

as accused in the place of real accused. This is being done without the knowledge of the Court. The Court when calls the accused all of them would be present and the accused who are not real accused sign or affix thumb mark as if real accused. If the accused are produced by the police with their photos there would not be any difficulty for the Court to satisfy, whether all the accused are real accused or some of them are not real accused by verifying the photos in the charge-sheet.

In civil cases also the same system of affixing photo on the vakalat for the plaintiffs or defendants should be insisted so as to avoid mis-carriage of justice. Even the students are required to produce their photo identity cards, when appearing for examinations, for obtaining certificates from

other officials in Employment Exchange for getting name registered and for each, and every person who wants to profess any profession or employment of matters connected therewith. Photo identity system is strictly followed. Even advocates are given identity cards by the Bar Council. Likewise Doctors, Pharmacists, Passport Officer, drivers, conductors, every workmen employed in any concern in any private or public. The rationale behind this, appears to be to curb or check *mal practices*. Though the suggestion given by us is not exhaustive, it is high time that the Honourable High Court may be pleased to issue circulars to all Courts that every party in civil or criminal matters should furnish their photo identity card which should be available in the Court records so that impersonation of parties would be to a large extent avoided.

UNIVERSALITY OF VEDIC LAW

By

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When I mentioned Vedic Law, I meant the Legal Principles available in Vedas, Upanishads, Puranas, Dharma Shastras and - why not - the Mythological Epics like Ramayana and Maha Bharata. If we believe historicity of Vedas and Epics like Maha-Bharata, we must call this Law as Mythological and Puranic Ethos of India. Penultimately we have Hindu Ethos and I am of firm belief that they can withstand challenge of change provided they are properly understood and properly applied, notwithstanding what Sri *Samabayu Sen Gupta* wrote in his book "Hindu Ethos and challenge of change" in 1970 (there was an uproar in the Parliament led by Dr. *Karan Singh* attacking Sri *Sen Gupta*). This opinion of mine also differs with the

statement of Sri *Henry Summer-Maine* when he said that "fate of Hindu Law is measure of the role of the Roman Empire".

Before digging deep into the development of intricate and succinct legal principles that can be traced through stories (Upakhyanas) anecdotes, benedictions by Rishies, Parables and pebbles, we must understand that this mode of expression was chosen by our Rishies to make even the unlettered to understand these provisions of Law. This is the great Indian Mythological Jurisprudence or Vedic Law. A prudent man may ponder awhile as to why this great jurisprudence became either subservient to Roman Law or sometimes altogether withered away - for,

we always look-forward to Latin Maxims or English Legal Provisions. The reason, as it appears to be is dearth of Sanskrit knowing Pandits and the abundancy of pseudo Pandits, who pass for real Pandits monopolizing Vedic literature of Sanskrit texts with choicest interpretation depending on circumstances and always for selfish reasons for sometime and due to ignorance for all the times. We therefore, thanks to their ignorance, lost universal applicability of our own jurisprudence, be it Criminal Jurisprudence or Civil.

In Juxtaposition, we need to look into the provisions of Vedic Law in different perspective than our usual practice of looking towards *Cole Brook*, *Sri Henry Sumner-Maine* or *Dr. D.M. Derette*, who virtually stayed in India to study the niceties of Hindu Law. We also must come out of the hangover of the translated versions of our Puranas by *S.S. Wilson*, *Winternidge*, *Maxmuller etc.* Our misfortune is the dearth of real Sanskrit knowing Pandits after Kalhana (Kashmir), Panini (Pakisthan) and Pathanjali (India). The next generation Pseudo Sanskrit Scholars kept all the knowledge in their fists using different rules for different situations. We have Harichandropakhyanam where the Thumb Rule was not to speak lies at any cost and simultaneously we have advice of Sukracharya to Emperor 'Bali' to speak lies in umpteen number of situations when the Emperor was offering piece of land to Vamana, the 5th incarnation of God. As a result the greatest of all Laws *i.e.*, Vedic Law or Puranic Laws have become insignificant not because of the "measure of the role of the Roman Empire", as Sir *Henry Maine* puts it, but it was relegated to back benches by the role of our own Pandits, who were not only ignorant, but also selfish. The great postulations rendered by our great Rishies have blurred into oblivion and the same principles have acquired honorific usage when they were propagated either as principles of Roman Law or Principles of Anglo-Saxon Legal System.

