

JURISPRUDENCE II

THE IMPACT OF VEDIC LITERATURE ON THE LAW

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I, Prashant Jain, hereby declare that this written work titled, “The Impact Of Vedic Literature On The Law” is an original work which I alone have written in my own words, with the exclusion of works of others which have been duly credited and cited as per fair practices of authorship and no form or practice of plagiarism has been indulged into in the completion of this work. I further declare that I have not manipulated any data and I have truthfully identified all persons who have substantially supported me in my work in the Acknowledgments.

Prashant Jain

CERTIFICATE OF ORIGINALITY

I hereby declare that the project work entitled “The Impact Of Vedic Literature On The Law” submitted to the Hidayatullah National Law University, is a record of an original work, evaluated by me and this project work has not performed the basis for the award of any Degree or diploma/ associate ship/ fellowship and similar project if any. Any help taken from sources has been properly cited as footnotes and is added into the bibliography.

Dr. Kaumudhi Challa

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INTRODUCTION

The Vedas are the ancient scriptures or revelation (Shruti) of the Hindu teachings. They manifest the Divine Word in human speech. They reflect into human language the language of the Gods, the Divine powers that have created us and which rule over us. The term Veda comes from the root 'Vid', to know. The word Veda means knowledge. When it is applied to scripture, it signifies a book of knowledge¹.

There are four Vedas, each consisting of four parts. The primary portion is the mantra or hymn section (samhita). To this are appended ritualistic teachings (brahmana) and theological sections (aranyaka). Finally philosophical sections (upanishads) are included. The hymn sections are the oldest. The others were added at a later date and each explains some aspect of the hymns or follows one line of interpreting them.

The Rig Veda is the oldest of the Vedas. All the other Vedas are based upon it and consist to a large degree of various hymns from it. It consists of a thousand such hymns of different seers, each hymn averaging around ten verses. The Rig Veda is the oldest book in Sanskrit or any Indo-European language. Its date is debatable. Many great Yogis and scholars, who have understood the astronomical references in the hymns, date the Rig Veda as before 4000 B.C., perhaps as early as 12,000. Modern western scholars tend to date it around 1500 B.C., though recent archeological finds in India (like Dwaraka) now appear to require a much earlier date. While the term Vedic is often given to any layer of the Vedic teachings including the Bhagavad-Gita, technically it applies primarily to the Rig Veda².

The Rig Veda is the book of Mantra. It contains the oldest form of all the Sanskrit mantras. It is built around a science of sound which comprehends the meaning and power of each letter. Most aspects of Vedic science like the practice of yoga, meditation, mantra and Ayurveda can be found in the Rig Veda and still use many terms that come from it. While originally several different versions or rescensions of the Rig Veda were said to exist, only one remains. Its form has been structured in several different ways to guarantee its authenticity and proper preservation through time³.

¹Sri Swami Sivananda, "The Vedas", www.sivanandadlshq.org/religions/vedas.htm, last visited on (01/04/2014).

²Dr. B R Kishore, "Rig-Veda", (Diamond Pocket Books Pvt. Ltd., New Delhi), Pp. 6-9.

³ *Id.*

The Sama Veda is the Yoga of Song. It consists of various hymns of the Rig Veda put to a different and more musical chant. Hence the text of the Sama Veda is a reduced version of the Rig Veda. Its secret is in its musical annotation and rendering. The Sama Veda represents the ecstasy of spiritual knowledge and the power of devotion. The Rig Veda is the word; the Sama Veda is the song or the meaning. The Rig Veda is the knowledge, the Sama Veda its realization. Hence the two always go together like husband and wife. The Rig Veda is the wife and the Sama is the husband⁴.

The Yajur Veda seen by the outer vision is the Veda of ritual. On an inner level, it sets forth a yogic practice for purifying the mind and awakening the inner consciousness. Several versions of the Yajur Veda exist, which differ in a number of respects. It was the main Veda used by the priests in ancient India and has much in common with the Egyptian Book of the Dead.

