

GIRLS' HIGH SCHOOL & COLLEGE, PRAYAGRAJ

SESSION -2020- 2021

CLASS – 11 –D

LEGAL STUDIES

WORKSHEET – 1

CHAPTER – HISTORICAL EVOLUTION OF INDIAN LEGAL SYSTEM

TOPIC – DHARMA AND ANCIENT HINDU LAW

NOTE- Parents please ensure that your ward refers to the Reference Books and Websites for 2days to read the topics.

Reference Books:

1. A Text Book of Legal Studies by Gurmeet Kaur, Oswal Publication.
2. Legal Studies for Class 11 CBSE by Vikas Gupta and R.B Gupta.

Websites:

1. <http://www.legalindia.in>

Chapter in brief-

INTRODUCTION- A legal system is a system for the interpretation and enforcement of laws in a particular country. The legal system in India today is greatly influenced by the British system which is different from the legal system at the time of Mughal period, where mainly the Islamic law was followed. Law is an instrument of social change and the present legal system in India has evolved through a complex procedure. To understand the Historical Evolution of Indian Legal System, a comprehensive study of the historical processes of development of legal institutions, administration of justice in the ancient India, medieval period and British era is required. Law in India has emanated from the Vedas (Shruti), the Upanishads and other religious texts, Manu Smriti, Yajnavalkya Smriti and the Smriti of Vishnu, Narad , Parashar ,Gautam. etc.

In Modern India the coherent system of law has been developed by the process of codification and is largely based on English common law. The judicial mechanism derived from British legal system as established in India in the middle of the 19th century, which comprised of precedents, customs and legislative law. Since Independence, the Constitution of India is the supreme legal document.

Concept of Dharma –

The literal meaning of the term dharma is that which sustains or upholds. It has been taken to be an elusive term which has no exact equivalent in any other language. Therefore , the English writers in

their attempt to give a precise acceptable definition , have stated that “**dharma includes religious, moral , social and legal duties and can only be defined by its contents** ” According to Hindu scriptures, dharma ,stands for “ religious rights , fixed principles of rules of conduct and the whole body of religious duties. From the point of view of common man , the term may be said to include three things , namely ,

- 1) **Religion**
- 2) **Duty**
- 3) **Inseparable quality of a thing or order.**

In the first sense , dharma has been treated as religion. In strict sense of the word, religion may be said to be obedience to the law of God. According to Mahatma Gandhi, “God and His law are synonymous terms and therefore, God signifies an unchanging living law. No one has really found him but Prophets have by their devotion and sadhna given to mankind a faint of the eternal law”.

In the second sense, dharma stands for duty or kartavya. For instance, rajdharma connotes the duty of ‘Ruler, grahastha dharma signifies the duty of family man , nari dharma implies duty of women and so on. Similarly there may be the duty of a doctor , judge , lawyer , priest ,teacher ,leader, administrator etc. The ancient Hindu dharma dealt with the duty of the king or ruler in great detail.

In the third sense, dharma connotes essential characteristics features of a thing or object and everything without discrimination .Similarly , the dharma of water is to quench fire. This is unalterable and immutable.

HINDU LAW- Hindu law can be divided into three categories:

- **The Classical Hindu Law;**
- **The Anglo Hindu law and**
- **Modern Hindu Law.**

Classical Hindu Law :The classical Hindu law was based on religion, where Smritis and Shrutis had played an important role. It may include : ancient Indian law (dharma) and diverse legal practices as existed between 500 B.C till 1772 . The diverse practices were followed by various communities based on locations, work and caste : like merchants, military groups and priests.

Anglo – Hindu law- The law as evolved from the classical Hindu law during the British rule in India from 1772 to 1947 is regarded as the Anglo Hindu Law.

In the first phase the periods between 1772 and 1864 the personal laws were applied by the British for administration of justice in India. The court pandits were used in the British courts to aid the British judges with the interpretation of the Dharmashastra texts and implementation of the Classical Hindu Law.

Second phase the period between 1864 and 1947 the departure from the Dharmashastra tradition was seen and the system of court pandits was ended. The law reforms were

introduced to have uniform laws except for laws related to family or personal matters like marriage , inheritance and succession of property .

