



OUTLINES OF ANCIENT HINDU JURISPRUDENCE (1989). By M.S. Pandit. N.M. Tripathi, Bombay. Pp. viii + 64. Price Rs. 30.

IN MODERN times it is generally believed among the jurists particularly of the western world that jurisprudence—the science and philosophy of law, is the contribution of western thinkers only. Indian civilization is one among the ancient civilizations of the world. Who does not know about the ancient Hindu civilization of Mohanjodaro and Harappa. Such civilization could not have flourished unless it had the basic foundation of law and jurisprudence. Therefore, the contribution of ancient Hindu jurisprudence cannot be ignored towards the knowledge and understanding of law and jurisprudence.

The book under review<sup>1</sup> though a small monograph on the subject is very brief to the point and yet informative to the students of jurisprudence. It contains an excellent foreword written by Justice Y.V. Chandrachud, Ex-Chief Justice of the Supreme Court of India. He states that “This book of modest proportions, which delineates the outlines of Ancient Hindu Jurisprudence, contains a wealth of material on a subject which is almost unexplored until today. In a sense, therefore, this is a pioneering work.”<sup>2</sup> Such a foreword in itself is a testimony to the fact that the present work is an authoritative work on the subject. The book is not an original work but provides a summary of the sources of the Ancient Hindu law and a brief account of the Hindu law relating to family relations, the joint family, the law of property, the law of contract, torts and crimes, the administration of justice in ancient Hindu society and the Hindu conception of the origin of the State. The author himself recognizes the contribution of the original works like the *History of Dharmashastra* by P.V. Kane and the *Legal and Constitutional History of India* by Justice Rama Jois in writing this booklet.<sup>3</sup>

Even famous English jurist Mayne recognized the importance of Hindu law when he states that “Hindu law has the oldest pedigree of any known system of jurisprudence and even now it shows no signs of decrepitude.”<sup>4</sup> The author also aptly states that the Hindu system of jurisprudence as modified through centuries has been in existence for over five thousand years and has continued to govern the social and moral patterns of Hindu life with amazing catholicity of vision, harmonizing the diverse elements of Hindu cultural life.<sup>5</sup>

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1. M.S. Pandit, *Ancient Hindu Jurisprudence* (1989).

2. *Id.* at iii.

3. *Id.* at iv.

4. *Id.* at 1.

5. *Ibid.*



The book has been divided into eight chapters and the very first chapter entitled "The nature and Sources of Ancient Hindu Law" is the best chapter of the booklet. And this reviewer recommends that any one who is interested to know about the nature and sources of ancient Hindu law in brief should read this chapter to gain the knowledge on the subject within a short time. The Hindu conception of law is distinct from the western conception of law. According to Hindu law, law is called *Dharma*. A seer of Vedic Upanishad says, "One who speaks the truth speaks what is *Dharma*. Law for ancient Hindus was *Dharma*. The trio of *Rita*, *Satya* and *Dharma* are the essence of Hindu legal theory. And *Dharma* under ancient Hindu law embraced the principles and rules governing the entire life of man.<sup>6</sup> And the Hindu philosophy stresses the fourfold objectives of human existence. These are *Dharma*, *Artha*, *Kama*, *Moksha*<sup>7</sup>. The author states in case of the conflict between the first three objectives the guiding principle of resolving the conflict is the *Dharma* which is the principal aim of regulating human behaviours. *Dharma*, both in its cosmic and human context, is the stabilizing force of the universe.<sup>8</sup>

We know that natural law has been propounded by philosophers right from the ancient, thinkers from Greece and Rome to the modern times. Natural law stresses not merely the command element of law but also requires that law should have a purpose and should secure order and justice in society. The author states that the corresponding approach to the naturalist theory is contained in the dictum of *Kanada* who states that law is the instrument of realising material and spiritual well-being. Moral well-being is a step to spiritual well-being and therefore it secures happiness, material, moral and spiritual. Therefore, he states that there is a close similarity between the Western theory of natural law and the Hindu theory of *Dharma*.<sup>9</sup>

Then the author discusses the sources of the Ancient Hindu law. According to *Manu* the sources of *Dharma* are *Shruti*, *Smriti*, *Sadachara* and the voice of one's conscience giving satisfaction to oneself. *Shruti* or *Veda* is considered to be the highest source of law which is not in a single text-book. In ancient Hindu law in the absence of writing and printing, it was preserved through oral transmission from master to pupil and even now there are Brahmins who can recite the texts of the *Veda* of their own branch from memory. It is said that there may be errors in the modern printed editions of *Vedas* but none in the oral version of the Vedic text throughout India.<sup>10</sup>

The second main source of ancient Hindu law is *Smriti*. It is said that Vedic learning was supposed to have been revealed by God and heard by the ancient sages. *Smriti* was what was remembered by subsequent sages and

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6. *Id.* at 1—2.

