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Hindu Legal Theory and its Relevance in Current Times

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ABSTRACT

Hinduism is not just a religion but is a way of life. It has shown since long time that dharma is the key factor for a greater life. Dharma is not law; it is way broader than the concept of law. Jurists like Mayne acknowledge Hindu Law as the oldest pedigree of jurisprudence and it is still standing against all odds. Hindu legal theory derives its concepts from many sources such as Dharmashashtras, Smritis, Shrutis, Vedic literatures, Bhagavat Gita, Puraanas, Upanishads, epics like Ramayana and Mahabharata etc. The jurisprudential aspects of these sources have helped and are still helping us to interpret laws and understand its importance in current times.

The Hindu Legal Theory deals with the origin of law, its correlation with the state, conception of the term law by various people such as Manu, Jaimini and many more, law as duty and law with respect to morals and religion. This paper deals with the interpretation and understanding of these concepts by jurisprudential perspective and understands its relevance and existence in current dynamics also. There are various statutes in law but in Hindu Law customs and usages were given equal importance as the laws which are written and as we know that the customs and usages are ever dynamic the concept of Hindu law has also evolved but the roots are still intact and have stood the test of time. Supreme Court and different High Courts time and again have interpreted the term dharma and other concepts of Hindu law and decided the cases based upon such interpretations. So, the understanding of Hindu law with jurisprudential perspective will be useful in understanding its relevance in current times.

I. INTRODUCTION

Every religion has its own ways of understanding the term law. India is a country which is a home for diverse religions but majority of people follow Hinduism in this country. India is also the place where Hinduism took birth and spread across the globe. The texts of any religion reflect the ideologies and beliefs of that religion. In the same manner the texts of Hinduism reveal the ideologies and beliefs on which the whole system is setup. Indian is a

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country which has a great history of developed civilizations and because of that we can trace the existence of laws since time immemorial.

The existence of diverse sources such as Smritis, Shrutis, Dharmashastras, Bhagavat Gita, Puraans, Ramayana, Mahabharata etc. help us derive the interpretation of laws in the current times. The later sections will discuss all of these sources in detail. Dharma which we generally understand to be law is a term which is much broader than the term law. It is the right path on which the person should walk believing on his instincts and conscious. Different courts in our country have interpreted the term dharma time and again and explained its importance in various judgments. In the current time also when crimes are increasing specially the heinous offences against women, children the importance of understanding the laws made by our predecessors based on good conscious is very essential.

Hindu legal theory which is the jurisprudential aspect of laws pertaining to our country where Hinduism is widely followed gained popularity and appreciations from many jurists. Sir Henry Maine stated that “Hindu Law has the oldest pedigree of any known system of jurisprudence and even now it shows no signs of decrepitude.”² This clearly shows that jurists like Sir Maine acknowledged the strength of Hindu law of being one of the oldest and that system which stood the test of time without even a shake in its pillars. Another jurist Sir Francis Machnagthen penned that how he appreciates and acknowledges the understanding of minds behind the formation of Hindu laws and its jurisprudential understandings.

II. SOURCES OF HINDU LEGAL THEORY

▪ **Shrutis:** It was believed that some sages had divine connection with gods and while such communications with the god they got the divine revelations from them about laws. These literal meaning of the word Shruti is “what was heard”³, so for many years the sages chanted these Shrutis which they started calling Vedas. The memorized it thoroughly and recited to the younger generations and the process continued. These Shruits or Vedas are actually the way of living if our ancestors and the cultures or customs that they followed and do not depict any prescribed forms of laws.

▪ **Smritis:** The literal meaning of the term Smriti is “what has been remembered”⁴. Therefore, it contains that part of the Vedas which was remembered and were written as Dharmasutras and Dharmashastras. Dharmashutras were the earlier form of Smritis written both in prose and verses. Dharmashastras were mostly written in verses and contained more

² Dr B. N. Mani Tripathi, *Jurisprudence legal theory*, 78, 1999 (14th Edition)

³ Paras Diwan, *Modern Hindu Law*, 24, 2000 (13th Edition)

⁴ Ibid

systematic laws. . Some of the known writers of Dharmashutras are Gautama, Baudhayana, Apastamba, Vasistha etc. Manu Smriti is one of the prominent sources of laws in India and is basis for many laws.

