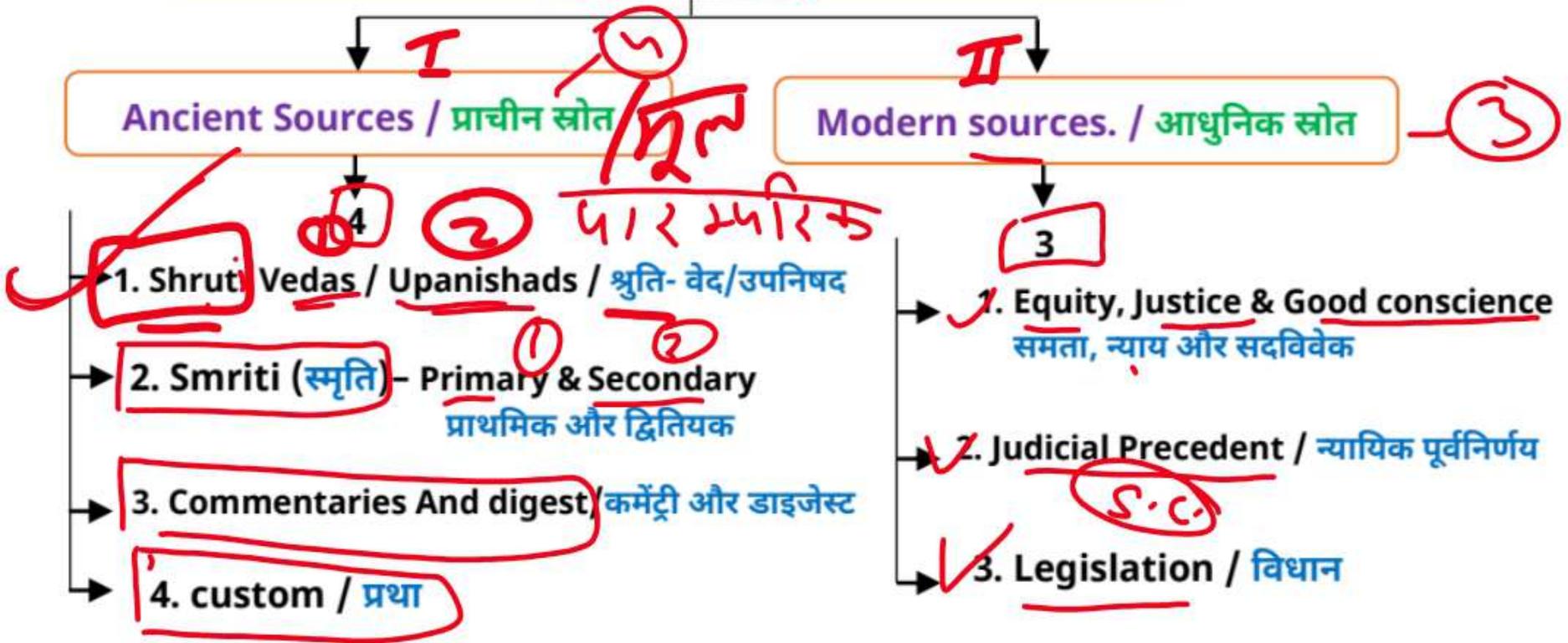
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Sources of Hindu law. / हिंदू कानून के स्रोत

(2 categories)



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I Shruti :-

(1) Shruti is derived from the word 'sru'

(श्रुति 'सु' शब्द से लिया गया है।)

(2) Meaning :- What is heard (सुना हुआ)

(3) It is most Ancient Source of Hindu Law i.e. first Source (यह हिंदू विधि का सबसे प्राचीन स्रोत है)

