

THE LEGAL SYSTEM IN ANCIENT INDIA

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ABSTRACT

India possesses the world's oldest judicial system. There is no other legal system with a more illustrious or ancient lineage. "An apparatus of horrible absurdities," according to Henry Maine, was how he defined the old Indian justice system. The following statement was made by an Anglo-Indian jurist regarding what he called "the oriental habits of life" of Indians prior to the arrival of the British in India. Some historians and foreign jurists asserted that there was no "rule of law" in ancient India; if this is the case, what was the system of justice administration that was in place at the time, and which "norms" (laws) of ancient Indian society contributed to attaining such highest stage of human civilization? This enormous development is impossible without very sound justice dispensing system during that Golden age.

Keywords: Rule of law, legal system, judiciary, legal system in ancient India, etc.

I. INTRODUCTION

From the time of the Vedic culture until the arrival of the Muslims, everyone in India was bound by the principle of Dharma. The verb "dhr" is the root of the term "dharma," which means to uphold, sustain, or nourish. It is frequently used closely with the words "rta" and "satya" by the Seers. Rta is described by Sri Vidyanaraya as the mental awareness of God. ¹Additionally, it is used alongside "satya" and "dharma" in the Taittiriya Upanishad. It urges students to be truthful and follow the Dharma (Satyam vadha: Dharmam chara). Sankara Bhagavatpada defined "satya" as stating the truth and "dharma" as putting it (Satya) into practise. In this regard, Sri. K. Balasubramania Aiyar's argument is pertinent: "Our understanding of the essential principles underlying dharma as the ideal for an individual is made evident when we examine the significance of these three words (rta, satya, and dharma). Dharma is the practise of upholding truth in one's conduct of one's life,

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¹ The Legal system in ancient india – Legal Services India [Online available at - The Legal system in ancient India (legalservicesindia.com)] Last visited on – 9-09-2022

whereas "rta" signifies the mental perception and realisation of truth and "satya" denotes the exact truthful representation in words of the truth as perceived by the mind."

Dharmic laws thereby control everyone in society, not just an individual.

Dharma is often used to refer to the "principle of justice" or "responsibility," as well as the "principle of holiness" and "principle of unity." In his instructions to Bhishma, Yudhishtira states that whatever causes conflict is Adharma, and whatever puts a stop to conflict and fosters harmony and oneness is Dharma.

It benefits us in this life and the next. The dharma we should adhere to shouldn't be a source of uncertainty or misunderstanding. We are all deeply ingrained in the dharma that our great men have pursued throughout history. They lived carefree, as opposed to those in our present day who are perpetually unsatisfied and involved in all types of agitations and demonstrations. They had an inner realisation of eternal beatitude. All we have to do is adhere to the dharma they followed. If we were to establish a new dharma for ourselves, it may cause problems, and we would always be plagued by uncertainties about whether it would benefit us or damage us.²

II. JUDICIARY IN ANCIENT INDIA

From the time of the Vedic culture until the arrival of the Muslims, everyone in India was bound by the principle of Dharma. The verb "dhr" is the root of the term "dharma," which means to uphold, sustain, or nourish. It is frequently used closely with the words "rta" and "satya" by the Seers. Rta is described by Sri Vidyanaraya as the mental awareness of God. Additionally, it is used alongside "satya" and "dharma" in the Taittiriya Upanishad. It urges students to be truthful and follow the Dharma (Satyam vadha: Dharmam chara). Sankara Bhagavatpada defined "satya" as stating the truth and "dharma" as putting it (Satya) into practise.

Dharma is often used to refer to the "principle of justice" or "responsibility," as well as the "principle of holiness" and "principle of unity." According to Dharma, if the Paramatman is to pull us to him, we must always fulfil both our obligations to him and to the rest of the world. These obligations make up what is known as dharma.

² Legal system in ancient India (Online available at- Legal System In Ancient India (doku.pub) Legal System In Ancient India [g0rw4ejn8wqk] (doku.pub)

Again, dharma is what benefits us both when we stay in our body and when we leave it. It benefits us in this life and the next. We are all deeply ingrained in the dharma that our great men have pursued throughout history. The difference between them and those in³ our own day, who are perpetually dissatisfied and involved in all manner of agitations and demonstrations, is that they have inwardly grasped eternal beatitude and we are positive that they lived carefree lives.

