Q-1. Define Partition. How is Partition Effected ? can a Partition once effected be Re-opened.

Meaning of Partition.- The Mitakshara lays down: "Partition is the adjustment of the diverse interests regarding the whole, by distributing them into particular portions of the aggregate." Thus according to Mitakshara partition is used in two distinct senses; firstly, the adjustment into specific shares the diverse rights of the different members according to the whole of family property; secondly; the severance of joint status, with the legal consequences resulting therefrom". Partition has been defined as "the crystallization of the fluctuation interest of a coparcenary into a specific share int the joint family estate".

Partition reduces the members to the position of tenant-in-common requiring only a definite, unequivocal intention on the part of member to separate and enjoy his shares in absolute severality. As soon as the shares of the coparceners are defined, the partitions is deemed affected. it is not necessary that there should be an actual division of the properly by metes and bounds. Once the are defineed, there is severance of joint status. the parties may then make a physical division of the properly or they may decide to live together and enjoy the properly in common according to Mayukha "partition is only a particular condition of the mind, where intention to separate constitutes partition it is a law by which the joint family severs and the coparcenary comes to an end. there is no need of any consent by other member Nor decree of a court or any other writing is necessary of partition. The karnataka high Court in **B.Bassamma v.K.B. sadyajathappa** has held that severance of status is brought about when shares of coparceners are crystallized by difinig their shares and once that is done the mare fact that they continued to stay together in the same house would not by itself make any legal impact on the severance of the status already brought about a subsequent conduct of the parties would only pertain the domain of mode of enjoyment of the properties.

where there is no joint properly to divide ,there can be a partition by the mere declaration "I am separate from thee" For a partition merely indicates state of mind. existence of property is not essential for partition, and reason for sevarance are immaterial. the supreme court in **Kalyani v. Narayan**, clearly laid down that to constitutes a partition all that is necessary is a definite and laid down that "to

constitute a partition all that is necessary is a definite and unequal indication of intimation by a member of joint family to separate himself from the family. what from such intimation, indication or representation of such interested should take would depend upon the circumstances of each case. a further requirement is that is this unequivocal indication of intention to separate must be to the knowledge of the person affected by such declaration.

material to gain that impression .The Madras High Court in a case laid down. that while in joint ownership the joint owners do not own anything in specie and every joint owner has a got a right, title and interest over every piece and parcel of the joint properly on partition, is joint owner comes to own and poses in severalty the property in specie according to his share. It is a division poses by metes and bounds and the allotments amongst the joint owners of the parts reletes to their shares thus putting and end of the community of the ownership.

How is Partition Effected

It is not necessary under Hindu law that the partition should be exhaust by a registered instrument .even a family compromise between the coparceners would be sufficient to effect a partition and by virtue of that they become entitled to individual share and use thereof.

According to Supreme Court, partition may be partial or total .partition could be partial with respect to the member of joint family or joint family property. When a partition takes place the, presumption is about the total partition. but where some members contend did the partition was partial with respect to members of property, onus them to prove it.

A partition can be affected by the father even during his lifetime among his sons. a partition could also take place by (i)agreement institutions of asset or two that affect,(iii)arbitration. it is not necessary for partition that the joint family property it is divided by every bit of it. The severance on the joints status could be brought about by any of the above mode and some property could be useed by the coparceners as joint tenants. The following modes of partition are important.

(1) **Partition by mere declaration.-**Partition under the Mitakshara law is severance of joint status and as such it is a matter of individual volition and

unequivocal indication of desire by single member of joint family to separate a sufficient to effect of partition.The filing of a suit for partition is clear expression of such and intention.

the oral or written Communications by coparcener could be enough to sever the joint status but the communication could be withdrawn with the consent of other coparceners and with its withdrawal partition would not take place.

In Raghvamma v. Chenchenmma, the Supreme Court laid down that it is settled law that a member of joint Hindu family can bring about a separation in status by a definite declaration of his intention to separate himself from the family and enjoy his share in severalty. Severance in status is brought about by unilateral exercise of discretion.