MODERN HINDU LAW- After independence in 1947, in the family or personal matters , customary laws of the relevant religious groups or traditional communities continued to be applied and the four major legislations governing the family and personal matters of the Hindus were codified: Hindu Succession Act (1956), Hindu Adoptions and Maintenance Act (1956), Hindu Minority and Guardianship Act (1956), Hindu Marriage Act(1956).

The Sources of ancient Indian law: The sources of ancient law are :

- 1) **Shrutis are called Vedas or Amnaya**
- 2) **Smritis**
- 3) **Achara**
- 4) **Other sources of law are Itihasas, Puranas , Agamas etc.**

Shruti- Shruti is concerned with ‘ what is heard’ or the revealed and includes : Vedas, Aranyankkas and Upanishads in this class. Veda literally means knowledge. Vedas is collection of hymns, praises, and ritual instructions, the mantras. They were never written , never created and are embodiment of divine knowledge ; eternal and impersonal. The primary Vedas are Rig Veda, Atharva Veda, Yajur Veda , and Sama Veda.

Smriti- Literally means ‘ which is remembered’ . It consists of 1,010 slokas, created probably during Gupta period . Smritis are secondary scriptures, the books written by certain Sanskrit Scholars in ancient times. The main Smritis or Dharma Sastras are Manu , Narada , Yajnavalkya, Vishnu., etc. The most important and famous text are those of Manu and his Manava Dharma- shastra. It is also called the Manusmriti.

Achara – are customary laws, norms followed by particular community or a group. The ‘Achara’ also derives its authority by virtue of its connection with the Vedas. Where both the Vedas and the Smritis are silent on an issue , the norms of the community can be considered as dharma.

Other sources of law-Puranas contain mythological account of ancient times to popularize the religion of the Vedas.

The **Itihasas** are considered as friendly treatise (Suhrit – Samhitas) and four books can be placed under this head: The Valmiki’s Ramayana, the both Puranas and Itihasas belong to some class of Suhrit – Samhitas.

The **Agamas** include the Tantras, Mantras and Yantras and are theological treatises and practical manuals of divine worship.

Judicial System and Legal Procedure in Ancient India- The details of the judicial system prevalent in India can be called out from the writings of various jurists like Manu , Kautilya , Brihaspati ; Yajñ- valkyā , Katyayana and the commentaries written by various commentators to interpret the Dharmasutra texts and Smṛiti. Commentaries are also known as Nibandhas or Tikas.

Administration of Justice – King, who is desirous of investigating law cases , enters his court of justice with Brahmanas and with experienced councilors to decide all cases which fall under the eighteen titles .

Matter of disputes – The cases fall under following eighteen heads 1) the non-payment of debts, 2) deposit of pledge , 3) sale without ownership, 4) concerns among partners 5) resumption of gifts ,6) Non – payment of wages, 7) non- performance of agreements, 8) rescission of sale and purchase ,9) disputes between the owner (of cattle) and his servants, 10) Disputes regarding boundaries , 11) assault, 12) defamation, 13) theft , 14) robbery and violence, 15) adultery , 16) Duties of man and wife, 17) partition (of inheritance) 18) gambling and betting.

Applicable law – The king should decide the suits depending on the eternal law and according to principles drawn from local usage and from the Institutes of the sacred law

Punishment – King should apply the danda (the rod of punishment) to the miscreants.

I Answer briefly each of the following questions:

- 1) What is Ancient Indian Law?
- 2) What is Shrutis?
- 3) What is Smritis?
- 4) Define Dharma.
- 5) How 'dharma' is different from Modern Hindu Law
- 6) What are the several subject matters under Ancient Civil Laws?
- 7) What are the several subject matters under Ancient Criminal Laws?
- 8) Define Law?

II ANSWER IN DETAIL-

- 1) Differentiate between Classical Hindu Law, Anglo Hindu Law and Modern Hindu Law?
- 2) Describe the important features of Ancient Indian law?
- 3) Briefly explain the sources of Hindu law?