From *Manusmriti* to *Madhusmriti*

Flagellating a Mythical Enemy

❍ **Madhu Kishwar**

ON March 25 of this year, copies of *Manusmriti* were burnt by reformers protesting against the ill-conceived installation of the statue of Manu in the precincts of the Rajasthan High Court. The protestors believed that the text is the defining document of Brahmanical Hinduism, and also the key source of gender and caste oppression in India. In the ensuing controversy defenders of *Manusmriti* projected it as a pivotal canonical source of religious law for Hindus.

In a somewhat similar fashion, Deepa Mehta's film *Water* revived an ongoing controversy about whether those who exploit and downgrade women are following *shastric* injunctions. In the course of trying to explain why this debate amounts to a misunderstanding of the role of the *shastras* in Hindu religious life, I commented in a recent TV interview that *Manusmriti* (and other *shastric* texts) have as much or as little authority for Hindus as have *Madhusmriti* (my writings) - or for that matter the pages of Manushi, for its subscribers.

This perfectly serious statement was dismissed as "facetious" by many feminists (see for example, *Images of Widowhood* in *The Hindustan Times* of Feb. 19, 2000 by Urvashi Butalia and Uma Chakravarti). Others, claiming to speak on behalf of Hindu culture, took my comment as an insult to the great *shastrakar* himself. These diverse responses indicate that there is a serious misconception among the modern educated elite over the actual status and role of the *shastras* in our religious life and cultural traditions.

The confusion is not theirs alone; these common misrepresentations are an unfortunate byproduct of our colonial education which we slavishly cling to, even though it is more than five decades since we declared our Independence. We keep defending or attacking the same hackneyed quotations from the *shastras* and the epics which, incidentally, colonisers used for the purpose of creating a new discourse about these writings. Their inaccurate and biased interpretations have continued to inspire major misreadings of our religious tenets.*

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The Search for Non-Existent 'Hindu Fundamentals'

The Englishmen who came as traders in the 17th century were befuddled at the vast diversity and complexity of Indian society. Having come from a culture where many aspects of family and community affairs came under the jurisdiction of canonical law, they looked for similar sources of authority in India. They assumed, for example, that just as the European marriage laws were based in part on systematic constructions derived from church interpretations of Biblical tenets, so must the personal laws of various Indian communities similarly draw their legitimacy from some priestly interpretations of fundamental religious texts.

In the late 18th century, the British began to study the ancient *shastras* to develop a set of legal principles that would assist them in adjudicating disputes within Indian civil society. In fact, they found there

* *For a more detailed analysis see* Dr. P. V. Kane *History of Dharmasastra;* Duncan Derret, *Religion, Law and State in India*. The Free Press, New York, 1968; also see *Codified Hindu Law: Myth and Reality* by Madhu Kishwar, *Economic and Political Weekly*, Vol. XXIX, No. 33, August 13, 1994.

was no single body of canonical law, no Hindu Pope to legitimise a uniform legal code for all the diverse communities of India, no Shankaracharya whose writ reigned all over the country. Even religious interpretations of popular epics like the *Ramayana* failed to fit the bill because every community and every age exercised the freedom to recite and write its own version. We have inherited hundreds of recognised and respected versions of this text, and many are still being created. The flourishing of such variation and diversity, however, did not prevent the British from searching for a definitive canon of Hindu law.

Perhaps more egregiously, in their search, the British took no steps to understand local or *jati* based customary law or the way in which every community - no matter how wealthy or poor -regulated its own internal affairs through *jati* or *biradari* panchayats, without seeking permission or validation from any higher authority. The power to introduce a new custom, or change existing practices, rested in large part within each community. Any individual or group respected within that *biradari* could initiate reforms. This tradition of self-governance is what accounts for the vast diversity of cultural practices within the subcontinent. For example, some communities observe strict *purdah* for women, whereas others have inherited matrilineal family structures in which women exercise a great deal of freedom and social clout. Some disapprove of widow remarriage, while others attach no stigma to widowhood and allow women recourse to easy divorce and remarriage.

The multiplicity of codes was a major reason for the wide divergence

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in judgments, interpretations and reports provided by the pandits appointed to assist British judges presiding over the newly established colonial courts. Often, the same pandits even gave different opinions on seemingly similar matters, confounding the judges of the East India Company. The British began to mistrust the pandits and became impatient with having to deal with such a range of customs that had no apparent *shastric* authority to back them, since that made it difficult for them to pose as genuine adjudicators of Hindu law. The British were even more nonplussed because they had a history of using the common law system, based on precedent. However, given the myriad opinions of the Indian pandits, they couldn't depend on

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uniform precedents to make their own judgments.