- **Customs:** Customs always played a very important role in Hindu laws. It is defined under section 3(a) of Hindu Marriage Act, 1955 as a rule which is observed continuously for a very long period of time, which is uniform, reasonable and has attained the force of law.

- **Dharmasutras and Dharmashastras:** Dharmasutras were written from 800-200 B.C. and were mostly written as prose but sometimes they also contain verses. The names of the authors as well the schools to which they belong were also mentioned in these dharmasutras. The prominent writers of Dharmasutras were Gautama, Baudhayana, Apastamba, Vasistha, Vishnu, Harita etc. Dharmashahstras came later than dharmasutras. They were written in metrical verses. They were mostly very systematic and were divided into three parts: Achara, vyavahara and prayaschitta. The first one means religious observances, second means behavior or civil law and third word meaning penance.

- There are various other sources of law also such as Bhagavat Gita which is one of the holy books of Hinduism and which describes what should be the way of life in which you attain satisfaction and contentment, epics such as Ramayana and Mahabharata where the Ramayana teach us what we should do to lead a happy life and Mahabharata teach us what we should not do to lead a happy life. While going through the Ramcharitmanas one can understand that many of the current laws in our country were actually present in the time of Ramayana also and the interpretation of those verses is actually the sources behind many of our laws.

- Not only with the legal perspective but the Hindu ideologies such as the sixteen samskaaras that we have which is actually a depiction of stages of life as to at what age which action is righteous. The concept dharma, artha, kama and moksha which is a chronology in which how a person walking on a right path should first become financially stable and then he can have the pleasure of marital relationship which will ultimately lead him to attain moksha or salvation. As it is also mentioned earlier that Hinduism is not just a religion but a way of life and these concepts and ideologies are a proof of it. Law has also evolved from these concepts because it is to balance the society so, when the people in the society deviate from these ideologies the law comes into picture to govern them.

III. INTERPRETATION OF DHARMA

The meaning and purview of the term dharma is so wide that it cannot be defined. It can only

be explained through various incidences and perspectives. The word dharma was explained by various great kings, sages, writers etc. as the righteous conduct or justice or welfare through morality, religious activities, duties, obligations etc. In Mahabharata when Yudhistir asked Bhisma Pitamah about it he explained that dharma is an act of welfare for the upliftment of the souls of human beings. Writers such as Jaimini explained dharma to be helpful to achieve higher good; Madhavcharya explained it to be a progress in which one attains moksha (eternal bliss) by doing good and welfare for all. There are many more such explanations and interpretations of the term dharma which has been discussed since time immemorial.

In the ancient time when there was no systematic form of laws and the standard of behavior was so high that people used to follow dharma and walk on righteous path. They never used to harm each other in any manner. But with time things changed people started becoming mighty and exploiting the weaker ones. They started infringing rights of others for their own benefit. The need of protection of those weaker individuals lead to the formation of laws and the king started making laws and giving justice. The positive civil and criminal laws came into picture. The Rajdharma and the Vyavahardharma were the two key concepts in those days which were mostly based on the various perspectives of the word dharma such as dharma to do public welfare was charity, dharma in favor of plaintiff it was justice, dharma of parents to take care of their children was duty, dharma to pay debts was obligation, dharma to punish offenders was punishment and many more aspects like these. Dharmarajya means the rule of law and not the rule of religion. The Hindu religion is not the law because these two are distinct concepts and cannot be used interchangeably. It was and it is binding on the king or the state as well as on the subjects. Dharma is a concept way beyond the scope of one person understands and cannot be defined in words.

IV. CORRELATION BETWEEN RAMCHARITMANAS AND CRIMINAL LAW

While reading Ramcharitmanas we see various incidences where the journey of lord Ram explain basis for various laws prevailing in current times. One of the incidences is that in Kishkindha kaand when Sita was abducted by Ravana and Ram along with Laxman try to search Sita then they meet Sugreev the former king of Kishkindha who was thrown out of his kingdom by his elder brother Bali because of some misunderstanding between them. While he excommunicates his brother but he retains his wife Ruma and tries to establish sexual relationship with her. When Ram in order to help Sugreev kill Bali before his death he asks Ram that you were born to establish dharma and you killed me by hiding behind the bushes