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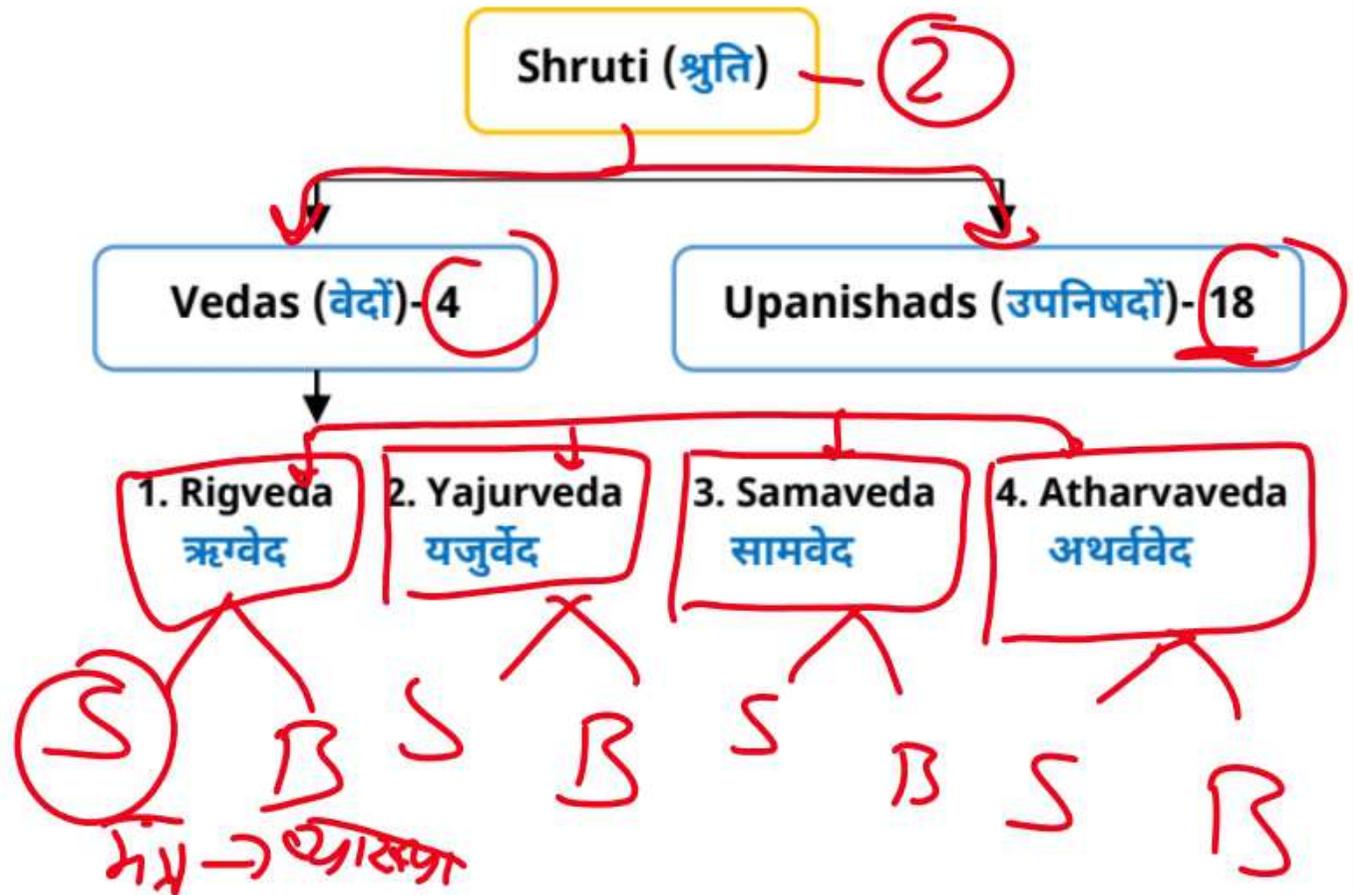
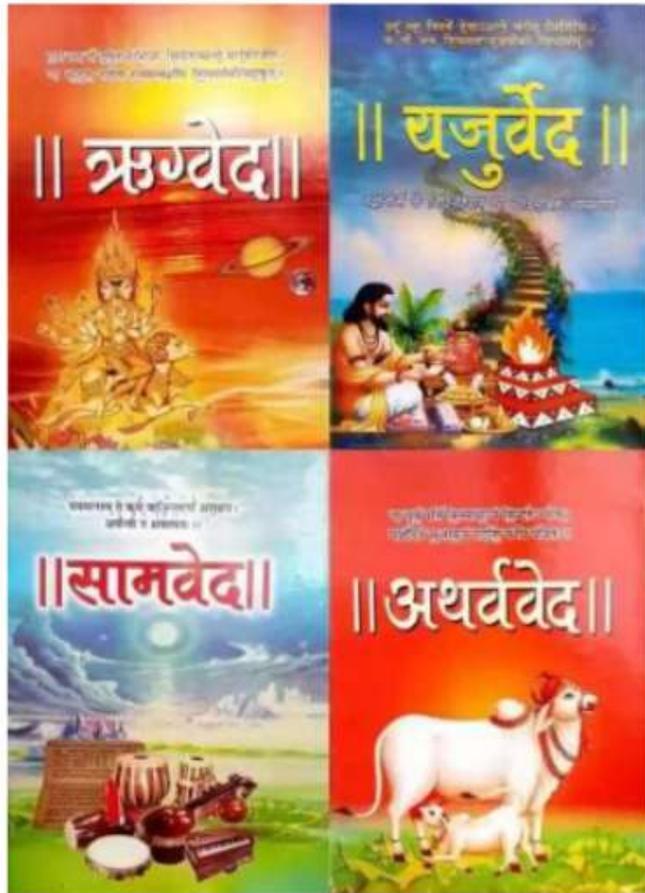
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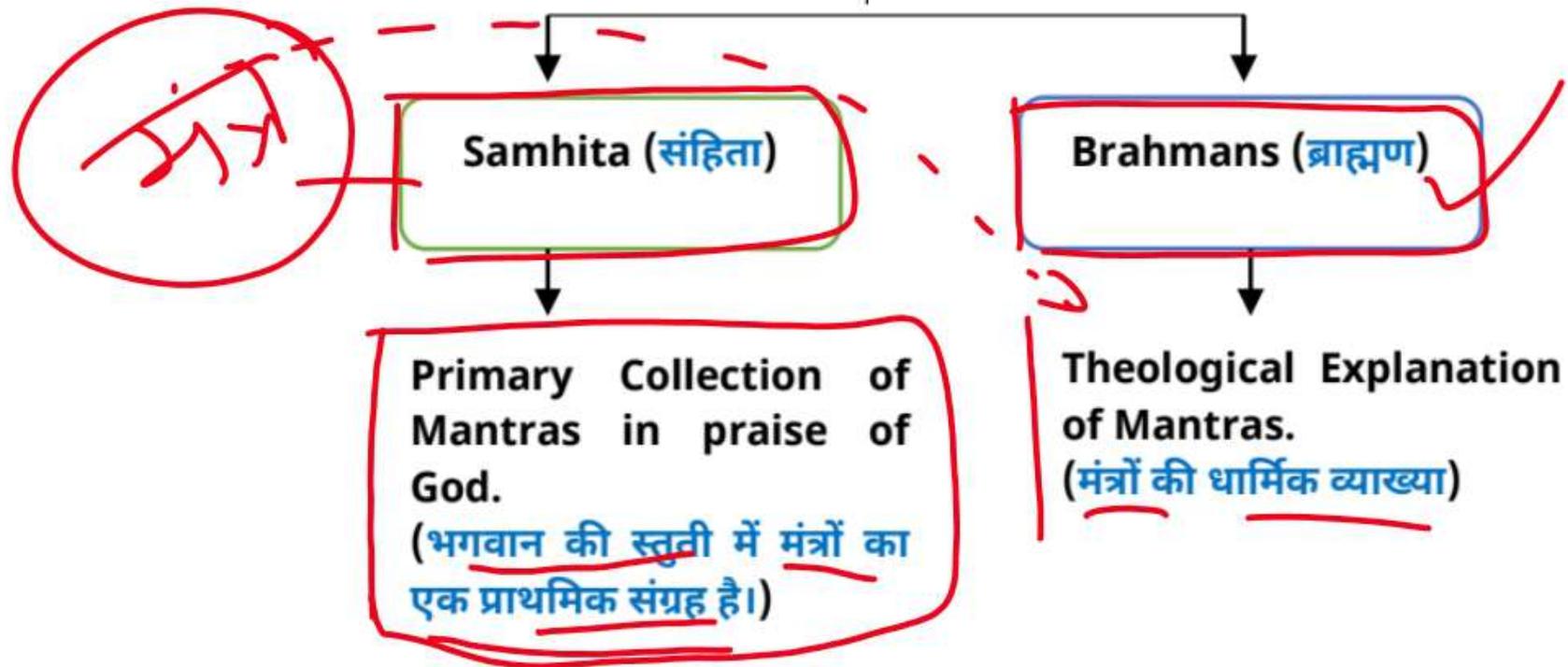


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Each Vedas has 2 parts / प्रत्येक वेद के 2 भाग हैं



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- * Vedas:- Vedas contain a complete code on conduct of life. (वेदों में जीवन के आचरण पर एक पूर्ण संहिता है।)
- * It emphasized more on practice of Dharma. (धर्म के पालन पर अधिक जोर दिया)

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✓ 1. Rigveda- It consists of hymns and songs in praises of the forces of the Nature.