Presently all the newspapers repeatedly published the repeated applications on behalf of the condemned *Dhananjaya Chattarji* whose hanging was fixed on August, 14th of this year in Alipur Jail, Calcutta for having raped and murdered a 14 year girl of an Apartment of which he was a watchman. A common man will be perplexed about the tactics adopted by the lawyers on behalf of *Dhananjaya Chattarji*. But we have a fine legal provision about such a situation in Chapter-15, Stanza-46 Scandha Purana. The situation was as under. The Guru of *Indra* was Viswakarma and *Indra* kills his Guru's son by name *Viswaroopa*. It was a "Brahmahatya". The Pathakam or the sin of "Brahmahatya" appeared like a giant and started chasing *Indra*. Finally *Indra* had to hide under waters of a tank to escape from the onslaught of the Brahmahatya Pathakam. The absence of *Indra* in Amaravathi created panicky among the Rishies and Bruhaspathi understood the situation. He went to the tank where *Indra* was hiding and called him out and gave a benediction that there was no alternative punishment except death sentence for a murderer who knows what he was doing. Bruhaspathi also clarifies his dictum that a substituted sentence of imprisonment for a murderer can be imposed if the murderer knows nothing of what he was doing in killing another person.

The relevant Sloka is as follows:

"Maranantho Vidhi,
Karvo, Kamena hi, Kritena hi,
Agnantha Janitha Pape
Prayaschittam Vidheyathe".

Meaning:

If an Agnani or a person having no knowledge commits murder, alternative punishment of imprisonment can be imposed. But if a murder is committed by a person having knowledge, there is no alternative except death sentence. One must now accept

that Vedic Law does not confine to only to Agamas, Arsha Sampradayas, Family matters, Personal matters, marriage and Succession matters, but it also deals Criminal Jurisprudence of universal application.

Parallely we have a Latin Maxim, and definitely it was later than Skanda Purana

“Actus non-facit Reium, Nisi Mensitrea”

which means no act is an offence if it is not accompanied by culpable mind. All the sections in Indian Penal Code commence with ‘knowingly’, ‘voluntarily’ ‘common intention’, ‘common object’ *etc.* There are certain General Exceptions in Chapter-IV Indian Penal Code dealing with this mental element. Bruhaspathi’s above ruling also indicate that there was no opportunity for *Indra* to plead for mercy as “*ignorentia non curate lex*” (another borrowed principle of Law) stared at him.

As said earlier, our Rishies have chosen the path of postulation of ‘Dharma Sutras’ (Legal Provisions) *via* symbolism. There is a story in Bhagavatham that ‘Putana’ a female Demon was sent by ‘Kamsa’, a Rakshasa King to kill Lord Srikrishna by breast feeding and finally Lord Srikrishna kills her sucking the Demon’s life through her breasts. This is purely a medical matter. ‘Charaka Samhita’ dealing with medical matters describes the first viral attack of a child through breast feeding and this virus was named as ‘Putika’ followed by another disease called ‘Sarakhanda’. The next heroic deed of Lord Srikrishna was killing another Demon sent by ‘Kamsa’ by name ‘Sarakhanda’ (wheel of a cart). Thus, the Western Scholars must ungrudgingly understand that the greatest postulations of Civil and Criminal Jurisprudence in ‘Vedas’ and ‘Vedangas’ are all in symbolic format.

