Volume 18 Issue 29
Originally issued as A4



Global Journal of human-social science: A
Arts & Humanities - Psychology
Volume 18 Issue 4 Version 1.0 Year 2018
Type: Double Blind Peer Reviewed International Research Journal
Publisher: Global Journals
Online ISSN: 2249-460X & Print ISSN: 0975-587X

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GJHSS-A Classification: *FOR Code: 440201*



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A Beneficial Resemblance of the Origin of Hindu Law: Religious Observation

Shah Mohammad Omer Faruqe Jubaer [α], Samia Rahman Chowdhury [σ] & Nomita Rani Deb [ρ]

Abstract- **This paper aims to improve our understanding about the prevalence and determinants of Hindu law in both historical and comparative perspectives with an introductory reflections on the nature and role of law in society, the inter relationship between religion and their sources in general, further issues covered include the triple origins of Hindu law in priestly codes, Dharmaas religious law and the controversy over religion and secularism in the courts today. Attention is given to definition of the category 'Hindu', attempts to legislate the universal structure of Hindu Scriptures as It is especially pertinent for students interested in comparative legal theory of Hindu law; the inter sections of law, religion, and religious practices; and the role of law in determining or reforming the social** order.

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I. Introduction

Hindu law cannot be separated from morality and culture-specific ethics in the broader sense of practices and social realities or relativities on the ground.[1] To do so is to impose the template of a much later development of the idea of 'law' from the natural law tradition and the Roman secular version[2] Dharmasastra is a rhetoric of law, a "meta-discourse" in Olivelle's phrase and more closely resembles modern textbooks or training manuals that legal codes or legislation. Training in Dharmasastra led in the originally put to a knowledge of how law managed in theory, i.e. a knowledge of theologically motivated jurisprudence, and only secondarily to a knowledge of what the law was, i.e. lawyer's knowledge of substantive law. Part of the reason for this is the fact that substantive law and dharma itself derived its content from sources beyond the dictates of the sastra, namely the standards [normative ethos] of good people (sadacara) and personal preference (atmatusti). While its is likely that a significant proportion of rules in Dharmasastra had, at some place and time, a practical reality, that reality in most cases existed prior to the text, which "records" the law in particular way.

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[1] Several chapters in Indian Ethics volume, in particular J N M.
[2] Scruton (indication in Sally works chapter 7)

II. Methodology

This study based on secondary sources and invariable beneficial analogical appliance of research method by balancing antithetic applicable rules regarding main source of the applications of Hindu law. The secondary sources which have been reviewed are: books, journals, reports, news papers and data from various official and unofficial sources. Internet sources have also used to collect informations on the principle of Darshans under Hindu law.

a) Objectives of the study

Against the milieu of the set statement, the main objectives of the study are as follows:

i. To examine how the arrangements and principles of Darshans applied in Hindu Law.
ii. To identify and equate with the various Scriptures relating to Hindu Law
iii. To perceive and detect the reliability and changeability of the acceptability of Agama alongwith Itihasa in diverse facets of Hindu Law.
iv. To signify the outcome of extension and deliberate Justification of Sanskrit and Hindu Scriptures.
v. To become aware of the split application of different scriptures of Hindu Law.

Who is a hindu: A Hindu is he who believes that the Vedas contain self-evident and axiomatic truths and who believes in a religion which has originated in India." "A Hindu is one who regards India as his motherland and the most sacred spot on earth." Some others define: "He who calls and considers himself a Hindu is a Hindu." Some define: "He who accepts the Vedas, the Smritis, the Puranas and the Tantras as the basis of religion and of the rule of conduct, and believes in one Supreme God (Brahman), in the Law of Karma or retributive justice, and in reincarnation (Punarjanma), is a Hindu. There is no correct and complete definition of " Hindu" but for a narrative definition we may consider this "He who is a follower of the Vedanta and He who has perfect faith in the Law of Karma, the law of reincarnation Avatara, ancestor worship, Varnashrama Dharma, Vedas and existence of God, he who practices the instructions given in the Vedas with faith and earnestness, he who does Sandhya, Sraaddha, Pitri-Tarpana and the Pancha-Maha-Yajnas, he who follows

