JURISPRUDENCE - I (LEGAL METHOD)
Course Code: LB-101

(ADDITIONAL READINGS)

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Jurisprudence I (Legal Method) Course Code: LB-101

Course Objectives:

- To give an overview to the students about law and legal systems prevalent in the world and India in particular, so that they could understand the jurisprudence of all subjects taught to them over a span of three years.
- To learn the jurisprudential basis of various concepts which are continuously being dealt with in law.
- To sensitize the students to adopt a pragmatic approach in studying all the subjects in the six semesters by teaching them how to read cases and ways to club theory with practice. It is a subject which forms the foundation of the law degree.
- To make the students trace the origin and evolution of law and to understand major legal systems of the world.
- To familiarize the students with linkage of law with other social science.
- To familiarize the students with the growth of legal profession in India and the laws governing the profession.

Learning Outcomes

- Students will be acquainted with the basic ideas and fundamental principles of Law.
- Knowledge of Law and Legal precepts will acquaint the students and will help to develop their skill.
- Students will be able to identify socio-legal issues and challenges and would be able to provide solution within the parameters of the law, justice and other social norms.
- It will provide a holistic approach to study law and legal systems.

Course Content:

Unit- 1 -Jurisprudence with Bhartiya and Western perspective

a. Origin and nature of Jurisprudence
b. Need and Scope of Jurisprudence
c. Legal System in ancient India and its comparison with other major legal systems of the world.

Suggestive Readings
- Ludwik Sternbach – Juridical Studies in Ancient Indian Law (2 Vols.), Motilal Banarsidass, Delhi, 1965.
  https://archive.org/details/juridicalstudiesinancientindianlawludwiksternbachpart1_202003_655_a/page/n27/mode/2up?view=theater
- Tiwari,K.N.&KrishnaKumari–Ancient Indian Law(3Vols.),Prashant PublishingHouse,Delhi,2009
- M. Rama Jois – Ancient Indian Law, Universal Law Publishing Pvt. Ltd., 2002, Reprinted 2015.
- M. Rama Jois – Legal and Constitutional History of India (Ancient Indian Judicial andConstitutionalSystem), Universal LawPublishingPvt. Ltd., 2016.
- Ancient Indian Law by Justice D.P.Singh, Published by Kitabwale2022.
- N.R.MadhavaMenon,OurLegalSystem.
- Rene David& J.E.C. Brierley,MajorLegalSystemsinthe WorldToday 17-31, 484-515 3rd ed. 1985.
- Reflections on Ancient Indian Jurisprudence in the current social and judicial set up by Anupama Goel and Seema Singh, Published by Mohan Law, 2021.

Unit -2 - Structure of Indian Legal System

a. Basic Principles of Law , Rule of Law and Separation of powers

b. Customary dispute resolution mechanism in Bharat- Continuity and sustainability

c. Legal Services, Legal Profession and Advocate's Act

d. Hierarchy Of Courts And Jurisdiction

Suggested Readings

- "A. V. Dicey: Law of the Constitution". 1889. Retrieved 12 April 2011.
- कौटिल्य -Theories of Punishment) KautilyaArthshastra – Editor Rajsehwar Shastri Dravid, SSU Varansi)
- The Tradition And Significance Of Mediation In India Section A-Research Paper, Eur. Chem. Bull. 2023, 12(Special Issue 10), 802 –808 802, THE TRADITION AND

SIGNIFICANCE OF MEDIATION IN INDIA by Anindita Sarkar (Dutta)& Prof. (Dr.) Ishita Chatterjee.
- Open Access Journal available at www.jlsr.thelawbrigade.com, JOURNAL OF LEGAL STUDIES AND RESEARCH [VOL. 2 ISSUE 5] ISSN 2455-2437 ,DISPUTE RESOLUTION IN RURAL INDIA: AN OVERVIEW, Written by Dr. Laju P. Thomas Hsst, St Mary's Hss, Thiruvananthapuram.
- Advocates Act & Professional Ethics: Law Relating to the Legal Profession in India, by Nirmalendu Dutt-Majumdar, Eastern Law House, 1975
- Jurisprudence and Legal Theories by V.D.Mahajan, 2001, Published by Eastern Book Company.
- Studies in Jurisprudence and Legal Theory By N. V. Paranjape, 2016, publishd by Central Law Agency

Unit 3 -Sources Of Law

    a. Morality

    b. Custom

    c. Legislation

    d. Precedent

Suggested Readings

- Law and Morality-Readings in Legal Philosophy, Arthur Ripstein, David Dyzenhaus, Sophia Reibetanz Moreau, University of Toronto Press ,June 2007.