इसमें प्रकृति की शक्तियों की प्रशंसा में भजन और गीत शामिल हैं।

✓ 2. Yajurveda- It deals with mantras, Rituals and Sacrifices

यह मंत्रों, अनुष्ठानों और बलिदानों से संबंधित है

✓ 3. Samaveda- It consists prayer composed.

इसमें रचित प्रार्थना शामिल है

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4. Atharvaveda- It consists magic, spells and incantations. (जादू मन्त्र शामिल है)

ॐ
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Vedas वेद
समाप्त → उपनिषद्

✓ Upanishads- There are total 18 Upanishads.

कुल 18 उपनिषद हैं।

⇒ These are denominated as the Vedanta or the concluding portion of the Vedas.

(उपनिषदों का वेदान्त या वेदों के समाप्त भाग के रूप में नामित किया गया है।)

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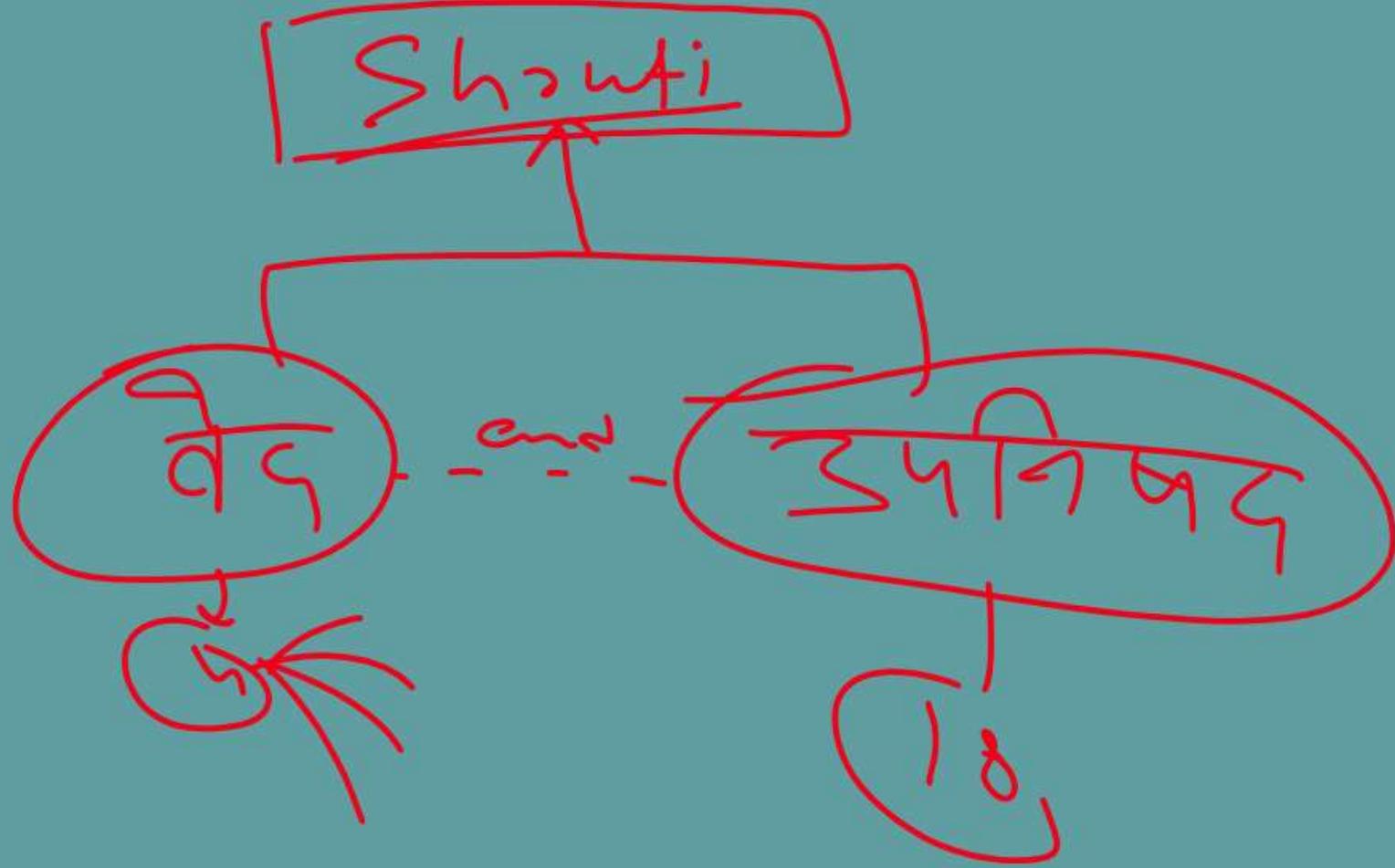


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THE HINDU LAW

II

Smriti- Meaning of smriti- 'what was remembered'.
(जो याद किया गया।)

Smarties are considered as text which has been remembered and then interpreted by the rishis throughout the generations. (स्मृतियों को पाठ के रूप में माना जाता है। जिसे ऋषियों द्वारा पीढ़ी-दर-पीढ़ी याद किया जाता है और फिर उसकी व्याख्या की जाती है।)

Smriti are embody what sages remember through revolution. (स्मृति में वे अवतार है जिन्हें सन्त रहस्योद्घाटन के माध्यम से याद करते हैं)

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Smriti / स्मृति

Primary Smriti / प्राथमिक स्मृति

Secondary Smriti / द्वितीयक स्मृति

धर्मशास्त्र

①

Dharma Sutras

In prose form

Authors

- Gautama'
- Boudhayana
- Apartamba

②

Dharma Shastras

In poetry form

Authors:

- Manu
- Yajanvalkya
- Narada
- Vishnu

धर्मशास्त्र कवित्त

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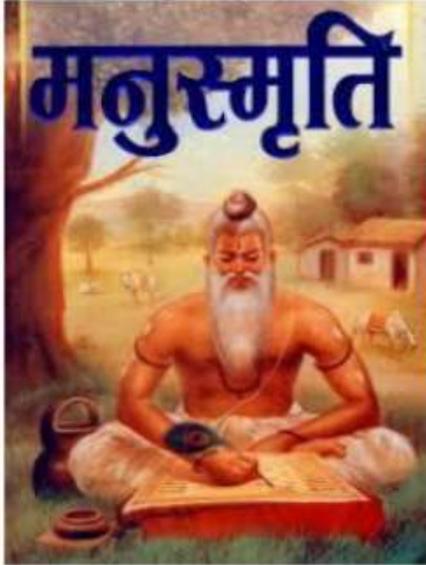
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Secondary Smriti



①

Manu Smriti (मनु स्मृति)

Oldest smriti
सबसे पुरानी स्मृति

known as manav dharma shastra.
मानव धर्म शास्त्र के रूप में जाना जाता है

अध्याय
12 chapters, 2690 श्लोक

②

Yajanvalkya Smriti याजनवल्क्य स्मृति

Broader than many smriti
अनेक स्मृतियों से व्यापक

divided into three parts
तीन भागों में विभाजित

महिला अधिकारों से ज्यादा सम्बन्धित है।

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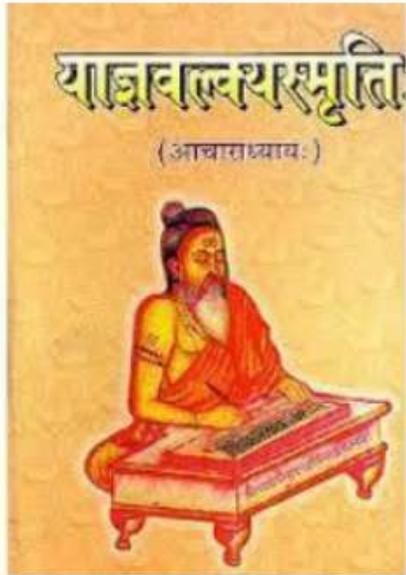


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- * The era (युग) of creation of smriti is also known as golden era.
- * (स्मृति के निर्माण के युग को स्वर्ण युग के रूप में भी जाना जाता है)
- * Because it is era when all organized and serial wise development of Hindu law started.

क्योंकि यह वह युग है. जब हिन्दु विधि सुव्यवस्थित और क्रमिक विकास शुरू हुआ था)

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golden era
↓
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3. Commentaries and digest (कमेंट्री और डाइजेस्ट-)



* It expand the scope of Hindu law.
(इसमें Hindu कानून के क्षेत्र को बढ़ाया)

* Commentaries and digests are record of customs continued in smritis.
स्मृतियों में चली आ रही रीति-रिवाजों के भाष्य और निबन्ध हैं।

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Custom



✓ Ind.

✓ Explain

✓ Modify ✓

The custom are interpreted, explain and modified in the commentaries and digests.

रीति-रिवाजों की व्याख्या, व्याख्या और टिप्पणियों और डाइजेस्ट में संशोधन किया गया है।



It helps in interpretation of smritis.
(स्मृति के निर्वर्चन में यह सहायता प्रदान करता है)

Single interpretation of smriti is called commentary.

स्मृति की एकल व्याख्या को भाष्य कहते हैं।

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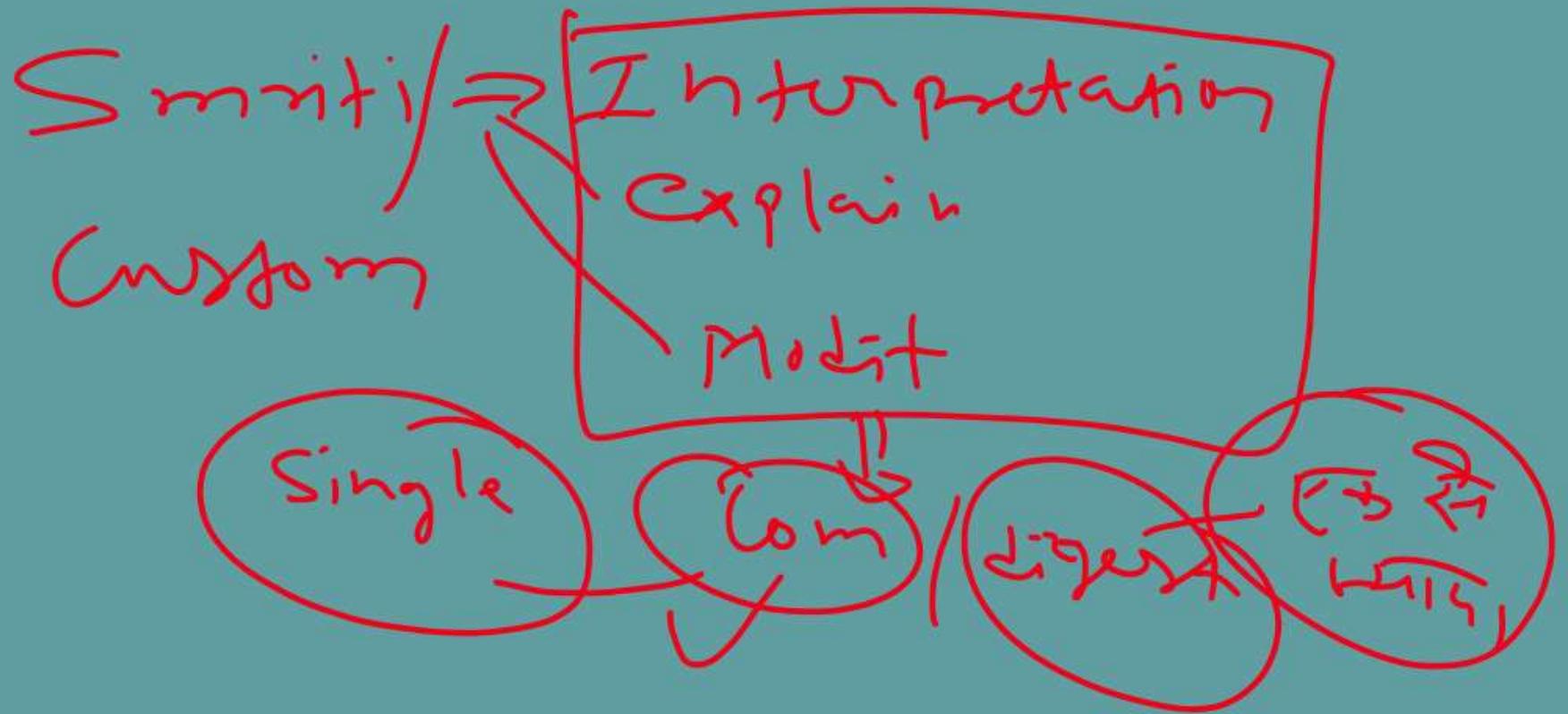
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Comm.
↓
eg. (I) शिक्षण
(II) → दयानिष्ठता

