

LAW AND SOCIETY TRUST

Fortnightly Review

No 3 Kynsey Terrace, Colombo 8
Fax 696618 Tel 686843/691228

1 October 1994, Volume V, Issue 83

OBJECTIVES

The Law and Society Trust Fortnightly Review keeps the wider Law and Society community informed about the activities of the Trust, and about important events and legal personalities associated with the Trust. Our publication is aimed at raising public awareness on all issues concerning the legal rights of citizens, and at gaining wider recognition of law as society's instrument for peaceful change.

This issue of the Law and Society Trust Review contains the papers presented at a symposium on "Hindu Law and its Interaction with Society" held in September. This symposium was the concluding one in a series on Religion and its Interaction with Society. Proceedings of symposia on Buddhism, Christianity and Islam were previously published in the LST Review.

SPECIAL ISSUE

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HINDU LAW AND ITS INTERACTION WITH SOCIETY IN SRI LANKA

The Law & Society Trust has over the past few years, organised several symposia on religion and its interaction with society.

The first symposium in this series was on Buddhist Ecclesiastical Law in 1991; the second on Christianity, Law and Society in 1992 and in 1993 a third symposium on Islamic Law. The concluding symposium in this series, on "Hindu Law and its Interaction with Society" was held on 24 September 1994.

This issue of the Law & Society Trust Review contains the papers presented at this symposium.

The symposium was inaugurated by Dr. Nissanka Wijeyaratne who also inaugurated the first symposium in 1991. Former Court of Appeal President Justice K. Palakidnar, produced the background documentation and provided other support in connection with the symposium.

The objective of these symposia was to address a neglected area of legal study and to examine the clash between religion and tradition on the one hand, and development and modernisation on the other. The often volatile response that this clash generates and the links between religion and the values of human rights and constitutionalism, were also some of the concerns of this series of symposia.

The Trust plans to compile the papers and proceedings of the entire series into a single publication, which it hopes to release sometime during the latter part of 1995.

Dr. Nissanka Wijeyaratne's speech at the inauguration of the symposium

Ladies and Gentlemen, I am deeply honoured by the request by Dr. Neelan Tiruchelvam to inaugurate this seminar. I remember that a few years ago in discussing some of Sri Lanka's legal problems, I mentioned to Dr. Tiruchelvam that there was a big lacuna in the religio-social structures of the majority community. The Temporalities of the Buddhists left much to be desired. This has had a very deleterious impact on society, for it diverted the energies of many of the trustees and gave them resources that were not conducive towards a stable and balanced society. A similar lacuna exists in the case of Hindu Temporalities and it is regretted that the contemplated legislation to remedy it has not seen the light of day. In the meantime case law was helpful to determine many of the needs of the Hindu Temporalities. In 1948 (or 1949) Mr. M. Vairamuthu spent days in the Home Ministry studying the problem, preparing data with which he hoped to bring about through government legislation the regulation of the affairs of Hindu religious institutions, but so far this has not been finalised.

In India the Hindus were more fortunate and Mr. C.P. Ramaswamy Iyer played an important role in bringing about the **Much Trust**. It is due to this measure that Rameswaram is properly administered and above all Tirupathy has been able not only to develop so as to run a university with its resources properly conducted but has also recently established a hospital for the benefit of the Hindu people.

I remember years ago at an accidental meeting with the present Prime Minister of India he mentioned how he was able, as Chief Minister of Andhra Pradesh, to take interest in the Temporalities of Tirupathy and that has stood him in good stead for it appears that even subsequently, the magnetic attraction of that shrine, that draws Mr. Narasimha Rao monthly to Tirupathy has brought upon him the protection of Vigneswaran. However, the subject today has become wider than the Temporalities themselves and goes to very fundamental aspects of Hindu law and its Interaction with society. I notice that Dr. Naresha Duraiswamy will talk to you on Hindu Jurisprudence and Society and Justice C. V. Vigneswaran on Hindu Jurisprudence and Tirukkural, and have no doubt they will go into this more fully.

When one talks of Hindu Jurisprudence, I think all of us should bear in mind that the use of words here is rather imprecise. You can talk of Muslim Jurisprudence, that is a very definitive appellation; it relates to a particular faith irrespective of its geographical boundaries. However, Hindu law does not relate to the Hindus dispersed right through the world. It is only in those particular sectors where Hindu custom has been recognised and incorporated in the legal systems of each country that it prevails. In India itself, there exists a large body of **Mohamedan** law. In Sri Lanka largely due to the influence of Hindu culture, the law as far as the Sinhalese Buddhists were concerned, drew a considerable amount of inspiration directly from the Hindu Shastras and indirectly from Buddhist thinking influenced by the Hindu background against which the Buddha and the subsequent commentators lived. Unfortunately, Hindu law inspired by very high ethical concepts pronounced by great religious leaders and thinkers, dealt with a range of activity not merely

in regard to conduct but also with regard to punishment. With regard to punishment there was a natural confrontation between high principles of charity and kindness and the need for society to impose condign punishment as a deterrent.

Perhaps the types of punishment laid down not so much in the religious works, but even in secular works like Kautaliya's *Arthashastra*, judged from a modern perspective were rightly rejected by the British in framing their criminal law in India. Among the Muslims many of the punishments that were contemplated in the society in which the Prophet lived have been rejected not only by Britain and the Commonwealth, but also by a large number of countries and in fact moderated in some of the progressive Muslim States. The subject on which Dr. Duraiswamy will speak requires, I feel, students not only in Sri Lanka but even in India to examine the wider spectrum in which high principles enunciated by great Hindu thinkers over millennia and requires analysis and adaption for incorporation in the life of contemporary societies. In respect of this I would mention that Hinduism is not merely a faith for those who claim to be Hindus. It is part of a cultural efflorescence not merely confined to the ancient Saptha Sindu or the Gangetic Valley or even to the whole of Bharath, but extended wherever Hindu traders went, particularly Bangladesh and Malaysia but more so, Indonesia and Sumatra. In Sumatra a vast empire was built with a legal system of its own which dealt with and regulated the vast trade of the Indo-China routes. I mention China here because one cannot think of the world without its most vital and highly populated area, that extends from India to China and beyond to Japan. In fact, talking of China and Japan, the development of Buddhism in China owes much to the Tang dynasty, whose emperors were influenced in the establishment and development of the Buddhist institutions by a distinguished monk known in China as Bhodidharma, a monk from Kanchipuram in South India. In fact it is that monk who also ultimately went to Japan established Buddhism and influenced Shotokusan, who subsequently became the ruler of Japan, with the 16 principles of good government which have been modified and added to by the edicts in Japan after the Meiji restoration of 1870, particularly the edicts of the early part of the 20th century.

The influence was so indelible that a few years ago when I went to Japan with a friend from Madras, he was surprised when I pointed out at the entrance to the Expo at Chokobo, the stone carving of Bhodidharma, a Tamil monk from Kanchipuram. The influence was so pervasive it shows that good government was important for the citizen, and the monk is remembered for having told the rulers how they should manage the trust that was conferred upon them. There is, underlying all societies, Indian and Chinese, the concept of a social contract. In the countries influenced by Hinduism the ruler was responsible for the people long before the principle was asserted by the Parliamentary system brought in by the West. There was a belief that the ruler could be called to account and I think this is clearly expressed by Justice Vigneswaran, when he refers to the Thirukkural, as the unique compendium of moral and social maxims for the improvement of individuals and society. In fact, unlike the concept of the divine right of kings, no Hindu people ever felt that the sovereign was infallible. Englishmen could refer to their kings and say:

"Here lies our sovereign lord the king, whose words no man relied on.
Who never said a foolish thing or never did a wise one".

This was unthinkable in societies influenced by Hindu thought and by the moral guidance that the Rishis gave their devotees. No one was above the law, custom, decency and morality. This is the argument that has been used with devastating effect on political parties, to one of which I belong. It is now apparent in the propaganda the Labour Party is devastatingly applying to the Conservative government in England.

However in Europe there has been another good and fortunate pattern, particularly in the Scandinavian countries and among Germanic people, that has been incorporated apart from indigenous customs. Law has been shaped by the impact of the Bible which in turn has been fashioned by the Jewish thinkers and rabbis who in the Old Testament applied human knowledge to human society and gave it an imprimatur that law was derived from Above. But in actual fact it is not from Above but from the divinity within every human being, that the Hindu Rishis promulgated their high principles and exhorted society to live in a pattern that was conducive to their own happiness and the happiness of those over whom they ruled.

I referred to China and Japan; I think we should all come to realise that while we think in terms of one world, and of regional alliances like SAARC, there are intermediate divisions that are highly effective and efficient - for instance, the Organisation of American States, the EC, the Organisation of African States - and I think the time has come for Asian unity. And in an Asian unity movement all valuable maxims, whether they be Hindu, Buddhist, Zoroastrian, Confucian, Christian or Muslim should all be able to contribute to the finer elements that could be drawn into weaving a golden fabric that could adorn the dress of society.