If we pierce through the Puranic veil of Bhagavatham we come to conclusion that both Krishna and Kamsa are Yadavas,

(Yadhuvamsam) an Aryan Tribe and according to Balagangadhara Tilak, ‘Bharatas’, ‘Puras’, ‘Trutsus’, ‘Saku and Lavus’ (People of present Slavic Countries like Czechoslovakia, Eugoslava *etc.*) and ‘Yadhus’ (Yadavas) are the important Aryan Segments who came to India via Harappa and Mohonjadhara. In that view of the anlysis, Kamsa is not Rakshasa nor Krishna the Divine Incarnation. Strictly speaking the Sloka enumerating the Cronology of Incornation of God ends with Ramo Ramascha ‘Satvaha’. Who is this ‘Satvaha’? Is it Bodisatva as some Buddhist Pandits Opined? Or is it the colour of that Incornation described as ‘Satva’ meaning ‘Dhavala’ or ‘White’ but our Krishna is a Blue Shaphered Boy !!. According to *Pendyala Venkata Subrahmanya Sastry’s* ‘Mahabharatham’ Satva is one sect of Yadavas always opposed to another ferocious Sect of yadavas called ‘Bhojas’. The Original epic ‘Jayam’ by Vyasa in 8000 slokas gives this clarification. But when Vysampayana the student of Vysya recompiled ‘Jayam’ it not only became Bharatam but also increased its volume to 25,000 slokas. The two students of Vysampayana by name *Suka* and *Paila* have recompiled this Bharatam making it Mahabharatam running into 1,00,000 Slokas with 18 Parvas. According to Tilak, *Kattamanchi Ramalinga Reddy* and *Pendyala Venkatasubrahmanya Sastry* and Western Scholars like Winternidge *etc.*, it was in this large compilation so many confusing aspects have crept in. That is a different story.

The question is who is borrowing from whom? Is it the Roman Law and the English Law that postulated the above maxim borrowing clue from the Bruhaspathi’s Dictum? The Western Scholars may not readily agree for this. They may still categorise the essence of Puranas and the characters therein as imaginary without any basis. The valuable provisions found in Puranas and Epics in India would be brushed aside by the Western scholars by clothing them as superstitions. Such hole-finders or the Pseudo

Pandits may be taken to 6th Mandala of the great Rigveda which according to me is the comprehensive code for the universe. In this Chapter compiled by Vashishta to the tune of 105 Sukthas and elsewhere in other Mandalas compiled by great Rishies such as Angira, Bhruhu, Kasyapa and others, we come across a long battle called 'Dasaragna' war. King 'Divodas' and after his death, his son 'Sudasa' on one side under able guidance of Vashishta were waging this war on behalf of *Indra* for the share of waters against Jalandhara in and around Saptasindhu (Saraswathi Sametha Saptasindhu-Iravati, presently Ravi, Jeelam, Biyas (Vyasa), Chinab, Sutlej (Parusti) etc. 'Hapta Hindu' that is how the Persians in their religious book 'Zend Avesta' first time coined the word 'Hindu' as they cannot pronounce 'Sa' and as they pronounce 'Ha' for 'Sa' and it must be emphatically stated here that neither Vedas nor Puranas or for that matter epics like Ramayana and Mahabharata neither coined nor used the word 'Hindu' at any point of time. The so called Hindutwa haters must understand this harsh reality. Later the Greeks who pronounce 'Aa' for 'Ha' changed the word 'Hind' into 'Ind' and in this way it has become Indus valley civilization and our country as 'India' notwithstanding with partition in 1947. Coming back to Rigveda, most of the Mandalas consist of Sukthas praising *Indra* for he was the hero who fought with Jalandhara and got waters for other parts around Harappa and Mohanjadaro. We must also remember that the first three incarnations of God, viz. Matsya, Kurma and Varaha are all flood legends! From this description we must presume that *Indra* was a reality and therefore Bruhaspathi's Dictum was also a reality. If we keenly observe the Rgvedic description, Jalandhara is not a Demon as described by some scholars, but he was no other than Lord Shiva, who Symbolically control Ganga (water of Sapta Sindhu) keeping it on his head. Our pseudo Pandits went to the extent of characterizing Ganga as a second wife of

