

## SOCIAL WELFARE IN HINDU JURISPRUDENCE

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It has been acknowledged by the eminent western jurist, Mayne, that the Hindu law has the oldest pedigree. The necessary and sufficient conditions for the existence of a legal system were present in India during *Rigveda* period. The dates assigned to *Rigveda* range from 6000 B.C. to 1500 B.C. The concept of State (*Rashtra*) was well developed in the Vedic period and the duties of the King and leaders of the society have been meticulously depicted in the Vedic literature. Not only the law but also the principles of interpretational law (Mimamsa Rules of Interpretation) find expression in the Vedic literature. Rules of war, protection of State, duties of the State and the King have been vividly expressed in the Vedic literature.

Once the concept of State has evolved the development of law and legal theory naturally follow. The Hindu system of law has been so rich in principles, precedents and concepts that even the most advanced legal systems of modern times are unable to surpass it. The eminent Indian jurist K.P.Jayaswal in his *Tagore Law Lectures* makes the position clear beyond doubt. He says:

“The rules show a very developed stage of pleadings. The language of Yajnavalkya which is terse like that of the sutra-writers, makes their appreciation difficult. His procedural law becomes clear only when we make a comparative study of the subject and give value to each of his syllables. Here Apararka excels even the great Vijnaneswara and the acute Mitra-Misra. Yajnavalkya’s law of procedure is far in advance of Kautilya and Sumati. Yet he does not reach the level attained by Narada and Brihaspati, whom the most technical rules of pleadings of modern Europe have not yet surpassed. In our modern courts at present, for instance, it is to be argued that the judge has to be convinced by the authority of English cases that plaintiff’s right cannot be affected by ‘fraud of speech’ in his plaint. But in Narada’s time the matter was placed beyond controversy. One who further abandoning his first case, takes stand on another, on account of shifting his ground, is called one of ‘Hina’ (‘inferior’) pleading”<sup>1</sup>.

Vedic literature states that the welfare of the people must be the central concern of the King or the leader of the society whose acts should be directed for the welfare of the people. We find the prevalence of this principle in all the

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1 Jayaswal K.P., “*Manu and Yajnavalkya*”, 1930, pp. 127-128.

law codes of Hindus. All attempts to reform the society are bound to fail if they neglect the individual, the basic unit of society. Therefore, the ancient Indian Philosophers, Jurists or reformers who had fully grasped the preaching of the scriptures, and had worked them out in practical life always stressed that the first step for a co-ordinated harmonious society is that ambiguities and conflicts must be eliminated from the minds of the individual. Hence every reform must start from the individual. The code of Manu, contains the principles which contribute to the solution for so many socio-legal problems of the conflict-ridden modern world, from which moral values are fast disappearing. There is a moral vacuum. The author of the Code is not an ordinary individual possessing worldly knowledge alone. He seems, certainly, to have comprehended the ultimate truth, the truth of the spirit, and it is in the light of this truth that he wants to reshape the actual life of the people.

Mr. Motwani's remarks are noteworthy in this connection:

“Manu belongs to no single nation or race; he belongs to the whole world. His teachings are not addressed to an isolated group, caste or sect, but to humanity. They transcend time and address themselves to the eternal man”<sup>2</sup>.

The main purpose of the Code is to propound a science of social relations. One of the most complex problems of the day is “how to strike a balance between the interest of the individual and the society without infringing the personality of the individual. According to Indian view of life personality has a special significance which does not conflict with collectivism”. Personality means independence of growth. It is not necessarily unlikeness because there cannot be complete unlikeness, since man the world over is the same, especially so far as the aspects of spirit are concerned. “The variations are traceable to distinctions in age, history and temperament”. This variation which is spoken of by the eminent philosopher Dr. Radhakrishnan owes its existence in the *Karmavipaka* theory<sup>3</sup>. This variation is the root cause of the division of the world into different camps. The Code of Manu, I think, can provide a suitable answer to the modern problems. Not only those problems are not new, but they are perennial. The Code is composed with a view to provide answer to such socio-legal problems. It covers the whole-life span of the individual, who is