I do hope that these documents will be printed and sent to scholars in India. I believe Justice Bhagwati will be interested, as well as Justice Krishna Iyer and perhaps judges in Indonesia and Japan, and now that China is opening up, also to those of consequence in China, so that a joint study could be made without the uncomfortable concepts of Jurisprudence and Law with which the people have been burdened. We will be able to formulate principles that will bring about rules that will shape custom, and through customs will help people to establish those maxims that will be incorporated in actual law. The Buddhists in Sri Lanka would be only too happy. The whole question of succession has been completely mutilated by British judgements. I remember among the Hindus the problem arose nearly 30 years ago when Sir Kandiah Vythyanathan was lamenting on some of the powers that were available to trustees in Thirukatheswaram. Many years ago Sir Ponnambalam Arunachalam referred to the Kandyan Marriage Ordinance as a very civilized system.

There are of course certain customs which have been abandoned for the better largely due to the British influence - for instance Sati in India and Yohar that was once practiced in Rajaputana. But there are certain valuable things in regard to succession, property and divorce, which are matters that should be examined very carefully with a confidence in the strength of the eternal values that are inherent in our own traditions and in our own thought. I think it is imperative that in law reform we focus on the fact that law reform must bear in mind society itself and be a constant review on its impact - for instance on mediation courts, on the new process of mediation conciliation that replaces the rural courts. Everything must

be under constant study. In as much as people said that the government's record is studied during the election (that was during the last election), so must the record of the present government in its day to day activities be studied carefully. As I said, no government is infallible and no law is immutable; what remains is society which consists of individuals and it is in the happiness of the individual that the strength of society lies. I congratulate the Law & Society Trust on having arranged this final discussion, culminating as it does with the Hindu system of law which provides the largest compendium of law in Asia.

HINDU LAW AND ITS INTERACTION WITH SOCIETY

(Background Paper)

by

Justice K. Palakidnar

Manavantara means the duration or period between the emergence of two consecutive Manus. Manu represents the archetypal man. It is a certain period of time according to Hindu reckoning. Western scientists have found that this reckoning by the ancient Hindus has been based on certain accurate astronomical calculations. Mahayuga is the name of the period of all four yugas put together. Seventy one Mahayugas make a Manavantara. At the commencement of each Manavantara a Manu appears and codifies all ethical and social regulation to be followed during that Manavantara. The Manu whose code is currently being followed is known as Vaiswatha Manu and is the seventh in the time in this cycle. These were the Laws of Manu or the Hindu code of life regarded as the underlying basis of Hindu jurisprudential thought and which regulated social activity among Hindus.

The scope of our symposium like its forerunners on Christian, Buddhist and Islamic Codes limits itself to the interaction between the Hindu legal and social life in Sri Lanka. There is in existence the Thesavalamai Code which regulates all questions that relate to those rights and privileges which subsist in the Northern province between the high castes, particularly the velallar, and the lower castes the coviar, nallawar and pallar. The basis of these regulations is the social customs and ancient usages of the province.

One may note that the division of caste does have a basis and recognition in Hindu law and custom as varnas. It may be explained as the distinction in colour among the members of the different groups. But a closer inspection would reveal that an occupational division has a more rational and mutually exclusive character in these groups. The priests, wealthier business class and the leisured ruling class did claim some superior powers of regulation and privileges contrasted with the larger groups of tillers of the soil and other comparatively menial vocations. But artisans like goldsmiths and carpenters did assert their social importance on an equal if not on a superior basis to the velallar or the farmers and the land

owners. These assertions of equality or superiority did not have any basis in the law as it prevails in Sri Lanka. One may bring into focus here the Prevention of Social Disabilities Act (No. 20 of 1957) which asserted the legal position of equality of social classes in Sri Lankan society. The argument that the Act was *ultra vires* the Ceylon Constitution did not find acceptance with our courts. In *Suntharalingam v. Herat*, 72 N.L.R. 54, the position that the temple priest could regulate, according to ancient usages and custom, the question of temple entry was upheld.

In a Hindu Temple the sanctum sanctorum or the aathimoolam was accessible only to the priest and his assistants of the priestly class. The rule that other worshippers could go only as far as the kodisthamba or the flag post area was regulated by custom and usage. The problem arose in the Maviddapuram temple at Jaffna where members of some depressed castes, the nallavar and pallas, were denied entry even to the area where other non-priestly members of the congregation were allowed to enter. The question whether they were asserting a new right or whether a disability was cast on an existing right was the matter agitated in court. The act of the agent of the priest C. Suntharalingam in preventing access to the flag post area was held to be casting a social disability on a class of worshippers and therefore violative of the Prevention of Social Disability Act. He was found guilty and convicted.

A further matter of Hindu customs and usages that came up for court review was the matter of animal sacrifices in temples. It has been a long established custom among the meat eating Hindus to take a vow to sacrifice a goat if a sick person is cured of his illness. The basis seems to be that the life of a goat will be given to the god if the life of the sick person was spared. This practice was confined to the worshippers of vairavar and the officiating poojari was a non-Brahmin. Such animal sacrifices took on the nature of a goat meat fair and attracted worshippers who bought the meat from the taker of the vow after the goat was slaughtered in the precincts of the temple. In the District Court of Chavakachchari, Saiva Hindus sought an injunction in court to prevent the slaughter of animals in a temple long used to having a festival of animal sacrifice.

The court issued the injunction as hoped for and the festival of sacrifice was stayed. It brought a very happy response among the Hindu public and press alike. Subsequently a similar application for stay of the sacrificial festival on a temple at Tellipalai was refused on the ground that the material placed before court was not convincing enough to show that sacrificing animals was an anti-religious practice. The common law of Prevention of Cruelty to Animals could have strengthened the hand of court if it was disposed to stop the practice of animal sacrifice which undoubtedly offended the sentiments of orthodox Hindus.

With regard to the management of temples there have been frequent recourse to courts. It has been the subject of protracted litigation and lucrative practice to civil lawyers. The chief matter that arose for resolution of dispute was the ownership or trusteeship of the temple concerned. Most temples were of a public character in the sense that the public could worship in the temple as part of the congregation. Only temples which were like "a private chapel in a gentleman's park" could not be given a public character. But most temples had

their origin in public effort by way of monetary contribution and donation of lands for the maintenance of the temple.

Very often the question of management of such temples became the subject of heavily contested litigation. The early case of the Nakuleswaran temple at Keerimalai in Jaffna gave rise to questions of the management arising out of dispute among trustees about their rights. In this temple, history would show that Arumuga Navalar, a religious revivalist, initiated a move to restore this ancient temple and contributions were given by devotees from all over the country and the temple was dedicated for worship to the public. In Hindu law an act of dedication of this nature has the result of making the temple the property of the deity.

But the management is provided for by the instrument of dedication or a separate arrangement by which the person or persons in control become trustees for the benefit of the public who are the congregation; a founder is entitled to provide for the management of any endowment created by him. He can set out a scheme of management and the manner in which he wished to serve the object of his bounty. When the founder made an endowment without providing for its management, the rights of management rest in the founder and his heirs: vide Gour Hindu code 215(3). In the Nakuleswaran temple the deed provided for:

- (1) the management or trusteeship, succession
- (2) appointment and succession of officiating priests
- (3) control of temple ceremonies
- (4) custody of treasures
- (5) appropriation of public subscriptions

Recourse to section 106(2) of the Trust Ordinance which provides for the recognition of a trust even though there is a formal defect, if in all the circumstances of the case a trust in fact exists, is not a bar to the trust. (Vide section 107 of Trusts Ordinance.) It would be pertinent to have regard to the customs and usages of the particular temple in arriving at such a decision.

In *Kumaraswamy Kurukal v. Karthigesu Kurukal*, 26 N.L.R. 33, Bertram CJ expressed the view that a temple has no legal personality. It is the founder who is in law the title holder of the trust. On his death, in the absence of a formal devolution of the trusteeship, the heirs succeed to the title, but as trustees of the property.

Grenier J in *Ramanathan v. Kurukal* (15 N.L.R. 216) said that there is customary law which is capable of proof in the way in which customs and usages of other matters can be proved. Their existence cannot be overlooked whether they were imported from India or evolved locally.

Much of customary usages came up for review by Pathirana J in the *Badrakarli Kovil (Chilaw)* case 79(1) N.L.R. 361. The Kapurala system was examined and the principle that females could not exercise the office of priests was affirmed. Animal sacrifices to goddess Batherakali was brought out in evidence as customary practice. It must be noted that this

temple had the system of Kapurala and not Brahmin priesthood.

The proof of a marriage by customary rites or religious rites has a social impact. Where a couple have lived together for a long continued period, then both habit and repute must be established 78 N.L.R. 547, per Sharvananda J.

A religious custom must be proved by expert evidence by persons whose knowledge of custom are beyond question. Their evidence of custom must be weighed against the proved fact of the case. The presumption of a customary marriage can be rebutted by the failure to prove the observance of the requirement of the customary usage.

An attempt was made by prominent Hindus to enact the Hindu Temporalities Act on the lines of the Buddhist Temporalities Act to regulate and control the affairs of Hindu temples. However well intentioned the movers of this piece of legislation were, the objectives did not meet with the whole-hearted approval of the vested controlling interests of the temples and officiating priests alike. As a result the proposed Act did not see the light of day as a statutory enactment. The void thus left did not seriously hamper the working and regulation of temple affairs among the Hindus.

