

**A DIGEST OF HINDU LAW,  
AS ADMINISTERED  
IN THE COURTS OF  
THE MADRAS PRESIDENCY**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649037667

A Digest of Hindu Law, as Administered in the Courts of the Madras Presidency by H. S. Cunningham

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.  
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

[www.triestepublishing.com](http://www.triestepublishing.com)

**H. S. CUNNINGHAM**

**A DIGEST OF HINDU LAW,  
AS ADMINISTERED  
IN THE COURTS OF  
THE MADRAS PRESIDENCY**



A  
Ck  
D I G E S T  
or  
H I N D U L A W,

AS ADMINISTERED IN THE COURTS OF THE  
MADRAS PRESIDENCY.

Arranged and Annotated.

BY  
H. S. <sup>evvy</sup> CUNNINGHAM, M.A.,  
ADVOCATE-GENERAL, MADRAS.

o  
Printed by  
HIGGINBOTHAM AND CO.  
By special Appointment to H. H. H. The Prince of Wales.  
1877.

IN  
903MA  
C. S.

To

The Hon'ble Sir WALTER MORGAN,

*Chief Justice of the High Court.*

MY DEAR CHIEF JUSTICE,

It gives me great pleasure to be allowed to dedicate this little work to you. My aim has been not to codify the Hindu Law or to add to the already large amount of information concerning it which the labors of others have brought within our reach, but merely to express and arrange it in such a manner that the codifier of the future may find the material ready to his hand and that in the meantime each proposition, of which it consists, may be exposed to that general criticism, which is essential to sound and wise legislation. It is with reference to these objects that I venture now to commend it to your good will and that of the Profession.

Believe me,

My dear Chief Justice,

Your faithful Servant,

H. S. CUNNINGHAM.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It is essential for the company to have a clear and concise system in place to ensure that all financial data is properly documented and accessible. This includes keeping track of income, expenses, and assets, as well as maintaining a detailed ledger of all accounts.

In addition, it is crucial to establish a strong internal control system to prevent fraud and errors. This involves implementing strict policies and procedures for handling cash, inventory, and other valuable assets. Regular audits and reconciliations should be conducted to identify any discrepancies and address them promptly.

Furthermore, the document emphasizes the need for transparency and accountability in all financial reporting. Management should provide regular updates to the board of directors and other stakeholders, ensuring that they are fully informed of the company's financial performance and any potential risks.

Finally, it is important to stay up-to-date on the latest financial regulations and tax laws. Consulting with a professional advisor can help the company navigate these complex requirements and ensure full compliance.

## PREFACE.

---

THE rulings collected in the present volume have been arranged in such a form as may indicate the possibility of their enactment in a Code if at any time hereafter the Government should consider this desirable. Every student is familiar with the excellent treatises in which the sources of Hindu Law and its gradual development into its present form are explained, and I have aimed at nothing in the present digest but to state the doctrine, finally laid down, in a series of short, distinct and carefully worded propositions.

At present the law is to be found (1) in the primitive texts and the authoritative commentaries thereon, which, though of course, of the highest possible interest and importance, are not only in many instances obscure or contradictory, but have in numberless particulars been superseded by custom, and so become obsolete; (2) in treatises of more or less research and authority, especially the standard works of Mr. Colebrook and Sir T. Strange; (3) in the Reports of the Law Courts in India and of the Judicial Committee of the Privy Council.

The combined result of the two latter agencies has been to carry through to a great extent the process of ascertaining what portions of the ancient Hindu Texts are binding Law as opposed to mere moral precept or advice; what portions are to be regarded as religious duties as opposed to legal duties; what portions are mere excrescences due to the period of extreme Brahminical supremacy and may be disregarded altogether; what portions, though unquestionably belonging to the ancient Codes, have been gradually superseded by the progress of society to a condition for which those Codes were never intended and to which they are to a great extent inapplicable.



This has been of course a most difficult and delicate process ; and the Law Courts have from time to time experienced great embarrassment either in determining not to enforce parts of the written law on the ground of their having become obsolete, or in applying the law to a state of things for which it did not provide. The extent of a Hindu's Testamentary power, for instance, was a matter which, as the testamentary power was unknown to the ancient law, the Judges were driven to decide, as best they could, by analogy, convenience and custom. On the other hand the universal practice as to consanguinity in marriage is in direct defiance of the clearest precepts of the ancient law and can be upheld in our Courts only on the ground that custom has superseded the written law.