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The principal commentaries are:- (प्रमुख भाष्य हैं:-)

Pre

1. **Mitakshara** - Written by - Vigneshwar.

It is commentary on Yojnavalky. (यह यजनवल्क्य स्मृति पर कमेन्ट्री है)

2. **Dayabhaga** - Author - Jimutvahana
(जीमूतवाहन)

3. Viramitodaya (वीरमित्तोदया)

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4. Vivada Chintamani (विवाद चिंतामणि)
5. Vivada Ratnakara (विवाद रत्नाकर)
6. Dayatattva (दयातत्त्व)
7. Daya Karmasangraha (दया कर्मसंग्रह)
8. Smriti Chandrika (स्मृति चंद्रिका)
9. Parashara Madhaviya (पराशर माधवीय)
10. Vyavhar Mayukha. (व्यवहार मयूखा)

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4. Custom and usage (रूढि और प्रथा) :-

Def. of custom and usages ^{is} the section 3(a) of हिंदू विवाह अधिनियम, 1955 की धारा 3 (ए) के रिवाज और प्रथा की व्याख्या

Hindu Marriage Act
1955

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Essential condition of a valid custom (वैध रूढ़ि की आवश्यक शर्तें):-

1. **Ancient- (प्राचीन) Custom to have the binding force of law. It must be ancient.**

(रूढ़ि को विधि का वाध्यकारी बल अभिप्राप्त करने के लिए प्राचीन होना चाहिए)

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✓ It is in existence from time beyond remembrance.
(इसका अस्तित्व स्मरण से परे हो)

It must be from the time immemorial. ('पुराने जमाने)

(यह अति प्राचीन काल से होना चाहिए)

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2. Definite (निश्चित) and certain- it must be followed without disturbances.

इसका बिना किसी बाधा के पालन किया जाना चाहिए।

3. Continuous- (निरन्तर)

Custom must be continuous. (रूढ़ि निस्तर होना चाहिए)

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✓ when a particular custom has been discontinued for a Period, it would come to An end.

(जहां पर एक विशिष्ट रूढ़ि कुछ समय के लिए एक जाये तो वह खत्म हो जायेगी)

✓ 4. Reasonable (युक्तियुक्त)

✓ 5. Clear And unambiguous (स्पष्ट और असंदिग्ध)

✓ 6. followed As a right (अधिकार के रूप में पालन किया हो)

✓ 7. Not immoral or opposed to public Policy (अनैतिक और लोकनीति के विरुद्ध न हो)

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8. Not opposed to Any law (किसी कानून के विरुद्ध नहीं हो)
9. uniformity (एक रूपता)

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Cases: Karipal singh v/s Bachhen singh (1958 SC)

कृपाल सिंह बनाम बचन सिंह

it was held that custom is question of fact the burden of a proof is on the party who relies on the custom there is no presumption that a particular person or class of persons is governed by custom .

(यह अभिनिर्धारित किया कि गया कि प्रथा तथ्य का प्रश्न है। साबित करने का भार उस पक्ष पर है जो रीति-रिवाज पर निर्भर करता है)

(ऐसी कोई धारणा नहीं है कि कोई विशिष्ट व्यक्ति या व्यक्ति का वर्ग रीति-रिवाजों द्वारा शासित होता है।)

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Cases:

Collector of Madura V/s Motoo Ramalinga (1868)

मदुरा बनाम मूटू रामलिंग कलेक्टर (1868)

Custom = Law

Privy council held that "In Hindu Law, the clean Proof of customs shall be more relevant than the basic epics of Law,"

(प्रिवी काउंसिल का यह मानना था कि हिन्दू कानून में रूढ़ि का स्पष्ट प्रमाण कानून के मूल तुलना में अधिक प्रासंगिक है।)