Its deities are the same as the Rig Veda. The purpose of the ritual is to put together and recreate within ourselves the Cosmic Man or Indra. The ritual is to recreate the universe within our own psyche and thereby unite the individual with the universal. Its series of sacrifices culminate in the Atmayajna or the self-sacrifice wherein the ego is offered up to the Divine. While the lesser sacrifices win the lesser worlds, the Self-sacrifice wins all the worlds and gains the greatest gift of immortality⁵.

The Atharva Veda is the last of the Vedas. It has not always been accepted as a Veda, which are often spoken of as three. It still contains many hymns from the Rig Veda but also has some more popular magic spells which are outside of the strictly ritual-knowledge orientation of the other Vedas. Like the Rig Veda it is a collection of hymns but of a more diverse character, some very exalted like the Rig Veda others of more common nature. As such it gives us a better idea of the life of common people in Vedic times. The deities of the Atharva Veda are also the same as the Rig Veda although Rudra-Shiva assumes a more visible role. The language is a little simpler and less variable in its forms⁶.

⁴ Dr. B R Kishore, "*Sam-Veda*", (Diamond Pocket Books Pvt. Ltd., New Delhi), Pp. 2-7.

⁵ Dr. B R Kishore, "*Yajur-Veda*", (Diamond Pocket Books Pvt. Ltd., New Delhi), Pp. 6-9.

⁶ Dr. B R Kishore, "*Atharv-Veda*", (Diamond Pocket Books Pvt. Ltd., New Delhi), Pp. 5 -9.

RESEARCH METHODOLOGY

This research project is largely based on secondary & electronic sources of data. Books, case laws, journals & other reference as guided by faculty of Jurisprudence are primarily helpful for the completion of this project.

Problem

The project deals with the following research problems:

- Is it possible to extract legal principles from the primarily religious texts of the Vedas?
- If so, for whom are they a legitimate source of law?
- Was India at any point governed by laws which were said to be derived from the Vedas?
- Should the Vedas be a source of law?

Rationale

The Impact Of Vedic Literature On The Law - A jurisprudential analysis is important as it discusses the concept of Vedas, the basis of its recognition in the Legal instruments as a major source in the process of deriving laws from them. The study is also important because it studies the reason for non-recognition of Vedas in the various legal statutes and ultimately discusses the scenario in the present and how it has transformed from ancient times.

Objectives of Study

- ✓ To determine whether the Vedas themselves contain law.
- ✓ To determine whether ancient books of law actually derive law from the Vedic texts.
- ✓ To determine if at any point in Indian history Vedic Law was enforced.
- ✓ To see if this Vedic Law is applicable to India in contemporary times.

Nature of Study

This research project is Non-Doctrinal in nature since it is largely based on secondary & electronic sources of data and also since there is no field work involved while producing this research and it largely involves study of various Vedic Literature and comparison from different books, journal and other online sources, it is not empirical in nature.

Sources of Data

Data that were used for the completion of this research project are all secondary sources of data ranging from books, journal, articles and other online sources these cannot be said to be primary sources since they are not first-hand information or judgment reports but a modified form found in books or journals.

Review of Literature

- ❖ **VD Mahajan's Jurisprudence & Legal Theory, V Edition** – This book has been referred to understand the concept of justice and theory of justice by H.L.A Hart.
- ❖ **Rita Joseph, Human Rights and the Unborn child** : This book has been referred to understand the status of unborn under various International legal instruments.

LEGITIMACY OF THE VEDAS

Hindu tradition is essentially divided into *Shruthi*⁷ and *Smriti*⁸. The *Shruthis* and the Vedas are one and the same. The *Smritis* would encompass all the *Dharamshastras* and similar works by sages and lawgivers. *Shruthi* tradition carries more sanctity and thus if ever there is conflict between *Shruthi* and *Smriti*, the former would prevail.⁹ The reason for this is that in a sense all that is contained in the *Smritis* are notes based on the *Shruthi*¹⁰. This is however a rare occurrence as there is very little positive law as such in the Vedas while the *Smritis* are the real sources of Hindu Law though they claim to draw authority from the Vedas.