All we have to do is adhere to the dharma they followed. If we were to establish a new dharma for ourselves, it might cause problems, and we would always be troubled by uncertainties about whether it would lead to good or evil. It is best for us to adhere to the dharma that the great men of the past, our forebears, practised. This does not imply that "Dharma" is unchangeable because it has two aspects: "Sanatana Dharma" and "Yuga Dharma," the latter of which is timeless.

The Smiritis also accept this principle of societal change.

Shurtis stands for ubiquitous, eternal, and fundamental principles, and Smiritis, Shrutis stands for a group of usefulness derived from these principles and finding their expression in a finite, temporary, and relative field of social life.⁴ Dharma is a unique blend of rigidity and flexibility. We are aware that two distinct sets of truths are clearly distinguished in our writings, according to Swami Vivekananda. They belong more appropriately to the puranas, the Smiritis, rather than the shruti; customs from one era and yuga were not the same as those from other ages, and as yugas pass one after the other, they will need to change.

Henry Maine Explained that Indian civilization and its legal work as 'Static', this is because of his cluelessness he sinew have depend his equivalent clarification (demolish) other than apprehension Indian Society as it on one's feet, stood, in India the King himself was that time matter to the Legal Perspective; with each higher Court having the authority to review the judgment of the Courts below; disputes were largely resolved in granting with the identical natural justice principles that control the judicial operation in the Current

³ Legal system in ancient India – IndiaNetzone.com [Online available at - Legal System in Ancient India (indianetzone.com) Last visited on 12-09-2022

⁴ <https://www.legalservicesindia.com/article/1391/The-Legal-system-in-ancient-India.html>

standpoint today; procedural and evidence rules were similar to those used today; and supernatural modes of proof were not permitted.⁵

III. RULE OF LAW IN PRIMEVAL INDIA

The Albion stated that the lack of a civilized system of self-government among Indians was a result of their presence in India, which gave that nation a feeling of fairness and the rule of law. These opinions were deeply held by many Indians today. These beliefs are not only erroneous but they are boisterous recline. In reality, there was no legal system that could compete with that of ancient India; in comparison, even English law appears to be overly conservative. "A King who after having pledged that he should defend his subjects fails to safeguard them should be executed like a mad dog," the Mahabharata stated.

A king who have not safeguard the people, but instead robs them of their assets and property, and who receives no advice or direction from anyone, should be put to death. In the Arth-shastra, Kautilya explains the responsibilities of the king in the following way: "Whatever pleases him he shall not view as good, but whatever pleases his people he shall consider to good." In other words, such a king is neither a king nor fortune.

It is amusing that they would claim that the old Indian judicial system is filled of insanity in a nation where the "King can do no wrong" principle is upheld.

The supposedly progressive politician tells us that we should focus on the future rather than the past that cannot extended construct like Akbar did, that India can learn very little, if anything, from looking back at her own history, and that East must become west. dissimulate to be actual with the systematic political agenda based upon real life, he is unlettered of the rudimentary economic together with social factors by which a cautious and far-seeing State policy must be directed and blind to the objects of ordinary Indian life which pass before his own eye.

He does not understand the logic of history, whether it be old or modern, Indian or European. The British industrial worker and slum dweller sings when he Proceed to war because, for him, it represents an escape from servitude and misery that is frequently even more demeaning than the worst manifestations of the Indian caste system. In moments of calm, he doesn't sing. He is then imprisoned in the modern industrialist slavery of a life

⁵ Judiciary in ancient India IILS BLOG [Online available at - Judiciary in Ancient India » IILS Blog (iilsindia.com)] Last visited on -14-09-2022

without joy or freedom. He makes fruitless attempts to break free of it by creating trade unions, but this simply serves to feed the political machine another kind of oppression that frequently poses a threat to the entire imperial structure. This observation is made by great English historian E.B Havell.

The Upanishad is where the concept of the rule of law first appeared in India. It states that the law is king of all monarchs. It is stronger and more rigid than the kings. Law is the only thing that matters.

