

## **Evolutionary History of the Indian Law**

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

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

**1658** Aurangzeb 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 for the first time a centralized law (constitution) was imposed in India. Under the Persian law all non-Muslim were considered Sudra (infidel) 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 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 status quo. "Governor & Council" continued with the Persian Law for administration and collection of revenue. Legislative power was delegated to the Company by 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** 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 priest-craft. 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 (1100 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 Council and son of 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 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 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 advise of Thomas Babington Macaulay, made English the medium of instruction in India. English Education Act 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 Muslim and only Vyavahara applied to Hindus. Under the Persian law, Muslim were stratified into four castes: Nobles, Governors and landlords, Middle class, and Commoners. Punishment for the same crime was different for different castes. Nobles could not to be humiliated, imprisoned, or punished. Governors and landholders could only be humiliated, Middle class could be imprisoned but not punished, and Commoners 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). It meant unequal punishment for the same crime. Caste system in India was a direct and inevitable outcome of centralized caste based Persian law of centuries.

**1855** Indian Civil Service based on competitive examinations was introduced. Corruption and incompetence were wide spread 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). Hindu use local customs as the law. Hindu law is not a written law. Most Hindu 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 traditions have precedence over sacred books. Mitakshara, Smriti Chandrika, and Sarasvati-Vilasa were all based on local traditions.

**1881** The Sarasvati-Vilasa was translated into English.

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

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