Shiva. This is a different story even by our ignorant Pandits. Remember the prominence of Bull in the inscriptions of Harappa and Mohanjadaro and Nandi on which Lord Shiva travels? (Courtesy - Rahul Sankrityayan)

Another fine example of symbolic exposition is the story of 'Satee Savitri'. In this story 'Savitri' with her knowledge and timely questioning pleases 'Yama' (Death God), who was taking away the life of her husband 'Satyavan' and gets back her husband's life by her fine pleadings. This is again a symbolic description of Yoga Principle viz., 'Kundalini'. The pinnacle of 'Kundalini' is 'Savitri' with which one can postpone death. In other words what it meant was that practice of 'Savitri' (Kundalini) in Yoga to its perfection keeps the God of death away from you. Even conceding for a moment that 'Savitri' is a story of Pativrata (a chaste and pious female) as our belief goes, is there any great lawyer in the world better than Savitri who with superb Advocacy got an impossible relief! It is more difficult than getting a decree in favour of the plaintiff on a promissory note which was time barred!

Coming to legal matters - another Puranic incident also clarifies that the Doctrine of 'Mensrea' was also available in an incident in Ramayana. *Valmiki* before becoming a Saint was a Thug and used to rob the travellers cruelly killing his victims. Once it was *Brahmarshi Narada* whom *Valmiki* was about to kill. At the juncture *Narada* questioned *Valmiki* as to whether his wife and other family members also share his sins acquired by his killings. *Valmiki* after tying down *Narada* to a tree, goes to his house and asked the same question to his wife and also other members of the family. After all poor *Valmiki* was robbing and killing the travelers to sustain his family! But, the wife of *Valmiki* and the family members bluntly refused to share his sin indicating that they have no Mens rea in the killings. Now the real question is are we to parrot the so-

called provisions of Anglo-Saxon Legal System, or our Sanskrit Pandits or are our legal luminaries are able to shout atleast audible to Western scholars that it was we or our ancient Rishies that have postulated these landmark propositions of Law?

Before completing this small Article, I may also bring to light that it was *Draupadi* in Maha Bharat, who incidentally postulated the maxim 'Nemo Dat Quad Non Habet' in Civil Law meaning one cannot convey a better title than what he had, by questioning in the Durbar whether *Yudistara* after loosing himself put the bet on her in the Dice with Shakuni. Thus, our Puranas or Epics or in other words our Vedic Law pervades beyond the Personal or Family Laws of Hindus and establishes the classic principles of Criminal Jurisprudence and Civil Laws and in that view of the matter, the Vedic Law is not camouflage by the spread of Roman Civilization notwithstanding the famous Justenian Twelve Tables through which the 'Dos' and 'Don't Dos' were publicized at the beginning of every year letting every citizen know what is law and what is not. This opportunity was denied to the general public in India by the so-called Vedic Pandits. They interpreted the ancient Legal Principles as per the convenience of the situation different from person to person or because of their ignorance. We have one Law to Harichandra and another to Emperor Bali! The result: the greatest Legal System of the Vedas and Puranas and Epics was buried fathoms deep by our ignorance and the Edifice of Roman Law and thereafter the English Legal System was established as universal.

Finally, for the legal eagles of the day, I draw their attention to Maha Bharata and also to Ramayana in which we can search for Provisions of Law of Limitation. In both the epics, 'Vanavasa' (Abandoning right of kingship or of property and going to forests) for 14 years in Ramayana and for 12 years in Mahabharata was imposed on Rama and

Pandavas respectively. We have 12 years limitation in our Limitation Act to claim and regain title over the property !!

(This small article is devoted to the sincere efforts made by *Dr. D.M. Derette* (Institute of Oriental Studies, London) by coming to India and studying various legal principles of Hindu Law - Author)

Levy of Interest on Property Tax.

