

A TREATISE

C#

ON

# HINDU LAW AND USAGE.

BY

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SEVENTH EDITION.

**REVISED AND ENLARGED.**

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MADRAS: HIGGINBOTHAM & CO.

By Appointment to H. E. The Governor of Madras.

1906.

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most of the Dravidian tribes of Southern India come under the same head.

§ 47. Southern India is, except perhaps in some few hill or jungle districts, entirely occupied by Dravidian tribes, who differ in race, origin, colour and language from the Aryans. Nothing can be stated with certainty as to the time when the Aryan first penetrated into the South. It was, probably, much before the Christian era. "As far as is actually known from direct evidence, the first Aryans, who settled permanently in the South, were hermits who, by civilising the people round about them, gradually opened a pathway for more effectual invasions" (v). They never colonised, or even conquered it. "Southern India has no other connection with the Aryan race than that it has, for many ages, been under the influence of Aryan, in other words, of Brahman, administrators." At the present day the Brahmans are only 3 per cent. of the Southern Indian population. They are practically the only Aryans. There may be a few Vaisyas, or Kshatriyas; but their number is inappreciable. None of the existing Sudras can be recognised as Aryans, and it is doubtful whether any Aryan Sudras ever came to Southern India. Those who are now called Sudras are simply that large class of the community who, not being of the twice-born classes, are still recognised by the Brahmans as being within the pale of caste, as distinguished from the mere outcastes (w). *Primâ facie* one would not expect that Brahman laws and usages would have been widely accepted by an alien race. The Jesuit Bouchet, who lived in Madura in the beginning of the 18th century, stated that the natives whom he knew had no writings embodying their laws, and were governed entirely by

Dravidian  
usage.

Appx. I, p. 693. Mr. Fergusson remarks on the curious identity between the architecture of South Canara under Jain influence and that of Nepal, cited by Mr. Logan, Malabar Manual, I, 184. They revere the gods of the Hindu Pantheon, but reject the Vedas. Their supreme deity is Narankar. Their Scriptures are the thirty-two sutras written by Mahavir. They neither reverence nor feed Brahmans. Census of 1891, Punjab Report, XIX, 181, 182.

(v) Man. Adm., Mad., I, 114.

(w) *Ib.*, 33, 37, Sorg Int., 46.

immemorial usage (*x*). The Abbé Dubois writing in reference to Mysore and the Southern parts of the Madras Presidency in the beginning of this century, says that there are two or three Hindu works which contain rules and directions concerning the administration of justice both civil and criminal, and mentions as the best known of these the Dharma-Sastras, the Niti-Sastras, and the Manu-Sastras ; but he remarks that these books are quite beyond the comprehension of the majority of Hindus, and that their disputes are settled by common-sense and by customs handed down from father to son (*y*). M. Leon Sorg states that the decisions of the Pondicherry Court in the last century show that the Tamil population was ignorant of the Sanskrit law books, and even of the Sanskrit terms, such as Brahma, or Asura marriage, Stridhan, Sapinda or Bandhu. Only two cases are to be found which were referred to the pundits of Conjeveram, and in these the parties were Brahmans (*z*). At the present day all classes, even the majority of the hill and forest races, who are Muhammedans, call themselves Hindus, and even offer a nominal allegiance to the Vedic deities ; but the real worship of the greater number is offered to the village deities, whose priests are never Brahmans, and who are propitiated by blood-sacrifices which are repugnant to Brahmanical feeling. Demons, serpents and even plants are also the object of an adoration, which is as much intended to propitiate against evil as to procure good (*a*). As regards a principle which is at the root of much of the Brahman law, it is stated "Homage to remote ancestors is not a practice among the Dravidians, though observances are paid to relatives lately deceased with the intent that they may not return to do harm to the living. Hero-worship is unknown to the Dravidians. They do not act with any hope of reward, or any fear of punishment, which will

(*x*) Cited Sorg Int., 6.

(*y*) Dubois, 661—63.

(*z*) Sorg Int., 9.

(*a*) Census of 1891, XIII, 56—60; N. Arcot Man., I, 186—189; Man. Adm., Mad., I, 70—84.

arise after death" (b). "Again, it is part of the Brahmanical doctrine that a man must have a son to save him from hell; but this belief obtains little currency among the generality of the people, and the strong tendency to marriage has little, if any, connection with religious sentiments" (c).

§ 48. As regards those who profess submission to the Hindu law as a whole, questions of usage arise, *first*, with a view to determine the particular principles of that law by which they should be governed; and, *secondly*, to determine the validity of any local, tribal, or family exceptions to that law. *Primâ facie*, any Hindu residing in a particular province of India is held to be subject to the particular doctrines of Hindu law recognized in that province. He would be governed by the Dayâ Bhaga in Bengal; by the Vivada Chintamani in North Behar and Tirhut; by the Mayukha in Guzerat, and generally by the Mitakshara elsewhere (d). But this law is not merely a local law. It becomes the personal law, and a part of the *status* of every family which is governed by it. Consequently, where any such family migrates to another province, governed by another law, it carries its own law with it (e). For instance, a family migrating from a part of India, where the Mitakshara or the Mithila system prevailed, to Bengal, would not come under the Bengal law from the mere fact of its having taken Bengal as its domicil. And this rule would apply as much to matters of succession to land as to the purely personal relations of the members of the family. In this respect the rule seems an exception to the usual principles, that the *lex loci* governs matters relating to land, and that the law of the domicil governs personal

Disputed applicability of local law.

(b) Man. Adm., Mad., I, 71.

(c) Census, 1891, XIII, 128.

(d) See ante, § 26-81. *Ram Das v. Chandra Dasia*, 20 Cal., 409. As to Assam and Orissa, which are supposed to be governed by Bengal law, and Ganjam by the law of Madras, see ante, § 11.

(e) *Ambabai v. Govind*, 23 Bom., 257; *Muilathi Anniv. Subbaraya*, 24 Mad., 650; *Parbati Kumari v. Jagadis Chunder*, 29 I. A., 82, S. C., 29 Cal., 423. This law will not necessarily be the law now prevailing in the domicil of origin, but that which did prevail there at the time of emigration. *Vasudevan v. Secretary of State*, 11 Mad., 157, 162.