7. *Id.* at 2.

8. *Ibid.*

9. *Id.* at 5-6.

10. *Id.* at 6-7.



transmitted to the following generations from master to pupil.<sup>11</sup> *Smriti* works are not original but derivative sources of law. In ancient Hindu law the authority of *Shruti* or *Veda* prevailed over that of the *Smriti*.<sup>12</sup> The author also gives in brief the literature of *Dharamshastras*, *Purandas*, *Smritis* and discusses custom as a source of law in ancient Hindu law.

The second chapter is devoted to the law of family relations. The author points out that the ancient Roman law was classified under the three heads *viz.*, the law of persons, the law of things, and the law of obligations. However, Hindu jurists classified law under eighteen titles called *Vyavharpad*. Of these eighteen titles fourteen pertain to civil law and four to criminal law.<sup>13</sup> Thus it appears that the ancient Hindu law was a highly specialized system even at that time like we now have various branches of law in the modern times. It may be mentioned in general that the modern law and jurisprudence stresses upon the concept of right but the ancient Hindu law stressed on the *Dharma i.e.*, duty of persons which could be either positive or negative.<sup>14</sup> Then the author discusses the Hindu law of marriage and divorce, about sonship and adoption, the law of succession, maintenance and even about slavery. The Institution of slavery did prevail in India but it is interesting to note that treatment of slaves was so humane that Megasthenes, who visited India in the 4th century B.C. observed that there was no slavery in India.<sup>15</sup>

Chapter III is devoted to the law of joint family which still has its traces even in the modern Indian Hindu law, whereas chapters IV to VI deal in brief about the ancient law of property, the law of contracts, torts and crimes. In chapter VII the author writes about the ancient Hindu system of administration of justice. The Hindu system of administration of justice rested on the foundation of the king being the fountain of justice. The king was the highest judge. In ancient India the king administered justice personally as a part of his daily routine. The courts in ancient India were called *Dharmasthana*.<sup>16</sup> And administration of justice was strictly in accordance with the rules of *Dharma*, derived from the recognised sources. The king himself could not lay down new rules of law. He himself was bound by *Dharma*. And his duty was to enforce the law through the courts. The sources show that the trial procedure and evidence was taken in a proper manner to establish the truth. The chief judge and the assessors weighed the evidence and decided the case and the judgment contained the arguments and reasons for the same. Even the appeals were allowed from

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11. *Id.* at 7.

12. *Ibid.*

13. *Id.* at 16.

14. *Id.* at 17.

15. *Id.* at 26.

16. *Id.* at 52.



the lower courts to the higher courts and final appeal could be at the King's court.<sup>17</sup>

In the last chapter the author discusses the origin and the nature of the state. Hindu jurists generally subscribed to the theory of social contract regarding the origin of the state. According to *Mahabharat* primitive society was as having no state and no law. There was no ruler, so no subjects. But then there was chaos. Thus the ancient Hindu law supported the theory of monarchical form of government subject to the rule of *Dharma*.<sup>18</sup> The author mentions that in ancient India the political theorist conceived of the state as having seven elements. They were the king, the people, ministers, treasury, army, forts and the allies. Even in the modern political state all these elements are important for preserving and developing any state.

To conclude it may be said that Pandit's *Ancient Hindu Jurisprudence* is a welcome booklet in the field of jurisprudence. It is a small book, so those jurists who would care to read this would read it from first page to the last and perhaps at one sitting. The book is written in a very simple and lucid language and would serve the purpose of those who are interested in comparative jurisprudence. The publishers N.M. Tripathi deserve to be congratulated for having published this booklet in an attractive fashion and having priced it at Rs. 30 only. However, it may be stated that the author would have done better service had he given the proper citations of the sources of materials used in this book which he has absolutely ignored. It is hoped that in the next edition of this book the author would provide citations of the sources of materials used in this book.

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17. *Id.* at 53-55.

18. *Id.* at 57.

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