The weak will defeat the mighty thanks to its power, and justice will win out. Thus, the idea of law evolved in monarchies to regulate the use of arbitrary power by the rulers who claimed divine authority to rule. In a democracy, the idea has taken on a new meaning, and it now requires those in positions of authority to be able to openly defend their use of their positions as morally and legally appropriate.

IV. JUDICIAL ADMINISTRATION IN ANCEINT INDIA

The four pillars of law are: sacred law (Dharma), proof (Vyavahára), history (Charitra), and royal decrees (Rájasásana), with the last being superior to the others. Dharma is universally prevailing truth; Vyavahára, or proof, is found in witnesses; Charitra, or history, is found in the customs (sangraha) of the humankind; and sásana, or the order of kings (legislations). Three people who are familiar with hallowed Law (dharmasthas) and three Secretary of State of the King (amátyas) will carry out the administration of Justice under these principles at "Sangrahana," "Karmatik," "Dronamukha," and "Sthánia," as well as locations where districts assemble.

Ten villages are served by Sangrahana, 200 by Karyatik, 400 by Dronamukha, and 800 by Sthaniya, respectively. According to this system of justice, there were enough courts at various levels of government, and there were circuit courts in the district of Janapadasandhishu.

For the purpose of administering justice to the villagers, parish village councils, or class, which were akin to the current panchayat, were composed of a board with five or more members. Village councils dealt with straightforward civil and criminal cases⁶. Higher

⁶ Development of jurisprudence in ancient India -Ipleaders [Online available at - Development of jurisprudence in ancient India – iPleaders] Last visited on- 17-09-2022

level courts in towns and districts were presided over by government officials with the King's permission to dispense justice.

The village head man served as a liaison between the local village assembly and the governmental administration. Each village had a local head man who served as both the village's chief executive and its representative to the government. He held an inherited position and was responsible for upholding law and maintaining order.

Huge business, trade bills, guilds, and associations of traders or artisans (sreni) were given permission to exercise effective jurisdiction over their members in order to resolve conflicts between their members. These tribunals, which were composed of three to five co-adjutors, were permitted to regularly decide civil cases in the same manner as other Courts. It was certainly possible to appeal a decision made by the guild tribunal to the⁷ local court, then to the Royal judges, and lastly to the King, although such circumstances are rare. Due to the existing joint family system and the establishment of Family Courts, civil family issues are decided by "puga" gathering buildup of groups of pedigrees and Group of human being from the same village.

In Ancient India, there existed a hierarchy of Courts that went from the family Courts to the King, according to Brihaspati Smiriti. The family arbitrator was the least effective. The Judge Court was the next higher Court, followed by the Chief Justice, also known as Praadivivaka or adhyaksha, and finally the King's Court. The significance of the matter determined which court had jurisdiction over it, with the lowest Court having authority over small conflicts and the king having jurisdiction over major problems. Each higher court's judgment superseded that of the lower court.

"The binding impact of the rulings of these tribunals, ending with that of the monarch, is in the ascending order, and each succeeding judgement shall triumph against the prior one due to the higher degree of study and knowledge," says Vachaspati Misra.

1.2.2. (b) Duty and Manner: The Sacred Texts very clearly outline the king's duties and proper behaviour when administering justice. According to Manu's code, a king who wishes to investigate legal matters must come his court of justice while maintaining a dignified demeanour, along with Brahmans and knowledgeable councilors. Let him observe the behaviour of suitors there while sitting or standing and lifting the right arm

⁷ The evolution of legal system in ancient India – CLATalogue [Online available at- Lawctopus] Last visited at- 19-09-2022

without ostentation. "Justice, being violated, destroys; justice, being preserved, preserves," Manu warns King. As a result, justice must not be infringed, lest it destroy us.

He goes on to say that justice is "the lone friend of men even after death," as everything else is gone simultaneously with the body's perishing. If the court system fails to deliver justice, according to Manu, one-fourth of the blame for the unfair (judgement) rests with the criminal, one-fourth with the false witness, one-fourth with all the judges, and one-fourth with the king.