An Anglo-Brahamanical Hybrid

In order to arrive at a definitive version of the Indian legal system that would mainly be useful for them, the East India Company began to recruit and train pandits for its own service. In 1772, Warren Hastings hired a group of eleven pandits to cooperate with the Company in the creation of a new digest of Hindu law that would govern civil disputes in the British courts. The Sanskrit pandits hired to translate and sanction this new interpretation of customary laws created a curious Anglo-Brahmanical hybrid. The resulting document, printed in London under the title, *A Code of Gentoo Laws, or, Ordinations of the Pandits*, was a made-to-order text, in which the pandits dutifully followed the demands made by their paymasters. Though it was the first serious attempt at codification of Hindu law, the text was far from accurate in its references to the original sources, or to their varied traditional interpretations.

The very idea of "Hindu" law, in fact, was as much a novelty as the idea of a pan-Indian Hindu community. In the pre-British era, people of this subcontinent used a whole range of markers based on *region, jati,* language, and sect to claim and define their identities. Hardly anybody identified themselves as "Hindu" - a term first introduced by foreigners to refer to people living across the Indus River. The British lent new zeal in bringing actual substance to the new identity markers imposed by Europeans on the diverse non-Muslim inhabitants of the subcontinent. The codification of

their so-called "personal laws" became an important instrument in that endeavour.

Maha Pandit William Jones

This codification still could not put an end to the conflicts of opinion. The British mistrust of the pandits increased, along with their frustration at the way they thought they were misleading the court primarily by favouring the interests of their own caste, and dealing with a spectrum of customs that were not certified by any apparent *shastric* source.

The resulting confusions and reports of corruption led William Jones to work on a more 'definitive' code of Hindu law, as a reference work for Europeans in India. Jones' statement says it all:

> "I can no longer bear to be at the mercy of our pandits who deal out Hindu law as they please, and make it at reasonable rates, when they cannot find it ready made." (Derret, p. 244)

He was determined that the British should administer to the Indian people the best *shastric* law that could be discovered. Jones went on to translate *Manusmriti*. It became one of the most favoured texts of the British. A policy decision was taken at the highest levels in the India Office to keep this particular document in circulation and project it as the fountainhead of Hindu jurisprudence, for the purpose of perpetuating the illusion that the British were merely enforcing the *shastric* injunctions by which Hindus were governed anyway, and that they had inherited the authority to administer this law.

Thus *Manusmriti* came to influence Oriental studies in the West far more profoundly than it had ever influenced the practices of any actual living communities in pre-British India. After Jones, Colebrook tried his hand at a similar compilation. In a few years time, Colebrook's translations of the *Mitakshara* and the *Dayabhaga* became the two most frequently referenced sources in court judgments. At the same time, several Sanskrit scholars were also writing legal treatises, but the work of European authors on *shastric* law was held in higher authority than even the genuine Sanskrit *shastric* works.

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The British consistently promoted the myth that Hindus were governed by their codified versions of *shastric* injunctions. The modern educated elite in India, whose knowledge of India comes mainly from English language sources, were thenceforth systematically brainwashed into believing that the British were actually administering Hindu personal laws through the medium of the English courts. This was part of a larger myth-building exercise, whereby the people of the subcontinent were taught that theirs was a stagnant civilisation. The ignorant assumptions of our colonial rulers, that social stability in India was due to the supposed proclivity of its people to follow the same old traditions, customs and laws that had allegedly remained moribund for centuries, slowly came to acquire the force of self-evident truth over a period of time, both for those supporting as well as those opposing British rule.

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Custom vs Anglo Shastric Law

Since then, the dynamism of customary law has been in constant conflict with the frozen and artificial Anglo-Shastric law. *Dharmashastras,* for instance, were not strictly religious treatises. *Dharma* itself means the aggregate of duties and obligations - religious, moral, social and legal - delineated for every individual and collective performing a specific role in society. For example, the obligations and duties of a person in his role as a king *(raj-dharma)* are different from his obligations as a husband or son *(pati-dharma* or *putra-dharma).* Similarly, *guru-dharma* demands specific responsibilities from a teacher just as *shishya-dharma* binds students to their own set of obligations. Even war demanded a very rigorous code *-yuddha-dharma.* The list is endless and refers mostly to secular duties.