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the Varnashrama Dharmas, he who worships the Avataras and studies the Vedas, is a Hindu.[3]

Dharma-shastra: the words derived from Sanskrit which means Righteousness Science. the ancient Indian body of jurisprudence that is the starting point, theme to legislative modification, of the family law of Hindus living in territories both within and outside India (e.g., Pakistan, Malaysia, East Africa). Dharma-shastra is primarily concerned not with legal administration, though courts and their actions are dealt with comprehensively, but with the right course of conduct in every dilemma. Some fundamental principles of Dharma-shastra are known to most Hindus brought up in a conventional environment. Those include the proposals that duties are more significant than rights, that women are under perpetual guardianship of their closest male relatives, and that the state must protect the subjects from all harm, moral as well as material.

Hindu Law and Hinduism: The term "Hindu law" was coined by the British Orientalists and administrators in the later 18th century to refer to the general system of law preponderating among the Hindu majority before the British Colonial encroachments.[4] Principles of Hindu Law emphasizes that for the ancient Hindu his 'law was revelation, immutable and eternal Shruti [as Vedas] was the fountainhead of his law.[5] Next is smrti (smriti), the immemorialized or 'memorized' tradition [6] on the other hand Hinduism has no founder or date of origin. The authors and dates of most Hindu sacred texts are unknown, although the oldest text (the Vedas) are estimated to date from as early as 1500 BCE. Scholars describe Hinduism as the product of religious development in India that spans nearly 4,000 years, making it perhaps the oldest surviving world religion. inclusive of the commentaries and digests which as a corpus is transmitted through the sages and scribes and as such forms Hinduism's literary and religious canonical texts with implications for social and cultural, also political, practices. [7] But the term "Hinduism" encompasses a wide variety of traditions, which are closely related and share common themes but do not constitute a unified set of beliefs or practices. Hinduism is not a homogeneous, organized system. Many Hindus are devoted followers of Shiva or Vishnu, whom they regard as the only true God, while others look inward to the divine Self (atman). But most recognize the existence of Brahman, the unifying principle and Supreme Reality behind all that is.

b) Origin of Hindu Law and Hinduism

That part of the great Aryan race which migrated from Central Asia, through the mountain passes into India, settled first in the districts near the river Sindhu, now called the Indus, on the other side of the river. The Persians pronounced the word Sindhu as Hindu, and named their Aryan brethren Hindus. Hindu is only a corrupt form of Sindhu. The Hindu Aryans spread themselves over the plains of the Ganga. Then the Persians gave the name Hindusthan, or abode of the Hindus, to the whole of those districts between Punjab and Benaras.[8] In perception of pullock Hindu Shastra is a 'cultural grammars' that both reflect and regulate practice .[9]

But there are so many religious reference that manifestly create a scenario of the three foundational elements - scriptural authority, tradition, 'exemplary conduct', and only marginally custom, are said to underwrite the central principle of Hindu life, known as dharma (righteous order and obligations).[10]

c) Sanskrit literature and Hindu Law

The literature of Hindu shastra is divided into two main periods: the Vedic period and the Sanskrit When classical Sanskrit preponderate. The Sanskrit means perfected and the language was adopted as an improvement of the Vedic. Sanskrit literature can be classified under six orthodox heads and four secular heads. The six orthodox sections form the authoritative scriptures of the Hindus. The four secular sections embody the later developments in classical Sanskrit literature.

Nearly all Sanskrit literature, except that dealing with religious construction, is in verse. The first period of

[3] It is the scholastic system of the Maxims that has gone to the greatest length to preserve the epistemological and moral autonomy of the Vedas, bereft of a supreme transcendent authority. See P Bilimoria, 'The Idea of Authorless Revelation', in Perret.

[4] Donald Davis Jr Review of Menski, p-735

[5] 17th ed New Delhi: Butterworths, 1998

[6] Flavia Agnes, describes the smriti as 'the memorized word' (op.cit. p.12), while Robert Lingat's seminal work The Classical Law of India, Oxford University Press (New Delhi), 1998, simply describes smriti (or smrti) as 'tradition', pp.7-8.