Since a king's responsibility is to uphold justice and defend his subjects, fulfilling this duty will take him to paradise. His royal sceptre (danda) is useless in the hands of one who fails to defend his subjects or upends the social order. Power (danda) is the only thing that can sustain both this earth and the following, but only when it is used by the king impartially and in bit portion to culpability toward either his son or his opponent. In order to rule the entire universe encompassed by the fiscal year (Chaturantám mahm), the monarch must administer Lawlord in accordance with consecrate law (Dharma), proof (vyavahára), history (samsthá), and kings' decrees (Nyáya), is on fourth⁸ When it comes to those three sources of enjoyment, a king who rightly administers punishment prospers; yet, if he is curvaceous, fragmentary, or deceptive, he will be overthrown despite the unfair punishment he administers. Manu believed that a weak-minded ruler shouldn't have control over the court system. Such a ruler would devastate the entire nation if⁹ granted control of the judiciary. Without an assistance, a fool, a covetous man, a person with an undeveloped mentality, or a person who enjoys sensuous pleasures, punishment cannot be administered fairly.

V. JURY SYSTEM

It has been established that there was a jury system in place during Manu's reign, and Manu advised the king to grant Brahmins the authority to administer justice while he was away. Jurors were referred to as "sabhasada," or councilors, who served as the King's assessors or advisors. They were comparable to the present jury, with one significant exception. The jury of today is made up of laypeople—"twelve shopkeepers"—whereas the council members who sat beside the Sovereign were supposed to be lawyers. "The Sovereign shall

⁸ <https://www.legalservicesindia.com/article/1391/The-Legal-system-in-ancient-India.html>

⁹ Administration of justice in ancient India -History discussion [Online available at - Administration of Justice in Ancient India (historydiscussion.net) Last visited on- 21-09-2022

designate persons as assessors of his Court who are thoroughly versed in the literature of the law, truthful, and by temperament capable of total impartiality between friend and foe," Yajanvalkya commands¹⁰.

The Sovereign was obligated to hear these assessors or jurors out without fear, even if it meant disagreeing with him and alerting him that his position was against the law and equity.

They are comparable to the Judicial Committee of the Privy Council in that they "humbly advise" their Sovereign, but Shukr-nitisara says that their advice is binding: "The King after witnessing that the assessors have pronounced their judgment should award the successful party a decree (Jaya-patra)". It can also be compared to the Soviet legal system's people's assessors, who sit alongside the executive judgment in the People's Court yet have the same authority as him. However, if the Sabhyas (Judge) ruled against them, their property would also be forfeited in addition to being fined, expelled from their position, and banished. They were under pressure to make up the defeat. Each person received a double fine if Sabhyas' decision was influenced by rapacity, terror, closeness, etc.¹¹

VI. LAW RELATING TO WITNESS

Hearsay was not permitted in ancient India, but a witness from abroad can submit his written testimony to a wise man who is versed, according to reports, when it comes to the number of witnesses. However, only one witness is not allowed. However, according to Narada Smriti, One Person identify if both sides agree to it. According to Kautilya, if the transaction itself was conducted in secret, a single witness could be accepted.

He must be a guy of good morals, someone you can trust, who understands the Dharma and upholds it. Prepare a witness from the same caste, and in cases involving women, a woman may testify. Regarding the characteristics of incompetent witnesses, it may be noted that they include those who lack faith in the Dharma, very elderly people, children, oil pressers, drunk people, lunatics, troubled people, inattentive people, long-distance travellers, gamblers, etc Narada also classifies unreliable witnesses into five categories, including 1) the educated Brahmanas and ascetics who practise austerity. (2) Thieves,

¹⁰ The legal system in ancient India- linkedIn [Online available at-The Legal system in ancient India (linkedin.com)] Last visited at - 25-09-2022

¹¹ Anceint law system -Study page [Online available at- Ancient Indian Law - Study Page] Last visited on 7-10-2022

robbers, and stoker (3) onlooker are to be disregarded due to inconsistencies in their testimony (4) Anyone who arrives on his own initiative to present evidence is also considered inept (5) When a people passes away, he names a few witnesses for the transaction; and the person who receives general information from the parties without specific instructions. Normally, the parties must be present while the witnesses are questioned, never behind their backs.