The Supreme Court in Puttoranganna v. Ranganna, reiterated that "it is, however, necessary that the member of the joint Hindu family seeking to separate himself must make known his intention to other members of the family from whom he seeks to separate. The process of communication may vary in the circumstnaces of each particular case. The proof of a formal despatch or receipt of the communication by other members of the family is not essential, nor its absence fatal to the severance of the status. It is of course, necessary that the declaration to be effective should reach the person or persons affected by some process appropriate to the given situation and circumstances of the particular case".

(2)**Partition by will**.-Partition may be effected by a coparcener making a will containing a clear and unequivocal intimation to the other coparceners of his desire to sever himself from joint family or containing an assertion of his right to separate." In Potti Laxiii v. Potti Krishnannta the Supreme Court observed, "where there is nothing in the will executed a member of Hindu coparcenary to unmistakably show that the intention of tho he far testator was to separate from the joint family, the will does not effect severancorof status." An ineffective will, somctimes though not always, if otherwiseconsented by all adult member's may be etfective as a family arrangement but allas the father of a joint Hindu family has no power to impose a familythearrangement under the guise of exercising the power of partition, the powerwhich undoubtedly he has but which he had failed to effectively exercisecannot in absence of consent of all members bind them as family arrangement."

(3) **Conversion to another faith.**-Conversion of a coparcener to anyother religion or faith operates as partition of the joint status as between himand other members of the family. The coparcener, who has converted, no longerpossesses the right of survivorship as he ceases to be a coparcener from themoment of his conversion and he takes his share in the family property as itstood at the date of his conversion." Reconversion of the convert to Hinduismdoes not ipso facto bring about his coparcenary relationship in absence of subsequent act or transactions pointing out to a reunion.

(4) **Marriage under Special Marriage Act, 1954.**-Marriage of a Hinduunder the Special Marriage Act, 1954 causes severance of joint status.

(5)Partition by agreement.-An unequivocal expression of the desire to use the joint family property in certain defined shares may lead the members of joint family to enter an agreement to effect a partition. The two ideas, the severance of joint status and a de facto division of property are distintict.

(6)Partition by arbitration.-An agreement between the members ot joint family whereby they appoint an arbitrator to arbitrate and divide the property, operates as a partition from the date thereof. The mere fact that no award hasbeen made is no evidence of a renunciation of the intention to separate. where all the coparceners jointly have referred the matter relating to the partition of their shares in the joint family to an arbitrator, this very fact expressly indicates their intention to separate from joint status.5 In such cases even if award is not given, their intention is not dissipated.

(7) Partition by father.--The father may cause a severance of sons even without their consent. It is the remnant of the ancient doctrine of 'Patrin Potestas'. The father during his ifetime is competent to effect such partition under Hindu law and it would be binding on his sons. It would be binding on the sons not because they have assented to it but because the father has got the power to do so, although this power is subject to certain limitations on the basis of its utility and general interest of the family. It has to be considered as to whether it is lawful in accordance with the spirit of Hindu law or not." According to Supreme Court's decision is Kalyani v. Narayanan, a Hindu father under Mitakshara law can effect a partition among his sons even in the lifetime of karta of joint family and such partition would be binding on them. In

(8)Partition by suit. -Mere institution of a partition suit disrupts the jointstatus and a severance of joint status immedia tely takes place. A decree may benecessary for working out the resultant severance and for allotting definite shares but the status of a plaintiff as separate in estate is brought about on his assertion of his right to separate whether he obtains a consequential judgment or not. So even if such suit was to be dismissed, that would not affect the division in status which must be held to have taken place when tlié action was instituted. Ordinarily a partition is affected by instituting a suit to this effect. In case of a suit for partition in joint status, father's consent to the suit for partition is no longer necessary. The son is fully eligible to file a suit for partition even during the lifetime of father.

Exception.-The general rule mentioned above will not apply where a suit is withdrawn before trial by the plaintiff on the ground that he did not want separation any more. In such a case there would be no severance of joint status. Where the suit is proved to be fraudulent transaction resorted to with an intent to create evidence of separation, no severance in the joint status takes place. If the defendant dies and the suit is withdrawn on that ground there is no separation.