Looking at the Vedas in more detail, there are essentially two reasons as to why they are considered to be the holiest of all Hindu texts and carry the most sanctity. The first is that they are divine in origin¹¹. That is to say they were revealed to man by a divine power and thus they are supreme in their authority and unquestionable. However, there is no way that one can prove that the Vedas were revealed to man by a divine power and thus its credibility lies in the minds of human beings, in what they believe. If a person does not even believe in the existence of a divine being this argument immediately loses all credibility. At this point I would like to compare the Vedas to other religious texts. The Old Testament contains the teachings of many prophets. The New Testament contains the story of Jesus Christ. The Koran contains the teachings of the prophet Mohammed. All of these works have authors who are clearly mortal even if their writings are based on divine inspiration. They were all the works of historical figures whose existence can be proved.

The other reason why the Vedas hold the position they do is because they are said to be timeless¹². The Vedas are said to be *Anadi*¹³. This means that nothing existed before it or

⁷ Shruthi literally means what was heard. They were accepted as the original utterings of a great power. cf. Satyajeet A Desai, "*Mulla on Hindu Law*", (Volume 1, 18th Edition, Butterworths, New Delhi, 2001), P. 4.

⁸ Smriti literally means recollection. They were couched in the words of the rishis who saw or received the revelations and proclaimed their recollection. *Id.*

⁹ M.N Dutt, "*The Dharam Shastra*", (Vol 1, Cosmo Publications, New Delhi, 1978), P. 12 (Introduction).

¹⁰ Pūjyaśrī Candraśekharendra Sarasvatī Svāmī, "*Hindu Dharma: The Universal Way of Life*", (Ed. S. Ramakrishnan, Bharatiya Vidya Bhavan, Mumbai, 2000), P. 120.

¹¹ This is a statement that is repeated in every book that I have consulted and thus I cannot attribute it to one single source. It seems to me that most texts begin with this fundamental assumption and none of the texts I have read question the divine origin of the Vedas.

¹² It is important to mention here that these two reasons are related inherently and could draw legitimacy from each other. *i.e.* The Vedas are timeless because they are of divine origin and they are of divine origin because they are timeless.

they have existed since the beginning of time. This is not a universal view however and there are many accounts which describe the forming of the Vedas over a period of time, one after the other. It is believed that the Rig Veda is the oldest of the Vedas followed by the Sama, Yajur and Atharva Vedas, in that order¹⁴. If this is true not only does the whole timeless argument die but the divine origin also comes into question again. My own opinion on the matter is that the Vedas are neither timeless nor are they of Divine origin, rather they were put together by ancient *Rishis* who saw the need for such a work in order to bring order into a society that was losing its nomadic roots and becoming civilized. Further in one sense the idea of the Divine root and *Anadi* are somewhat contradictory in nature. If the Vedas are indeed timeless that means they were not created by a divinity and if they were then they would not be timeless going by the Hindu idea of creation¹⁵. To be considered timeless, the Vedas would have to have existed forever along with *Isvara* but this does not make sense as the content of the Vedas deal primarily with the Human race and the world we live in which was created by *Isvara* through *Brahma*. Thus the Vedas would have existed before their subject matter. It is my contention that what is meant here by timeless is that they were created by *Isvara* when he created *Brahma* and thereby the world. Thus they are not truly timeless, only so if one believes that time started with the creation of the world.

Even, under the assumption that the Vedas are timeless, it is an indisputable fact that they were written only very long time after they were composed or came into being. For this period of time they were passed down by word of mouth and it is very possible that some amount of corruption took place. Further there is much confusion and at a certain point in time much controversy over whether the Vedas were threefold or fourfold in character¹⁶. They were called and remain to be called the “*trayi-vidya*”¹⁷. Presently they are accepted to

¹³ *Anadi* literally means without a beginning. *Supra* note 10, P.143.

