Sources of hindu law notes pdf

Sources of Hindu law: Criticism of Hindu law has the oldest pedigree of any known system of jurisprudence, and even now it shows no signs of decrepi interviewer. Henry Mayne. The phrase source of law has several connotations. It could be a body that issues rules of conduct that are recognized by the courts as binding. In this context, source of law means creator of law. This can mean social conditions that inspire the adoption of a law to manage conditions. In this context, this means because of the law. It can also literally mean the material from which the rules and laws are known. In this sense, the expression means proof of the law and it is in this sense that the expression source of law is accepted in jurisprudence. Vainaneswar (commentator Yaznavalki Smriti and founder of the Mitakshar School) called her Inapak Hetu, i.e. a means of knowing the law. It was important to examine the sources of law, since in each personal legal system only that rule was the law that took place in its sources. A rule that is not stated or recognized in the sources is not a rule in this legal system. The word Hindu first appeared in the old Persian language, which was derived from the Sanskrit word Sindhu, the historical local designation of the Indus River in the northwestern Indian subcontinent. Hindu is a hindu. Hindu law is a set of personal laws governing the social conditions of Hindus (such as marriage and divorce, adoption, inheritance, minority and guardianship, family matters, etc.). Not only do Hindus have to follow Hindu law, but there are several other communities and religious denominations that submit to its rule, such as jains, Buddhists, Sikhs, Brahmo-samajists, Purtana Samajists, Virashaywa and Linayats and Santals chota-Nagpur, as well as others. In Sir Dinshah F. Mullah's Hindu Law Principles, the scholarly editor defined Hindu law in the following words: Wherever The laws of India recognize the validity of a Hindu's personal right, the rights and responsibilities of a Hindu are determined by Hindu law, i.e. by its traditional law, sometimes called the law of his religion, subject to the exception that any part of this law may be amended or repealed. The law understood by hindus is a branch of the

dharma. Nature and scope: In this article, the scope will be limited to clarifying the sources of Hindu law and criticizing some aspects of identifying sources and general criticism of sources. The sources of the Hindu law Sources of Hindu law can be classified under the following two heads: I. Ancient sources Under this would come the following: (i) Shruti (ii) Smriti (iii) Digests and comments and (iv) customs. II. Modern Sources Under This Head Will Come: i) Justice, Justice and Conscience Precedent and (iii) legislation. Ancient Sources (i) Shruti- This literally means what has been heard. The word comes from the root of shru, which means to hear. In theory, it is the main and paramount source of Hindu law and is considered the language of divine revelation through the wise men. The synonym for shruti is veda. This comes from the root of the vid, which means to know. The term Veda is based on the tradition that they are a repository of all knowledge. There are four Vedas, namely: Rig Veda (containing hymns in Sanskrit, which will be read by the chief priest), Yajurva Veda (containing formulas to be read by the judge), Sam Veda (containing poems that will be chanted by visionaries) and Atarva Veda (a collection containing spells and spells, stories, predictions, aropopes). Each Veda has three parts viz. Sanhita (which consists mainly of hymns), Brahmin (tells us about our responsibilities and means of fulfilling them) and Upanishad (containing the essence of these responsibilities). Shruti include Vedas along with their components. (ii) Smritis- The word Smriti comes from the root of the smri, meaning to remember. Traditionally, Smritis contain those parts of Shrutis that the sages forgot in their original form and the idea whereby they wrote in their own language with the help of their memory. Thus, the basis of Smritis is Shrutis, but they are human works. There are two kinds of Smritis viz. Dharmasutra and Dharmasashtra. Their subject matter is almost the same. The difference is that the Dharmasutras are written in prose, in short maxims (Sutrah) and Dharmasastra written in poetry (Shlokas). However, sometimes we find Shlockas in Dharmasutra and Sutrah in Dharmashatrah. In a narrow sense, the word Smriti is used to refer to poetic Dharmasastr. The number of Smriti writers is almost impossible to determine, but some of the famous smritian writers listed by Yajnavalkia (the sage of Mitila and the main figure in the Upanishads) are Manu, Atri, Vishnu, Harita, Yajnavalkia, Yam, Katyayan, Brihaspati, Parachar, Vyas, Shah, Sah, Dah Rules, laid out in the S. Achar (morality), Vyavahar (meaning procedural and substantive rules that the king or state used to settle disputes in the decision of justice) and Prayashit (meaning a criminal provision of error). (iii) Digests and comments - After Shrutis entered the era of commentators and digesters. Comments (Tika or Bhasya) and Digests (Nibandhs) covered a period of more than a thousand years from the 7th century to 1800 AD In the first half of the period, most of the comments were written on Smritis, but in the later period of the work were in digests containing the synthesis of different smrit and explaining and harmonizing various contradictions. The evolution of the various schools of Hindu law was made possible by various comments written by various authorities. The original source of Hindu law was the same for all Hindus. But Schools of Hindu law emerged as people decided to stick to one or the other school for different reasons. Diabhaga and Mitaxhara are the two main schools of Hindu law. The Dayabhaga School of Law is based on comments by Jimutwakhana (author of Daiabhagi, which is a digest of all codes) and Mitakshara based on comments written by Vainaneswar on the Yajnawalki Code. Customs is seen as a third source of Hindu law. From an early age, the custom ('achara') is considered the highest dharma. In accordance with the custom of the Judicial Committee, a rule that in a particular family or in a particular class or area has been granted the force of law from long-term use. Custom is the main source and its position is close to Shrutis and Smritis, but the use of customs prevails over Smritis. It transcends written law. There are certain characteristics that need to be performed to declare the custom valid. They:- (i) The custom must be ancient. Special use should be practiced for a long time and accepted by general agreement as the guiding rule of a particular society. (ii) The custom must be defined and free from any ambiguity. It should also be free of technical aspects. (iii) The custom should be reasonable and not against any existing legislation. It should not be immoral or against any public policy and (iv) custom should be continuously and evenly followed for a long time. Indian courts recognize three types of customs visas: (a) local customs are customs recognized by courts as common in a particular region or area. (b) Class custom is a custom to which a particular class operates. There is a custom among the Vaishyas class that desertion or abandonment of the wife by the husband frees the marriage and the wife is free to marry again during the life of the husband. Family custom is a custom that is mandatory for family members. For example. In the families of ancient India there is a custom that the eldest member of the male family should inherit the estates. II. Modern Sources (i) Justice, Justice and Conscience - Sometimes a dispute comes to the Court, which cannot be resolved by any existing norm in any of the available sources. Such a situation may be rare, but perhaps because not every type of fact-finding situation that arises may have an appropriate law governing Courts can't to settle a dispute in the absence of the law, and they are also obliged to decide on such a case. In determining such cases, the courts rely on core values, norms and standards of fair play and decency. In terminology, this is known as the principles of justice, justice and good conscience. They can also be termed as natural law. This principle has been a source of law in our country since the 18th century, when the British administration made it clear that the above principle was being applied in the absence of any rule. Laws- Laws are parliamentary acts that play a profound role in shaping Hindu law. After India achieved independence, some important aspects of Hindu law