Re-opening of Partition

Be-opening of partition.--Manu says "once is partition made, once is adamsel given in marriage, once does a man say, "T give thee" these are by good men done once for all and irrevocable".

Paritión made once cannot be re-opened.-When a severance takes place, the joint status comes to an end irrespective of the fact that the partition has been effected in order to defeat the claims of the creditor. If the partition is proved by mutation, it would be final, might it be done with some the u family some ulterior motive. Such partition would be binding also upon the members of the family who were joint prior to partition.

1. A son conceived at the time of partition, though not born before partition, can reopen it, if a share has not been reserved for him. On the other hand if a son is begoteen as well as born after partition, and it a share is allotted to the father, such after-born son is not entitled to have the partition re-opened and he is only entitled to succeed to his father's share and his separate or self acquired property to the exclusion of the other divided sons.

2. A Son begotten as well as born after partition can demand a re-opening of partition, if his father, though entitled to a share, has not reserved a share for himself.

3. A disqualified coparcener after the removal of disqualitication or a missing coparcener on his return can reopen the partition.

4. A minor coparcener on attaining his majority can ask for the re-opening of the partition, if it was made during his minority and was unfair or prejudicial to his interest. The Supreme Court has held that if the partition is detrimental to the interest of minor or it was improperly effected, the partition could be re-opened irrespective of the fact that there was no fraud or mis-representation or undue influence.

5. Similarly, if a coparcener has obtained an unfair advantage in the division of the shares, the partition may be re-opened for the re-adjustment of shares. The Supreme Court in **Ratnanm Clhettiar v. S.M. Kuppuswanmi**, held that where a partition effected between the members of the Hindu undivided family by their own volition and with their consent, it cannot be re-opened unless it is shown that the same is obtained by fraud, coercion, mis-representation or undue influence. When undivided family consists of minors, and partition effected therein is proved to be unjust and unfair and is detrimental to the interest of the minors, partition can be re-opened whatever be the length of time when the partition took place.

Re-union

Re-union.-Once a partition is effected as a general rule, it cannot bere-opened. However, there is an exception to this general rule which is based on a text of Vrihaspati who says, "He, who, being once separated, dwells again through affection with his father, brother or paternal uncle, is termed "reunited" The Mitakshara, the Dayabhag and the Madras School of Hindu Law interpret the above text literally and hold that a member of a joint family once separated can reunite only with the father, brother and paternal uncle but not with any other relations.

The incident of reunion must be proved like any other event. Just as in absence of a clear proof of partition, having been effected it is presumed that the family is joint,

so also, on a partition there is a presumption that the family is disjointed unless there is reunion among the members. The burden of proof of reunion is on the member who asserts it."

Effect of Reunion.-The effect of reunion is to revert the united members to their status as members of joint Hindu family But the separate property of a reunited coparcener does not pass by survivorship to the other reunited coparceners but passes by succession to his heirs according to special rules.

Q-2 Explain two main School of Hindu Law And Pointout the difference between them. ?

There emerged two schools of Hindu Law as a result of different gloss on ancient text broadly speaking, by two gigantic commentaries, namely the Mitaksharâ and the Dayabhag. The emergence of schools in Hindu law has been rightly ascribed to these two commentaries by the Privy Council. It remarked, the smritis did not agree on all points and moreover a single expression of the smritis is capable of various interpretations. The remoter sOurces of law were common to all the different schools, the commentators put their own gloss on ancient text and their authority have been accepted in one and rejected in another part of India, various schools of Hindu Law arose. The two main schools are:-

1. The Mitakshara School,and

2. The Dayabhag School.

The Mitakshara is a commentary written by Vijnaneswar in the latter half oF 11th century. The authority of Mitakshara was recognised throughout the length and breadth of the country except in the province of Bengal and Assam. But even in Bengal the Mitakshara is regarded as an authority on all questions in respect of which there is no conflict between it and the Dayabhag. The Dayabhag is of supreme authority in Bengal. The Dayabhag bears a progressive outlook towards women's property rights. It lets in women as coparceners alongwith men and thus exhibits an improvement upon the Mitakshara. There are some fundamental differences between these two schools of Hindu law. To mention a few of them are: the basis of the rules of succession, the law relating to the coparcenary and coparcenary property.