The endeavours of interested parties to work towards personal gain and misappropriation of the temporalities have always been halted by a vigilant public congregation who have democratically, or by evoking the provision of the Trust Ordinance in conjunction with the Civil law, worked out acceptable schemes of management for individual temples and run the affairs of religious places without much disruptions.

HINDU JURISPRUDENCE AND SOCIETY

by

Dr Naresha Duraiswamy

I assert the point that Hindu/Brahmanic law is based on popular convention and practice. While Hindu law is a high textual tradition, it accommodates divergent folk custom. Moreover, I affirm that Hindu law was not envisaged as a fixed legal code valid for all time and place. Key provisions such as divorce and inheritance were amended depending on region, community and the ethos of the times. However, a coherent and over arching theoretical framework exists, one that can be recognised for its distinct features such as corporatism. I include reference to the social vision of Hindu law.

The Brahmanic legal tradition demarcated a specific social framework. The principle of social inter-connectedness contributed to a corporatist, albeit segmented, societal framework.

This has endured over the centuries. The Dharma Shastras (100 C.E) are the pre-eminent Hindu legal texts written in Sanskrit. Niti, i.e justice, is based on Dharma, i.e the moral law in these works. The term Dharma is derived from the root word dhr, i.e that which supports or sustains. The expression has a range of meanings. It signifies both counsels of general prudence as well as the highest virtue conducive to human welfare. The concept Dharma represents a comprehensive and consolidating view of life. It, however, also caters to individual situations. The contextual specificity of Dharma permits continuous adaptation to changing social situations. Dharma varies with time. It remains nonetheless a broad theoretical perspective which transcends the immediate despite a sensitivity to changing contexts.

Hindu jurisprudence developed as the civilisation incorporated peoples wholesale. These communities introduced newer practices. The legal framework adapted to historical, political, economic and social changes¹. Medieval commentators re-interpreted legal statutes to keep pace with newer contexts. Legal codes were revised due to the influence of regional custom. Numerous interpolations, recasts and additions are seen in the Manu Samhita². Hindu law is a complex and dynamic code open to changing needs and imperatives. However, coherent theoretical parameters reconcile evolving circumstances and the basic principles of law.

The principles of Hindu jurisprudence are not confined to the texts in high Sanskrit. Manu attests that custom is the foremost basis of jurisprudence. Customary law delimits Brahmanic legal theory. Customs differ according to districts, towns, castes, guilds and corporations³. Traditional usage prevalent in the community is upheld over the letter of the law found in the texts. Manu asserts that a centralising monarch is obliged to protect local practices. The precedence of provincial custom is thereby asserted. Hindu law is not an elitist textual inheritance frozen in time and divorced from folk convention. Brahmanic legal theoreticians reconciled abstract principle and conflicting practice in formulating a code of law.

Unwritten tradition continued to supersede textual statutes in colonial India. This was so in the Bombay presidency, the Punjab and Awadh. Custom shares equal place with the written law in the Madras presidency and in the central provinces⁴. Traditional Hindu jurisprudence emphasised folk conventions. Local legal traditions were accommodated. The Dravida school of Mitakshara law re-interpreted the Dharma Shastras to accord with customary law prevalent in pre-historic South India. The Dayabhaga code integrated text-centered principles and traditions in Bengal. Other legal statutes such as the Thesavalamai of Jaffna and the Marumakattayam of Kerala were specific to certain districts or castes.

¹ "Indian Law", in *Encyclopedia Britannica* v.12 1947.

² Manu's Dharma Shashtra is considered the pre-eminent work of Hindu jurisprudence. He is known in the Brahmanic tradition as the law giver par excellence.

³ P.B. Gajendragadkar, "The Historical Background and Theoretic Basis of Hindu Law", in *The Cultural Heritage of India* (Calcutta: Advaita Ashrama) v.2 p.426.

⁴ "Indian Law", in *Encyclopedia Britannica* v.12 1947.

A common Hindu legal tradition exists nonetheless. Similar statutes were present in different regions across the Indian subcontinent. The principle of adoption enunciated in Mithila, i.e. North Bihar, approximated that of Jaffna law. The woman had the independent right to adopt children on her own. Matrilineal modes of succession existed likewise in several non-contingent regions. The relocation of a man to the bride's household, known in the Kandyan regions as the Binna marriage, was termed the Ghar Jamai adoption in north and west India. An underlying unity of syntax existed beneath the real heterogeneity of the Hindu world. A common deep structure generated similar legal codes and a civilisational continuum.

II

Due to the emphasis on folk convention, Hindu jurisprudence recognises marriage practices that differ across region, caste and community. The Dharma Shastras concede various marriage conventions that include the Brahma, the Daiva, the Asura and the Gandharva. The Brahma marriage is the formal, community sanctioned and patriarchal union prevalent in Sri Lanka. The Gandharva marriage is centered on the mere consent of man and woman and the consummation thereof. The legal texts recognise the lawfulness of Gandharva unions in certain contexts. The Asura marriage represents bride capture practiced among certain tribes in central India. Polyandry was practiced by the Nairs of Kerala, a custom shared by the Mukkuvers of Eastern Sri Lanka⁵. The Mahabharata has reference to polyandry. The Dharma Shastras permit polygamy on condition that the husband reimburses his first wife before consummating a second marriage⁶. The legal texts affirm discrepant practices in different contexts.

The Sanskrit treatises reconcile such differences within a common legal framework. Sections within the Manu Dharma Shastra forbid divorce. The colonial authorities enforced this prohibition except in instances where caste custom explicitly permitted re-marriage. A careful assessment of the classical texts reveals, however, legal allowance for divorce. It was the later interpreter of the law who took a rigid stance against divorce. The Thesavalamai, for instance, allows for the division of assets when husband and wife live apart and consider re-marriage. The Vanniyar took divorce for granted⁷. The attitude towards divorce in Hindu jurisprudence is context bound and dependent on local custom.

Hindu law was not irrevocable. Differences in interpretation facilitated legal innovation in the face of new contexts and challenges. The legal commentators adapted the principles of jurisprudence to shifting conditions. The Brihaspati Narada Dharma Shastras affirm that the basis for legal decisions should not be limited to the classical texts. Jurisprudence needs to

⁵ H.W. Tambiah, "Pre-Aryan Customary Laws", in *International Association of Tamil Research, Proceedings of the First International Conference Seminar of Tamil Studies* (Kuala Lumpur: 1968) v.1 p 358.

⁶ Ibid.

⁷ Ibid, p.359.

conform to reason for it to reflect Dharma⁸. The Apastamba Sutra asserts likewise that decisions of corporate and popular bodies constitute a valid source of law⁹.

The Manu Dharma Shastra is conservative and inflexible in matters of caste and gender. This text is dated to the 1st century C.E. The liberal Yajnavalkya Dharma Shastra reveals a more developed legal procedure. This text is generally affixed to the Andhra dynasty of the 2nd century C.E.¹⁰. The later Parasara Dharma Shastra is even more enlightened in its approach to law. Development, therefore, took place in time. The process of innovation ceased, however, with the colonial encounter. The courts no longer made decisions based on changing contexts and relied instead on medieval commentators. Traditional jurisprudence had become fossilised and conservative under European rule.

III

A division of labour into hereditary castes was enunciated in the Hindu world view. The texts envisioned the inter-connectedness and inter-dependence of the different societal segments. A corporatist social community was affirmed. A sense of community cutting across social divisions was asserted through ritual - be it the harvest, the kings coronation, temple observances, marriage and funerals. A symbiotic relationship existed between the different castes. This social system facilitated a complex system of labour specialisation in the absence of a monetised economy. The Sanskrit terms, jati, kula, gotra, varna etc. denote a service or occupational role¹¹. These in addition have a multiplicity of meanings, i.e. family, tribe, race, caste etc. Castes were industrial guilds in classical and medieval society. They were incipient professions and specialised trades. Each caste had the sole right to supply a specific commodity¹². It served as a trade union of sorts and a benefit society. Industrial specialisation enhanced excellence and workmanship.

The segmented, albeit inter-connected, social system checked political absolutism and arbitrariness. The village communities and urban trade guilds were autonomous locales. The head of the village, the caste headmen, the court of the guilds, and the king's officers each shared legal adjudication¹³. Such autonomous multi-centered political formations inhibited royal despotism. Sectarian groups, immigrant communities and specialised guilds were

⁸ P.B. Gajendragadkar, "The Historical Background and Theoretic Basis of Hindu Law", in *The Cultural Heritage of India* (Calcutta: Advaita Ashrama) v.2 p.426.

⁹ The decisions of corporate bodies are known as samayas which are a source of Hindu jurisprudence. Ibid.

¹⁰ Ibid p.427.

¹¹ K.M. de Silva, *A Short History of Sri Lanka* (Delhi: Oxford University Press 1981) p.41.

¹² Ibid p.147.

¹³ Will Durant, *Our Oriental Heritage* (New York: Simon and Schuster 1954) p.483.

incorporated within this inclusivist framework. Each such group was autonomous in matters of law and culture.