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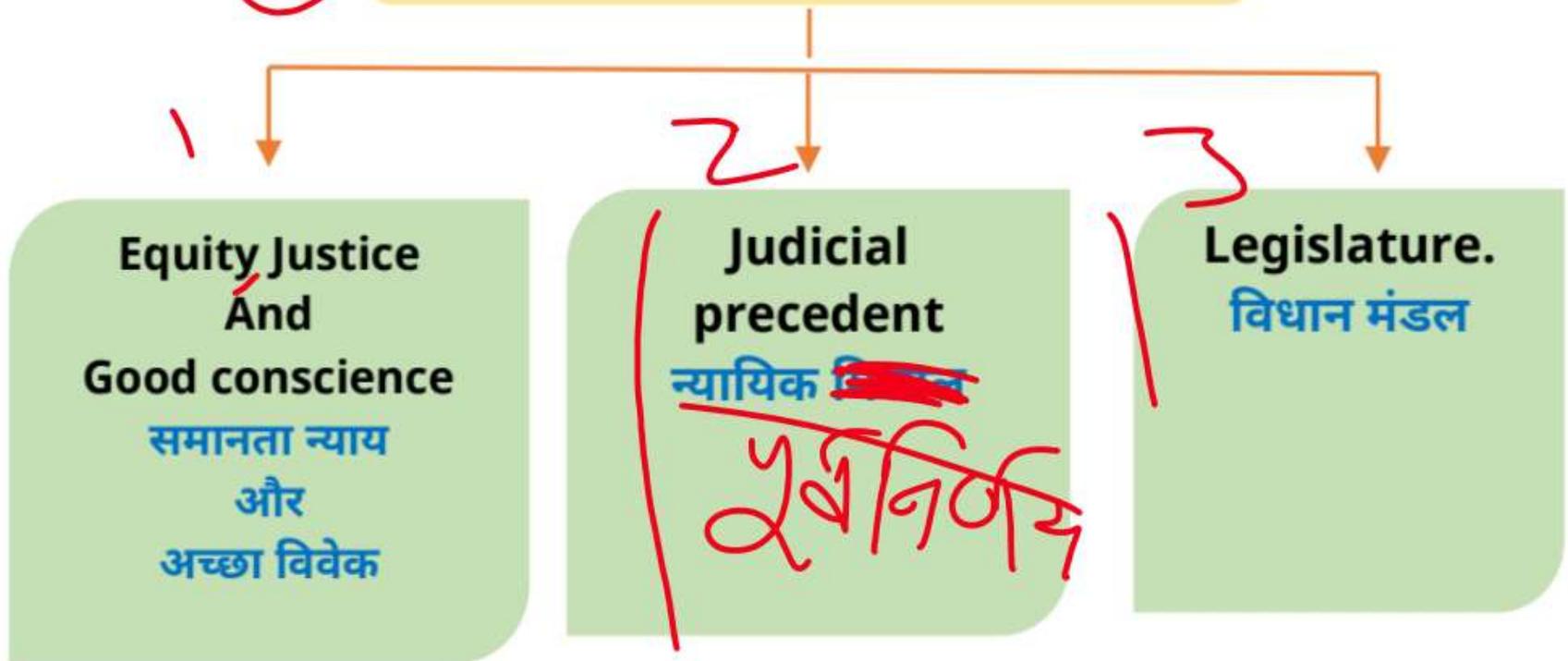
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THE HINDU LAW

Cases: Laxmi bai v/s Bhagwant Bua (लक्ष्मी बाई बनाम भगवंत बुआ)

Modern Sources / आधुनिक स्रोत



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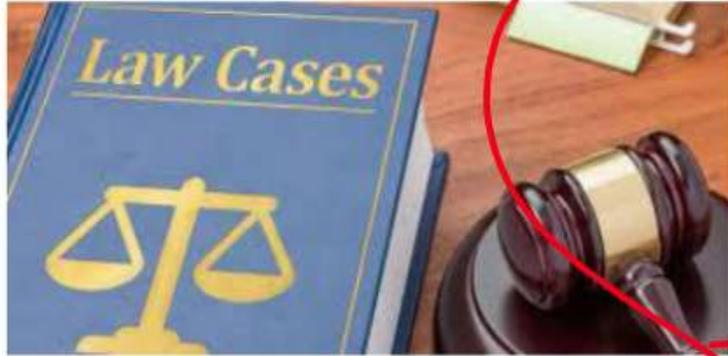


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Judicial precedent (न्यायिक पूर्व निर्णय)

It means the Judicial decisions over Any ~~disputes~~ ~~of~~ ~~similar~~ ~~disputed~~ ~~matters~~

~~अर्थ~~ अर्थ है किसी भी विवादित मामले पर न्यायिक निर्णय जो भविष्य में समान विवादित मामलों के निपटारे के लिए दिशानिर्देश होगा।

Generally

~~Generally~~ the decisions of S.C., High court, privy council have the effect of precedent over the subordinate courts.

विशेष रूप से एस.सी., उच्च न्यायालय, प्रिवी काउंसिल के निर्णयों का अधीनस्थ न्यायालयों पर मिसाल का प्रभाव है।

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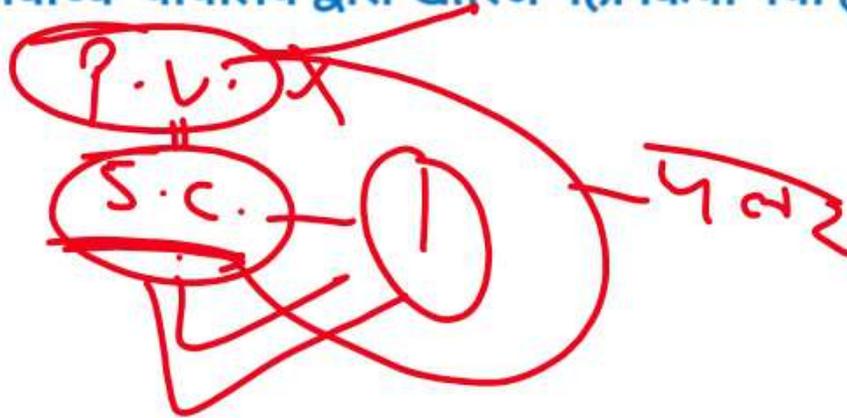
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Case Pandurang Kalu Patil v/s state of Maharashtra (2002)

पांडुरंग कालू पाटिल बनाम महाराष्ट्र राज्य (2002)

- Decision of privy Council is binding over all High courts, Provided that it has not been overruled by the Supreme court.

प्रिवी काउंसिल का निर्णय सभी उच्च न्यायालयों के लिए बाध्यकारी है, बशर्ते कि यह सर्वोच्च न्यायालय द्वारा खारिज नहीं किया गया हो।



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Case: Luhar Amritial v/s Doshi Jayantilal (1960) S.C.

लुहार अमृताल v/s दोषी जयंतीलाल (1960) एस.सी.

* in this case S.C. held that the Judicial decisions have become Part of Hindu law.

इस मामले में सुप्रीम कोर्ट ने माना कि न्यायिक फैसले हिंदू कानून का हिस्सा बन गए हैं।

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Source *

Judicial decisions have modified and supplemented the Hindu law and they have emerged ~~have~~ *an* **Imp. source** of present Hindu Law.