¹⁴ R.C Majumdar, “*History of India*”, (8th Edition, Motilal Banarsidas Publishers, New Delhi, 1994), P. 40.

¹⁵ In Hindu philosophy, there exists *Isvara* who is the Supreme Being who is timeless and everlasting. He is responsible for the creation of the world. He created *Brahma* who in turn created the world. He also created *Vishnu* to control and sustain the world and *Rudra* to destroy and bring death. *Isvara* also created laws for the world and all the other Gods like *Indra* and *Agni* are simply the enforcers of his various laws. *Supra* note 10, P. 424.

¹⁶ K.M Munshi, “*The book of the Master: Veda Vyasa*”, Krishnavtara, Book 6: The Veda in question is the Atharva Veda. At the time of *Krishna Dvaipayana*’s youth, mainstream thought held that the Vedas were three fold. It was *Dvaipayana* who was responsible for bringing the Atharva into the Vedic fold. At that point in time the Atharva was a knowledge that was restricted to very few people who were hostile to the mainstream *rishis* because of their refusal to accept the Atharva as one of the Vedas. *Krishna Dvaipayana* gained the knowledge of the Atharva from his father in law (*Maharishi Athravan*) and was by including it in his writing of the Vedas gave it the legitimacy it was lacking.

¹⁷ Which means three-fold knowledge. *Supra* note 6, P.7.

be fourfold. The existence of the controversy however goes against the idea that the Vedas were composed by a Divine author and were timeless.

Krishna Dvaipayana was responsible for the writing of the Vedas and hence received the name *Veda Vyasa*. This is the version of the Vedas that we have presently and is referred to throughout this paper. It is important to mention once again the possibility that there may have been some corruption of the Vedas in its writing¹⁸.

Though I have questioned the both the authenticity and the authority of the Vedas in this chapter, for the purposes of the arguments in the succeeding chapter I work under the assumption that the Vedas are authentic.

¹⁸ In the sense that the writers may have added or left out material.

BOOKS OF LAW –

THE VEDAS AND BOOKS THAT DRAW AUTHORITY FROM THEM.

The next and most important point that I would like to make is that the Vedas themselves are not works on law. They do not explicitly lay down any laws¹⁹. They are more religious and devotional works. It is my opinion that that there is no way that a layman could possibly hope to extract legal principles from them.

This simple argument however is highly problematic as most works on Hindu Law (especially the ancient works) say very clearly that they draw authority from the Vedas. *Pūjyaśrī Candrasekharendra Sarasvatī Svāmī* says that the *Smritis* do not reflect the views of the sages who composed them, rather, he says that these sages have simply presented to us in an orderly fashion what is already represented in the Vedas²⁰. Thus whatever is represented in the *Smritis* is binding *prima facie*. It is said that every rule in the *Smritis* has a base in the Vedas though some may be rooted in parts of the Vedas lost since the earliest of times²¹. I concede here that it is more than probable that there were parts of the Vedas which may have been lost from times immemorial but I maintain that in my eyes the Vedas remain a primarily religious text and though it might be possible to justify some laws given in the *Smritis* by relating them to prose and verse found in the Vedas, I find it very hard to believe that a complete and comprehensive system of laws governing every social and political aspect of the life of a human being can be extracted from the texts of the Vedas.

The *Manusmriti* is considered the most authoritative and comprehensive work on law which derives authority from the Vedas. The *Manusmriti* is the oldest of all the books on law (derived from the Vedas) and is considered next in sanctity to the Vedas and was the model for all future books on the Hindu Law codes, so much so that if any book had any law which was contradictory to one in the *Manusmriti*, it was no longer considered an authority on the subject²². Thus if the *Manusmriti* were to be discredited as a good source of law then it would follow that the *Dharamshastras* too would lose their credibility.