were codified. Few examples of important statutes are the Hindu Marriage Act of 1955, the Hindu Adoption and Maintenance Act of 1956, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, etc. The law repeals all previous laws, whether on the basis of custom or otherwise, unless the adoption itself provides for express savings. In matters not specifically covered by codified law, the old text law contains application. Precedents - After the establishment of British rule, a hierarchy of courts was established. A doctrine of precedent has been established based on the principle of dealing with such cases. Today, the decisions of the Privy Council are binding on all lower courts in India, except when they have been amended or amended by the Supreme Court, whose decisions are binding on all courts except themselves. Criticism of sources It is important to note that the term Hindu is not defined anywhere from the point of view of religion, nor in any legislative or judicial decisions. To determine who Hindu law applies, it is necessary to know who is Hindu, and none of the sources speaks directly about it. In most cases from the statutes, we can obtain a negative definition of Hindu, which states that Hindu law should apply to those who are not Muslim, Christian, Parsi, Jew, etc., and which are not regulated by any other law. The Hindu Law is considered a divine law, because it is firmly believed that the sages have achieved some kind of spiritual dominion and they can communicate directly with the Form of God with which we receive the divine law. But this is only an assumption, and no concrete evidence of the same is shown that sages could communicate with God (the very existence of which is disputed by atheists). Because of this, many communities also suffer from misunderstanding or misconception that their and the messiahs had revelations from God. Judge A.M. Bhattacharjee emphatically states that, in his words, he cannot think that even a convinced believer in any divine existence, transcendent or immanent, can in the divine origin of Hindu law, unless he has a motive for such a profession of faith, or he has not read Smritis or is not ready to believe everything and all with slave infidelity. According to Judge Marcandai Katju, Hindu law does not come from Veda (also called Shruti). He vehemently argues that there are many who claimed that Hindu law originated from Shrutis, but this fiction and in fact Hindu law originated from Smriti's books, which contained the writings of Sanskrit scholars in antiquity who specialized in law. Shrutis hardly consists of any law, and the scriptures ordained in Smriti make no clear distinction between the norms of law and the norms of morality or religion. In most manuscripts, ethical, moral and legal principles are woven into one. Perhaps it is for this reason, according to Hindu tradition, that the law did not mean only in the Austin sense of jurisprudence and is undesirable to it; and the word used instead of law was the Sanskrit word dharma, which means religion as well as duty. Although Dharmasutra dealt with the law, they did not provide an anthology of law dealing with all branches of law. Manuscuriti provided a much-needed legal exposition that could become a collection of law. But, according to Kane, it's almost impossible to tell who composed Manustrithi. The very existence of Manu is considered by many to be a myth, and it is called a mythological character. Many critics argue that the very word Smriti means that what is remembered, and therefore the validity or proof of the existing Smritis can be challenged. It is impossible to say with certainty that the sages remembered what was actually announced. Hindu law is generally criticized on the grounds that smrits and other customs tend to be extremely orthodox and against the favour of women. Thus, Hindu society has always been a patriarchal society, and women have always received muted meaning in relation to men. Some also disapprove of the notions of the caste system created by the ancient Hindu law, from which the unconceived notions of untouchability, etc., have arisen, and so on, the Smrits are considered to have independent power, but although their authority is unquestionable, their meanings are open to various interpretations and have been and are the subject of much dispute. Until