The Sarasvati-Vilasa, the Hindu Law

by Potluri Rao In Seattle

The Sarasvati-Vilasa was a Law Treatise bearing the royal seal of Gajapati King Pratapa Rudra Deva (1497-1540) of the Orissa (Odisha) State. It was the Law of the Land of Kakatiya kings of the East Coast of India for centuries. It was superseded by the Indian parliamentary statutes of 1955 and 1956. Under British rule it was known as the Hindu Law of the Madras Presidency, that covered the Kakatiya and Vijanagara empires.

The Sarasvati-Vilasa was not a creation of one person, it was the distilled essence of administrative practices of centuries. Rudra Deva was a warrior and a scholar who mastered logic. He was a Rajan Rishi. His court was well known for Sanskrit literary giants. Rudra Deva told us that he wrote the Sarasvati-Vilasa as a synthesis of prevailing legal authorities, to serve as a work of practical utility, written in a popular and unpretentious style. It was widely accepted in South India by Hindus.

The Hindu Law

Societies are of two types: spiritualistic and materialistic.

In spiritualism, spirits of ancestors are worshiped through rituals and periodic offerings of food, flowers, and other forms of respect. Only the people who have legal rights to their ancestors could perform these duties.

Hindu Law covers both spiritual and secular aspects of life. It tells us how we should respect ancestors and the offspring. We who live in the Present, our deceased grandparents who live in the Past, and our unborn grandchildren who live in the Future have equal legal rights.

In contrast, materialism abandons spirits of ancestors and kicks offspring out of the home when they come of age. Laws of materialistic societies are egocentric. They have no Past, no Future, only the Present.

To understand Hindu civilization one has to understand the concept of legal rights of Past, Present and Future generations. Hindu civilization had nothing to do with Hinduism (Brahman, Science) or Brahminism (God, neScience). Hindu civilization was an advanced secular social behavior that evolved over tens of thousands of years. It had no need for Hinduism or Brahminism.

In Hindu law, property is of two kinds: spiritual and secular. The right to secular property is derived from spiritual property. You have the legal right to inherit my secular property if and only if you have the legal right to worship my spirit. My unborn son's son has the legal right to worship my spirit, therefore he has the legal right to demand my secular property. Legally, he could take me to a court to stop me from donating my (his) property. The unborn child has the same rights as I do. The State could file a case on his behalf.

An individual is an integral part of a greater society with infinite future. One should take into consideration the welfare of society, not just selfish interests. Society is an entity with legal rights. Likewise, society has responsibility to look after an individual. Hindu law covers legal responsibilities of both an individual and society.

When Present inherits property from Past, it is acting only as a custodian to transfer it to Future. Present does not own inherited property, because Future has legal claim to it. If Present earns property of its own labor, then it has ownership rights only to the earned property. Inherited property (society) and earned property (individual) are governed by different laws.

Property is further classified by gender, namely Father's and Mother's. Father has no right to mother's property and mother has no right to father's property. They get their properties in an independent manner. Father and mother are partners in a family with their own equity stakes and independence. Mother is not a dependent. Only sons could inherit father's property, only daughters could inherit mother's property.

Son has share in father's property by virtue of birth and can demand it at any time. Since all sons have the same right, they have equal shares. Unborn sons also have the same right. Father's property has legal responsibility to pay for expenses of daughter's marriage. Value of son's share could not be determined until all daughters are married, or provided for, and there is no chance of begetting any future children.

Daughters inherit mother's property upon her death, not necessarily in equal shares, by mutual agreement based on need, compassion, sentimental value, and other such considerations. Such decisions are usually made long before her death.

Laws regarding woman's property (Stridhana) are clear and explicit. Anyone who willfully cheats a woman of her lawful property loses all spiritual and secular rights. Daughter gets her property in the following ways: jewelry she normally wears as a child, jewelry given by her groom's parents as a part of accepting the marriage proposal, dowry given by parents, presents given by guests at the wedding, presents given by her husband

out of affection during their married life, and any property divided among sisters after the death of their mother. Jewelry has special significance because it is Stridhana.

In Hindu law the primary reason for marriage is spiritual, procreation is secondary. Marriage grants a certain spiritual property to husband and wife. The ceremony is a ritual and the chants by the priest are a reminder of the spiritual rights being granted to them, with ceremonial fire as the witness.

A marriage is a legal contract between consenting parents of bride and groom, not the children. If a marriage does not work out then the bride has the legal right to go back to her parents. Her parents have the legal right to demand custody of all her Stridhana, including dowry, to provide for her support. That is what the parents agreed to by giving their consent, with ceremonial fire as the witness. Dowry is Stridhana. It is a trust fund to provide for her support should the marriage fail. Father has no control over it. Son can not inherit it. Only daughters can inherit it. Father is only a custodian.

Hindu law recognizes marriage without the consent of parents as legal, but not as spiritual. Such a groom loses his right to worship his father's spirit and inherit secular property. The bride loses her right to return to her parents. It is a common practice for parents who do not want to give their consent to read the law with witnesses present, so there is no question of ignorance of the law. Society is an insurance provider, the default option at birth. Hindu law allows people to opt out if they are independent and do not want the service. By marrying without consent of parents, children are canceling their insurance policy. Marriages are arranged only after a thorough background check on the parents of both sides; children have no say.

Hindu marriage is not called a union. It is called a "donation of bride" (kanya-daanam). The father of a girl is required, by law, to find a worthy groom and give her as a gift to him. It is the legal responsibility of parents, not the child, to find a husband.