Mitakshara

The Mitakshara written by Vijnaneshwar in the latter part of the eleventhcentury is a very comprehensive commentary which deals with all titles ofHindu law. It is a running commentary on the Smriti of Yajnavalkya. Althoughthe authority of Mitakshara was accepted throughout India, yet the exact practice of law differed in different parts of the country on account otdifferences in the customary rules followed by them. Hence the Mitakshara School itself was subjected to further sub-

divisions and consequently five sub-schools developed in course of time. All the sub-schools regarded the authority of the Mitakshara as supreme but some differences between them particularly relating to adoption and inheritance made their emergence quite conspicuous. Every sub-school under the Mitakshara preferably acknowledged the authority of certain treatises and commentaries, written in a particular region. These five sub-schools are as under:-

1. The Benaras School,
2. The Mithila School,
3. The Dravida or Madras school,
4. The Bombay or Maharashtra school, and
5. The Punjab school.

Mayne writes that the variances between the sub-divisions of the Mitakshara school are comparatively few and slight. Except in respect of the Maharashtra school, the division serves no useful purpose nor does it rest on any true or scientific basis. It is to a certain extent misleading as it conceals the fundamental identity of doctrine between the so-called Mithila, Benaras, Maharashtra and Dravida schopls, etc. and suggests that there are more differences than do really exist.

Sometimes it is suggested that variance between the sub-divisions of thee Mitakshara appeared on account of the fact that the glosses and commentaries upon the Mitakshara are received by some of the schools but are not receivedd by all. Another rea son for the difference is that the commentaries in a particular province which follows the Mitakshara put a particular gloss on it and have agreed upon it among themselves. As it has been pointed out earlier, the differences between the sub-divisions of the Mitakshara related to adoption and inheritance, they have now been swept away by the two legislations, namely the Hindu Succession Act, 1956 and the Hindu Adoption and Maintenance Act, 1956. The geographical limits of these schools cannot be clearly defined, however one may say that:-

1**. Benaras School.-** The Benaras school applied to whole of Northen India except in certain regions of Punjab where customs and usages differed from the Mitakshara itself or from other work such as Virmitrodaya and Nirnaya Sindhu. The following commentaries besides the Mitakshara are accepted in this school:

1. Virmitrodaya 2. Dattaka Mimansa 3. Nirnaya Sindhu

Vivada-Tandava 5. Balambhatti, and 6. Subodhini.

2. **Mithila school**.-This school prevailed in Tirhoot and North Bihar. The Mitakshara was kept in high steem here and the law laid down by it was fully acceptable to them except in few matters. It was rightly observed by the Privy Council that 'the law of Mithila school is the law of Mitakshara except in a few matter in respect of which the law of Mithila school has departed from the law of the Mitakshara'. Besides Mitakshara, the following commentaries are acceptable to this school:-

1. Vivad Ratrakar, 2. Vivad Chintamani 3. Smriti-sara or Smriti Tattvasara 4. Madan Parijata.

3. **The Dravida or Madras school**. -The whole of the province of Madras is governed by this school. This school was sub-divided into Tamil, Kamatak and Andhra school for which, however, there was no justification. The following commentaries are held in high esteem in this school:-

1. Smriti Chandrika, 2. Parasara Madhavya, 3. Saraswati vilas, 4. Virmitrodaya, 5. Vyavhara Nirnaya, 6. Dattaka Chandrika,.7. Dayavibhag, 8. Kesava Vaijayanti, 9. Madhavi, 10. Nirnaya Sindhu, 11. Narada Rajya, 12. Vivada Tandava.