When speaking to a Brahmana witness, the judge must "speak and swear by veracity." He should swear before the Ksatriya witness, saying, "Speak the truth," and by the animal he is riding and his weapon. A Sudra have to take vow by all heinous faults, but a Vasisya have to take vow by kine, money, and grain. If a majority opinion cannot be reached, the viewpoint of the majority of witnesses must be prepared, and the credibility of the witnesses' statements must then be taken into account.

When there is disagreement among the witnesses regarding the time, place, property, or amount, the dispositions are effectively void. In general, when the witnesses are present,¹² no ordeals (divyas) should be used. Oaths should be used in minor conflicts, and ordeals should be used in significant disputes involving crimes.¹³

Punishment for false witnesses includes fines in all of the following situations: (a) when a witness refuses to testify in court despite having made a promise to do so alongside other witnesses; (b) when a witness declines to testify due to unfavourable circumstances; and (c) when a witness repeatedly gives false testimony. In the last instance, physical punishment may also be imposed on the witness.

VII. CLASSIFICATION OF VIVADA (DISPUTES)

A distinction betwixt (civil dispute) and treat chronic samudbhava Vivada (criminal disputes) has been made in addition to Manu's classification of 18 subject matters of legal proceedings. Among criminal case, there are two sub-divisions: (i) Danda Parusya (assault and battery); (ii) Vak-Parusya (defamation); when someone complains about being

¹² Sources of ancient Indian law Ane Medieval Law [Online available at- Sources of Ancient Indian Law Ane Medieval Law | PDF | Theocracy | Religious Law (scribd.com)] Last visited on-10-10-2022

¹³ Ancient Indian law- Study page [Online available at- Ancient Indian Law - Study Page] Last visited on – 8-10-2022

harassed in a way that is against Smriti norms and usage. The four sections of a court case are typically the complaint, the reply, the evidence, and the judgement. Responses are likely to fall into one of four categories: admission, denial, special plea, or reference to a prior ruling.

Document, possession, and witness are the three sorts of evidence that are discussed. The opponent or defendant that the lawsuit is filed against must be summoned to court, according to the summoning regulations. Additional people may be summoned, including those connected to the defendant (in the lawsuit). However, when certain people— such as warriors, farmers, and cowherds— are entirely focused on their task, their representative may be permitted to appear before the Court, according to the Narada Smriti. However, in critical cases, people are permitted to appear in person before the court, especially when appropriate precautions are in cases like the murder of a woman.

According to Old Books, adultery with her is prohibited. However, in such cases involved in a disaster, performing religious rites, performing kingly duties, or a woman whose family is in poor health, it is actually acceptable for them to be present. However, if the defendant does not appear in court after being served with a summons, the King must wait 30 or 15 days before issuing a ruling in the plaintiff's favour.

However, if an enemy invasion, famine, or disease occurs, agents can be permitted to speak on behalf of his incapacitated Master.

Legal representation: Another issue is whether the use of attorneys was permitted in ancient India. Demonstrate the need for expert assistance in the legal proceedings. According to Asahaya's commentary on the, persons who are knowledgeable about the Smriti literature may be able to assist the parties who have stood before the court for payment. The fees for such competent professionals were also set, and the parties, not the court, appointed them.

VIII. INTERPRETATION OF LEGAL DOCUMENTS

A separate school of legal principles predominated in prehistoric Indian communities. According to some general rules governing legal proceedings, justice according to use is to be applied where there is a conflict between two texts of the Smriti. When a Smriti scripture related to dharma and another related to artha dispute, the former text takes

precedence. The former establishes regulations for things that are invisible or otherworldly, whilst the later is more focused on regular issues.

Judges had a legal obligation to provide judgments in both criminal and civil proceedings. This required interpreting the law's written text, which presented a number of challenges, including illuminating cryptic language, balancing provisions that ran counter to one another within the same statute, resolving conflicts between the letter of the law and moral principles, adjusting for custom and smriti, etc.¹⁴ This area of law has undergone extensive development, and certain guiding principles for the courts were established. The most significant of them had to do with the struggle between artha-shastra and dharm-shastra.