The relationship between a husband and wife is described in the law as Affection, not Love. Affection is long lasting whereas love is fleeting. In a materialistic society, two people fall in love on a whim, get married, and ask for divorce as soon as they become sober. They do not have Past or Future to demand accountability for their actions. Hindu law is designed to nourish Affection for a lifelong bond.

Hindu law was a product of evolution; not enacted by a parliament, handed down by God, or dictated by a holy man. Wise men recorded accepted social practices of their Hindu clusters in a book form called Smriti. There were numerous Smriti, often contradictory. An accepted practice in one cluster might be forbidden in another.

The Sarasvati-Vilasa was a compilation of the best practices of all available Smriti, in light of Case Law discussed in the Royal Court, judged by the learned men, and approved by the Royal Seal. It was the Law of the Land of the Kakatiya Kingdom.

The Hindu Lawgivers

The following is a list of some of the pivotal legal authorities consulted by the Sarasvati-Vilasa. The list is arranged in chronological order. It is the evolutionary history.

It is difficult to establish exact, or even approximate, dates of when they lived. The relative age order of these authorities is well established, based on linguistic and metrical analysis of their work and cross-references.

These lawgivers were separated by hundreds of years and many social and political changes occurred during those intervals.

1. Sage Manu
The first lawgiver who created jurisprudence was Sage Manu. His work is available to us only through fragments quoted by his successors. Sage Manu is often confused for Manu of Manava Dharmashastra.

2. Gautama
Gautama is the oldest extant legal authority. He quoted only Sage Manu by name. The first sloka of Gautama says: Vedas are the authority.

3. Baudhayana
Baudhayana basically restated Gautama with some additions and clarifications.

4. Apasthamba
Gautama was a North Indian. He documented accepted social practices of that region. Apasthamba was a South Indian. He documented accepted social practices of his region. They were radically different. Apasthamba disagreed with Gautama and Baudhayana. He claimed that traditions and customs have precedence over Vedas. In particular, Apasthamba approved marriage between cross cousins, a Dravidian tradition, whereas Gautama opposed marriage between bloodlines of up to six generations.

5. Vasista
Vasista was a conservative. He attacked Apasthamba's radical views and tried to defend Gautama on theoretical grounds, without success.

6. Manu
This Manu is often confused for the Sage Manu. This Manu is a School of Thought, not a person. The school was called Manava of Black Yajur Veda of South India. It was a synthesis of Gautama and Apasthamba. It was a General Theory of Justice, not an operations manual to settle legal disputes. It was called Manava Dharmashastra, after the name of the school.

The General Theory stated that Vedas, traditions, customs of holy men, and self-satisfaction were the four components of justice. The theory cast a wide net. Both Gautama and Apasthamba were special cases of the General Theory.

7. Yajnavalkya
Yajnavalkya was a milestone in the history of jurisprudence. He belonged to the White Yajur Veda of North India. He was respected as a great sage and his word was the law.

Manu of Black Yajur Veda (South India) and Yajnavalkya of White Yajur Veda (North India) were respected as infallible sacred texts.

8. Narada
Narada was a pen name, not a person. It was a School of Thought. Narada gave a logical structure to law. Unlike the other lawgivers, Narada ignored religion. Law was treated as a form of logic.

9. Medhatithi
Medhatithi was the father of modern Hindu law. His commentary on Manu reconciled differences between the old texts and the new practices. He gave new interpretation (spin) to old texts. He modernized law without offending the venerable sages. He set the stage for the commentators that followed to break away from orthodoxy.

10. Vijnaneswara
Vijnaneswara was a follower of Medhatithi. He wrote a critical commentary on Yajnavalkya, called Mitakshara. He was respectfully called Vijnanayogi, for both his simple ascetic lifestyle and his knowledge of law.

He lived in a Capital City called (Basava-)Kalyana, 100 miles to the west of Hyderabad city, during the reign of Vikramarka of (Western) Chalukyas, according to his own account. Mitakshara was dated at 1076 CE.

Commentaries on Mitakshara, incorporating regional variations, were used as Law books by Indian rulers in their dominions for centuries. Mitakshara was used as a boilerplate to derive their own versions. There were dozens of variations of Mitakshara.

Only in Bengal, a Brahmin law book called Dayatattwa by Raghunandana Bhattacharya, a commentary on Jimutavahana, was used in place of Mitakshara. There were no Brahmin in Bengal until 500 CE. King Adisura imported them from Kanyakubja. Brahmin in Bengal lived as an exclusive community with their own laws, totally isolated from the rest of the country. Jimutavahana was a descendant of one of the original imported Brahmin, of influence. He made his own laws, to protect Brahmin interests, around 1000 CE.

11. Sarasvati-Vilasa

Sarasvati-Vilasa by Rudra Deva of the Kakatiya kings and Smriti-Chandrika by Devana Bhatta of the Vijanangara kings were commentaries on Mitakshara to incorporate regional variations.

Mitakshara, Smriti-Chandrika, and Sarasvati-Vilasa were accepted as the Law of the Land in Madras Presidency, covering Kakatiya and Vijanagara empires.

Other regional variations of Mitakshara existed in all parts of India. British Courts recognized Mitakshara and its regional variations as the Law of the Land in all British Presidencies. Only in Bengal, both Mitakshara and Dayatattwa were used.

Mitakshara was translated into English in 1810 and made available to all British Courts. Sarasvati-Vilasa was translated into English in 1881.

In 1964, the Supreme Court of India ruled that Mitakshara was the Law of the Land in areas not covered by the Indian Statutes.

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