[7] A. M. Bhattacharjee cites several modern scholars and writers on Hindu Law who appear to be committed to this characterization, notably, Mulla in his, Principles of Hindu Law, 14th Ed. 1974, p. 77; Mayne's Treatise on Hindu Law and Usage, 11th Ed., 1953, p. 19 [and add others on page 13]; including J D M Derrett, Paras Diwan, Tahir Mahmood et al. Menski also takes them and a few others to task on this score. And Fyzee repeats the stereotype introducing God in connection with dharma for the Hindus, in his Outlines of Muhammadan Law p 15.

[8] Latest historical researches have now proved that the Aryans did not come from outside India, but were the original inhabitants of India.

[9] Sheldon Pollock, 'Playing by the Rules: sastras and Sanskrit Literature', in Dallapiccola, A.L., and Lallemant, S. Zingel-Av, eds. The Sastric Tradition in Indian Arts, Weisbaden: Steiner, 1989, pp. 301-12, p. 301.

[10] Derrett includes sruti and smrti under Dharmasastras, which is the only category he otherwise notes as the sources of 'Anglo-Hindu Law'. Paras Diwan lists (1) sruti, (2) smrti (3) Digests and Commentaries, and (4) Custom. Whereas Tahir Mahmood describes Hindu Law as 'that body of law in its entirety which originated from religious scriptures of various indigenous communities of this century'. All cited in A M B, p 13

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the Sanskrit age is one of epics, they are separated into two main assemblage

i. The natural epic (Mahabarata)
ii. The artificial epics (Ramayana)

The subject matter consecutively became subsidiary to form, and intricate laws were setup to regulate style.

d) Scriptures in Hindu Law

The Vedas positively ordain injunctions and moral responsibility toward performance of sacrifice and rules are set down for the correct recitations and incantation of mantras accompanying this performative act. There are even exhortations towards certain 'alterity' virtues, such as 'gift giving' (dāna), welcoming the guest (atithi), and care for the ancestors.[11]

The six scriptures are: (i) Srutis, (ii) Smritis, (iii) Itihasas, (iv) Puranas, (v) Agamas and (vi) Darsanas.[12]

Shruti: is a Sanskrit word which means "What Is Heard" in Hinduism, the most-revered body of sacred literature, measured to be the artifact of divine revelation. Shruti works are considered to have been heard and transmitted by earthly sages, as contrasted to Smriti, or that which is remembered by ordinary human beings.[13]

Smriti: it means Recollection that class of Hindu sacred literature based on human memory, as distinct from the Vedas, which are considered to the product of divine revelation. Smriti literature elaborates, interprets, and codifies Vedic thought but, being derivative, is considered less authoritative than the Vedic Shruti. Most modern Hindus, however, have a greater familiarity with Smriti scriptures. The Smrti literature is a corpus of diverse varied texts.[14]

The *Smrti* texts structurally branched, over time, from so-called the "limbs of the Vedas", or auxiliary sciences for perfecting grammar and pronunciation (part of Vedāngas).[15] the Dharmasūtras, the Arthasaśāstras, the Purānas, poetical literature, extensive *Bhasyas* and numerous *Nibandhas* covering politics, ethics .[16]

Purana: the purana are ancient Hindu texts rave about various deities, primarily the divine Trimurti God in Hinduism through divine stories.[17] Puranas may also be described as a genre of important Hindu religious texts alongside some Jain and Buddhist religious texts, notably consisting of narratives of the history of the universe from creation to destruction, genealogies of kings, heroes, sages, and demigods, and descriptions of Hindu cosmology, philosophy, and geography. The Puranas are frequently classified according to the Trimurti (Trinity or the three aspects of the divine).[18] The Padma Purana classifies them in accordance with the three gunas or qualities as Sattva (Truth and Purity), Rajas (Dimness and Passion) and Tamas (Darkness and Ignorance), an apparent means by which to rate the texts based on sectarian merit.[19]

