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Dharma, Law and Justice in Smrti Literature

[1]Dr. Ambika. K.R
[1]Professor
[1]Sanskrit Sahitya
[1]Sree Sankaracharya University of Saskrit, Kalady, Kerala, India

Abstract : In the entire range of Ancient Indian thought, no concept is as significant as the *Dharma*. *Dharmasastra* clearly enjoins that even in the affairs of the state, injunctions of *dharma* should not be forgotten or ignored. The ethical conception of law as the dictate of conscience has a long tradition in Indian thought. The Vedas are usually regarded as a primary source of Ancient Indian Law. Secular law or *Vyavahara* is a branch of *dharma*. Jaimini defines *dharma* is the desired object, which is characterized by command. The laws of dharma relating to legal and judicial proceedings are known as *Vyavahara* or Civil law. The practical aspect of *dharma* as law is the application of law to the different cases or the administration of justice. The ancient Indian Judicial system was far superior to the present day, administration of justice the gradation of courts and tribunals are different from time to time.

India is proud to have her own great thinkers in the field of the law, justice and jurisprudence. During the ancient times flourished a branch of science called *Dharmasastra* or *Smrti* Literature. Even today we follow certain antique laws that were given by our ancestors. This paper is an attempt to visualize our ancestors' depth of knowledge in the field of law and justice.

Index Terms **- Dharmasastra, Jurisprudence, Smrti, Vyavahara, Literature.**

Dharma is a Sanskrit word, which has different connotations. *Dharma* in *Smrti* literature encompasses a wide range of duties, rights, laws, conduct, virtues, and the right way of living. It is a complex concept that includes both individual duties and societal obligations. *Dharma* has been one of the most powerful and influential terms in Indian thought and society from Vedic times up to today. It stands for religious observances, righteousness, justice, and conformity to law, sense of duty and moral, ethical as well as legal significance. In *Manusmṛti*, *Dharma* is personified as a deity (VII/16). It is very difficult to trace the exact meaning of the word *Dharma*-s used during the Vedic period. Etymologically the word *Dharma* is derived from the root *dhṛ*, which implies 'to uphold, sustain or nourish'. The *Rgveda* (III/17/1& X/56/3), *Atharvaveda* (IX/9/17), *Aithareya Upaniṣad* (II/23) and *Taittirīyopaniṣad* (I/11) uses the term *dharma* in the sense of religious duties or truth. The *Bhagavatgītā* says *Svadharme nidhanam sreyahḥ* (III/35, II/31). This word is employed in this sense in *Dharmaśāstra* literature.

The *Smriti*-s identify four sources of *Dharma*: the *Vedas* (*Śruti*), tradition (*Smṛti*), the conduct of virtuous people and one's own conscience (*Ātmānastuti*). The *Smṛti*-s emphasize that *Dharma* should guide every aspect of life, from personal behavior to the administration of justice.

Justice in *Smṛti* literature is inherently tied to the concept of *Dharma*. The aim of justice is to restore balance and harmony in society by ensuring that individuals fulfill their duties and that wrongdoers are appropriately punished.

Dharma isn't just a spiritual or ethical guideline but serves as the foundation for legal principles and state affairs. The Vedas are considered the primary source of Ancient Indian Law, and the concept of *Vyavahāra* (secular law) is viewed as a branch of *Dharma*. Jaimini, an ancient scholar, defines *Dharma* as an object characterized by command, indicating that it has a binding authority. The practical application of *Dharma* in legal proceedings is termed *Vyavahāra*, which is akin to civil law in contemporary terms. The text also notes that the administration of justice in ancient India, with its hierarchical system of courts and tribunals, was highly developed and possibly more sophisticated than modern systems.

Vyavahāra in ancient Indian law refers to the practical application of *Dharma* in resolving disputes and administering justice, particularly in civil matters. Here are some examples of *Vyavahāra*: Property Disputes, Contracts and Agreements, Marriage and Family Law, Torts and Compensation, Trade and Commerce, Criminal Offenses and Dispute Resolution. These examples illustrate how *Vyavahāra* functioned as the practical mechanism through which the ethical and moral principles of *Dharma* were applied to everyday legal issues in ancient India.

Smrti texts define *Vyavahāra* as the practical application of *Dharma* in legal matters. This includes the procedures for settling disputes, the rules of evidence, and the principles for delivering judgments.