2 K.Motwani, “*Manu Dharmasastra*”, 1958, p. 333.

3 *Karmavipaka* means a theory of action according to which every action performed gives rise to its consequences—“*Karmaphal*”. According to Indian metaphysics immortality is at the root of *Karmavipaka* theory (action-consequence theory). The consequences, which subsist in invisible form after the completion of the act follow the soul in the next birth. Law of *Karma* is a characteristic of Indian philosophy and is of universal nature; it is demonstrative of the doctrine of freedom of action for which man cannot shift his responsibility. The Indian philosophy thus makes man sovereign in the sphere of his salvation which is essentially individual in nature. See K.V.R. Aiyanger, “Some Aspects of Hindu View of Life According to Dharmasastra”, 1952, Ch. I, n. 53.

the unit of the society, by providing various disciplines (*Samskaras*) for him, which, if correctly followed, inculcates in him the characteristics or qualities of a really civilized person. The Code prescribes these disciplines (*Samskaras*) right from conception, birth to death until his body is consigned to flames. To one not conversant with Indian metaphysics these *Samskaras* may seem part of the religion. But they are in the nature of disciplines prescribed for an individual at various stages of his life in order to prepare him for the larger role in the life ahead, to face and tackle any problem in the social life.

These *Samskaras* are also in the nature of social norms for imparting social training and regulating the life of an individual so that he may develop his personality in the best possible manner and in order to adjust himself in the society. Sri Aurobindo says:

“The business of the ancient *Rsi* was not only to know God, but to know the world and life and to reduce it by knowledge to a thing well understood and matter with which the reason and will of man could deal on assured lines and on a safe basis of wise method and order. The ripe result of this effort, was the *Sastra*”<sup>4</sup>.

According to Hindu view of life the juridical principles originate and evolve from the very existence of human life, very much nearer to the approach by the jurists of historical school. The view of the givers of the Hindu Codes is.

Universe owes its existence according to Hindu view of life, to desire, *Ekoaham Bahusyami*. This text is the basis of all the concepts, whether juridical or otherwise. No system, social or legal can be built scientifically on universal principles if we ignore the element of desire in constructing that system. Desire is the genus of which the interests or rights are the species. People have desires, interests or rights which they want to satisfy. Not a single act here (below) can ever be done by a man free from desire, for, whatever (man) does, is (the result of) his impulse or desire. Every society has an end in view which it sets before it for achieving. This tendency is very much found in the modern days when directive principles of State Policy find place in the Constitutions. These principles of State Policy are in the form of Dharma or end or moral law which the State shall strive to achieve, and therefore, they may also be called the rules of morality set forth for the State. Manu had well in advance anticipated that the progress of the society is impossible without an ideal for the society. The ideal is relative to time and place. The socio-legal philosophy of Manu, the master of Brahma Vidya, is *Sarva-vidya-pratistha* which must be of the highest order and is ahead of the contemporary socio-legal philosophy.

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4 Sri Aurobindo, “*The Foundations of Indian Culture*”, 1959, p. 89.

Those who are ignorant of the Hindu metaphysics can think that the Code of Manu is a specimen of a primitive humanity of the Vedic times. Therefore, Vedic background is essential for the proper understanding and appreciation of the purpose underlying this ancient Code. The rules of the Code of Manu owe their origin to the nature of Man. And, therefore, the Dharma which is promulgated in the Code could not be said to have been based on *apriori*-doctrines alone. Manu distinctly declared that the source of all rules or Dharma lies in the desires of human beings.