Itihasa: Itihasa means history in Sanskrit, consists of the *Mahabharata* and the *Ramayana* . The *Mahabharata* includes the story of the Kurukshetra War and also preserves the traditions of the Lunar dynasty in the form of embedded tales. The *Puranas* narrate the universal history as perceived by the Hindus – cosmogony, myth, legend and history. The ancient Sanskrit epics the *Ramayana* and *Mahabharata* comprise together the Itihāsa ("History")or Mahākāvya ("Great Compositions"), a canon of Hindu scripture. Indeed, the epic form prevailed and verse remained until very recently the preferred form of Hindu literary works.The term Indian classical drama refers to the tradition of dramatic literature and performance in ancient India. The origin of dramatic performance in Indian subcontinent can be traced back to as early as 200 BCE.[20] Its drama is regarded as the highest achievement of literature.[21]

Buddhist philosopher Asvaghosa who composed Buddhacarita is considered to have been the first Sanskrit dramatist. The rules of classical Indian poetics prescribe that the themes of the mahakavyas Many texts of Sanatana Dharma record history - just in a form that is different than what is now considered to be the norm. (ornate epics) and natakas (drama) should be primarily selected from the itihasa. It's have been variously described as a revelation through anubhava (direct experience), or of primordial origins realized by ancient Rishis. In Hindu tradition, they have been referred to as *apauruṣeya* (authorless).[22]

Agama: Agama is a Sanskrit word meaning "a traditional percept "collection of doctrines" or "handed down and fixed by tradition." The term is used to recognize a part

[11] Laurie L. Patton, 'The Fires of Strangers: A Levinasian Approach to Vedic Ethics', in Indian Ethics I; and Maria Heim in Indian Ethics I

[12] Manu's Code of Law A Critical Edition and Translation of the M nava-Dharma shastras, Patrick Olivelle, New York: Oxford University Press, 2005, p. 94, p.405. II.12 is to be read in conjunction with surrounding verses II.6-II.13.

[13] James Lochtefeld (2002), "Shruti", The Illustrated Encyclopedia of Hinduism, Vol. 2: page 645

[14] James Lochtefeld (2002), "Smrti", The Illustrated Encyclopedia of Hinduism, Vol. 2: N–Z, Rosen Publishing, , page 656-657

[15] Gavin Flood (1996), An Introduction to Hinduism, Cambridge University Press, pages 53-56

[16] smiritis Monier-Williams' Sanskrit-English Dictionary, Cologne Digital Sanskrit Lexicon, Germany.

[17] "Purana". *Random House Webster's Unabridged Dictionary*.

[18] Nair, Shantha N. (2008). Echoes of Ancient Indian Wisdom: The Universal Hindu Vision and Its Edifice. Delhi: Hindology Books. p. 266.

[19] Padma Purana, Uttara Khanda (236.18-21)

[20] Robert Barton, Annie McGregor. *Theatre in Your Life*. Cengage Brain. p. 218.

[21] Brandon (1981, xvii).

[22] P Bilimoria (1998), 'The Idea of Authorless Revelation', in Indian Philosophy of Religion (Editor: Roy Perrett), Springer Netherlands, pages 3, 143-166

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of the collection of scriptures in Buddhism,[23] Hinduism and Jainism that enclose information on spiritual philosophy and observations.[24] They help instruct in spiritual systems that involve practicing moral behavior and worship rituals through the teachings or guidelines of a deity.[25]

There are three main classes of Agamic texts:

i. Vaishnava Agamas
ii. Saiva Agamas
iii. Sakta Tantras

The Vaishnava and Saiva texts are usually called Agamas, while the word Tantra in wide range applies to Sakta texts. However, theoretically tantra is a part Agama and owing to the centrality of Tantra the two words are used often interchangeably The Vaishnava and Saiva texts are usually called Agamas, while the word Tantra in wide range applies to Sakta texts. However, theoretically Tantra is a part of Agama and owing to the centrality of Tantra the two words are used frequently interchangeable.[26]Agamas expound a variety of subjects and could be called the guides to a huge range of practices.[27] They contain

