

Sources of Hindu law: A comprehensive view

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ABSTRACT: : *Hindu law has been derived from a very wide and enormous corpus of literature ranging from "Shruti", "Smriti", "Sadachar" and "Swatah Prajna" to the modern systems of precedents and legislated law frameworks.*

The flexibility of this vast institution lies in the fact that it has always been open to adaptations and reasonable changes so as to accommodate the desired necessities and not become a rigid framework wherein no modification can take place whatsoever.

It is this unique feature of Hindu law which makes it a vibrant institutionalized system.

The present work aims to take a comprehensive view on "shruti", "smriti" and "sadachar" as major sources of Hindu law with all the essential components contained in them so that a broader understanding can be developed with regard to its synthesis, evolution and development.

Key Words: *Shruti, Smriti, Upanishad, Sadachar, Rita, Rina, Dharma.*

Introduction:

The most important , noteworthy and creditworthy source of Hindu law from where all the relevant laws have been derived and are accorded legitimacy is "Shruti".

The word "Shruti" is a Sanskrit word which technically means "something which is heard" denoting and connoting towards the fact that these are transferred from one generation to another via recitations.

On one hand it lays emphasis on the intellectually vibrant tradition of our great civilization and on the other hand it also lays stress on the enormous impact these texts had and have on our society.

"Shruti" are four in number and are popularly called the great "Vedas" (derived from the root "vid" in Sanskrit which means-to know).

These are-Rigveda, Samveda, Yajurveda and Atharvaveda.

These texts in turn are further divided into-Samhita, Brahmana, Aranyaka and Upanishad.

The "Rigveda" is divided into (10) ten parts or "mandalas" and contains 1028(one thousand and twenty eight) suktas and 10600(ten thousand six hundred) verses.

It can broadly be divided into 5(five) branches-Sakal , Vaskal, Aswalayan, Shankhayan and Mandukayan.

"Yajurveda" is derived from the root "Yaj" in Sanskrit which means "Yajna".

Of its various verses-663 (six hundred sixty three) verses are taken directly from "Rigveda".

It is categorized into "Shukla Yajurveda" and "Krishna Yajurveda".

It contains an elaborate procedure to perform "yajna" for maintaining environmental balance.

The procedural aspects at times becomes a little bit difficult to understand and therefore an elaborate system has been developed to fully and properly interpret the forms and procedures of performing various "yajna"s called the "mimansa" principles of interpretation which is used to interpret "padas","vakyas" and "shlokas" mentioned in the Vedas.

"Samveda" is derived from the root "sa" and "amah" which means "richas" and "singing" respectively.

In it only 75 (seventy five) verses are new and rest are taken from the "Rigveda".

It contains the science of music and the Rishi Jaimini is supposed to be the father of "Samveda" for the reason that Veda Vyas taught the science of "Samveda" to Jaimini only.

"Atharvaveda" also called the "sthatyaveda" is derived from the root "a" and "tharva" which means "no" and "shiver" respectively.

It comprises of 4(four) parts and 20(twenty) chapters in total and contains variety of subjects matters ranging from hypnotism, decimal system, caste and profession, vivah sukta and sao-rajas-tamas sukta.

The underlining feature and commonality amongst all the Vedas is that all of them lay emphasis on the concept of "Rita", "Rina" and "Dharma".

"Rita" is the cosmic order of existence and the settled, immortal and ethical law.

It is considered as the unending symphony of cosmic order and has in totality three very important aspects encompassed in it-

- (1) Being a natural, eternal and cosmic law, it is imperative in nature and operates independently.
- (2) It is indicative of the sacrifice which needs to be observed meticulously.
- (3) It motivates man to act in conformity with universal principles of truth.

Principles of harmony, equality, order, liberty and justice owe their origin to the conceptualization of “Rita” only and the present day targets and aims of law towards social order, legal order and evolution order get their legitimacy and authentication from the correspondence in the concept of “Rita” and its idea of establishment of a perfect cosmic order.

The other important and relevant idea emphasized upon is that if “Rina” which connotes the feeling of indebtedness to cosmic order or system and living in harmony with it.

“Vedas” talk about three “rinas” which are-

- (1) “Dev rina” ie respecting and clearing the indebtedness of the greater level of consciousness by respecting the nature and environment.
- (2) “pitra rina” ie respecting the geneology to which we belong.
- (3) “rishi rina” ie learning and propagating the knowledge which we learned from our preceptors.

The third important concept being the idea of “dharma” dominates the whole of the discourse with regard to the law, legitimacy, authenticity of any action and righteousness.

“Vedas” propound that “dharma” is something which is “liable to be hold” ie “dharyate iti dharmah”.

It also states with regard to “dharma” that “yat abhyuday nihshreyas siddi sa dharmah” ie that which aids you in excelling in your wordly and other worldly pursuits is “dharma”.

Although the modern scholars translate the term “dharma” as “religion” but the idea of “dharma” as envisaged in our “Vedas” is much more elaborate and vast as compared to what it is being compared with these days because “dharma” encompasses all aspects of dutifulness, righteousness, ethics, morality and virtuosity and is not confined only to any specific delimiting idea.