Tambiah introduces in his works the concept of galactic polities. The borders of such political formations were blurred and imprecise. A series of satellite principalities and provinces replicated the center in structure. Heterogenous groups were positively placed and incorporated in distinct niches. There was a devolution of authority. This inclusivism represents a broader civilisational framework. Such polities flourished in the Indianised kingdoms of South and South East Asia. I assert that it was this political formation that the Dharma Shastras envisaged¹⁴. This broad, inclusivist and adaptive legal system gave continuity and resilience to a socio-cultural world view in times of political and military uncertainties.

The classical legal framework sanctions differential rights. It legitimises a network of unequal obligations between the ecclesiastical classes, the landed agrarian castes and the artisan/service castes. It is explicitly hierarchical. The concept of untouchability is one outcome of this social system. The texts rationalise serfdom in terms of ritual pollution. The entire concept of caste pollution represents a flawed dimension in Hindu social thought. Jurisprudence, moreover, as in most pre-modern societies, had a gender bias. This is seen in the differential rights in marriage, divorce, re-marriage, inheritance and property. A patriarchal textual perspective sidelined women and often denied them a legal persona. The elitism, hierarchy and gender exclusivism of the legal texts is much evident.

IV

A broad coherent theoretical perspective demarcates Hindu jurisprudence. Hindu law is nonetheless region and community specific. It reconciles broad concepts and micro-level practices. It is both a textual inheritance and a series of customary statutes. It adapts to changing contexts while also demonstrating certain principles consistently over time. Brahmanic jurisprudence posits a corporatist vision of society and affirms likewise the autonomy enjoyed by local level units. It facilitates labour specialisation. The hierarchy in ritual status contributes however to elitism. One needs to amend, adjust and come to terms with contemporary ethos and values. This would be in keeping with the traditional emphasis on interpretation, evolving practice, popular decisions and reason. The dynamism of Hindu jurisprudence makes imperative such a transformation. Hindu law sans its hierarchy has much to offer contemporary humanity.

¹⁴ S.J. Tambiah, *Buddhism Betrayed: Politics and Violence in Sri Lanka* (Chicago: University of Chicago Press, 1992) pp.173-175.

HINDU JURISPRUDENCE AND THIRUKKURAL

by

Justice C. V. Vigneswaran

Thirukkural reflects the lifestyle, character and aspirations of the Hindu Tamils probably more than any other literary creation by the Tamils. It is at the same time a peerless treatise on morals, an oft-quoted literary masterpiece, an authentic sociological document and a primer on political theory.

Though principles of jurisprudence are also to be discerned in Thirukkural, such principles have to be gleaned scrupulously since they are strewn hither and thither and not patently visible. The purpose of this paper is to present certain salient features of Hindu Jurisprudence from the perception of Thiruvalluvar, the author.

To appreciate Thirukkural fully, one must understand its social provenance (source). The society in ancient India had four divisions which later gave rise to the iniquitous caste system. The divisions called **Varnashram** were **Brahmins** who were the pious and constituted the intelligentsia in society; **Shatriyas** who were the aristocrats, warriors and the ruling class; **Vaishyas** the commercial class and **Shudras** the working class. The divisions were functional but as time went on men born to each family identified themselves with the above functional groups hereditarily and later brought forth sub-divisions in each group giving rise to hereditary castism.

The Hindus also divided one's life span into four periods. The first was that of the student (**Brahmachari**) upto about 16 years. He was expected during this period to be celibate and studious. The second period was that of a **Grahastha** or householder which extended upto about 32 years. He was expected to marry during this period, run a graha or house with his wife, beget children, earn and enjoy all worldly pleasures.

The third phase was that of a **Vaanaprastha**. During this period he should have made arrangements to give his children in marriage, detach himself from his worldly possessions, hand over his wealth and possessions to his progeny and get ready for the fourth and final phase which was **Sanyasa**. He together with his wife should by 48 years withdraw from worldly life, seek a tranquil environment to live a life of gentleness, peace and calm preparing for the call of the divine.

The Hindus also classified the **aims** of each person's life as that of seeking righteousness, wealth, worldly pleasure and divinity. Thus most religious and literary Tamil works spoke of these four aspects of life as **Aram**, **Porul**, **Inbam** and **Veedu**. The Thirukkural was an exception in one respect. It spoke of **Aram** or righteousness in life, **Porul** or accumulation of wealth, **Inbam** or obtaining mundane felicity but did not refer to **Veedu** or salvation.

Thus Thirukkural consists of 133 chapters each containing 10 stanzas of which chapters 1 to 38 deal with righteousness or morality, chapters 39 to 108 with wealth and its acquisition and chapters 109 to 133 with domestic pleasures.

Under the title of morality or righteousness (**Aram**) 380 stanzas under 38 headings are given which are set out in Appendix 1 hereto.

Aram deals with morality, laying down those righteous acts decreed by law givers like **Manu** to be followed and dissuading from such acts censured by them. The denizens of each group, viz. Brahmana, Shatriya, Vaishya and Shudra, were expected to adhere to those acts prescribed for each stage in their life - viz. Brahmachariya, Grahastha, Vaanaprastha and Sanyasa, and desist from such acts disapproved of.

While chapters 1 - 4 of the Thirukkural deal with general matters, chapters 5 - 24 deal with the essentials of married life, chapters 25 - 37 with the essentials for a detached life bordering on asceticism and chapter 38 with destiny.

Under the title **Porul** or wealth 700 stanzas under 70 headings are laid out. They are set out in Appendix 2 hereto.

Porul has three divisions captioned as "statecraft" from chapters 39 - 63, "instruments of statecraft" from chapters 64 - 95, and general characteristics of those who constituted the state but left off in the earlier chapters which are found in chapters 96 - 108.

Chapters 109 to 133 deal with domestic pleasures. Their headings have not been translated since they do not strictly fall within the purview of this paper.

Thus Hindu Jurisprudence is based on the Ethical notions or concepts widely prevalent in ancient Hindu Society. These concepts have been expounded in the Thirukkural. Hindu Jurisprudence was also consistent with the structures of the Hindu Society which was earlier referred to as Varnashram. Therefore it is two-fold. Firstly the moral precepts which formed the foundation and secondly those prescriptions governing each group among the Varnas.

At this stage it may be relevant to examine the Western attitude to moral precepts and the Hindu perception of the same. *Moral precepts* deal with the state of the will of man irrespective of its outward manifestation while *Law* in its strict sense deals with the state of the will of man only so far as it is manifested in action including willed inaction. The former regards, while the latter disregards, those internal acts of the will which do not result in outward acts.

Sir Thomas Holland referred to these moral precepts as Ethics and the laws as Nomology. He said that "the essential difference between them is that Ethic deals not only with the outward results of the determination of that faculty of respect for a rule which is the basis of all the moral sciences, but also, and rather with the balance of inward forces by which

those results are produced. It looks not only to the sort of acts which men do, but also to the sort of men who do them. Nomology on the other hand deals entirely with the conformity or non-conformity of outward acts to rules of conduct"

Sir Holland further explained that "Ethic is the science of the conformity of human character to a type" while "Nomology is the conformity of actions to rules"

Thus "Ethic" he said, "is the science mainly of *duties*; while Nomology looks rather to the definition and preservation of *rights*. The terms right and duty are of course correlatives and are common to both Ethic and Nomology; but the former science, in accordance with its more inward nature, looks rather to the duties which are binding on the conscience; the latter looks to the rights which are the elements of social life".

Thus Ethic is concerned with the laws for which external legislation is impossible. Nomology is the science of the totality of the rules for which an external legislation is possible.

Western Jurisprudence had been concerned with Nomology in which the object of investigation was the conformity of acts to a rule.

Hindu Jurisprudence on the other hand had been more concerned with Ethic in which the object of investigation was the conformity of the will to a rule.

Having understood the differences in perception between Western Jurisprudence and Hindu Jurisprudence let me examine a few of the moral precepts stressed by Thirukkural.

1. **Divine right of kings was hereditary in Western Jurisprudence while it depended on merit in Hindu Jurisprudence.**

In the West there was the prevalent theory of the divine right of kings. According to it the king descended from a divine ancestor and they were divinely ordained to rule and the subjects had to submit to it. Kings were considered **fons et origo justitiae** [fount and origin of justice]. Therefore the justice they dispensed was supposed to be derived from authority of God and therefore beyond debate or dispute. Even if their decisions were unjust due to the theistic sanction behind it, people had to obey it as it was considered the mysterious ways of providence and therefore beyond human comprehension.

Amongst the Hindus the king was elevated to divinity by the wisdom of his judgements and not by his hereditary role.

In stanza 388 Thiruvalluvar states as follows:

A king who justly governs and protects his subjects would be considered a God.

Therefore the king's conduct of the affairs of the state corresponded with the respect and

esteem in which he was held. Thus kings were sensitive to justice being meted out to their subjects due to the realisation that any injustice perpetrated by them can have a vitiating effect on him.

According to Silappathikaram a Tamil literary masterpiece, when the king Koperum Cholan realised that he had executed an innocent person called Kovalan the husband of Pathini Kannaki, he immediately fell in a swoon and died.

This is a classic example of the supreme sensitiveness of the Hindu ruler to an injustice.

2. Hindu Jurisprudence emphasised just means and just ends equally.

The immoral acquisition of wealth was reprobated and aggrandisement of one's self was frowned upon by the Hindus. Hence acts of theft, misappropriation, breach of trust and cheating were held to be anti-social. In the same sense usury and any other mode of unconscionable acquisition incurred the wrath of the rulers.