¹⁹ *Supra* note 1.

²⁰ *Supra* note 10, P.498

²¹ J Duncan M. Derrett, "Religion, Law and the State in India", (Oxford University Press, New Delhi, 1999), P. 84.

²² *Supra* note 3, Pp. 3-5 (Introduction).

Now there is much dispute upon the author of the *Manusmriti*. *Manu* is said to be the son of *Brahma*²³ and thus his understanding of the Vedas was complete in every way and hence he was able to extract these laws from the complicated texts of the Vedas. The Vedas are said to be divine in origin and timeless, this is the reason why it is considered the most holy of Hindu texts²⁴. Now if the *Manusmriti* was indeed the work of the son of *Brahma*, wouldn't it also be of divine origin and thus attain the authority of the Vedas. Why should it have to draw its authority from the Vedas? Shouldn't the fact that it was also the work of a divine author grant it enough legitimacy? The only conceivable explanation to this would be that *Manu*, though the son of *Brahma* would not be considered a God. This is quite possible as the lines of divinity are somewhat blurred in most ancient Hindu texts²⁵. So then *Manu* was just a sage (though the son of the creator).

Thus *Manu* is said to be “a particular individual, perfect in the study of many branches of the Veda, in the knowledge (of its meaning) and in the performance (of its precepts) and known through the sacred tradition which has been handed down in regular succession.”²⁶ It is also important to remember that though *Manu* is credited with the revealing of these (so-called) Vedic laws, he did not write the *Manusmriti* himself, rather it was written by the sages to whom he revealed the sacred law²⁷. The fact that the *Manusmriti* in its present form which is considered to be the most authoritative of all the ancient law-books was not actually written by *Manu*, at least in my mind takes away some of its credibility. After all it is very possible that the sages responsible for the writing of the *Manusmriti* did not put down the teachings of *Manu* in their entirety and it is possible that they may have made small changes as a result of their interpretations of what was being revealed by *Manu*.

The first lines of the *Manusmriti*, read as follows.

- 1) “The great sages approached *Manu*, who was seated with a collected mind, and, having duly worshipped him, spoke as follows:

²³ *Id.*

²⁴ This is a fact that is repeatedly mentioned in almost every chapter of “*Hindu Dharma: The Universal Way of Life.*”

²⁵ There are numerous examples where the sons of gods are Sages or Kings. The best example would be that of the Pandavas who though were said to be the sons of Gods were at no point considered to be Gods themselves.

²⁶ G. Buhler, “*The Laws of Manu*”, Sacred Books of the East, (Ed. Max Mueller, Ahuja Book Company, New Delhi, 1990), Pp. 13-14 (Introduction).

²⁷ The best proof of this is the fact that throughout the *Manusmriti*, *Manu* is referred to in the third person which he would not have been the case if it was written by *Manu* himself.

- 2) ‘Deign, divine one, to declare to us precisely and in due order the sacred laws of each of the (four chief) castes (varna) and of the intermediate ones.
- 3) ‘For thou, O Lord, alone knowest the purport, (i.e.) the rites, and the knowledge of the soul, (taught) in this whole ordinance of the Self-existent (Svayambhu), which is unknowable and unfathomable.’
- 4) He, whose power is measureless, being thus asked by the high-minded great sages, duly honored them, and answered, ‘Listen!’”²⁸

It seems fairly obvious that the purpose of these lines would be to establish Manu as an authority and thus to legitimize the verses that follow. If analyzed objectively, however these lines serve more to discredit the *Manusmriti* for the simple reason that none of the other *Dharamshastras* begin this way. True, most start with a question being posed to a being of superior knowledge and intellect which he answers through the book. Yet none of the other books contain this level of praise for the being. The first lines of the *Ya’jñawalkya Samhita*, one of the most authoritative of the *Dharamshastras* starts as follows.