Under Section 91 of the Andhra Pradesh Municipalities Act, 1965, the property tax should be paid every half year before the end of thirty days after commencement of the half year. The Act, as it originally stood, the rate payer is entitled to rebate as may be prescribed if the amount is paid if it is paid within the prescribed 30 days. There is a penal clause under which the tax payer should pay penalty at such rate as may be prescribed. But the Government has not prescribed either the rebate nor the penal rate for over years. After nearly 25 years the Government has brought the introduction of arriving at rental values based on plinth area of the building by Act 20 of 1989. In so doing, Section 91 was also amended. The provision relating to rebate has been deleted, but the rate of penalty is prescribed at 5%. But this provision was also not implemented for some years.

Though Assessment Rules were brought out by the Government in the year 1990, they were given effect in 1992. The plinth basis of taxation faced rough weather. On the representation made by the Rate Payers Association at State Level the Government came down and accepted to restrict the increase to 76% and 100% over the previous tax. At that time, the Government promised not to implement levy of penalty and said that it is envisaged to inculcate a sense of responsibility to the tax payer.

Subsequently, the Government brought out some more amendments to the main Act by Act 3 of 1994 with effect from 1-3-1994.

Under this Act Section 91 was again amended incorporating the levy of 24%, as simple interest per mensem, as against 5% under Act 20 of 1989. At this time the word penalty is replaced by the word interest. Here also this levy of interest has not been enforced from 1994 till this year.

Thanks to the emergence of *E. Seva Kendras* the Government has instructed the municipalities to levy interest @ 24% on the arrears of tax. This was almost at the fag end of half year commencing 1-4-2004. The civic bodies were not made to accept the system because they have not issued demand notices, which is mandatory under Rule 30 Schedule II of the Municipalities Act. When this anomaly was pointed out the authorities agreed to dispense with collection of interest for the first half year because of their latches.

Thus there is clear culpable negligence or calculated indifference on the part of the Government in not enforcing the penal clause of Section 91 for all the years. There is no justification or good reason to wake up suddenly and levy it without giving notice or opportunity to clear the arrears by the defaulters. According to law, justice and equity the Government and the civic bodies should express their intention in advance to enforce this clause and call upon the rate payers to pay the tax arrears within a time frame of atleast six months. The omission is an unfair advantage at the cost of the tax payers.

There is yet another important aspect. This levy was originally styled as 'penalty' which is repeated in Act 20 of 1989. Evidently the Government realised the unreasonability and untenability of collecting 'penalty' and called it as 'interest' under Act 3 of 1994. In either case the object that is sought to be achieved is to make the tax payer to pay the tax within the prescribed time. If once it is accepted as interest, it should not be unreasonable and unconscionable as envisaged under Interest Act. The previous conduct of

the Government is very clear that this provision is meant to make the tax payer responsible and not to punish him. In this backdrop the Government is estopped from making this levy. The law is clear that under Section 14 of the Constitution of India, the State actions should be non-arbitrary and reasonable. After all, the State is dealing with its own citizens and should not do acts or things which will bring misery to its subjects. It was fair enough that a simple interest of 5% was contemplated under Act 20 of 1989. But there is no good reason to hike to 24% within a period of five years as was done under Act 3 of 1994.

In this connection it is apposite to refer to methods adopted by Municipal Corporation of Delhi. The Corporation has compiled a user-friendly Property Guide with clear instructions which are helpful to the rate payers. Under this system the tax can be paid in dual way by tax payer. He is given rebate of 15% of the tax if the total tax is paid in lumpsum before 30th September, or pay it in four quarterly installments with no rebate. The late payment of quarterly installments would invite penal interest @ 1% per month or part of the month after the due date of each quarter in which the tax was due. There is no good reason for the A.P. Government to totally negate the rebate concept and resort to harassing the tax payers who contribute mainly for the existence and sustenance or the civic bodies. Another important feature that the Government departments are the worst defaulters in payment of tax which runs into crores. They are not paying taxes, let along the interest or penalty. Several Municipal Councils and peoples representatives have expressed their resentment over the levy of interest and wanted the Government to reconsider the same. The Government would do well to give pragmatic thinking and levy reasonable interest like the one under Act 20 of 1989 and give six months time to clear the arrears and make this levy as prospective one to serve the purpose in a meaningful way.