In the Koran usury is declared a sin. But in the West it was condoned. In Calvinism earning money by any means was not to be impeached on religious grounds because it was seen as a corollary of predestination.

Hence the Protestant religion, particularly Calvinism, evolved in its secular aspect into Capitalism. (Vide Max Weber - *Protestantism and the rise of Capitalism* and R.H. Tawny - *Religion and the rise of Capitalism*.)

On the other hand the Hindu religion emphasised the relationship between ends and means. The ends, though laudable, should not employ culpable means. Ever since Western ethos permeated into the Hindu society it has attenuated its moral fibre with the result that even in Hindu society now means is considered insignificant and inconsequential. This in a way has adulterated our moral values.

By way of an example, under our Money Lending Ordinance more than twice the capital on the whole cannot be recovered. Yet fresh forms of obtaining interest by ingenious investments such as by hire purchase agreements have now taken root. The law now sanctions usury by such devious means as hire purchase which is repugnant to the Hindu concept of justice.

3. Hindu Jurisprudence reprobated the act irrespective of the effect while Western Jurisprudence only reprobated the effect.

Thiruvalluvar observed in stanza 45, chapter 4 as follows:

Avoiding jealousy, lust, anger and harsh words is righteous conduct.

Under Western Jurisprudence imported into our country only slander and libel were culpable.

According to Roman Dutch law there must be loss of reputation for slander and libel to be culpable. Such loss of reputation must refer to something tangible and derogatory.

On the other hand, according to Thirukkural, avoiding harsh words of any sort is righteous conduct in that the very act of saying or writing harsh words is prohibited while the Western Jurisprudence disapproves of them only if they have a harmful effect on another.

4. **Hindu Criminal Jurisprudence was considered both retributive and preventive.**

Crime was considered to be an act against society which was punishable by the State symbolised by the king.

Protecting his subjects and punishing the miscreants are duties of the king - Kural 549.

Under the Hammurabi Code, it was an eye for an eye and tooth for a tooth. The criminal was inflicted a punishment commensurate with the harm he did to society. Such punishment is only retributive.

In Thirukkural that was not sufficient. Such punishment must prevent future crime by others and the criminal. This could promote greater happiness and harmony in society. In the next stanza, Thiruvalluvar expatiates on the preventive nature of punishment.

The king punishing the wicked and protecting his subjects is akin to a farmer destroying the weeds to protect his crop - Kural 550.

Thus it would be seen that Criminal Jurisprudence as reflected in the Thirukkural encompasses deterrence and retribution.

Further, punishment was to be commensurate with the crime and must fit the criminal.

To inquire into the criminality of an accused and punishing such person deterring him and others from perpetrating the crime is the duty of a king - Kural 561.

Modern theories of criminology have been propounded by Lambroso & Beccaria and others.

The cardinal tenet of these theories is that punishment should fit not only the crime but the criminal. This meant that crime was not only considered from the point of view of society but also from that of the reprobate.

Thiruvalluvar had this in view when he said in stanza 541 as follows:

When there has been a violation of the law the king should objectively analyse the

wrong, be impartial, be just and then impose a punishment commensurate with the transgression -Kural 541.

There was, therefore, an obligation on the part of the king to objectively inquire into commission of crimes and impose on the transgressors condign punishment.

It may be relevant to realise at this stage, that every system of jurisprudence reflects the character of its society and the nature of its political organisation. The organisation of the society is the polity and the polity is coincidental and co-terminous with the state. One may say that law is a product of society just as much as society is determined by the nature of its laws. There is an inescapable pluralism. Hence the laws of Plato's *Republic* have to be different from the laws of Sir Thomas More's *Utopia*. The chief feature of a democratic society is the Rule of Law but the characteristic of a fascist state is ad hoc and ex post facto (retrospective) legislation.

Therefore, though the law prevailing in the society of Thirukkural was based on the corporate social conscience of the Tamils at that time, yet it was also related to the structure of its political organisation. It was a polity with hereditary monarchy and the role of the sovereign in the implementation of law must also be a part of its jurisprudence. There was no separation of powers and the king was vested with the triune powers of Executive, Legislative and Judicial.

In this context it was the duty of the king to extirpate from society those rabidly anti-social elements who can be a canker in the body politic. It was the task of the monarch to resort to benevolent social surgery. This was imperative lest the trauma corrupt the whole body politic.

Thus the manner in which the king had to exercise his function as the protector of his subjects and preserver of their well-being was what was illustrated by the aforesaid stanza 541.

5. **Jurisprudence in action was as important to the Hindus as Jurisprudence in theory.**

Laski observed that "Law is not logic but life". Law has to deal with human realities. If the moral well-being of society was to be preserved and promoted, the king must be impartial in his judgements and considerate in his punishment. Thus ethical prescriptions and moral conventions were considered not enough. It had to be rigorously enforced by the king who might be referred to as the counterpart of the philosopher king of Plato.

Since the king was enjoined with the onerous duty of impartially ascertaining the commission of an offence before punishing the dereliction, it is necessary at this juncture to know the concept of impartiality referred to in the Thirukkural.

At stanza 118 it is stated as follows:

It is the virtue of the wise man to stand erect like the balance beam and then weigh the articles in the scales without veering to one side or the other - Kural 118.

Impartiality, therefore, connotes objectivity and dispassionateness. One must have a mind free from all preferences, predilections, prejudices, inhibitions and imagination. It should be a just attitude of mind. This is different from the Wu Wei principle of Tao. In the philosophy of Tao the right mind meant a mind free of mundane pleasures and transfixed in the Absolute where you perceive the totality of phenomena in its due place. It was a vision of the panorama of phenomena allied to the mental state conceived in the Bhagwad Gita of being action in inaction and inaction in action.

But what was described in the Thirukkural was worldly wisdom in human judgement eliminating all factors that could cloud human mind and mar correct judgement.

In stanza 119 it is stated as follows:

Not to be tainted in terminology with prejudice nor warped in mind is impartiality - Kural 119.

When one's mind is warped, the words that issue forth from the tongue reflects the mental state. Thus an impartial person should be pure in word and thought. Thirukkural, therefore, has commended the virtue of impartiality because a just society is not possible unless those who sit in judgement are free from bias.

In stanza 111 Thiruvalluvar states:

If one deals with his friends, foes and neighbours properly the virtue of impartiality itself is sufficient - Kural 111.

Thus persons charged with the task of administration of justice, whether it be the king or anyone else delegated with such authority or function, must be free from bias and its subterranean operations.

Thus jurisprudence in action has been stressed by Thiruvalluvar.

Conclusion

The Hindu religion generally deals with the spiritual aspect of human nature and man's realisation or communion with the Ultimate Reality. But some facets of Hindu religion like Karma Yoga are methods by which one can attain spiritual happiness while being fully involved in one's day-to-day mundane life.

Stanza 50 states:

One who treads the path of virtue in this world and acts in a delineated manner is to be held in esteem as Gods in heaven - Kural 50.

The delineated manner would mean in accordance with the ethical principles propounded by Saints and Sages. These ethical principles are crystalised in the Thirukkural, and Hindu Jurisprudence is a *resume* of those principles found in the Thirukkural along with the social prescriptions laid down for each Varna by law givers like *Manu* and others.

A P P E N D I X - 1

Righteousness

Aram

General Topics

- Chapter 1 - invocation of deity
- Chapter 2 - rain
- Chapter 3 - the virtues of those who have renounced
- Chapter 4 - the importance of righteousness

Essentials of Married Life

- Chapter 5 - married life
- Chapter 6 - the benefits of a life partner
- Chapter 7 - progeny
- Chapter 8 - kindness and affection towards others
- Chapter 9 - sharing victuals with others
- Chapter 10 - the benefits of uttering kind words
- Chapter 11 - gratitude
- Chapter 12 - impartiality
- Chapter 13 - self-control
- Chapter 14 - discipline

- Chapter 15 - not coveting one's neighbour's wife
- Chapter 16 - tolerance
- Chapter 17 - not bearing ill-will
- Chapter 18 - not coveting other's things
- Chapter 19 - not slandering others
- Chapter 20 - not gossiping
- Chapter 21 - fear of doing wrongs
- Chapter 22 - helping others
- Chapter 23 - being charitable
- Chapter 24 - fame

Essentials of Detached Life

- Chapter 25 - compassion
- Chapter 26 - being vegetarian
- Chapter 27 - forbearance
- Chapter 28 - hypocrisy
- Chapter 29 - wrongful acquisition
- Chapter 30 - speaking the truth
- Chapter 31 - abjuring anger
- Chapter 32 - refraining from harming others
- Chapter 33 - not killing
- Chapter 34 - permanency
- Chapter 35 - renouncing worldly attachments
- Chapter 36 - the knowledge of eternal verity
- Chapter 37 - severance from craving