न्यायिक निर्णयों ने हिंदू कानून को संशोधित और पूरक किया है और वे वर्तमान हिंदू कानून के महत्व के रूप में सामने आए हैं।

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अधिनियम

2. Legislation: (विधान)-

Acts

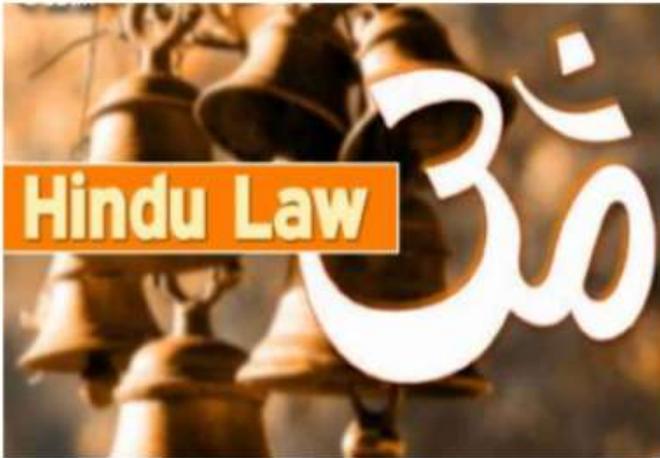
Most of the subjects of Hindu law has been ~~not~~ codified. *to day*

हिन्दू विधि के अधिकांश विषयों को आज संहिताबद्ध कर दिया गया है।

ex. of such Laws: (ऐसे कानूनों की व्याख्या):-

(1) Hindu Marriage Act 1955- (हिंदू विवाह अधिनियम 1955)

(2) The Hindu succession Act 1956. (हिंदू उत्तराधिकार अधिनियम 1956)



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- ✓ (3) The Hindu minority And Guardianship Act 1956. (हिंदू अल्पसंख्यक और संरक्षकता अधिनियम 1956)
(हिंदू दत्तक ग्रहण और रखरखाव अधिनियम, 1956)
- ✓ (5) The caste Disabilities Act Removal Act, 1850 (जाति विकलांगता अधिनियम निष्कासन अधिनियम, 1850)
- ✓ (6) Hindu widow remarriage Act, 1856. (हिंदू विधवा पुनर्विवाह अधिनियम। 1856)
- ✓ (7) Prevention of child widow Act 1929. (बाल विधवा निवारण अधिनियम 1929)

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3. **Equity Justice And good conscience:** (इक्विटी न्याय और अच्छा विवेक:)
- समद, Lack Law*
- * The subject over which there is lack of law the principle of equity Justice And Good conscience should be Apply

~~जिस विषय पर हेक हो गया है कि समानता काय और सद्बिषय का सिद्धान्त कैसे लागू हो~~

- * Equity means the principles or rules emerging in the court of Administration of Justice.

समानता का अर्थ न्याय प्रशासन के न्यायालय में उभरने वाले सिद्धांतों या नियमों से है।

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Case: Gurunath v/s Kamlabai (1951) (गुरुनाथ बनाम कमलाबाई (1951))

Sc has recognized equity Justice, Good conscience has a source of Law. It was observed that It is now well established that in the absence of any rule of Hindu law. The courts have authority to decide cases on the principles of equity. Justice And Good conscience, unless in decision would be repugnant to or inconsistent with any doctrine or theory of Hindu law.

SC ने इक्विटी न्याय को मान्यता दी है, अच्छे विवेक के पास कानून का एक स्रोत है। यह देखा गया कि अब यह अच्छी तरह से स्थापित हो गया है कि हिंदू शासन के किसी भी नियम के अभाव में। अदालतों के पास इक्विटी के सिद्धांतों पर मामलों का फैसला करने का अधिकार है। न्याय और अच्छा विवेक, जब तक कि निर्णय हिंदू कानून के किसी सिद्धांत या सिद्धांत के प्रतिकूल या असंगत न हो।

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Main sources of law

② Vedas an imp. source of law explains

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Schools of Hindu Law



Schools of Hindu Law (हिंदू कानून के स्कूल)

Schools of Hindu Law are considered to be the commentaries and digestives of the smirities. These schools have widened the scope of Hindu law (हिन्दू कानून के स्कूलो को स्मृतियों की कमेन्द्री और डाइजेस्ट माना जाता है इन स्कूलों ने हिन्दू कानून के दायरे का विस्तार किया है और इसके विकास में स्पष्ट रूप से योगदान दिया है।)

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School means rules and principles of Hindu Law which are divided into opinion.

(स्कूल हिन्दू कानूने के नियम और सिद्धान्त है, जो कि विभिन्न मतों में बँटा हुआ है।)

- * It is not codified / यह संहिताबद्ध नहीं है
- * School denotes a particular thought or Idea which have Written by different authors.

स्कूल एक विशेष विचार या विचार को दर्शाता है जिसे विभिन्न लेखकों द्वारा लिखा गया है।

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Schools of Hindu law- 2

Period - 1090-1130AD

Mitakshara / मिताक्षरा -5

Daya Bhaga / दया भागा

1- Banaras school

2- Mithila School

3- Maharashtra, School

4- Dravid (Madras) School

5- Punjab School.

Applies to Bangal, Assam,

Written by - Jimut vahana

*Dayabhaga is a digest on - Smriti.

*Dayabhaga deals with -
inheritance Partition, Joint family.

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Mitakshara school: -

by vijnaneshwar in the Later part of 11th century.

It is a very comprehensive commentary prevalent
(यह 11 शताब्दी के उत्तरार्ध में विजनेश्वर द्वारा याज्ञवल्क्य स्मृति पर एक लिखित कमेन्ट्री है। यह बंगाल असम को छोड़कर पूरे भारत में प्रचलित एक बहुत व्यापक कमेन्ट्री है)

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According to this school father has restricted power of Alienation of the joint family property.

(इस स्कूल के अनुसार, पिता के पास संयुक्त परिवार के अलगाव की शक्ति सीमित है)

- * Son or daughter can claim partition at any time. (बेटा या बेटी किसी भी समय विभाजन का दावा कर सकते हैं।)

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A son has interest in the ancestral property since birth and is a coparcener in such property along with his father. After the Hindu succession Amendment Act 2005, Now daughter also has Interest in the ancestral property and is also Coparcener .

(एक बेटा जन्म के बाद से पैतृक सम्पत्ति में हित रखता है और अपने पिता के साथ ऐसी सम्पत्ति में सहदायिक होता है। हिन्दू उत्तराधिकार संशोधन अधिनियम 2005 के लागू होने के बाद अब बेटी भी पैतृक सम्पत्ति में हिस्सा (हित) रखती है और एक सहदायिक भी है।)

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- * According to this school member coparcenary member can not dispose of their share while coparcenary is undivided.