then what kind of dharma are you trying to establish. He also questioned that on what grounds did you chose to help Sugreev instead of me and how he is dear to you than me. In order to answer that Ram said that brother's wife, sister, niece, daughter-in-law should be treated like our own daughter and trying to establish sexual relationship with them is adharna or wrongful act and it is his duty to punish those who commit such an offence. This lays down the foundation of rape laws, incest as well as degrees of prohibited relationships in the current times. Even on those days also these rights and dignity of a woman was being protected. The concept was always there to respect fellow human beings and to punish whoever tries to harm the modesty of a woman. It is believed that Ram rajya is the greatest form of life but in order to achieve that we all need to learn the importance of respecting the dignity and modesty of each other.

In the same incident Bali also questioned that he is a vanara and not a human so, why should he be punished for something which is not even an offence for him. To that Ram answered that he lived a life like a king, he did the administrative work, fought wars, married and had a domestic household and he did everything that a human being does. Therefore, he falls under the definition of the term human and that gave the basis for the definition of the term 'person' defined u/s 11 of the IPC, 1860. It clearly states that the term person includes any company or association or body of persons because they do functions done by an individual human entity.

The term dharma was interpreted, understood and applied in Ramayana at different point of time and gave a broad perspective and understanding of it.

V. DHARMA AND OTHER HINDU LEGAL CONCEPTS IN CURRENT TIMES

Dharma is not religion it is way beyond that. It also stood the test of time is prevalent in current dynamics also. Courts while understanding the various laws and statutes have interpreted the term in varied manners. In the case of *Dattatraya Govind Mahjan & Ors v. State of Maharashtra*⁵ the court held that Dharma of constitution and Karma of adjudication will lead us to a society where justice will prevail. Also in the case of *The Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal & Anr*⁶. The court held that "The moral values in particular, should not be allowed to be sacrificed in the guise of social change or cultural assimilation. The path of right conduct shown by the great sages and thinkers of India and the concept of Dharma (righteousness in every respect), which are the bedrock of our civilization, should not be allowed to be shaken by unethical standards." By

⁵Dattatraya Govind Mahajan & Ors. v. State of Maharashtra, AIR 1765 SC (1996).

⁶ The Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal & Anr, AIR 915 SC (1977).

these lines it can be clearly understood that the courts have not interpreted dharma to be religious. They have distinguished between dharma and religion as dharma is wider concept which talks about righteousness, morality and welfare. One more case where the term Dharma was discussed widely was *Shri A.S. Narayan Deekshitulu v. State of Andhra Pradesh & Ors*⁷.

In evidence law also the concept of Hindu ancient customs are relevant such as sakshi (witness), Lekhya (Documentary evidence), bukhti (possession) etc. From civil laws to criminal laws to even property laws the concept of Hindu legal theories are applicable and are also acknowledged in current times eg., the concept of Hundi which was used as negotiable instruments in earlier days are still used in some part of the country. Not only to understand the older concepts but also for new rights such as equal rights of transgender the courts cited the texts of Hindu religion and Shikhandi from Mahabharata etc.

VI. CONCLUSION

In this paper we understood the importance and value of Hindu legal theory. The concept of this theory is ancient but has stood the test of time and is still relevant in a lot of contemporary issues. The word dharma is not related to religion but is related to the righteousness, morality and welfare of the fellow beings. It always taught us that if we walk on the path of good we will be able to establish a safe, healthy and content society. Laws are governed by our good conscious. Therefore we should follow the path of dharma and respect the dignity and life of others.

We also understood that even the courts in our country have time and again interpreted the word dharma in various judgments. In the process of understanding and contemplating Hindu legal theory we understood the connection of Hindu texts to current laws. We witnessed the connection between the Ramcharitmanas and the current time criminal laws. Many Jurists quoted that the Hindu Legal Theory is one of the oldest jurisprudential theories and have been acknowledged by the jurists as well as the courts at various instances while interpreting or making of laws. The paper also discussed the importance of the term dharma and the way in which it is beyond the scope of the term law and how it is not only acknowledged by the jurists and courts in India but also round the globe.

⁷ *Shri A.S. Narayan Deekshitulu v. State of Andhra Pradesh & Ors*⁷, AIR 1236 SC (1995)

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