now, no one can say for sure the exact number of smrits that exist under Hindu law. It was because of the aforementioned problems that digest and comments were created and various schools of Hindu law began to give birth. Modern sources of Hindu law, such as justice, justice and conscience, have been criticized on the grounds that it paves the way for personal opinions and beliefs were made into law. We have seen a cata zero of cases where the Court's decisions criticized for not being properly reasoned. It also means that existing laws are incomplete. The Supreme Court has successfully established Hindu law in most cases, but in several cases it interprets these norms in its own light. One of the most serious cases of the Supreme Court, which deserves special criticism, is the case of Krishna Singh v. Mathura Ahir. The High Court of Allahabad rightly ruled that the discriminatory injunction imposed on Mr. Smritz was overturned because it was contrary to the fundamental rights guaranteed by the Constitution. However, the Supreme Court refuted the above opinion and ruled that Part III of the Constitution did not apply to the personal laws of the parties. When applying the personal laws of the parties it is impossible to introduce their own concepts of modernity, but it is necessary to enforce the law, as it happens from recognized and authoritative sources of Hindu law .... except where such a law is changed by any use or custom or changed or repealed by law. It is easy to say that the aforementioned point of view is contrary to all constitutional theories and directly contradicts article 13. It is shocking to note that this decision has yet to be over-managed in a direct point of view. Since then, Hindu legislation has been reformed and modified to some extent by legislation, but these reforms have been half and fragmented. The problem with fragmentary reforms is that, while reforms have been implemented to change some aspects, their implications for others have been over-considered. For example, the Hindu Women's Right to Property Act was enacted in 1937 in connection with the granting of property rights to women, but its implications for the right of the joint family were over-examined. As a result, disparate reforms through legislation solve some problems, but lead to others. Many people make the mistake of considering various textbooks written by erudite scholars as sources of Hindu law. This is due to the fact that the courts have decided in many cases, based on these textbooks, and quoted them for reference. For example, Mullah's Hindu law was cited by many judges. In Bishundeo v. Seogani Rai, Judge Bose, in his ruling, stated that the rule in Mullah's book was explicitly stated in cases where that position was not exercised by decree of the competent court. It was the same with many other textbooks. It should be made clear that textbooks were not sources of Hindu law and that the authors did not have the power to set out the law. It was concluded that Hindu law was criticized for its orthodoxy, patriarchal character and does not carry a very modern worldview of society. Have areas where Hindu law should modernize itself, for example, the irretrievable theory of decay as a valid basis for divorce has not yet been recognized The Hindu Marriage Act of 1955 and even the Supreme Court expressed their concern. The most valid problem is that the very definition of Hindu has not yet been given in any of the sources. Statutes provide only a negative definition that does not allow time to be verified. The same proponent of Hindu law being a divine law has been challenged by scholars and atheists. There are many Smritis that have yet to be found according to historians and many conflicts of opinion and interpretations have arisen for existing ones, thus creating a window of ambiguity under Hindu law. There are also several areas where Hindu law is silent. Most ancient sources of Hindu law are written in Sanskrit, and it is well known that there is currently a shortage of Sanskrit scholars. It is unlikely that ancient sources have any significance left since the appeared and followed by modern sources. It can be said that proper codification of Hindu law without the possibility of ambiguity is a necessity of an hour. It can be said that where the current sources of Hindu law