Having adored *Yajñawalkya*, the Lord of the Yognis, the Munis said; – “Do thou describe unto us in full, the religious rites of Varnas, asramas and those of other inferior castes”

Meditating for a while that lord of Yognis, residing in Mithila said to the Munis:

“Know these to be religious rites of the country where the antelope roams at large.”²⁹

The difference is obvious when one compares the praise and respect the passage from the *Manusmriti* shower on Manu and that which the complimentary lines in the *Ya’jñawalkya Samhita* give to *Yajñawalkya*. It seems almost that the first lines of the *Manusmriti* use the legend of Manu.³⁰ to build legitimacy for itself. In doing so it accomplishes the exact opposite in the eyes of the discerning reader.

Further after reading the texts of Manu, I do not understand the logic or rationale that is used to draw these laws from the Vedas. The *Dharamshastras* merely declare law;

²⁸ *Supra* note 26 P. 1.

²⁹ *Supra* note 9, P. 1.

³⁰ *Supra* note 26 P. 58 – 67 (Introduction): There are many stories involving the identity of Manu. Apart from being the son of Brahma, he was also considered to be the father of mankind and the first King of men in one sense and thus the founder of the social and moral order of men. I have already placed in question before whether he was indeed a mortal or a divinity.

nowhere do they give the jurisprudential principles behind these laws. If they had done so then they would have much more credibility.

Despite all that I have said in this chapter, for the purposes of arguments made in the next chapters, I will work under the assumption that the *Manusmriti* and the *Dharamshastras* do indeed contain the holy law of the Hindus drawn from the Vedic texts.

APPLICABILITY OF VEDIC LAW

Also going by Austinian principles of jurisprudence, the law in the *Smritis* would not be considered as law; rather they would be called morals. It is a well known principle in modern jurisprudence that law and morals do not always go hand in hand and rather often contradict one –another. Further these *Smritis* are more texts which define Dharma and a part of righteousness for each individual; they were not “a direct or circuitous command of a monarch or sovereign number to persons in a state of subjection to its author”.³¹ Rather than draw authority from the command of a monarch these texts lay down rules which draw authority from a divine author³². However the fact that many of these texts also give punishments for various offences undermines the theory that they simply contained rules which were to be followed by every individual as regards his dharma rather than being imposed upon people and enforced by a sovereign. The fact that there were punishments mentioned would mean that they were indeed meant to be enforced. I would like to also make a distinction here – most modern law falls under the Austinian definition (i.e. the command of a sovereign), whereas the law in the *Smritis* would be the commands of a divinity, enforced by the sovereign.

The laws of the *Smritis* were indeed at one point of time enforced by the Hindu rulers. However they were not applied word to word and were not the be all and end all of the ancient legal systems. Custom was another very important factor when deciding cases and in many cases orally handed down custom was considered more authoritative than the written *Shastras*.³³

Even if the law of the *Dharamshastras* is indeed authoritative, it’s applicability would be limited to people of the Hindu religion. Defining a Hindu is an exceedingly difficult. When the country was ruled by Hindu kings, they may have applied this Hindu law to people of all religions. Now, however, India is said to be a secular country and hence these laws apply only to Hindus and that too only in the field of family law. This is something which I find very problematic as this would mean that people would be subjected to different laws based on their religion and therefore their beliefs. In the religious sense, the word, “Hindu” is

³¹ *Supra* note 7, P. 11.

³² It is my view that a basic distinction between law and morals would lie in the fact that law is imposed on people by people, while morality is something that can only be enforced by a person on himself. This is perhaps grounds for the link between morality and the rules of a divine author.