4.**The Bombay or Maharashtra school-**This school prevails in almost whole of Bombay or Maharashtra including Gujarat Kanara and the parts where Marathi language is spoken as local language. The authority of followin Commentaries besides Mitakshara was accepted in this school:-

1. Virmitrodaya, 2. Nirnayasindhu, 3. Parasara Madhavya, 4. Vivada Tandava.

5. The Punjab School.-This school prevailed in the north-west part of the country, called the East Punjab. This school is chiefly governed by customs The following authorities are mainly accepted in this school:-

1. Mitakshara, 2. Virmitrodaya and 3. Punjab customs

Dayabhag

As pointed out carlier, the Dayabhag was a commentary by Jimutvahana and its authority prevailed in Bengal and Assam. The Dayabhag is a digest on the leading smritis. It primarily deals with inheritance, partition and joint family The period of its composition, according to Kane is between 1090-1130 A.D. But the period of Dayabhag is disputed. According to Siromani Jimuta refers to the opinion of Srikara, Bhajdeva, Vishwaraf and Govindaraja. He never expressly refers to the Mitakshara. But his whole work may be said to have extensively made use of the doctrines of the Mitakshara although at times those doctrines, he

had assailed mercilessly.....In some places, jimutvahana has apparently controverted the doctrines of Vachaspati. Had Vachaspati been a later author hne would have taken care to refute Dayabhag. It is not unlikely that Vachaspati was a contemporary of Jimuta. In that case Jimuta must have lived in the 15th Century. The latter view about the period of Dayabhag appears to be logically founded.

In the words of Prof. Sarkar: The Dayabhag was supposed to have been written by way ot revolt against many artificial and sometimes even absurd principles ot inheritance, based on theory of propinquity conscious of the shortcomings and limitations of Vijnaneshwar's doctrine. Jimutavahana propounds the theory of spiritual benefit for the governance of the rules of succession. The immediate benefit of this new theory was the inclusion of many cognates in the list of heirs, excluded by the Mitakshara which was mainly agnatic.

Differences between the Mitakshara and Dayabhag school

The main points of difference between the Mitakshara and Dayabhag are as follows:-

(1) As regards joint property.-Under the Mitakshara-

1. The right to property of the coparcener arises by birth, hence the so is a co-owner with the father in ancestral property, whereas under the Dayabhag the right to property arises after the death of the last owner. Hence the son has no right to ancestral property during father's life time.

2. Under the Mitakshara the father has the restricted power of alienation of ances tral property whereas the father has the absolute power of alienation of ancestral property under the Dayabhag school.

3. Under the Mitakshara the son can ask for partition of the joint family property even against the father, whereas under the Dayabhag the son cannot demand partition against the father.

4. The interest of a member of joint family under the Mitakshara would, on his death pass to other members by survivorship whereas under the Dayabhag, the interest of a member would, on his death, pass by inheritance to his heirs namely widow, son and daughters.

5. Under the Mitakshara, members of joint family cannot dispose of their shares while undivided, whereas under the Dayabhag any member of joint family may sell or give away his share even when undivided.

The modern Hindu Law does not affect the joint family system of Hindusand therefore both the Schools with their differences still operate. The Hindu Succession Act, 1956, affects the Mitakshara joint family only on its fringes.

(2) As regards inheritance.

1. Under the Mitakshara, inheritance is governed by the rule of consanguinity i.e., blood relationship, whereas under the Dayabhag inheritance is governed by the rule of religious efficacy i.e., offering of Pindas.

2. Under the Mitakshara, cognates are postponed to agnates but under the Dayabhag some cognates like sister's sons are preferred to many agnates.

3. As regards the recognition of the doctrine of factum valet, Mitakshara extended its recognition to a very limited extent but Dayabhag has extended its full recognition to it.

Under the modern Hindu Law, the difference between two main schools is no longer tenable. Under the Hindu Succession Act, 1956, we have one uniform law of succession for all Hindus, to whatever school or sub-school they may belong.

Q-3 Discuss- the various sources of Hindu Law?

VARIOUS SOURCES OF HINDU LAW

According to Hindu orthodox view there was an inseparable relationship betwéen 1law and Dharma. The sources of Dharma and law were common. Manu has accordingly described four sources of Dharma which are the sources of law also. Manu said, "Vedas, Smritis, approved usages and what is agreeable to one's conscience are the four direct evidences of Dharma", ie., law Yajnavalkya also has similarly spoken about the four foundations of Dharma Shrutis, Smritis, approved customs and whatever appears agreeable to oneself and which is the outcome of right determinations. On the one hand the last expressions used by him in fact do

not grant a licence to act according to ones wishes but on the other hand permit one to act in accordance with any of the options enjoined by Dharmashastras. Yajnavalkya further pointed out fourteen sources of law which constitute four Vedas, Six Vedangas, Dharma Shastras, Nyaya, Puran and Minansa."

