Evolutionary History of the Indian Law

by Potluri Rao In Seattle *©2018* (CC BY 4.0)

The Indian parliamentary statutes of 1955 and 1956 are the current Indian law. This is an attempt to trace the history of the current Indian law.

1658 Aurangzeb's rule started in India.

1670 Fatawa-e-Alamgiri (Fatawa-i-Hindiya), based on Sunni Hanafi Islam's Sharia law, was adopted as the Indian Law by Aurangzeb. Persian was the language of courts. The law books were in Persian. It was the first time a centralized law (constitution) was imposed in India. Under the Persian law, all non-Muslims were considered Sudra (infidels) subject to the humiliating Jizya (head tax). People were encouraged to convert to Muslim to avoid punitive taxes. Bengal, current Bangladesh, was converted.

1757 Nawab of Bengal Sirajuddaulah surrendered his dominions to the British East India Company. The Company Rule started.

1765 The company was granted the right to collect revenue in Bengal and Bihar. The Company had a presence only in Bombay, Bengal and Bihar (Calcutta), Madras, and Coastal Andhra (Northern Sarkars).

1772 The company inherited India from the bankrupt Muslim. It was ill-prepared for the job and wanted to maintain the status quo. "Governor & Council" continued with the Persian Law for administration and collection of revenue. Legislative power was delegated to the company by the British. Governor Warren Hastings recommended a council of people learned in Sastras for a possible separate law for Hindus.

1773 A council of eleven all Brahmin pundits produced the "Gentoo Law" in Persian. Persian was the language of courts. "Gentoo" was a Portuguese word for "Hindu."

1776 The Gentoo Law was translated into English, from Persian, by Nathaniel Halhed.

1781 The Declaratory Act of 21 Geo. III. c. 70 stated that Mahommedans and Gentoos were covered by separate laws, Persian and Gentoo. British courts recognized that the Gentoo Law was a Brahmin law based on an archaic book of no relevance. Hindus were not Brahmin. It was unconstitutional to impose an arbitrary law on Hindus.

1788 Governor-General Cornwallis ordered a review of why British courts rejected the Gentoo Law as unconstitutional.

1794 William Jones (Institutes of Hindu Law) of the company presented a literal translation of the Sanskrit Manu Smriti, Manava Dharmasastra, to show that the All Brahmin Gentoo Law was flawed and ignored by British courts for a good reason. The Gentoo Law was Manu Smriti in disguise; it was never the Law of the Land. It was not based on case law. He called it a priestcraft. He recommended a review of Hindu legal history. The company assembled a team of experts to collect original source material on Hindu law.

1796 H. T. Colebrooke (The Digest) translated the report of the team of experts on Hindu law into English. The Digest documented more than forty authorities on Hindu law. Hindu law evolved naturally and changed over a distance of ten miles. However, they all shared common core values that qualified as the Hindu Common Law. Mitakshara by Vijnaneswara (1,100 CE) was a compilation of the core values of Hindu Law.

1810 Mitakshara was translated into English by H. T. Colebrooke, a member of the Governor's Council and son of the former Chairman of the Company. Mitakshara had the blessings of the Council and implicitly received statutory authority subject to approval by the courts.

1817 Chief Justice Thomas Strange of the Madras High Court (Elements of Hindu Law) maintained, by authority of Colebrooke and the Council, that Mitakshara, Smriti Chandrika of Vijayanagara kings, and Sarasvati-Vilasa of Kakatiya kings were the law of the land in the Madras Presidency. Smriti Chandrika and Sarasvati-Vilasa were regional variations of Mitakshara. They were approved by local rulers as the Law of the Land for centuries and had statutory authority. Other presidencies in British India had different variations of Mitakshara. Mitakshara and its regional variations were accepted as the law of the land. Each Presidency had its own Hindu Law.

1827 A Hindu pundit was assigned to courts to give opinions based on sacred texts.

1833 Legislative authority transferred from the Company to the British.

1835 Governor-General William Bentinck, on the advice of Thomas Babington Macaulay, made English the medium of instruction in India. The English Education Act of 1835 was passed. English replaced Persian as the language of courts.

1850 Neil Baillie translated the Fatawa-e-Alamgiri into English. It consisted of two parts: Achara (spiritual) and Vyavahara (temporal). Both Achara and Vyavahara applied to Muslims, and only Vyavahara applied to Hindus. Under the Persian law, Muslims were stratified into four castes: (1) Nobles, (2) Governors and landlords, (3) Middle class, and (4) Commoners. Punishment for the same crime was different for different castes. Nobles (1) could not be humiliated, imprisoned, or punished. Governors and landholders (2) could only be humiliated. The middle class (3) could be imprisoned but not punished. Commoners (4) could be punished. Social stratification stiffened under the Persian law. Administration of the Persian law also stratified and stiffened Hindus into four castes with unequal punishment for the same crime. The word "caste" (casta) was Portuguese, similar to "gentoo" (Hindu). The Portuguese were in India only after 1,500 CE. The word "caste" meant unequal punishment for the same crime. The caste system in India was a direct and inevitable outcome of the centralized, caste-based Persian law of centuries.

1855 Indian Civil Service, based on competitive examinations, was introduced. Corruption and incompetence were widespread in the company. The company was insolvent. The British taxpayers refused a bailout.

1858 British Raj came under the Crown.

1859 Civil Procedure Code Act VIII removed the Hindu pundit from court. Pundits were dispensing ignorance as sacred texts.

1867 The Smriti Chandrika was translated into English.

1876 H. S. Cunningham (A Digest of Hindu Law of Madras) codified Madras Case Law for possible future use as Indian Statutory Law.

1878 John Mayne (Hindu Law and Usage) argued that traditions and customs (the unwritten law) have precedence over sacred books (the written law). Hindus use local customs as the law. It is customary law. Hindu law is not a written law. Most Hindus have never heard of Manu.

1879 Georg Buhler translated the Gautama Sutra, the oldest extant Hindu law text of North India, and also the Apasthamba Sutra, the oldest extant Hindu law text of South India. Apasthamba argued that customs and traditions that evolved naturally have precedence over sacred books. Mitakshara, Smriti Chandrika, and Sarasvati-Vilasa were all based on local customs and traditions.

1881 The Sarasvati-Vilasa was translated into English.

1883 Madras High Court ruled on several cases based on the English Smriti Chandrika and Sarasvati-Vilasa, setting a legal precedent.

1886 Buhler translated the Manu Smriti, Manava Dharmasastra, into English. It was an academic curiosity, ignored by the legal profession.

1947 British rule ended.

1955 The Hindu Marriage Act was enacted.

1956 The Hindu Succession Act was enacted.

The current Indian law was a synthesis of all the different Hindu laws of various presidencies.

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