Similarly, the *smritis* are collections of precepts written by the *rishis,* the sages of antiquity. *Smritis* are presumed to be the compositions of human authors, not gods; these authors make it clear that they are merely

anthologising traditions handed down to them over generations. They did not hesitate to propose changes and reforms in their writings. For instance, Apastamba, whose work embodies the customs of certain regions of southern India, and who authored one of the most respected *Sutras,* takes care, at the end of his work, to impress his pupils with the statement:

> "Some declare that the remaining duties (which have not been taught here) must be learnt from women and men of all castes." He adds, "the knowledge which... women possess is the completion of all study." (Mulla, *Principles of Hindu Laws,* N.M. Tripathi Pvt., 15th ed., 1986, p. 15).

Neither *shastras* nor *smritis* suggest that there exists an immutable, universal moral doctrine. Rather, they emphasise that codes of morality must be specific to time, person, and place, and evolve according to changing requirements. For example, Narada states, "custom is powerful and overrides the sacred law." *Manusmriti* itself stresses that the business of the ruler is not to impose laws from above but that,

> "a king... must inquire into the law of castes *(jati),* of districts *(Ganapada),* of guilds *(Shreni),* and of families *(kula),* and settle the peculiar law of each...Thus have the holy sages, well knowing that law is grounded on immemorial custom, embraced as the root of all piety good usages long established." (Mulla, *Principles of Hindu Laws,* 15th ed., 1986, p. 23).

The authority to change or create new customs rests with not just the *biradari* but also the *kula* or family.

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Our *smritikars* repeatedly stress the primacy of custom and practice over textual axioms.

People as Law Makers

Since different *smritikars* documented the customs of different communities, there were substantial differences in their approaches, perspectives, and precepts. But characteristically, none of the *smritikars* deny the authority of other *smritikars* or attempt to prove that theirs is the supreme, most authoritative version of a code of conduct. They acknowledge that the authority of the king and the law are derived from the people. Most of the leading *smritikars* make explicit statements to this effect. The *Smriti* of Yajnavalkya, for instance, lists twenty sages as law givers. The *Mitakshara* explains that the enumeration is only illustrative and *Dharmasutras* of others are not excluded. Nor is the authority of any *shastrakar* assigned hierarchical importance.

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Mahatma Gandhi

The *smritikars* were not rulers. Nor did they owe their authority to any sovereign political or military power. The authority of the codes they enjoined were not enforced by punitive measures. Their influence depended solely on the voluntary internalisation of such value systems by the groups to which they addressed themselves to, and people's respect for their judgement. Actual enforcement was left in the hands of the local communities. An oft-repeated maxim was that reason and justice are to be accorded more regard than mere texts. Most important of all, a *dharmic* code, in the *rishis'* view, was one that was "agreeable to good conscience."

Gandhi is one of the few modern social reformers to have understood this principle underlying the *shastras.* Therefore, he could unhesitatingly declare:

> "My belief in the Hindu scriptures does not require me to accept every word and every verse as divinely inspired... I decline to be bound by any interpretation, however learned it may be, if it is repugnant to reason or moral sense." *(The Collected Work of Mahatma Gandhi,* The Publication Division, Government of India, Vol. XXI, p. 246)

He goes on to add:

"1) I believe in *varnashrama* of the Vedas which in my opinion is based on absolute equality of status, notwithstanding passages to the contrary in the *smritis* and elsewhere.

2) Every word of the printed works passing muster as 'Shastras' is not, in my opinion, a revelation.

3) The interpretation of accepted texts has undergone evolution and

is capable of indefinite evolution, even as the human intellect and heart are.

4) Nothing in the *shastras* which is manifestly contrary to universal truths and morals can stand.

5) Nothing in the *shastras* which is capable of being reasoned can stand if it is in conflict with reason." *(The Collected Work of Mahatma Gandhi*, Vol. LXII, p. 121).

Gandhi could present himself as a modern day sage calling upon people to overthrow beliefs and practices that did not conform to principles of equality and justice -or went against "good conscience" - because he had inherited a tradition whereby the power to change its own customary law rested with each community.

People in India have demonstrated time and again that they are willing to accept changes in their customs, provided those who propose change take the trouble to win the confidence of the community, rather than attack or humiliate the community as hostile outsiders. The success of the 19th century social reformers is testimony to this inherent flexibility of Hindu communities. In recent decades, the work of *Swadhyaya* in parts of western India, the *Radhasoamis* in Northern India, and many other reform movements have carried forward the same tradition.