are not satisfied with the legislature, it may recognize the sources and customs of other religions and incorporate them into Hindu law if it meets the needs of society and meets the test of time. The bibliography Primary Sources -Constitution of India. -The Law on the Right of Hindu Women to Property, 1937. (Repealed) - Hindu Adoption and Detention Act, 1956. Hindu Marriage Act, 1955. The Hindu Minority and Guardianship Act 1956. Hindu Succession Act, 1956. Cases -Bishundeo vs. Seogani Rai, AIR 1951 SC 280. -Harprasad vs. Sheo Dayal, (1876) 3 IA 259. -Krishna Singh vs. Mathura Ahir, (1981) 3 SCC 689 -Pudiava vs. Pavanas, ILR (1922) 45 Mad 949 (FB). -Saraswathi Ambal vs. Jagadambal, AIR 1953 SC 201. -Siromani vs. Hem Kumar, AIR 1968 SC 1299. -Subhani vs. Nawab, AIR 1941 PC 21. Secondary Sources of the Book and Encyclopedia - Bhattacharjee, A.M., Hindu Law and The Constitution, 2nd ed., Eastern Chamber of Law, 2005. - Derrett, John D.M., Criticism of Modern Hindu Law, 1st, Allahabad Law Agency, 1970. - Sofa, P., Modern Hindu Law, 17th Ed., Allahabad Law Agency, 2006. - Gandhi, B.M., Hindu law, 2nd ed., Eastern Book Company, 2003. - Gaur, A., Comments on Hindu Law, 1st ed., Dwivedi and Company, 2007. - Hindus, Encyclopedia of Hinduism, Ed, Kapoor, S. 1st Ed., Cosmo Publications, 2000. - Maine's Treatise on Hindu Law and Use, ed. Ragannath, J. 15th Ed., Bharat Law House, 2003. - Mitra Hindu Law, 2nd, Orient Publishing Company, 2006. - Mullah, Principle of Hindu law, Vol-I, ed. Desai, S.A, Ed., Lexis Nexis Butterworths, 2005. - Nagpal, R.C., Modern Hindu Law, 2nd Ed., Eastern Book Company, 2008. - Nandan, J., Hindu Marriage Law and Divorce, 1st University Book Agency, 1989. - Sen,., Hindu Jurisprudence, 2nd ED., Eastern Law Chamber, 1984. - Sharma, Dr.B.K. Hindu law, 1st ed., Ed., Publisher of law, 2007. Articles - Hon'ble Katju, M, J., Ancient Indian Jurisprudence in relation to Modern Indian Jurisprudence, AIR 2008 Journal 65. - Hon'ble Katju,M, J., Mimanza Interpretation Principles, AIR 2002 Journal 119. - Hon'ble Katju, M, J., The Importance of Mitakshara in the 21st Century, AIR 2005 Journal 215. Internet Sources - last visited 23/08/2009 at 7:05 p.m. - last visited 23/08/2009 at 6:50 p.m. and Nagpal, R.C., Modern Hindu Law, 2nd Ed. (2008) in page 22. Meath. on Yaj., I: 7. Hindus, Encyclopedia of Hinduism, Ed, Kapoor, S. 1st Ed. (2000) in page 828. Nandan, J., Hindu law- Marriage and Divorce, 1st Ed. (1989) in page 1. Mullah, Principle of Hindu Law, Vol-I, ed. Desai, S.A., 19th Ed. (2005) in page 1. - righteous duty or any virtuous way. Pudiava vs. Pavanas, ILR (1922) 45 Mad 949 (FB). - Shruthisto vedo viinayo dharmastracram tu wai smritih, Manusmriti-II, 10. Manu II, 12; Yajn. Me, 7; Medhatithi on Manu II, 6, as admonished in Maine's treatise on Hindu law and use, Ragannath, J. 15ed Ed. (2003) in page 15. Yajn., I, 4-5, as highlighted in Supra n.1, p.31. Sharma, Dr.B.K. Hindu law, 1st ed. (2007) in page 6. Mitra by Hindu law, 2nd Ed. (2006) in page 28. Supra n.9 on page 45. Manu Smriti: I: 108-110, as mentioned in Gandhi, B.M., Hindu law, 2nd ed. (2003) in page 19. - Harprasad vs. Sheo Dayal, (1876) 3 IA 259; Siromani vs. Hem Kumar, AIR 1968 SC 1299. Subhani vs. Nawab, AIR 1941 PC 21. Supra n.12 on page 25. Saraswathi Ambal vs. Jagadambal, AIR 1953 SC 201. Ibid. Supra n.11, in page 24. Article 141, Constitution of India. Sofa, P., Modern Hindu Law, 17th Ed, (2006). Ibid, see also Supra n.1 on page 29. Hindu law and the Constitution, 2nd place, 2005. Hon'ble Katju,M J., Ancient Indian Jurisprudence in relation to Modern Indian Jurisprudence, AIR 2008 - Journal 65 in p.66. See also Hon'ble Katju, M J., Mimansa Principles of Interpretation, AIR 2002 - magazine 119 on page 122. Supra n.23 on page 20. Sen,., Hindu Jurisprudence, 2nd Ed, (1984) in p.21. Supra n.23 on page 33; See also, Gaur, A., Comments on Hindu Law, 1st ed., (2007) in page 10. Cm. Derrett, John D.M., Criticism of Contemporary Hindu Law, 1st ed., (1970) (1981) 3 SCC 689. Supra n.23 on page 54. AIR 1951 SC 280. Author can be reached by debanshukhettry@legalserviceindia.com ISBN No: 978-81-928510-1-3 Comments : Sushant : Good understanding of the Hindu law of Mr. Khetttry! Debanshu Khettry : @Sushant: Thank you :) :) sources of hindu law llb notes. sources of hindu law srd law notes. sources of hindu law notes pdf