A task, beset with difficulties so grave, depending in a large measure for its solution on the personal researches and independant exertions of various minds, involved of course numerous divergencies of opinion and a large accumulation of the materials on which these divergent opinions were based. Sir T. Strange's work has been in the hands of the public for nearly fifty years. The Courts of the Presidency towns have been at work for a century, with the assistance, at first, of native expositors of the law and, subsequently, of the additional translations of ancient Treatises which the labors of Sanscrit scholars brought within their reach : thousands of decisions have been given, those decisions again have been criticized, affirmed, modified or set at nought : the result is a large mass of material from which the law may be extracted, and a correspondingly large amount of uncertainty as to what the law, so to be extracted, really is. How great that uncertainty is—how faltering and vague the utterances of authority often are—how complete the revolutions of doctrine that our Courts from time to time undergo, are points on which there is, I believe, no difference of opinion among those who are in any degree familiar with the present administration of the law. Suffice it to say that the uncertainty affects every detail of Hindu life from first to last. Moreover, not only are there serious differences of opinion, but where there is agreement, the doctrine is laid down in language sometimes loose and inaccurate, sometimes argumentative or rhetorical, sometimes with reference to some particular set of facts which

render it an inaccurate exposition of the general law, almost always surrounded by an envelopment of circumstances, necessary to be considered for the decision of the particular case, but unnecessary and therefore obscuring, as regards the exact point of law to be determined. The student, who starts with some primitive Text, finds it contradicted by some equally venerable authority, explained into new meanings by the glosses of commentators, interpreted one way by one Court and in another by a second, both decisions modified by a trimming judgment of a third, arrives at the end of his inquiry, certain of nothing but that certainty is unattainable.

Nor does this state of things possess the merit of satisfying those, whom, at any rate, it might be supposed to please, the scholars who have made Hindu Law their especial study and regard it with especial interest. On the contrary it is from Sanscrit scholars that come the loudest protests against misapplications or misinterpretations of the ancient Texts, and two civilians are, I understand, at this moment engaged on works which have for their object to show how widely our Courts have departed from the primitive canon.

The first remedy for this state of things appears to be for some one to endeavor to express the general results arrived at in a form sufficiently distinct and concise to allow of its correctness being readily tested. So long as a legal doctrine is, so to speak, in solution, diffused through some bulky material, and concealed thereby from exact observation or crucial experiment, the difficulty of accurately criticizing it, ascertaining its precise force, detecting its unsound parts, separating it from extraneous matters, is enormously increased. It is only when it is stripped of all adventitious surroundings and made to stand out in naked simplicity that we are able to judge properly of its claim to acceptance.

I have endeavoured therefore throughout this work, while adopting as far as possible the language in which the authoritative exponents of the law have thought fit to express it, to state the doctrine in each instance in language, which, however crude, harsh or inelegant, shall, at any rate, convey with distinctness and completeness the precise meaning intended. This is, as it seems to me, the one great

desideratum in a law book, and the only beauty or elegance of which legislative language admits.

I have no doubt that I shall be found to have frequently failed, and I shall trust to the good offices of my critics hereafter to set me right where ignorance or inadvertence has occasioned a lapse. But I believe that the following pages will be found to contain a statement, on the whole correct, of the results at which the Courts have arrived in their interpretation of the law, and that I shall have done a useful work in exhibiting those results in a manner sufficiently intelligible and compendious to bring them readily within the ken of any one, whether student or not, who wishes to have a distinct idea of what the Hindu law is.

My principal motive, however, for giving the work its present form is that I hope thereby to help forward what seems to me the greatest possible desideratum for the country—the codification of the law.

The prejudice which at one time was felt in certain quarters against legislation, and especially against legislation for the purposes of codification, and which ten years ago Sir H. Maine felt sufficiently general and strong to demand express notice in the Legislative Council, has, I imagine, at the present day, either wholly ceased, or is confined to such narrow limits as to be entirely unimportant. Civil officers have come to recognize the truth, that, though the existence of any law is a restriction, occasionally inconvenient or distasteful, on their freedom of action, yet that, if there is to be a law, the more clearly it is arranged and expressed, the easier is the task of those whose business it is to administer it.

Successive repealing Acts have been driven with courage and success through the wilderness of obsolete, contradictory or superfluous enactments which at one time beset every department, civil or criminal, of Indian law; and, so far as the administrative machinery of the country is concerned, it may be said that, though much room still is left for improvement in detail, the work of legislation has either been completed or has been advanced to a stage at which completion may, at no distant date, be reasonably expected. Several great chapters of general law—Contracts