- Guides for worship
- Process and manners for salvation, Yoga
- Devata, Yantra
- Prayogas using various mantras[28]
- Temple Building, Town planning
- Iconometry
- Domestic practices and civil codes
- Social/Public festivals
- Holy Places
- Principles of Universe, Creation and Dissolution[29]
- Spiritual Philosophy
- Worlds[30]
- Austerities

Darsana: Darsan is Sanskrit word also spelled as Darshana, in Indian philosophy and religion, particularly in Hinduism, the beholding of a deity revered person, or sacred object. In Indian philosophy the expression allocates the distinctive way in which each philosophical arrangement looks at things, including its exposition of sacred scriptures and authoritative knowledge.[31] it is the auspicious sight of a deity or a holy person. The term also refers to six orthodox schools of Hindu philosophy and their literature on spirituality and soteriology. Atman is eternal and free, and liberation is to realize this clearly and not to mistake it for something else. The darshanas differ in the technicalities like how binding comes, and the methods and meaning of liberation. They are not unanimous in accepting Veda as the highest authority on Truth.[32] They are not unanimous in accepting the existence and nature of Iswara or a unitary Godhead.It is most commonly used for The ophany "manifestation/ visions of the divine", in Hindu worship, of a deity or a very holy person or artifact. One can receive *darśana* or a glimpse of the deity in the temple, or from a great saintly person, such as a great guru [33]

Many of the darsanas have developed along with spiritual philosophy, elaborate methods and practices that help the individual's liberation. The methods are based on the theory of consciousness. There are six principal of Hindu Darshanas.

i. Samkhya
ii. Yoga
iii. Nyaya
iv. Vaishesika
v. Mimamsa
vi. Vedanta

III. Conclusion

Hindu law is of divine origin, having been derived from Vedas, which are revelations from the Almighty and which Austin calls the laws of God. is based upon immemorial customs, which existed prior to and independent of Brahmanism. When the Aryans penetrated into India, they found that there were a number of usages either the same as, or not wholly different from, their own. They accepted these usages with or without modifications rejecting only those which were incapable of being assimilated, such as, polyandry, incestuous marriages and the like. Brahmanism modified the current customs by introducing the religious element into legal conceptions firstly, by attributing pious purposes to purely secular acts; secondly, by adding restrictions to those acts suitable to those pious purposes; and thirdly, by altering the customs themselves so as to further the special objects of religion or policy favoured by Brahmanism.

[23] Grimes, John A. (1996). A Concise Dictionary of Indian Philosophy: Sanskrit Terms Defined in English. State University of New York Press. . LCCN 96012383. pages 16–17
[24] Mariasusai Dhavamony (2002), Hindu-Christian Dialogue, Rodopi, pages 54–56.
[25] Indira Peterson (1992), Poems to Siva: The Hymns of the Tamil Saints, Princeton University Press, pages 11–18
[26] Richard Davis (2014), Ritual in an Oscillating Universe: Worshipping Siva in Medieval India, Princeton University Press, page 167 note 21, Quote (page 13): "Some agamas argue a monist metaphysics, while others are decidedly dualist. Some claim ritual is the most efficacious means of religious attainment, while others assert that knowledge is more important."
[27] Teun Goudriaan (1981), Hindu Tantric and Śākta Literature, Otto Harrassowitz Verlag, , pages 39–40
[28] Vaikhanasa Agama Books
[29] Venkatadriagaram Varadachari (1982). Agamas and South Indian Vaisnavism. Prof M Rangacharya Memorial Trust.
[30] Awakened India, Volume 112, Year 2007, p.88, Prabuddha Bharata Office.
[31] Davis, Richard H. (2008). "Tolerance and hierarchy: accommodating multiple religious paths in Hinduism". In Neusner, Jacob; Chilton, Bruce. Religious tolerance in world religions. West Conshohocken, PA: Templeton Foundation Press. pp. 360–376.
[32] Flood, Gavin D. (2011), "Miracles in Hinduism", in Twelftree, Graham H., The Cambridge Companion to Miracles, Cambridge University Press
[33] Gethin, Rupert (1998). *The foundations of Buddhism*. New York: Oxford University Press

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