Kumaril in his famous work Tantra Vartika' has laid down that although Manu Smriti is broadly based on the Smritis written earlier yet it is unique in its originality. It establishes its identity by laying down new propositions of law. Broadly the sources of law can be divided into the following two heads:

(1)Ancient sources, which include the following-

(a) Shrutis;

b)Smritis;

(c) Commentaries and digests; and

(d) Customs.

(2) Modern Sources, which include the following:-

(a) Judicial decisions;

(b) Legislations;

(c) Justice, equity and good conscience.

Ancient Sources

(a) Shrutis.- The word shruti has been derived from the verb 'Shru' which means "to hear". Shruti stands for what has been heard. It is generally believed that the Shrutis contain the words of God which came down to usthrough the seers and sages. These shrutis occupy the most exaulted position for spiritual bearing. They are not so much useful for the knowledge of the positive law. These shrutis including Upnishadas constitute the complete codes of the spiritual learning which are helpful in the attainment of salvation. However, they are regarded as the oldest sources of law. Rigveda is first and foremost among the shrutis for the knowledge of law. It comprehensively deals with the duties of a King. It contains a detailed description of laws which the King shall have to follow in the administration of

justice. The King was required to punish the offenders and to uphold the law. Among Vedas Rigveda distinguishes itself for its jurisprudential value. The Rigveda enjoins observance of the ancient rules of 'Adi Manu'. "Do not take us far away from the path (rules of Dharma) prescribed by Manu and came down to us from our forefathers The following are the four Vedas:

(a) Rigveda,
(b)Yajurveda,
(c)Samveda,
(d) Atharvaveda.

(b) Smritis.- The term Smriti literallý means what has been remembered. These Smritis are recollections of human mind put in a consolidated form. According to some scholars they were edited by those seers upon whom the knowledge of Vedas descended. They have been therefore regarded as much an authoritative source of law as Shrutis.

They are also known as Dharamshastras, constituting the foundations of law. They are collections of precepts handed down by Rishis or sages antiquity. They are composite in their character and they blend religious, social and legal duties, They contain some metaphysical speculations, matsers sacramental in nature and also rules of legal rights and obligations, The rules of law laid down in these Smritis are not controversial and their superiority is not doubted by anyone. Thesę, smritis can be classitied into two categories: (1) Primary and (2) Secondary

Secondary Smritis are the latter works. Among the primary Smritis are the Dharmasutras. Gautam, Bandhayana, Apastamba, Vasishtha and Vishnu are the chief Sutra Karas. Manu, Yajnavalkya, Narada and others are chief exponents of Dharmashastras.

The Smritis designated as Dharmasutras were written in prose style and the Smritis other than Dharmasutras were written in shlokas or metrical verses. The Dharma Sutras are more ancient and are sometimes differentiated from the Smritis or Dharmashastras written in verse form and specifically referred to as the Smritis.

The period of these Sutras and Gathas vary approximately between 800 B.C. and 200 B.C. They contain a vivid description of human duties. They were composed in different parts of this country in different periods. These Sutras and Gathas do not contain opposite views. The legal principles laid down in the Smritis have been based on old Gathas and aphorism of Sutras. The customs and usages have been given due recognition and their role in the evolutions of law have been acknowledged by all the Smriti Karas.

Besides the above Dharmashastras the Ushna and Hirandyakash of Shankh and Sutras of Kashyap are extremely important as they contain a critical exposition of law. The Nirukta of Yaksha is full of legal proverbs and injunctions which exhibited remarkable development of legal rules.