Ancient Indian courts were highly organized and had a structured hierarchy to ensure the administration of justice. Here are some examples of courts in ancient India. The highest judicial authority was the king himself, who was considered the ultimate dispenser of justice. The king's court, also known as *Raja Sabha*, dealt with serious cases, including disputes between nobles, significant property issues, and matters of state. For eg. In the epic *Mahabharata*, the court of King Dhṛtarāṣṭra is depicted where various legal and moral issues are discussed and adjudicated. *Pradvīvaka* or *Sabha* or Chief Justice's Court, *Gram Sabha* or Village Council, *Śreni Sabha* or Trade Guild Courts, *Kula* or *Jāti* Sabha or Family or Caste Council and Dharmastha-s or *Puga* or Special Tribunals. These ancient courts reflect a well-developed judicial system that sought to balance the principles of *Dharma* with the practical needs of society. The system was hierarchical, with various levels of courts addressing different types of disputes, ensuring that justice was accessible to all levels of society.

The philosophies like *Purvamimamsa* of Jaimini consider *dharma* in the form of duties (I/1/2). *Dharma* is the performance of those religious and ethical duties and rituals. According to *Vaiśeṣika* Philosophy, *Dharma* is that which deals with the state of happiness and blessings. In Buddhism the word *Dharma* calls for the practice of the noble eight-fold path. These eight ethical rules represent the morality of Buddhism. According to Jainism, *Dharma* means right conduct, which can be obtained through the ethical principles in life. In the time of Brahmanism, the term *Sanatana Dharma* is formed. This S*anātanadharma* was not intended to stand for each individual observance.

The Purana-s have made a successful attempt at reconciling *Sādharaṇa Dharma* with *Svadharma.* The *Smṛtikāra*-s dilate upon *Dharma* as five-fold i.e *Varṇadharma, Āśramadharma, Varṇāśramadharma, Naimittikadharma* and *Guṇadharma*.

Dharma treats life as a whole. It implies virtue, right action, the law of nature, universal truth, a code of customs and traditions, righteousness, the ethical and unchanging order, law and variations of on these. *Dharma* has a wide meaning. It is that moral standard against which all else must be judged. Today, there is a practice to keep the head of the state above the law. The modern rule of the law has a very restricted scope and it does not cover the entire range of *Dharma*.

Rājadharma was an integral part of *Dharmaśāstra*. In ancient European theory, laws are the embodiment of eternal justice. The ethical concept of law as the dictate of conscience had a long tradition in Indian thought. In *Bṛhadaraṇyagopaniṣad*, law is identical with truth as powerful as the king. According to *Āpastamba* law is what is unanimously approved in all countries by men of Aryan society who have been properly obedient to their teachers (1/7/20/8). In the *Manusmṛti*, law is whatever is practiced and cherished at heart by the virtuous and the learned that are devoid of prejudices and passions (II/1). *Vasiṣṭa* and *Baudhāyana* also hold the view that law is the practice of the *sistas* or *rsi*-s (*Vasi*.1/5/6 & *Bau*.I/1). In the *Yājñavalkyasmṛti*, law is defined as *Sadācāra* (I/7). In the *Vyavahāradarpaṇa*, law is described as something eternal and self-existent far more powerful and right than they. *Mīmāmsāsūtra* declares *Dharma* is the desired object, *Artha* that is characterized by command (*codanālakṣaṇārtho dharmaḥ*).

The secular law or *Vyavahāra* is a branch of *Dharma*. In the *Smṛti* literature, the word *Dharma* was used in a very comprehensive sense, and it included amongst many other topics that may be regarded as rules of secular law. This branch of *Dharma* dealing with secular law, popularly known by the word *Vyavahāra* can be regarded as the most developed phase in the evolution of the concept of law, which corresponds with the modern sense of secular law. *Vyavahāra* law is a specialized branch of *Dharma* law.

The general feeling in ancient India was that the sources of *Dharma* consisted of the Vedas or *Śruti*-s, sacred tradition or *Smṛti*-s, the conduct of virtuous men and the individual conscience. Rules and commands are found in the *Smṛti*-s and *Dharmaśāstra*-s, which are practically synonymous. The law of *Dharma* relating to legal and judicial proceedings is known as *Vyavahāra* or civil law. The *Yājñavalkyasmṛti* devotes three chapters to *Acara*, *Vyavahāra* and *prāyaścitta*. *Vyavahāra* or civil law relates to marriage, adoption, partition and inheritance (p. 141, *The Wonder that is Hindu Law*).

The *Smṛti*-s represent the earliest attempts at codifying laws in ancient India. They provide a comprehensive legal framework that influenced not only the administration of justice in ancient times but also the development of legal thought in India over the centuries. The doctrine of dharma as justice in its bearing on the theory of the state. The value of justice has been declared by Manu is:

Dharma eve hato hanti dharmo rakṣati rakṣataḥ |
Tasmāddharmo na hantavyo mā no dharmo hatovadhīt || (VIII/15)

Such sentiments in the *Manusmṛti* could be bodily incorporated in the writings of the western like Jonas in ninth century and mediaeval theories (p.142, *The wonder that is Hindu Dharma*).