Destiny

- Chapter 38 - fate

APPENDIX - 2

Wealth

Porul

Statecraft

Chapter 39	-	the true qualities of a sovereign
Chapter 40	-	true education
Chapter 41	-	ignorance
Chapter 42	-	intellectual inquiry
Chapter 43	-	rational knowledge
Chapter 44	-	avoiding vice
Chapter 45	-	seeking the company of the Great
Chapter 46	-	avoiding the company of the vulgar
Chapter 47	-	foresight in action
Chapter 48	-	realistic appraisal of strength
Chapter 49	-	awaiting opportune moment
Chapter 50	-	understanding vulnerability of opponents
Chapter 51	-	correct assessment of character
Chapter 52	-	engaging the proper personnel
Chapter 53	-	keeping one's associates intact
Chapter 54	-	refraining from lethargic indifference
Chapter 55	-	ruling justly
Chapter 56	-	misrule
Chapter 57	-	abjuring tyranny
Chapter 58	-	being considerate
Chapter 59	-	espionage
Chapter 60	-	perseverance
Chapter 61	-	assiduity

- Chapter 62 - perseverance
- Chapter 63 - not being overawed by failure

Instruments of Statecraft

- Chapter 64 - the characteristics of Ministers
- Chapter 65 - persuasiveness
- Chapter 66 - acting beneficially
- Chapter 67 - steadfastness
- Chapter 68 - acting competently and thoroughly
- Chapter 69 - Diplomats
- Chapter 70 - being discreet in conduct with the King
- Chapter 71 - discernment in interpreting conduct
- Chapter 72 - correctly assessing the audience
- Chapter 73 - addressing confidently
- Chapter 74 - characteristics of an ideal kingdom
- Chapter 75 - securing the boundaries of the kingdom
- Chapter 76 - acquiring wealth properly
- Chapter 77 - characteristics of an invincible army
- Chapter 78 - military valour
- Chapter 79 - friendship
- Chapter 80 - assessment before friendship
- Chapter 81 - sustaining old friendships
- Chapter 82 - evil friendships
- Chapter 83 - simulating friends
- Chapter 84 - stupidity
- Chapter 85 - superficial learning
- Chapter 86 - fostering animosity

- Chapter 87 - the qualities of an adversary
- Chapter 88 - assessing an adversary
- Chapter 89 - undermining from within
- Chapter 90 - not harming respected elders
- Chapter 91 - subservience to one's wife
- Chapter 92 - the nature of Courtesans
- Chapter 93 - avoiding intoxicating drinks
- Chapter 94 - gambling
- Chapter 95 - gluttony

The Residual

- Chapter 96 - noble birth
- Chapter 97 - sensitivity
- Chapter 98 - the nature of the Great
- Chapter 99 - men of Excellence
- Chapter 100 - the characteristics of a cultured person
- Chapter 101 - miserliness
- Chapter 102 - honourableness
- Chapter 103 - exalting the standing of one's family
- Chapter 104 - farming
- Chapter 105 - poverty
- Chapter 106 - mendicancy
- Chapter 107 - disgraceful begging
- Chapter 108 - worthless people

A BACKGROUND TO THE UNDERSTANDING OF HINDUISM AS PURE RELIGION AND SOCIAL RELIGION

by

Prof. C. Suriyakumaran

I. BELIEFS

(i) *Hinduism* is at once a philosophy, a religion, and a way of Life. In one sense, there is no religion called Hindu. The term "Hindu" is purely one of geographic origin, referring to a river, Sindhu (the Indus), where the particular religion - as also the language, arts, agriculture, and civic systems - synthesised with the ancient Indus Basin civilisation of around five thousand years ago, into its present form.

(ii) "*Brahmanism*", the attainment of the Universal Soul, the Brahman, or Vidya Dharma, is a nearer description of the religion itself. (Whence, the name Brahmins arrogated by the priestly class to themselves).

(iii) Its outlook being catholic and free, it is also called '*Sanatana Dharma*', Eternal Religion.

(iv) It accepts the reality that there are varying *intellectual* and *spiritual* levels in peoples and all cannot take the same path; it therefore offers different approaches - to philosophers, poets, mystics, men of action, intellectuals, or men of simple faith. Such person may, therefore, be guided by his or her own individual spiritual level and experience and will, if he pursues his path with fervent *intensity*, attain the same goal.

(v) Thus, its espousal as outstanding, the words spoken by *Lord Krishna*: "Whosoever follows any faith and worships me, under whatsoever denomination, in whatsoever form, with steadfastness, his faith shall I indeed reinforce". Paraphrased for today, it may read : Come to me as a Hindu, Buddhist, Christian, Moslem, Jew or Sikh. I shall make you a better Hindu, Buddhist, Christian, Moslem, Jew, Sikh. It would not say, your religion is wrong and to follow it is a sin, get converted to mine and heaven will be yours.

(vi) Its fundamental beliefs have (a) no part of superstitions and superstitious practices that go as religion; and (b) no concept of 'competing' religions. "Ekam Sat Viprah Bahudda Vidanti". All is God, is One. Sages call that by different names.

II. SCRIPTURES

There is no single book, teacher or prophet. There is a concept of Eternal Truth; and thousands of books and scriptures, and more than one Avatar (Incarnation). The books and scriptures may be grouped under *Six Sets*.

(i) The First Set, are the *Srutis*, that is the *Vedas* - a long line of inspired writings ending with the Vedanta (anta - end) - including the Upanishads which hold the essence of the philosophy of the Vedas.

Also of the Srutis are:

- (a) the four Upa (subsidiary) Vedas on Ayurveda (medicine), Dhanurveda (archery and weaponry), Ghandarvaveda (music and dance, including the Natyashastra of Bharata) and Arthashastraveda (policy, administration and commerce); and
- (b) Six Vedarya (explanatory) works on the Vedas - Siksha by Panini on phonetics, Vyakarana also by Panini on grammar, Nirukta on etymology and linguistics, Chandras Shastra on prosody and versification, Kalpa Shastra on rituals and ceremonials, and Jyotisha on astronomy ad astrology.

(ii) The Second Set, are the *Smritis* (meaning 'remembered') or *Dharma Shastras* governing righteous conduct of individual, community, society, nation. Thus, the Srutis become described as Divine Law and the Smritis as Human Law. In all, the Smritis are eighteen, including that of Manu the earliest law giver.

(iii) The Third Set, are the *Itihasas*, the *Epics*, presenting Upanishad's philosophy in parable and story. The Ramayana by Valmiki (also called the Adi Kaviya, that is the Oldest Story), the Mahabharata including the Gita or Bhagavad Gita by Viyasa, the Yogavasishtha, and the Harivamsa, form the main epics. They are together called 'Suhrit Samhitas' or friendly compositions.

The Gita's emphasis on Nishkama Karma, Action without desire or passion, nor for the fruits thereof, is the central theme of the Mahabharata. Action - which is matter - is prime and essential, to be manifest in full at all times in this life, to be inactive being wrongful. It may be creative or apparently destructive. It is Motive - the 'Soul' - which determines the goodness of the Action, basing itself on complete detachment, or "non-attachment", thus fusing completely the matters of the world and those of the spirit.

(iv) The Fourth Set, are the *Puranas* - eighteen main and eighteen subsidiary tales conveying the Vedas, (i) above, and the Dharma Shastras, (ii) above, as short stories, and in murals.

(v) The Fifth Set, are the *Agamas*, that is *theology*, for worship of deities giving rise to the great sects of Shaivites (devotees of Shiva), Vaishnavites (of Vishnu) and Shaktiites (of Shakti, the manifestation of Cosmic Energy).

In them also are the rules for temple architecture; and the vast store of poetic compositions and exquisite devotional songs, rarely matched in piety, emotion, fervour and quality, specially in Siddhanta.

(vi) The Sixth Set, are the *Dharshanas* ('visions') of six schools of philosophy as they developed in time : (Nyaya, Vaisesika, Sankhya, Yoga, Mimamsa and Vedanta). Vedanta itself had Advaita (of Sankara), Visistadvaita (of Ramanuja) and Dvaita (of Madhava) the second and third with close links to Siddhanta's "Dualism".

The Upanishads, the Vedanta Sutras, and the Gita together are called Rashana Traya or the three authoritative scriptures.

As in the writings of all religions, these schools have differed in some of their doctrines notwithstanding the all embracing unity of their religion : for example, the distinction as to the relation between the Soul (Atman) and the Supreme (Brahman) in the progress and final place of the Soul in Brahman. In pure Vedanta (Advaita Vedanta) the Soul is simply the Brahman itself, 'unmanifest', and when released through self-realisation becomes one with and part of the Brahman (Non-Dual). In Siddhanta (siddhi - divine wisdom) mostly represented in Shaivism, the Soul (Pasu) attains the Supreme (Pathi) by the Grace of the latter and resides, upon release (from "Pasam"), beside the Supreme, 'at its feet' as it were, and not merged indistinguishably, as one, with it.

(vii) From all of these scriptures and traditions, is another *tradition*, namely that all - worship, life, love, language, dance, music, song, sculpture - are a grand unity, each a worldly symbol of, and offering to, the Supreme Reality. Religion is all of life, and life is all of religion. Hence the intensely intertwined mosaic of religion, music, poetry, dance, sculpture, and living itself in the Indian tradition.

III. DOCTRINES

For all its wide range, the Tenets of Hinduism are clear and precise.