³³ J Duncan M. Derrett, “*Religion, Law and the State in India*”, (Oxford University Press, New Delhi, 1999).

often used broadly to include Buddhists, Jains and Sikhs in addition to those who are described as “Hindu” in this most restricted sense of the term, that is, the adherents of Vedic or Brahmin religion. For example, the expression “Hindu” is used in the Hindu law not only for those who are Hindu by religion but also for persons who are Buddhists, Jains and Sikhs by religion.³⁴

The Government of India considers me a Hindu and thus I am subject to these laws, it does not matter whether or not I believe in the Vedas or if I accept their authority. Gandhiji laid down four reasons as to why he is a Hindu. He says

“I call myself a sanatani Hindu, because,

I believe in the Vedas, the Upanishads, the Puranas and all that goes by the name of Hindu scriptures, and therefore in avatars and rebirth.

I believe in the Varnashram dharma in a sense in my opinion strictly Vedic, but not in its present popular and crude sense.

I believe in the protection of the cow in its much larger sense than the popular.

I do not disbelieve in idol-worship.”³⁵

If these are the criteria for being a Hindu, then I find that I am not one as

- 1) I do not believe in the the Vedas, the Upanishads, the Puranas and all that goes by the name of Hindu scriptures, and therefore in avatars and rebirth.³⁶
- 2) I did not believe in Varnashram dharma, even before I began work on this paper.
- 3) I eat beef.
- 4) Though I have worshipped idols, I do not believe that one must pray to an idol or go to a temple for one’s prayers to be heard.

Yet my birth certificate says I am a Hindu and I have not changed my religion and thus I am a Hindu in the eyes of the law.

³⁴ Ramendra Nath, “*Why I am Not a Hindu*”, <www.infidels.org/library/modern/ramendra_nath/hindu.html>; (2/04/2014).

³⁵ M.K.Gandhi, “*Aspects of Hinduism*”, Hindu Dharma, (Orient Longman Publishers, New Delhi, 1978), P. 9.

³⁶ I do not claim to know what happens after death but I do not believe in rebirth and while I don’t categorically disbelieve all that is in these scriptures I cannot say that I believe all that goes by the name of Hindu scriptures.

Another reason why the Vedic law should not be applied in contemporary times lies in the fact that the present Hindu law contains a much changed version of the Shastras³⁷. The best way to prove this would be to look at the laws in the Shastras which provide different laws for different castes. Since the caste system has been abolished these laws can obviously not be applicable. Thus there are no caste divisions, all Hindus are subject to the same laws including the Shudras. This is also problematic as many Shudras do not consider themselves Hindus. Kancha Ilaiah says “In our childhood all of us never heard the word “Hindu” – not as a word, nor as the name of the religion. We heard about Turukoollu (Muslims), we heard about Kirastanapoollu (Christians), we heard about Baapanoollu (Brahmins) and Koomatoollu (Baniyas) spoken of as people who were different from us.”³⁸ Thus the existing Hindu identity is questionable.

³⁷ *Supra* note 33.

³⁸ Kancha Ilaiah, “*Why I am not a Hindu*”, (Samya Publishers, Calcutta, 1996), P. 11 (Introduction).

CONCLUSION

I cannot conclude by saying that the Vedas are not a valid source of law, I can conclude however by saying that the above is questionable. Further, I can say that though some legal principles in the *Dharamshastras* may have been drawn from the Vedas by and large they are an independent work.

Even if the above is wrong, it is my contention that the Vedas should not be the source for all law in India. The reason for this is because these laws were proposed a very long time ago and it would be irrational to try and apply them to modern society. One may argue that the above argument would hold good for British Common Law too. This is not so because of one fundamental difference, which is that British Common Law is not codified and is made by the courts and hence there is room for changes with the times. No doubt there are many legal principles in the Shastras that would still hold good today, but this middle path of adaptation and modification would be unacceptable to orthodox Hindus who contend that nobody has the right to modify the Shastras as they are based on timeless Divine uttering.

I believe that India should have a common civil code. In case this ever happens there will be room in it for what is said by the laws given by the *Dharamshastras* but they may have to be modified and adapted so that they can be applicable to all the people of India, irrespective of religion.

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