Practice of Self-Governance

Thus, the practice of self-governance continues to be a dynamic tradition in India. Each caste, sub-caste and occupational grouping continues to assert its right to regulate the inner affairs of its own community and does not pay much attention to either ancient textual authorities or to modern parliament-enacted laws. When an individual or a group in India seeks to defend a particular practice, the common statement one hears across the country is, *"hamari biradari mein to yeh hi chalta hai"* (This is how we do things in our community) - rather than quotations from the *shastras*.

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Those who insist on attributing our social ills to the *shastras* repeat the mistake of our colonial rulers. Just as a doctor can kill a patient through wrong diagnosis and treatment of the disease - no matter how benign the intention - in the same manner social reformers can wreak havoc on the people if their understanding of social ills is flawed.

Discrimination against women or Dalits is neither inherently 'Hindu' nor is it scripturally mandated. This is not to suggest that such practices do not exist. Sadly enough, the disgraceful treatment of Dalits and downgrading of women are among the most shameful aspects of contemporary Indian society. But they will not disappear by burning ancient texts because none of the 'Hindu' scriptures have projected themselves as commandment-giving authorities demanding unconditional obedience from all those claiming to be Hindus.

For example, oppressive widowhood was and is practised only in certain castes and communities in some regions among the Hindus.

According to the 1901 census, the ban on widow remarriage applied to only ten percent of all the communities in India. And yet, in colonial critiques, this ban came to be projected as the universal situation of all widows in India.

If we look closely, we will find that many of the older widows have ended up in exploitative institutions of Varanasi and Vrindavan not because of Manu's commands, or any other religious stipulations, or even the dictates of some contemporary patriarch. They are there primarily because of the failure of their community to provide secure rights for women in the family and many are there even because of ill-treatment by their daughters-in-law. It is also important to remember that of all the millions of widows only a few thousand end up in places like Vrindavan and Varanasi. True, many may live oppressed lives within their own homes. But it is also true that many others live respected lives as honoured matriarchs. If all Indian women are so subordinate, as suggested by a certain kind of feminist literature, we would not so frequently encounter the phenomenon of the dominating mothers-in-law who, in many homes, has the power to make or break their children's marriages. Nor would we witness innumerable older women putting up with humiliation and neglect because their daughters-in-law have come to acquire such a powerful hold over their husbands that they can make them abuse their own mothers. Those who find this description of the situation far-fetched should do a survey of their own families. They are likely to find both these extremes coexisting within their own family circles, along with instances of fairly balanced and reasonably happy equations.

We are free to rid ourselves of any text that debases women or certain castes. Let us not imagine that Manu or any other *shastrakar* is obstructing our efforts to improve the lot of women or other oppressed groups. Despite some of the very negative and offensive things he might have said from our point of view (which many scholars hold to be later interpolations)** Mr. Manu did have the proper sense to pronounce that good *karma* was more important than biological lineage. He also emphasised that families and societies which demean women and make them lead miserable lives inevitably move towards destruction. He noted that truly prosperous families are only those in which women are honoured and happy.

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I believe that Manu *bhai* would fully endorse my writing a *Madhusmriti*, no matter how much I differ with him. He would probably rejoice in the fact that many people of today prefer *Madhusmriti* to *Manusmriti* because Manu, like all other *smritikars*, emphasised that codes of morality are not fixed by some divine authority, but must evolve with respect to the changing requirements of generations and communities.

** See for example *The Manusmriti*, with critical commentary by Dr. Surendra Kumar, Arsh Sahitya Prachar Trust, Delhi, pp.452-53.

Fruit of My Labour

I took the vitamins, went to the Lamaze classes,
Recited the shlokas as Amma had directed,
Refused the epidural and endured the pain.

Through sweat, tears and blood I heaved and pushed,
They pulled it from my body, and said, "Look!"
My belly filled with sorrow
My heart with bile.
I gazed upon my child.

Ugly.
Deformed.
Retarded.
Puny and feeble. Swollen head.
Eyes shut as if he were dead.
I turn to my husband. He looks away.

Why did this child desecrate my womb?
Why not the woman in the next room ?
Experts, blood tests, hospitals.
A recessive gene is blamed.
"These things happen," they explain.
Fate. Karma. Bad luck.
Our friends spout philosophy and avoid us.

"I know how you feel," new mothers empathise,
Rocking their healthy babies in front of my jealous eyes.

I become a recluse
To avoid their pity.
My husband cannot bear to touch me.

I want to scream, but know there will be no answer.
I feel so alone. Have I created a monster?

Hungry cries. Greedy sucking.
My tears start as I nurse him.
I rock the bundle in my arm
And somehow
Feel the need to keep him safe from harm.

Jyothi Sampat