(i) The Absolute Reality is simply "*Nirguna Brahman*"; "of being", Immanent - transcendent, outside the limits of the material, above time and space, Nirguna - without shape or form, without beginning and end, not male not female, so "Tat" (that is the impersonal), "Om Tat Sat" - Om, that which exists ('Om', the all embracing symbol). The *Atman* is simply the 'unmanifest' Brahman within finite being.

(ii) To ordinary mortals, the Absolute is translated as "*Saguna Brahman*", of "Becoming", that is, with Attributes (of Nirgunan, Ishwaran, Easan) used as objects and means of devotion; and given "form".

(iii) A basic concept of Saguna Brahman is that of the Trinity - *Trimurti* of Ishwaran as Creator, Preserver and Destroyer (or Brahma, Vishnu and Shiva); and their female aspects as Sarasvati, Lakshmi and Parvati (the last also Prakriti consort of Purusha the husband, or Shakti). The offspring of Shiva and Parvati - Ganesha, Kartigeya with their other names - are equally expressions of several attributes or qualities. All these names put together are legion, picturesque and meaningful, and recur in the personal names of millions in India and, South and Southeast Asia.

(iv) The cosmic concepts (a) of *Shakti* (primal energy), *Anu* ('atom'), and *Sabda* Brahman (the vibrations of the universe) along with that of (b) the Trimurti, provide basis for understanding of Reality, and for a 'science fact' which Hinduism held, that this universe will end at a given future time (the Hindu *Kalpa*) and a new universe will emerge.... and repeat itself; that all forms of matter are simply transmutations of Shakti, 'Anu' and Sabdam, and the rest is *Mayam*, 'Illusion'. The apparent separate reality called matter will ultimately get transisted back as non-matter, like the Atman, part of the infinite.

(v) *Samsara* is the cycle through which each Atman, the individual soul residing in the physical world of illusion, passes until it is one with the Brahman - Param Atman.

(vi) *Karma* is the law of action not inaction. Such action produces its reaction and each cause has its effect. It is for us to act to get where we should.

(vii) *Dharma* is righteousness; and the need, the demand, that righteous duties must be performed in this Samsara.

(viii) *Yoga* (to 'yoke' to unite the soul with God) is the path, or paths, by which the goal may be achieved; and is designed to meet people's varying natures and capacities, *never excluding or condemning those who do not have one or other capacity or do not pursue another's faith*. These are broadly:

(a) *Bhakti yoga*, the path of Love, Devotion. The aims are to attain *Saryam* (Truth), *Sivam* (Love), *Sunderam* (Beauty). Images and idols, while known not to be God, are used as live symbols that stand for God in a particular attribute, as the worshipper chooses. They are the flag behind which he marches to God, like a soldier behind his country's. '*Bhava*' devotion, is at all times his. Many aspects of God can be chosen as Santa (father), Bala (child, son), Matha (mother), Shakti (Holy Spirit), Sakhya (friend), Dasya (master), Kanta (husband), Madhurya (lover); and others. In all these, the Bhakti (devotee) knows too that any symbol he may choose, even a place of worship devoid of any symbols, is only a symbol, equally as a blade of

grass, a stone not yet hewn into an edifice, or any other.*

(The twelve 'Alvars' and the sixty three 'Nayanmars' celebrated in South Indian literature, and among the most exquisite singers of God in this tradition, were all Bhaktas. Of one of them, the psalms of Thaymanavar, a celebrated Western scholar had to exclaim that the people from amongst whom these divine songs had arisen must have been especially blest of God indeed).

- (b) *Karma Yoga* is Selfless Service, in any profession of work, without expectation of reward, without attachment, in self-discipline, self-restraint, and total absorption along the path of justice, compassion and dedication. No work is inferior to another, or superior, and Work is Worship.
- (c) *Gnana Yoga*, is the functioning of the intuitive intellect at its most sublime and evolved form. It bridges the gap between Perfection of God and Imperfection of Man, as seen while pursuing Bhakti Yoga and Karma Yoga, through Jnana, knowledge or wisdom. So was the way of the Buddha, so later of those such as Ramakrishna Paramahmsa, Sankaracharya and Krishnamurti. As in all paths, the product of Realisation is permeating and sublime Love manifested in action according to the place, times and needs of the world in each one's time.

(ix) Hence, Appayya Dikshitar, a saint-poet wished to say, "Lord, in my meditations, I have attributed forms to thee who art *Formless*. In singing hymns of thee, I have belied the truth that thou art *Indescribable*. By going on pilgrimages I have denied thy *Omnipresence*. Forgive me these three-fold trespasses".

(x) Man's *true conversion* in religion is therefore vertical, from lower to highest, not horizontal, from one faith to another. Thus, the *Universalism* of all religion, excluding the most used understanding of conversion, as somehow converting the other person (sideways) to one's own religion, and not of one self (upwards) in one's own.

(xi) Two guiding lights lead all devotees:

"Jeevo Brahmaiva Naparah" (Adi Shankara). The individual soul is the Brahman only and none other. *"Tar Vam Asi"* 'That (the Brahman) thou art'.

* says an old Persian Poem: 'God sleeps in the mineral, dreams in the vegetable, stirs in the animal, and awakens in man'.

Annex

The Symbols of Brahma, Vishnu, Shiva in Traditional Indian Art and Architecture.

Brahma :

The four heads facing the four directions symbolise His creation of the Universe.

The Vedas, held in one hand, symbolise re-creation of the Universe after each 'Kalpa' or Cosmic Age.

So also the 'Kamandalu', the vessel used in prayer prior to Tapasya or meditation.

Appearing on the Lotus symbolises Purity, like the lotus plant growing in the mud but untouched in flowering.

Emerging from the 'body' of Vishnu symbolises the closeness of Creation to Preservation.

Vishnu :

Lying on the many-headed Serpent, Ananta, in an Ocean of Milk symbolises Cosmic Energy and Endless Bliss (Ananda).

The colour Blue symbolises infinity, limitless as the sky.

The Chakra, or discus, in one hand denotes 'Dharma', Righteousness and Order in the Universe.

The Shankhi, or Conch, in the other, stands for removal of ignorance as well as symbolising Nada-Brahman, the Sound in the dance-music of the Cosmos (the conch, placed to the ear, has a deep humming-sound).

The Gada, or mace, symbolises removal of evil in the World.

The Lotus stands for Beauty of the Cosmic Universe.

The Garuda, a man-eagle vehicle, connotes supernatural strength, Power and Piety.

Shiva :

(The Cosmic Dancer : His representation in Sculpture of Eternal Harmony out of apparent Chaos, has been considered unsurpassed in its expression of mystic power, meaning and

beauty.) (See e.g. Ananda Coomaraswamy, 'The Dance of Shiva', et. al.)

The dance, in itself, connotes cosmic energy as a whole.

Standing on the 'demon', Apasmara Purusha, refers to our ego.

The Deer in one hand, denotes our unsteady Minds, darting from one to another.

The Rattle-drum in the other denotes creative Activity.

Fire in a third connotes destruction.

The fourth hand, held up, conveys "Do not fear, I shall protect as I destroy".

The circle of Fire behind stands for continuity and Eternal Motion of the Universe in creation, preservation, destruction...

The river, Ganga, originating on the head symbolises Eternity and Purity.

The Crescent Moon denotes the Waning and Waxing of all things - and Time.

The Cobra coiled represents cosmic energy unfolding.

The garland of skulls reminds that Death comes to all.

The Third Eye connotes that He is all-seeing and wise.

Wearing of the 'Kandala' in the right ear and 'Tatanka' in the left represents the Eternal as half male and half female (Ardhavarishwara).

The Holy Ash denotes that the body is transient ending in Ashes.

The Tiger Skin on the waist represents our arrogant Pride (Ahamkara), to be suppressed and destroyed, as also our Illusions.

The Linga represents the endless Pillar of cosmic power and light.

PHILOSOPHY

I. PREMISES

(i) A *Universal philosophy* of truths and norms has no bearing on particular religions. Each particular religion would be appropriate in its own place, indeed, even proper. For example, a group of African intellectuals some years ago, in an informal search for identities and self expression, felt that there should emerge an evolving African religion, based on deep, essential beliefs of African civilisation. In another commentary, in South East Asia, outside scholars acknowledged what was earlier simply termed paganism or animism, to be a "universalism.....deeper, wider, more imaginative and, at times, almost beyond the reach of the formally trained Western mind!"

(ii) Organised religion, that is Social religion, organised -more in some cases than in others - is entirely different from *pure religion*; that is the philosophy and metaphysic of creation and attainment of the Infinite by the Finite.

(iii) *Social religion* will therefore be as varied and specific in relevance as it has different locations. Being foreign to each other, these variations have left behind one of humanity's greatest paradoxes. It is of religion, being the source of some of the world's outstanding works of art, as also the cause of some of the world's greatest abuses, murders and genocides.

(iv) Most *indoctrinations* lead to large-scale confusing of dogma, symbolism and parable for the Reality.

(v) *Reality* itself may be described in many ways, but all imperfect and none inferior to the other; any particular way chosen being simply because of location and origin, and human conditioning.

(vi) For pure Religion, what "religion" to hold becomes immaterial, the metaphysical being Universal; that alone is material. Thus in a *Perennial philosophy*, the Supreme as exists in all religions and the Universal are One. The possessiveness of social or organised religion becomes, besides this, divisive and small.