The Smritis which are in Shlokas' are popularly known as dharmashastras. The most important dharmashastra writers are Manu, Yajnavalkya, Narada, Vishnu, Devala, Brihaspati, Katyayan and Vyas. Manu stands foremost among all the Smritikaras and Brihaspati has himself admitted this fact. According to him, Manu has very ably explained legal precepts found in Vedas. Any later Smriti which came in contlict witn Manusmiriti could not be taken as authoritative. Chronologically after Manusmriti comes the Smriti of Yajnavalkya which 1s equally important. The Mitakshara, a commentary on Yajnavalkya Smriti itselt won great recognition throughout the length and breadth of this country. ro Stenjeller is of the view that the Yajnavalkya Smriti is broadly based lanusmriti and is of immense importance from point of view of knowleage of legal rules.

After Yajnaval kya Smriti, the Smriti of Narad is of still greateres importance for its comprehensive narration of legal rules. It is one of the distinguishing features

of these Smritis that they deal separately with the positive law and devote full chapter on it. Manu and others have divided the positive law into eighteen titles and hundred and thirtytwo sub-titles. They the contain connected procedural laws with respect to these titles and sub-titles.

Smritis are foundations of Hindu law. Juristically they occupY anand important position. They contain vivid exposition of all such laws which are generally relevant for regulating the conduct of man in various areas in modern the times also. The rules incorporated in these Dharmashastras bear distinct asreflections of the changing needs of society.

Manu's code in its present form appeared to have been compiled in 200 B.C. The rules of law contained in it are believed to have come down trom Manu, the first patriarch.

Arthashashtras.-Arthashashtra period of during written the was Chandragupta Maurya sometimes about 300 B.C. It is of no less importance in the history of the legal development in India. It dealt with the political administration in general, devoting chapters exclusively to the treatment of law.

(III) The Dayabhag-It is the chief commentary in Bengal, compiled by Jimahana in 13th century It mainly deals with law of inheritancepartition. In respect of these two, the work of Jimutvahana fundamentally ditfefrom Mitakshara. It recognises neither the son's interest in the coparcena property by birth nor his right to demand partition, while the father is alive goes to his heirs by sucession. In Dayabhag law he has absolute power of disposal of property by sale, gift, or Will or otherwise his separate as well as ancestral property It is an authoritative work on partition, inheritance and Stridhan for whole of Bengal. This work has an appeal to reason but not to The precepts and precedents. Dr. Jolly regards it as one of the most striking compositions in the whole department of Indian Jurisprudence.

(iv)Other commentaries.-The authority of commentaries differed from provinee to province and hence various schools with different doctrines arose each school accepting one or the other commentary as a paramount authority Even the remoter sources of Hindu law enjoy recognition anmong all the schools Thus in Mithila, the two commentaries, namely Vivad Chintamani and Vivad Ratnakar, in Southern

India, the Smriti Chandrika, Saraswathi Vilas and un Madhavya, in Bombay Vyavhara Mayukha came to be recognised as most authoritative work.

Conflict of laws in the texts.-When there were conflicting texts in Srutis or in Smritis on a peint of law, it was resolved with reference to the practice accepted widely by the public. But when there was conflict in the texts of a Sruti and that of a Smriti, the texts of Srutis were taken to be authoritative. According to Yajnavalkya, in case of differences in the texts of Smritis the law was settledon the basis of the practice prevailing in society. Dharmashastras and widely accepted practices were treated to be superior authority to Arthshastra." As regards the interpretation of the texts of Smritis, the law givers had laid down their own rules of construction. Jaimini's Mimansa is an important work in this connection, which contains a detailed account of rules of interpretation There appeared several commentaries on Mimansa.

Treatises on Adoption-Besides the above works, Dattaka Chandrika by Kuber and Dattaka Mimansa written by Nanda Pandit are two chie authorities on the law of adoption. These two works command great respect throughout India except that, wherever they differ the former is preferred in South India and Bengal and the latter in Benaras and Mithila. In addition to the commentaries two digests, namely Vivadarnava Setu commonly known as Halhed's Code compiled at the request of Warran Hastings and and Vivada Bhangarnava complied by Jagannath Tarakpanchanan at the SEters instance of Sir William Jones were prepared during the British rule. enany In modern times, the commentaries and digests have been assigned Ne. It superior authority because they, though professing to interpret the Smritis, have er considerably modified the old law in accordance with the views of the writers Of and according to the changes of times. At present they have greater recognition AS and any other Sanskrit works. Accordingly "in the event of any conflict between the ancient text writers and the commentators, the opinion of the latter must be accepted."" Although the commen tators might have been wrong in their hole interpretations of original text, their opinion should have primacy, for, they have the sanction of usages. Under the Hindu system of law clear proof of usage will rom outweigh the written text of law.