It clearly indicates that the law according to Hindu jurists has social dimension and its function in the society is to augment the welfare of the society in full. While the unit of the society is the individual and, therefore, the Hindu law givers have stressed on the development of the individual personality in all its faculties, body, mind and heart because a healthy society can be thought of only when the society consists of healthy individuals. All the natural freedoms or the civil liberties which are given a sacrosanct place in the Constitutional Jurisprudence of the civilized world were not only known to the ancient Hindu law givers but they also high- lighted them. They assigned very important place to civil liberties.

It would be naïve, rather absurd, to expect the 'social welfare' concept in the modern sense of the term to have developed in ancient Hindu jurisprudence. The present day welfare State with its promise of social good is a material State, and the 'social welfare' concept is the by-product of the Industrial revolution, which brought in, factory or labour legislation to curb the liberty and privilege of factory owners to exploit the weak. This legislation was enacted with a view to provide and improve working conditions of workmen, children and women who were employed to work in factories. Thus the Industrial revolution provided the backdrop to the theory of welfare State. It is beyond doubt that the concept of social welfare as presented in the modern formula of welfare State has never been a part of Hindu jurisprudence.

Social welfare element in the ancient Indian jurisprudence is the concern of Dharma therefore, Dharma had from the very beginning a social dimension, in ancient Indian scriptures. Legislator-philosophers who propounded the law codes were seriously concerned with the welfare of the members of the society. The greatest events of the ancient Indian History, as depicted in the Epics-Ramayana, and Mahabharata, are the two wars fought. These wars were fought to uphold the Dharma because if law is violated the whole society and social system would collapse, which will result in untold miseries to the people. Dharma or law has an ultimate aim to remove the miseries of the people and to create conditions so that people may pursue the aims of life which Dharmasastras prescribe for each individual.

About the Indian legal thought, there have been three fundamental misunderstandings or mis-information. They are (1) regarding the Aryans, (2) regarding the Vedas, and (3) regarding the Caste system. Le Figaro in his book "*Rewriting Indian History*" and Dr. S.D. Sharma in his book "*Administration of Justice in Ancient India*" have exposed the fallacies regarding these misunderstandings or mis-information. Not one scholar worth the name can afford to reach the true spirit of Hindu legal theory without freeing oneself from these misunderstandings.

Varnasrama Dharma had for its ideal the social welfare of the entire society which is the distinct feature of Indian culture. The object of the people of Europe is to exterminate all in order to live for themselves. The aim of the Aryans is to rise all up to their own level, nay, even to a higher level than themselves. Thus, the means of European civilization is the sword, but that of the Aryans is the division into different varnas. This system of division into different varnas is the stepping-stone to civilization, making one rise higher and higher in proportion to one's learning and culture. In Europe, it is victory of the strong, and death of the weak. In the land of Bharata, every social rule is for the protection of the weak<sup>5</sup>.

The views of Dr. Radhakrishnan are also interesting and illuminating. He also uses the word caste in the sense of varnasrama, i.e., classification of the society on the basis of work. The institution of caste illustrates the spirit of comprehensive synthesis characteristic of the Hindu mind with its faith in the collaboration of races and the co-operation of cultures. Paradoxically as it may seem, the system of caste is the outcome of tolerance and trust... No other country in the world has had such racial problems as India... Regarding the solution of the problems of racial conflicts the different alternatives which present themselves are those of extermination, sub-ordination, identification or harmonization. The first course has been adopted often in the course of the history of the world... When extermination is impossible, the powerful races of the world adopt the second alternative of subordination. They act on the maxim, spare the slave and smash the rebel... Caste, on its racial side, is the affirmation of the infinite diversity of human groups.... Caste was the answer of Hinduism to the forces pressing on it from outside. It was the instrument by which Hinduism civilized the different tribes it took in. Any group of people appearing exclusive in any sense is a caste. The Hindu society has differentiated as many types as can be reasonably differentiated.... It stands for the ordered complexity, the harmonized multiplicity, the many in one, which is the clue to the structure of the Universe<sup>6</sup>.

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5 Swami Vivekananda, "*Caste, Culture and Socialism*", 1947, p. 19.

