

Unit - I

The Concept of Dharma: Sources of Hindu Law

Ancient and Modern Perspectives

What is Dharma?

Sacred Duty & Righteousness

Dharma means **sacred duty, righteousness, and law** in Hindu philosophy — one of the oldest legal systems in the world, dating back **6,000 years**.

Beyond Western Law

Unlike Western law, Dharma combines **religious, moral, and legal obligations** into a unified framework governing all aspects of life.

Scope of Governance

Governs personal matters: **marriage, inheritance, adoption, and family relations** — representing a **unified jurisprudence** across multiple regional legal systems.

The Core Principle

Dharma is not merely law — it is the cosmic order that sustains life, society, and the universe. Every individual's duties are shaped by their role, stage of life, and place in society.

- ❏ Dharma literally translates as "that which upholds" — the foundation upon which Hindu legal tradition is built.

Primary Sources of Hindu Law

Shruti (Revealed Texts)

The **Vedas and Upanishads** — considered divine knowledge, directly revealed to sages. The supreme and unquestionable authority in Hindu jurisprudence.

Smriti (Remembered Texts)

Dharmasutras and Dharmasastras — human interpretations of Shruti. The practical legal texts that governed everyday life and conduct.

Commentaries & Digests

Scholarly works explaining and applying ancient texts to resolve disputes and clarify ambiguities across different regions and eras.

Custom & Usage

Regional and family-based practices that evolved over centuries, recognized as binding law when ancient, certain, and reasonable.

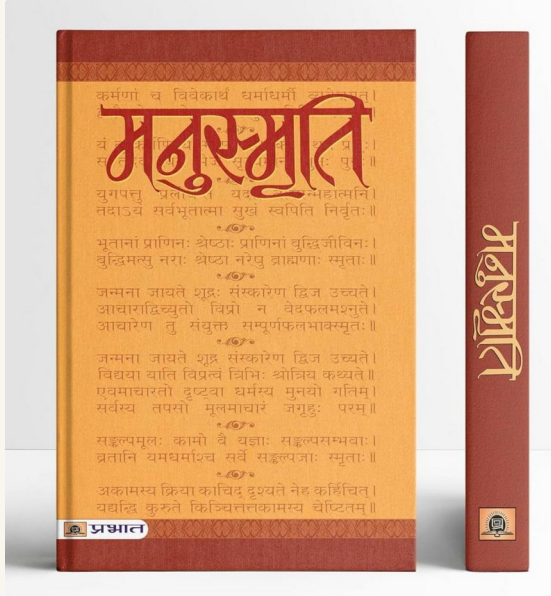
Judicial Precedent

Court decisions that shape modern Hindu law interpretation, bridging ancient texts with contemporary constitutional values.

The Dharmasastra Tradition

Dharmasastra — the "Science of Dharma" — forms the foundational legal canon of Hinduism, preserving centuries of scholarly debate and multiple interpretations.

- **Dharmasutras** (3rd century BCE – 1st century CE): Earliest works written in aphoristic prose
- **Manusmriti** (2nd century CE): First major Dharmasastra, written in verse and considered most authoritative
- **Yajnavalkya Smriti, Narada Smriti, Brihaspati Smriti**: Later foundational Smritis shaping legal thought
- These texts preserve **scholarly debate and multiple interpretations** of dharma across centuries





The Mitakshara School of Hindu Law

Origin

Commentary by **Vijnaneshwara** (12th century) on the Yajnavalkya Smriti — one of the most influential legal commentaries in Hindu jurisprudence.

Geographic Reach

Most widely followed across India — operative in all regions except Bengal and Assam, making it the dominant school of Hindu law.

Core Principle

Coparcenary rights arise by birth — sons own a share of ancestral property from the moment of birth, not merely upon the father's death.

Family & Property

Emphasizes the **joint family system** with shared property and collective ownership passing to **all male descendants** through the male line.

The Dayabhaga School of Hindu Law

A digest by **Jimutavahana** (post-12th century), the Dayabhaga represents a fundamentally different interpretation of the same ancient Smriti texts — shaped by the unique legal traditions of eastern India.

- **Primarily followed in West Bengal and Assam**
- **Ownership arises only after the father's death** — no coparcenary by birth
- Sons have **no automatic rights** in ancestral property during the father's lifetime
- Property is **individually owned** and passes through succession after death
- Represents a **different philosophical lens** on dharma, inheritance, and family

❏ Despite covering a smaller geographic area, Dayabhaga's influence on Bengal's legal culture has been profound and enduring.



Mitakshara vs Dayabhaga: Key Differences

Dimension	Mitakshara	Dayabhaga
Ownership	Arises by birth	Arises by succession after death
Coparcenary	Exists from birth	No coparcenary concept
Property Rights	Joint ownership of ancestral property	Individual ownership
Inheritance	All sons inherit equally	Eldest son preference
Geography	Most of India	Bengal & Assam
Family Model	Joint family system	Individual family units

Modern Application of Hindu Law in India

The Hindu Code Bills (1955–1956)

Led by PM **Jawaharlal Nehru** and Law Minister **Dr. B.R. Ambedkar**, these landmark bills codified and reformed Hindu personal law into four major statutes:

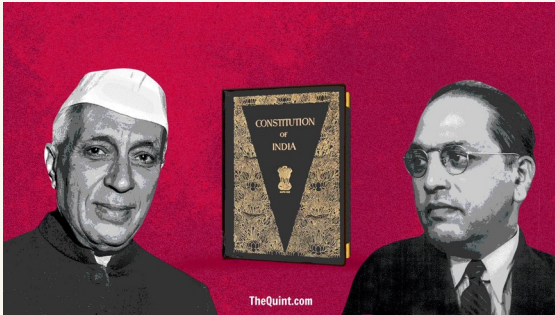
- **Hindu Marriage Act**
- **Hindu Succession Act**
- **Hindu Adoption & Maintenance Act**
- **Hindu Minority & Guardianship Act**

Constitutional & Social Reforms

- Operates under **Articles 14, 15, 21, 25** of the Indian Constitution
- Modern reforms have **expanded women's property and inheritance rights** significantly
- Extended to cover **Sikhs, Jains, and Buddhists** in addition to Hindus
- Courts continuously **interpret and modernize** Hindu law principles



From Ancient Texts to Modern Codification



→ Colonial Period

British introduced **textualization and precedent-based law**, fundamentally reshaping how Hindu law was recorded and applied.

→ Post-Independence Codification

Hindu law evolved from **custom-based pluralism to statutory uniformity** — a defining transformation of the new Indian republic.

→ Ongoing Tensions & Future

Balancing **traditional religious values with constitutional equality**; active debates on a **Uniform Civil Code** and further modernization continue.

Key Takeaways: Hindu Law Today



Dharma as Foundation

Dharma remains the philosophical bedrock of Hindu legal tradition — ancient yet alive in modern courts.



Two Major Schools

Mitakshara & Dayabhaga reflect rich regional diversity in the interpretation of the same sacred texts.



A Living Synthesis

Modern Hindu law blends ancient texts, colonial influence, and constitutional values into a dynamic legal system.



Gender Equality

Legal reforms have **significantly advanced women's property and inheritance rights**, transforming family law.



Judicial Evolution

Judicial interpretation continues to evolve Hindu law — demonstrating how **ancient wisdom adapts to modern society**.