“Smriti” is derived from a Sanskrit root meaning “that which is remembered”.

They are the other important source of Hindu law which are directly related to the legal aspect of the society.

Of the various Smritis the “Manusmriti” and “Yajnavalkyasmriti” are the most important and the most prominent ones.

The most important commonality between the two is that they are divided into three important sections-

- (1) Achara Adhyaya
- (2) Vyavahara Adhyaya
- (3) Prayaschit Adhyaya

“Achara Adhyaya” speaks about the “Ritualistic” laws, “Vyavahar Adhyaya” speaks about civil law and the “Prayaschit Adhyaya” speaks about the “Patakas”, “Mahapatakas”, “Upapatakas”, “idea of self knowledge” etc.

There are a lot many of commentaries which are written about these “smritis” like Vijnaneshwar has written a commentary named “Mitakshar” (followed in most of the parts of India except assam and West Bengal) and Jimutvahan has written another commentary named “Daybhag” (folloed in Assam and West Bengal).

These texts are full of explicit legal content which is clearly evident in their various scheme of chapterization, content and propositions.

Like, for instance the “Yajnavalkyasmriti” proposes a clear cut legal framework to be followed in any legal case in hand from the inception till the end of it.

It says with regard to plaint of a case-“pratyarthino agrato lekhyam yatha veditam arthina, samama sat dardhahar naam jatyadi chinitam” ie firstly reduce in writing all the details given by the plaintiff with regard to the defendant and then write the year, month, date of case and name and caste of the person.

It talks about the process of “chatuspad nyay” ie four fold process which is essential for the dispensation of justice-saying-“Tatsidhdhau sidhdhimapnoti, vipreetam tu anyatha, chatuspadwayam vyavaharoyam, vivadeshu padarshitah” ie it is only through this fourfold process of –“vaad”, “prativaas”, “pramaan” and “sidhdhi” that justice can be achieved and by no other means.

It also speaks elaborately about the whole process of examination of witnesses in a trial thereby saying-“sakshishu ubhayatah satsu sakshinah purvavadinah, purvapakshe dharibhoote bhavantu uttarvadinah” ie in casewitnesses of both the sides are present then firstly the purvapakshi should be heard and then the uttarpakshi.

Eligibility of a Judge is also mentioned in the verse-“shrutadhyayan sampanna dharmagayah satyavadinah,

ragya sabhasadah karya, ripau mitre cha ye samah" ie only he deserves to be a judge who is well versed in the Vedas, a knower of dharmic traditions, teller of truth and one who treats a friend and foe alike while sitting on the chair of a judge.

A very strict moral and ethical code of conduct is ordained to be followed by the "Smritis" in the verse-na dadati hi yah sakshyam janannapi naradhamah, sa kootsakshinam papaistulyo danden chaiv hi" ie he who despite being a knower of the facts does not give information or refuses to be a witness, should be punished in a similar fashion as a fraudulent witness is being punished.

Another important source of Hindu law is "custom" (which is popularly described in our scriptures as "sadachar") which can broadly be understood as course of conduct followed incessantly and constantly for a long time thereby gaining the status of law.

It essentially has to have few necessary ingredients for being qualified to be a "custom" like-

- It has to be ancient
- Element of invariability and continuity has to be present in it
- It has to be reasonable
- It has to be clear and unambiguous
- It should not be opposed to public policy and morality
- It should not be in violation of express provision of law

Onus of proving whether any particular practice is a "custom" or not lies on the person who alleges that it is a custom.

"Custom" can be of various categories like-local customs, class/community customs and family customs.

The most important thing about customs is that very often it can outweigh written text of law eg. Mimansa texts opines that if only one requirement is fulfilled with regard to customs ie they are not condemned and prohibited by any of the "Smriti" then they shall have universal application.

In the year 1868 in one of the most celebrated case in reference to "Customs" ie "collector of Madurai vs M.R.Setupati" Lord James Colville said that clear proof of usage and custom outweighs written text of law.

In the case the "Jamindar" of ramanad in Madras presidency died without sons and without authorizing his wife to adopt son but his wife "Rani parvativardani" still adopted a son with the permission of the sapindas.

Later the collector of madras eschewed the "Jamindari" as a consequence of which the adopted son filed an application claiming to be the legal heir which the collector rejected contending that in the Dravidian school there is no system of adoption.

The matter went to the privy Council which concluded in its decision that its customary to adopt son with the consent and permission of the sapinda even if the deceased husband has not permitted or authorized the wife for adoption

Conclusion:

"Shruti", "Smriti", "Sadachar" and " Swatah Prajna" are the most important sources of Hindu law since time immemorial and shall continue to be so for all times to come because this corpus of vast literature is the root from which each and every practice with regard to Hindu law emerges, evolves ,develops grows and reaches its fruition.

Precisely saying in the words of our ancient text-"Veda smritih sadacharah swasya cha priyamatmanah, etatchaturvidham prahuh sakshat dharmasya lakshnam" ie Vedas, smritis, customs and own's consciousness determine the fourfold means of defining the sacred law.

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