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 It was superseded by the Indian parliamentary statutes of 1955 and 1956.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 told us that the Sarasvati-Vilasa was a synthesis of prevailing legal authorities. It was widely accepted in South India.

Background

The Hindu civilization was an ancient advanced civilization that existed for tens of thousands of years before the recent European civilization. It evolved on a land-bridge (Gulf of Oman) between Africa and India, called Indus Fan, before the ice age (20,000 BCE). At that time, seawater was 400 feet below the current level, and the West Coast extended over 100 miles into the Arabian Sea. As the glaciers started to melt, the rising sea levels forced people to migrate along the Narmada river to the East Coast.

The European civilization is of recent origin. They evolved in the Russian Steppe. They were materialistic. They were hunters and gatherers. They evolved from the primitive stone age culture.

The Hindu civilization was an advanced social behavior that evolved over tens of thousands of years in a land of plenty. They were not hunters and gatherers. They were a trade-based civilization. They were compassionate and cared for each other. They respected other peoples' rights and property. They never had King, War, or God. They were autonomous self-governed democratic republics.

To understand the Hindu civilization one has to understand the concept of legal rights of Past, Present and Future generations. It evolved over thousands of years.

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.

The Hindu Law covers both spiritual and secular aspects of life. It tells us how we should respect our 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 to spiritualism, 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.

In the 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 only if you have the legal right to worship my spirit. My unborn son's son has the legal right to worship my spirit. 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. The 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 rules.

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. Mother is not a dependent. Only sons could inherit father's property, and 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 the 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, and any property divided among sisters after the death of their mother. Jewelry has special significance because it is by default Stridhana.

In the Hindu law, the primary reason for marriage is spiritual, procreation is secondary. Marriage grants a certain spiritual property to the couple. The ceremony is a ritual and the chants by the priest are a reminder of the spiritual rights being granted to them, with the guests 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 for her support. Dowry is Stridhana. It is a trust fund to provide for her support should the marriage fail. Father has no control over it. Son cannot inherit it. Only daughters can inherit it. Father is only a custodian.

The 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.

Society is an insurance provider, the default option at birth. The Hindu law allows people to opt out if they are independent and do not want the service. By marrying without the 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. The Hindu law is designed to nourish Affection for a lifelong bond.

The 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 communities in a book form called Smriti. There were numerous Smriti, often contradictory. An accepted practice in one location 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. It was widely accepted in all of South India.

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 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 gave it a logical structure 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.

5. Manu
This Manu is often confused for the Sage Manu. Manu was a School of Thought, not a person. The school was called Manava of Black Yajur Veda of South India. Manu 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.

6. 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. 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.

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

8. Medhatithi
Medhatithi was the father of the 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.

9. 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. The Sarasvati-Vilasa referred to him as Vijnanayogi, in reverence.

He lived in a Capital City called (Basava-)Kalyana, 100 miles to the west of the 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 in all of India.

10. 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.

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

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