(इस सूत्र के अनुसार सहदायिकी विभाजित नहीं होने पर सहदायिकी के सदस्य अपने हिस्से का निपटारा नहीं कर सकते।)

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* Cognates comes after agnates:

(Agnates के बाद cognates आते हैं।)

Principal of inheritance- Consanguinity (सगोत्रता)
(वंशानुक्रम का सिद्धान्त)

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Doctrine of factum Valet - under mitakshara school the doctrine of factum valet is has limited recognition (सीमित सीमा तक मान्यता प्राप्त है।)

factum valet means a fact cannot be Altered by 100 of texts (एक तत्थ को 100 ग्रन्थो से भी बदला नहीं जा सकता)

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* Subdivision of Mitakshara school- 5

1. **Banaras school** - This school Applies to whole Northern India

Precluding Orissa except Punjab and Mithila.

(यह उड़ीसा सहित पूरे उत्तर भारत में प्रचलित है, लेकिन पंजाब और मिथिला को छोड़कर)

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Commentates Adopted by this school (इस स्कूल के द्वारा Adopted कमेन्टी)

- ✓ Mitakshara / मिताक्षरा
- ✓ Viramirodaya / वीरमित्रोदय
- ✓ dattakmimansa / दत्तक मीमांसा
- ✓ NirnaySindhu / निर्णयसिंधु
- ✓ vivada tandavai / विवाद तांडवई
- ✓ subodhini / सुबोधिनी

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2. Mutula School :- Applies to Tirhoot (North Bihar)

तिरहुत (उत्तरी बिहार) में लागू

Commentaries: →

- ✓ vivada Ratnakara' / विवाद रत्नाकर'
- ✓ vivada chintamani / विवाद चिंतामणि
- ✓ mitakshara. / मिताक्षरा

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3. Maharashtra School: Applies to - whole Bombay state Including Gujrat Kanara.

गुजरात कनारा सहित पूरे बंबई राज्य पर लागू होता है।

It Applies to - The Areas Where Marathi Language is spoken

यह उन क्षेत्रों पर लागू होता है जहां मराठी भाषा बोली जाती है

Commentaries: (कमेंट्री)

- ✓ Virmitrodaya. / वीरमित्रोदय
- ✓ Nirnay Sindhu / निर्णयसिंधु
- ✓ Mitakshara. / मिताक्षरा
- ✓ vyavhara Mayukha. / व्यवहार मयूख

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4. **Dravid & School's** - Applies (लागू) - whole of Madras-

Commentaries (कमेंट्री) →

- ✓ Mitakshaver' / मिताक्षवेर
- ✓ Smriti Chandrika' / स्मृति चंद्रिका'
- ✓ soraswati vilas / सरस्वती विलास

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MITAKSHARA SCHOOL OF HINDU LAW

Essentially, the Mitakshara School of thought is further divided into various sub-divisions, these include

- Benares Hindu law school
- Mithila law school
- Maharashtra law school
- Punjab law school
- Dravida or madras law school

5. **Punjab School's** - Applies (लागू) - North-West India. called east Punjab.

उत्तर-पश्चिम भारत। पूर्वी पंजाब कहा जाता है।

commentaries(कमेंट्री).

- ✓ Mitakshara' / मिताक्षरा'
- ✓ VirMitrodaya. / वीरमित्रोदय
- ✓ Customs of Punjab. / पंजाब के रिवाज

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1. Hindu Law is हिन्दू लॉ है

- (a) Civil Law / नागरिक कानून
- (b) Personal Law / पर्सनल लॉ
- (c) Constitutional Law / संवैधानिक कानून
- (d) Criminal Law / आपराधिक कानून

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2. Under the Constitution of India all aspects of family law are provided in the-
भारत के संविधान के तहत परिवार कानून के सभी पहलुओं को प्रदान किया गया है-
- (a) Union List / संघ सूची
 - (b) State List / राज्य सूची
 - (c) Concurrent List / समवर्ती सूची
 - (d) None of the above / उपर्युक्त में से कोई नहीं

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3. The ancient source (s) of the Hindu Law is/are-

हिंदू कानून का प्राचीन स्रोत है/हैं-

- (a) Shrutu / श्रुति
- (b) Smriti / स्मृति
- (c) Digest, commentaries and custom / डाइजेस्ट, कमेंट्री और कस्टम
- (d) All of the above / उपरोक्त सभी

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4. Which out of the following is not modern source of Hindu Law?
निम्नलिखित में से कौन सा हिंदू कानून का आधुनिक स्रोत नहीं है?
- (a) Equity, Justice and Good Conscience / इक्विटी, न्याय और अच्छा विवेक:
 - (b) Precedent / मिसाल
 - (c) Legislation / विधान
 - (d) Custom / कस्टम

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5. Who among the following is the author of the famous work 'Mitakshara'?

निम्नलिखित में से कौन प्रसिद्ध कृति 'मिताक्षरा' के लेखक हैं?

- (a) Apararka
- (b) Bhoja
- (c) Vijnaneswara
- (d) Parasara

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6. The author of Dayabhaga was
दायभाग के लेखक थे
- (a) Vijnaneshwara
 - (b) Jimutavahana
 - (c) Vashishtha
 - (d) Narada

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7. 'Jimutavahana' is known for his work
'जीमूतवाहन' अपने काम के लिए जाना जाता है
- (a) Nirnaya Sindhu
 - (b) Dayabhag
 - (c) Dayatatva
 - (d) Dattak Mimansa

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ANSWERS

- 1) Ans. (b)
- 2) Ans. (c)
- 3) Ans. (d)
- 4) Ans. (d)
- 5) Ans. (c)
- 6) Ans. (b)
- 7) Ans. (b)

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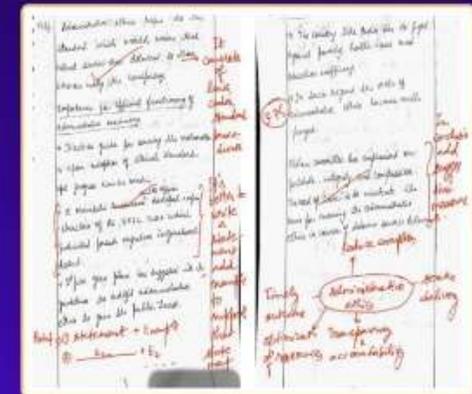
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