The Court acknowledged three systems of substantive law: the dharm-shastra, the arth-shastra, and custom, sometimes known as sadachara or charitra. The first was made up of laws, which had their final approval from the smritis, while the second was made up of governing principles. The line dividing the two frequently overlapped. However, the actual separation between the arth-shastra and the smritis is always secular, but the dharm-shastra is not usually. In fact, the arth-shastra is so strikingly secular in its approach to issues of governance that this has led some authors to push the notion that the artha-shastra did not originate from the dharm-shastra but rather had an independent genesis and developed concurrently with it.

Adverse possession and various acquisition methods were also part of the ancient Indian legal system. If the owner does not object even if his property is being negatively occupied, adverse possession gives the possessor rights. When a permanent asset is negatively possessed for 12 years without the owner's consent, it vests in the adverse possessor. The time frame for movables is ten years. The appropriate methods of acquiring a property include gifting, purchasing, etc. In general, acquisition through a legal method is a more convincing proof than possession. Acquisition is not lawful if there is no possession at all. If a mortgage the principle amount has doubled, ownership transfers to the mortgagee. After the end of that time period, a mortgage with a time limit expires.¹⁵

IX. CONCLUSION

¹⁴ Brief history of Law in ancient India – The Bar council of India [Online available at - Brief History of law in India « The Bar Council of India] Last visited on 13-10-2022

¹⁵ Dharma and Law- Academike [Online available at- Dharma and law (lawctopus.com)] Last visited on -15-10-2022

The British maintained that the presence in India gave the country a feeling of justice and the equality law since the Indians lacked a civilised form of self-government. These opinions are still deeply held by many Indians today. These opinions are flagrant lies in addition to being inaccurate. Indian traditional law was replaced by the British with their own legal code. One must realise that this was not merely a modification in the legislation; rather, it was the imposition of an entirely foreign philosophy, conception, manner of life, and notion of governance. The way the law was administered during the British era, both civilly and criminally, and the mindless adherence to it even after independence, is far substandard.¹⁶

The current legal system was inspired by the mindset that dominated Britain at the time. idea of an Austinian state, in which there was a single indivisible monarch or power that held all the power. All authority deteriorated top to bottom. The British were accustomed to the modern nation state's organisational framework. Therefore, both legislative and executive power were centralised. They had come from a unitary state, so seeing a region with numerous states was shocking in and of itself. It was also rather strange to them to have several legal systems where various classes. Attempted to bring about was consistency and predictability in the law, as well as they established. For Indians, the homogenization itself came as a huge shock. Additionally, it would cover everything involved in upholding the law, such as courts, police, and jails.

The presence of these specialised courts with attorneys serving as staff and ostensibly independent judges severely worried the Indian people. The Panchayat system had been the predominate method for settling disputes up until that point, usually at the village level, so that in and of to the Indian public.

India's criminal justice system is not well-established, therefore the police can oppress without fear of repercussions. Under British authority, a police darogah (officer) visiting a local peasant is disastrous. If a robbery occurs, the poor are terrified to report it; if a witness is required, they are removed from their jobs and kept in solitary confinement for several days; and if a crime minded People, or suspected criminal people, is arrested, he is instantly assumed likely to be tortured into confessing. Due to the insecurity surrounding their property, everyone who has the means to do so hires watchmen—or, more

¹⁶ Concept of Dharma,Justice and a Law: A study - manupatra [Online available at -CONCEPT OF DHARMA, JUSTICE AND LAW: A STUDY (manupatra.in) Last visited on -15-10-2022

appropriately, bludgeon men—of their own, who are then, whenever the case requires it, deployed as tools of all types of oppression and brutality. Because they believe they have little hope of resistance, the people's innate timidity is exacerbated by their overwhelming sense of fear. They understand that the major authority are the police and landlords and that they are effectively denied justice to the point where they submit to servitude and misery. Even 65 years after India gained its independence, the country's justice system still fell short of the public's expectations. This was due to the country's poor decision to adopt a foreign-made legal system, the use of discontent laws, and the rejection of an indigenous working system of justice administration.¹⁷

¹⁷ Exploration of Indian Law system From Past to Present [Online available at- Exploration Of Indian Legal System From Past To Present (ijllr.com)] Last visited at -18-10-2022