The modern theory of law in Europe may be said to have originated in the sixteenth century with Bodin and Hobes in their analysis of sovereignty. The origin of the Indian judicial system can be traced from the pre historic Vedic times. According to *Manu*. (VIII/3) justice consists in the application of law to the cases arising between the members of the state. The doctrine of *Dharma* as justice is organically connected with the theory of the state as contrasted with the non-state. The name Sabha or judicial assembly is usually associated with the pronouncement of judicial decisions. The *Ṛgveda* (X/71/10) and *Śuklayajurveda* (XXX/6) are represents the *Sabha*-s the courtroom. *Nārada* emphasizes the importance of elderly people, and truth in the court of justice (III/18).

Justice was to be primarily dispensed by the king. He was an original court as well as an appellate tribunal. The king was deemed to be the fountain of justice. *Arthaśāstra* prescribes that the king was to look in to the disputes of citizens and country

people (I/19). The king's court of justice was called *Dharmasthāna, Dharmāsana* or *Dharmādhikaraṇa*. Kalidasa (*Śākuntala* act. V) and Bhavabhūti (*Uttararāmacarita* I) employ the word *Dharmāsana*).

Smṛti-s and digests insist that the king cannot dispense justice by himself alone, but must do so with the help and guidance of others. The king to appoint a learned Brahmin with three *Sabhya*-s to decide the disputes of people when owing to the pressure of other weighty business the former was not in a position to attend to the work of administering justice (*Manu*.VII/9,10; *Yāj*.II/3; *Śukra*. IV/5.12). The qualifications of a judge are set out in many places. The judge should be proficient in the texts on the eighteen titles of law, their 8000 sub-heads, in logic or *Ānvīkṣikī* and should be master of the Vedas and *Smṛti*-s (*Nārada*. III/16)

There were different kinds of courts of justice and tribunals differed from time to time. The Śukranitisāra gives us a graphic picture of the king, the court and the procedure (IV/5/5-6). The judicial procedure and mode of judicial administration anticipate almost all the ideas as products of the British legal history and call modern. The *Śukranitisāra* gives us a complete picture of the system (II/92-100).

The procedure of law in the ancient Indian judicial system was remarkably modern. No civil action could be started without a complaint. As in the modern age, the ancient Indian judicial system, exempted certain persons like a soldier on duty, or engaged in public duties, diseased, minors or very old. Moreover, during the trial, evidences were recorded for and against the case. The ancient Indian judicial system used a very highly developed law of evidence. Evidences were broadly divided in to three:
1) witness 2) documents and 3) conduct.

The last part of the judicial procedure was the pronouncement of judgment. According to *Dharmaśāstra* and *Smrti*-s, the king who pronounces a wrong decision and leaves the party aggrieved loses heaven and his kingdom is disturbed. The decision of a case was to be based on the *Pramāṇa*-s possession, documents and witness. According to the ancient Indian judicial theory and practice there was a perfect equality before the law, and no one was exempted from the punishment. This principle of equality of the law for all was carried to the opposite extreme. But at the same time this *Smṛti*-s and *Dharmaśāstra*-s gave relaxation for higher castes in many situations. Under ancient Indian judicial system, punishment in criminal cases ware carefully graded (*Yāj*. I/367, *Manu.* VIII/129).

The aim of legal and judicial administration and that of *Dharma* was almost the same. According to the ancient Indian thinkers, the rules of *Dharma* were termed as civil and criminal laws. The foundation of ancient Indian society was based up on Dharma. *Dharma* lays stress on the right conduct of man by which he can secure his own advancement. The legal and judicial administration may be judged from this point of view.

BIBLIOGRAPHY

[1] *Sources of Hindu Dharma and its Socio-religious Aspects*, A.S Altekar, Sholapur, 1952.
[2] *The Wonder That is Hindu Dharma*, Ram Chandra Gupta, B.R. Pub., Delhi, 1987.
[3] *Family Law*, Paras Diwan, Allahabad Law Agency, Haryana, 2005.
[4] *Dharma in Early Brahmanic Buddhist and Jain Traditions*, Vincent Sekhar S.J., Satguru Pub, Delhi, 2003.
[5] *Dharmasastra An Introductory Analysis*, B.K.Swain, Akshaya Prakasan, Delhi, 2004.
[6] *Dharmasastra and Social Awareness*, V.N. Jha, Sri Satguru, 1996.
[7] *Ancient India According to Manu*, R.N. Sharma, Nag Pub, 1980.
[8] *Eight Upanisads*, Trans. By Swamy Gambhirananda, Advaita Ashrama, Calcutta, 1995.
[9] *Apastambadharmasutra*, CSS, Varanasi, 1969.
[10] *Atharvaveda* with Sayana com., Krishnadas Academy, 1989.
[11] *Bhagavadgita*, Gita press, Gorakpur.
[12] *Rgveda* with Sayana commentary.