(vii) The Supreme is and can be manifest in any *Form* which the intense devotee visualises. It is no basis for one intense devotee then to set upon another to exterminate him for his own vision. When any attains realisation of the infinite, only one Reality will be "seen" - by means beyond bodily senses and not truly describable to those that use only these. It has to be One, since there is only One.

(viii) The Supreme is and can manifest in innumerable *places* and at innumerable *times* - in this little world or in the vast unknown expanses of the universe unknown to man.

Here on earth He can manifest at various times in people's histories and then would use the Modes, the Allegories, the Cultures, and Languages of those peoples. This is no basis for claim to "uniqueness" by one group of people or conflict with others. What is made manifest is simply a "specific" of an indescribable Unknown, all One and the Same. Hence the validity and acceptance of all avatars or incarnations - Krishna, Christ and others.

(ix) All beings are *Sons of God*. Only, most are, like weak flickers of a candle, poor vehicles of that Supreme Energy (Brahman) from which their own (Atman) is derived. When by effort or by Grace, as incarnations or as prophets, that energy burns bright and fierce, they are truly sons of God's Spirit, some sublime and peerless. The goal for every mortal is in effect also to become so, as the Atman is merely part of the Supreme, and it is available to every individual to hold the mirror (of "Yoga") to himself and perceive the God - head in him.

(x) "*Hinduism*" as well, in its ritual form, is only an organised religion, much less organised and more social, certainly not more "universal" on that account. Beginning in the Indus Basin, with the name derived from it, it was simply part of that society and with codes, customs, totems and taboos specific to its times and places.

(xi) But alongside, a pure religion also emerged, as in other religions in varying form, perhaps more freely and explicitly in the former, as *another religion*.

(xii) The metaphysics of that other, pure religion or philosophy was not Hindu, if by that is meant the "*label*". It could not support exclusive doctrine; nor look to a world religion whose hallmarks were dogma, rule or ritual.

(xiii) The "other" religion, of the essence of *unity, diversity and universality*, and beyond religions, would assert "All truth is One, the paths to it are many". A weakness for organised religion, it is the strength of universal religion, based on a fullness of understanding and of conviction.

(xiv) Such *original truths* then transcend as they must, the labels, schisms and feuds that result by organising truths into exclusive and conflicting moulds.

(xv) Therefore there will be complete *Harmony* in pure religion. There can be in organised religion, if it were seen for what it is, purely as social, specific and varied, capable of being enjoyed in that form, by all; and even necessary to each society for its own enrichment, cohesion and advancement.

II. TENETS

(i) The Eternal Reality, that which is Infinite, that which is '*non-contingent*', cannot be seen where perceptions are contingent, dependent on the finite senses, as instruments for

that vision. It is only when they are not dependent on the finite, 'contingent' senses, that total apprehension becomes possible. The one would be 'sensory perceptions'; the other, 'intuitive apprehension'. It is thus that Awareness of ultimate reality is shared in all pure religion, whatever the origins; while finite knowledge is not.

(ii) The human possession of the *finite senses* - a source of great power as of great deception - if used as the only instruments of perception or communication, are thus limited as instruments, by their being finite. The moment a Reality is translated in words - the core of doctrine, dogma and organised teaching - distortion begins. Ultimate truth cannot really be expressed in its purity even in the thinking of logic. Much less can it be in words. We get intimations of Truth; and they must lead us to search for that Truth in higher forms, not fight each other for our conceptions of half - truths.

(iii) In the finiteness of human capacity therefore, in which the contingent cannot readily perceive the non-contingent, it is then truly impossible to describe that Reality to another. Each must find it with aids. The words which *describe* carry the first falsehoods: and it goes on, in increasing measure, to the end. It is the distortions that get embedded in doctrine, dogma, book and institution, and conflict and controversy. "Truth is that which is revealed on each one's level of consciousness", leading ultimately to fullest Awareness itself.

(iv) Further, logic and *dialectic* in itself - in any case, incomprehensible to the vast majority of the human race - cannot solve the problem of knowing even personally the Reality of the Supreme. Only a culmination of personal search, in personal experience, can.

(v) A universal religion must also without limit of time or space, embrace within its *synthesis* 'the whole gamut of the human spirit from the crude fetishism of the savage to the creative affirmations of the saints'. Nobody goes to hell, if there is one, for being in a particular 'place'; for not striving to be his full self, he remains, here in 'hell'.

(vi) Thus there is a place for *Symbols* - those who do not need them should not use them - of names, attributes, forms - as 'means', to travel, from any level of human position or understanding to the highest attainment of union; and through 'paths' as suit each - bakthi or love, karma or service, gnana or meditation. All these, at varying levels, are the 'tendrils' that Indian thought described as aids to meet the human limitations of trying to relate to the Infinite. No one is excluded from attaining salvation, the reality of the Brahman through union. Hence, that conversion is, and must be, really upwards and not sideways.

(vii) In a setting of *Universal Religion*, the purity of Allah without all Form fully accords with that of Nirguna Brahman, the Absolute and the Immanent. The Trinity of the Father, Son and the Holy Ghost may well accord with Ishwara, Krishna and Shakti; and, in a different way, with the Trimurti of the Creator, Preserver and Destroyer, in a cosmic cycle of emanation from the Infinite, through the Finite, to Contraction back to the Infinite. This

Unity, Diversity and Universality, in scientific equivalence, is the theory of the universe as expanding from a cosmic energy mass concentrate and destined to collapse back into the bosom of the infinite. The 'Destroyer' is of course a concept that organised religion, preaching an all Good and all Merciful, would wish to shun. Yet, God is without attributes 'not this not that' and being so, recognition of his manifestation as 'destroyer' is not of an 'Evil'. It is as we know, of a simple truth of the universe, of our bodies, our thoughts and of everything. From the smallest to the largest, here and in infinite space, substances are crashing, separating, burning, cooling and creating. It is not the Deed that is Evil. 'Action' as the Gita has repeated, is 'neutral'. Motive is its soul, that which determines its character, and makes the Action 'good' or 'bad'. In this, the aid to good action is Ahimsa born of detachment, or complete non-attachment.

(viii) In a setting of universe upon universe, of unending limitlessness, and of timeless eternity, the maimed, the deformed, the ravaged, the ignorant - as also the normal - in this world are not in a '*once and for all*' test of Attainment for some and Damnation for others. The Consciousness that is within all beings must go on until it merges into the Infinite for it is part of it, passing from Actions and Reactions to ultimate realisation. There are no separate places 'Hell' or 'Heaven' - or Satan - but all are within each person; in whom 'Sin', that is Action with weak 'Motives', disintegrates body, mind and soul, even as actions with good motives 'integrate' and advance them - until release.

(ix) The world, a spot in the universe and even less so *in the endless Infinite* need not be the only place in which creation resides, much less the centre of it.

This earth is not endless, but headed towards sheer obliteration in the cosmos at a given future time - not to mention the likely eradication of mankind by an expected new Ice Age in the cycle of such ages.

These, if no other, should humble all humans to see the transience of things and in particular the adolescence of spiritual conceits by peoples of one religion over another; leading to a wider perception of Universal Religion. The 'truths' for this already lie deep inside each human and each religion.

(x) Those Truths then, of the *Attainment*, in a journey from the Father (Brahman) through Birth, back to Union (Moksham) may be described variously, drawing on the varied mainsprings of eternal realities, from the recesses of all religions. Of the essence of Perennialism, it is set out here, first in brief, and then as the frame or pillars, of perennial religion. While the truths embodied are Universal, its words are purely one form of expressing, drawing in this instance on the sources of Indian metaphysic, philosophy and phrasing.

In this form of expression it would be as Brahman - Atman - Mayam - Samsaram - and Moksham (incidentally, the way in which it appears, the essence of Hinduism was taught.

from ancient time, to the young in the Island of Bali, distinguishing it sharply from its forest of gay and colourful rituals):

Without beginning is the Brahman, infinite, immeasurable, indescribable, the source of all things.

- From this is the Atman, a minute spark of the Brahman, some brighter some weaker, but all destined to go back according to efforts of each to the Brahman.
- Mayam is Illusion of the concept of Matter as the Real and the cloak it throws on seeing the essential, endless, transcendental Reality void of Time, Space and Form - with consequential 'finite' desires and conflicts.
- Samsaram, is that 'journey' the Atman takes within this encasement of illusion, until by its efforts, of yoga (union), it ultimately ends its material cycle.
- Moksham, is the vision of the Atman as part of the Brahman and its Attainment of and Union with it.

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The LST Review is published about 20 times a year. Annual subscription rates inclusive of postage have been adjusted due to rising costs of production as follows:

Local : Rs. 300/=

Overseas subscription has been adjusted as follows as postal rates have been increased in Sri Lanka:

South Asia/Middle East	US \$ 25
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Volume I	(August 1990 - July 1991)	Rs. 425/= or US \$ 30
Volume II	(August 1991 - July 1992)	Rs. 525/= or US \$ 35
Volume III	(August 1992 - July 1993)	Rs. 625/= or US \$ 40

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Printed and published at the Law & Society Trust, 3, Kynsey Terrace, Colombo 8, Sri Lanka



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