6 Dr. Radhakrishnan, "*The Hindu View of Life*", 1968, pp. 67-70, 75.

The emergence of social welfare concept in ancient India lies in the fact that according to Dharmasastra writers, society was the organizational unit in which each member of it occupied a very important place. For instance, a Brahmana is one who has attained perfect intellectuality and spirituality. The concept of social welfare according to Manu and Indian thought includes the overall welfare of the society. It is so comprehensive a term that the welfare does not stop with provision of mere guarantee for food and shelter, but it aims at securing for each person the status of a Brahmana. The Hindu jurisprudence is full of precedents of the supremacy of Brahmana rather than of the Kings. Many Kings were subjected to curses and punishments by Brahmanas. It was not the result of a conflict that the Kshatriya occupied the position of earthly ruler and the Brahmana is confined only to the religious and sacerdotal duties. The Indian scriptures provided for it.

The Brahmana is specifically prohibited to aspire for wealth, power or rights guaranteed by State. He is assigned the position second to the King in secular matters of State. The supremacy is that of the Kshatriya, who is supreme and recognized as the chief executive, the head of the State. *Brhadaranyakopanisada* makes it clear beyond doubt, "The Brahmana, using his intellectual power, recognized the Kshatriya as King, and endowed him with a hallow", *Sreyorupamatyasrijata Ksatram*. The text further says, "there is no one superior to the Kshatriya, that being the reason, the Brahmana honours the enthroned Kshatriya, himself sitting below the King in the *Rajasuya Yajna*". This doctrine of the supremacy of King illustrated that King has been given the power to administer justice over Brahmanas, lest they (Brahmana) should deviate from Dharma. The comment of Samkaracarya on this text makes the matter further clear. He says: "Since Brahmana created the Kshatriya in extremely excellent form, nobody is capable of controlling the Brahmana except the Kshatriya..." therefore, the Brahmana says: King! You are Brahmana<sup>7</sup>.

A clear supremacy of temporal power over the custodians of spiritual power has been the chief mark of ancient Indian jurisprudence. The controversy of temporal vs. spiritual that ravaged the European society was singularly absent because of the wise and tolerant attitude of Brahmana towards the King who was hailed as superior to everything in society, in the interest of law and order. Therefore, there was no room for the "two- sword doctrine"<sup>8</sup>, to emerge in

7 Yasmadbrahmanatisayena srestam ksatram tasmatsatratparam nasti Brahmanajaterapi niyantra... Rtvikpunastam pratyahatvam rajanbrahmasi. Comment on Br. Up. I, 4,11. (Gita Press 4th ed. Pp. 288-289).

8 The doctrine of two swords: In the later mediaeval conception of State, two opposed influences meet: the vigorous Roman Empire of the Caesars, conserved in the Roman German Empire, as the bearer of the older culture through which the authority of the Pope was established, confronts the Catholic Church which had usurped control of all temporal power. The Church found its philosophic support in Augustine's doctrine of the 'Civitas terrena'; while the Aristotelian philosophy favoured a more restricted conception of ecclesiastical rule. It was agreed that temporal and spiritual powers are alike conferred

ancient Indian polity. This discussion of the principles of ancient Hindu jurisprudence is much more advanced in terms of social welfare and secularism because of the negation of the “two- sword doctrine” as the express recognition of secular aspect of ancient Hindu jurisprudence.

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by God, but there arose a violent conflict of opinion and doctrine as to whether the temporal sword is conferred upon the ruler directly by God or through the mediacy of the People. The doctrine of ‘Two swords’ typifies the most important political issue of mediaevalism. Upon it Grimm comments, ‘Christ bade his disciples to buy a sword, and when they brought two, he said, ‘it is enough’ who would have thought that the biased interpretation of these simple words should for centuries serve to justify the rural claims of the two greatest of earthly powers’. See F. Berolzheimer, “The World’s Legal Philosophies”, 1968, pp. 101-102.