(d) Customs,- The Hindu Law, of which Srutis and Smritis are the two important sources, as a matter of fact, reflect the contemporary customs ot the society, great

importance is attributed to the customs, because the King was expected to adjudge the disputes according to custom, and custom could predominate or outweigh the law made by the King. In simple sense custom means a uniform behaviour with a belief that it is compulsory to follow such mode of conduct. In another way to say, a conduct which people feel obligatory to practice. A custom, which is a mode of conduct, arises by the practiceinitiated by the people in the society."

Modern Sources

(a) Judicial Decisions.- Judicial decisions pronounced by the courts upon the various points have also developed as sources of law. Now all the important points of Hindu law are found in the law reports. Since the law propounded by the courts have the effect of superseding the commentaries, they have assumed greater importance. The decisions of Privy Council and Supreme Court are binding on all the courts including High Courts) The decisions of the High Court are not binding on any other High Court although they are binding on the courts subordinate thereto. Thus the decisions of Privy Council, Supreme Court and those of the High Courts constitute precedents to become important source of law. Bose, J. observed The laws we are administering are judge-made laws. The ancient sages said nothing about the present matter and even where they often spoke with contlicting voices, and when they did it, sometimes spoke so enigamatically that the learned and able commentators were unable to agree as to what they meant.

(b)Legislation.-Legislation is the modern source of Hindu Law and has aedfossal importance, in the evolution of moderm Hindu law. The legislations have the effect of reforming the law and in certain respects have superseded the textual law. Prior to the British regime, Hindu law was subjected to divere practices in different parts of the country on account of differences in thee commentaries and Digests. Codification of law in the light of changes which had taken place in the course of time was a necessity. The British Govermment itself passed oertain Acts with a view to bring some reforms in certain aspects of law In post-independence era, legislations of far-reaching effect have revolutionised the the law relating to marriage, adoption, maintenance, succession, minority and guardianship.

1)The Caste Disabilities Removal Act, 1850-Under the Act a person renouncing his religion or losing his caste is not deprived of his rights of Him inheritance.

2)The Hindu Widow's Remarriage Act, 1856.-The Act legalised remarriage of Hindu widow and made clear provisions with respect to their rights and disabilities on remarriage.

(3) The Native Converls Marriage Dissolution Act, 1866.-The Act permitted Hindu converts to Christianity to get dissolution of marriage under certain circumstances. Under the pure Hindu law marriage being considereda sacrament could not be subjected to dissolution.

(4)The Special Marriage Act, 1872.-The Act permitted marriage between persons having different castes and different religions. It was amended in 1923 and has been repealed by the Act 43 of 1954.

(5) The Indian Majority Act, 1875.-The Act fixes the age of majority onthe completion of 18th years except in matters of marriage and adoption, fot which the rules of old Hindu law continued to apply.

(6) The Trans fer of Property Act, 1882.-The Act superseded the Hindu law relating to the transfer of property excepting certain gifts.

(7) The Guardian and Wards Act, 1890.-It provided for the appointment of guardian for the welfare of minors.

Customs and Usages.-Customs and usages in general have played a vital rote inthe-evolution of law, but in Hindu law they have special significance. Kealising the importance of customs and usages, the Privy Council in one of its decisions clearly stated that "a clear proof of usage will outweigh the written texts of law." Custonm is believed to be based on long established practices and unrecorded revelations. Its observance has been invariably insisted by the ancient Dharamashtra writers. Custom in its legal connotation means a rule which in a particular family, class or district has from long and continuous usage obtained the force of law. It must be ancient, certain, reasonable and continuous. Where it is fqund to be in derogation of general rules of law it must be strictly construed.