- Custom, Law and the British Empire in Northeast India: Select reading from the colonial archive by Nandini Bhattacharya

- Morality in Law , By Justice D.P.Singh, Eastern Book Company,2012.
- Jurisprudence and Legal Theories by V.D.Mahajan, , Published by Eastern Book Company, 2001.
- Studies in Jurisprudence and Legal Theory By N. V. Paranjape, 2016, published by Central Law Agency.

Unit 4 –Concept of Natural law

    a. Bhartiya Perspective-Ritam &Dharma
    b. Western Perspective- Thomas Acquinas **,**Auguste Comte

Suggested Readings

- Kane,PandurangVaman–HistoryoftheDharma śāstra,BhandarkaraOrientalResearchInstitute, Poona,1973,Vol.3,p.2
- Law and Spirituality-Reconnecting the Bond by Raman Mittal and Seema Singh, Published by Kitabwale, 2024.
- On Being and Essence by Saint Thomas Aquinas, Published by Hackett Publishing Co, 2012

- The Positive Philosophy of Auguste Comte,by Auguste Comte, Vol.2 Cambridge University Press,2009

Unit 5- Analytical Positivism

- Chankay's concept of State and Law
- Austin's Concept of Law
- H.L.Hart's Concept of Law

Suggested Readings

- The Province of Jurisprudence Determined by John Austin, Published by Legare Street Press.
- The Concept of Law by H. L. A. Hart, Clarden Law Series,1961

Unit 6-Historical And Sociological School Of Thought

- Kautilya's Arthshastra with special reference to Social Justice
- Karl Von Savigny's Volksgeist Theory
- Roscoe Pound's Theory of Social Engineering

Suggested Readings
- Jose Varghese, KautilyaArthashastra; A Lawyer's Point of view (2021)
- The Arthashastra (L.N. Rangrajan as well as Samashastri)
- System of the Modern Roman Law by Friedrich Karl von Savigny, Published by Hard Press,2019.
- AN INTRODUCTION TO THE PHILOSOPHY OF LAW BY ROSCOE POUND, MPP House Press

Unit-7-Jurisprudence in Bhartiya Scriptures

- The Ancient concept of 'Dharma'
- The Shrutis
- The Smritis

Suggested Readings

- Kane,Pandurang Vaman–History of Dharmasastra(5Vols.),Bhandarkar OrientalResearchInstitute,Pune,1930-1962, https://archive.org/details/in.ernet.dli.2015.37698/page/n811/mode/1up

- Ganesh,S. –VedicConceptofDharma,Purvamimamsa,Vol12,September2021.

- Vada in Theory and by Radhavallabh Tripathi The Secretary Indian Institute of Advanced Study Rashtrapati Nivas, Summerhill, Shimla

- Smritichandrika by Devana Bhatta, translated by T.Kristnasawmi Iyer, Published by Law Book Seller and Publisher,1933

IMPORTANTNOTE:

1. The topics, cases and suggested readings given above are not exhaustive. The Committee of teachers teaching the Course shall be at liberty to revise the topics/case/suggested readings.

2. Students are required to study/refer to the legislations as amended from time to time, and consult the latest editions of books.

HISTORY OF DHARMAŚASTRA.

1. Meaning of Dharma.

Dharma is one of those Sanskrit words that defy all attempts at an exact rendering in English or any other tongue. That word has passed through several vicissitudes. In the hymns of the Ṛgveda the word appears to be used either as an adjective or a noun (in the form *dharman*, generally neuter) and occurs at least fifty-six times therein. It is very difficult to say what the exact meaning of the word *dharma* was in the most ancient period of the vedic language. The word is clearly derived from root *dhṛ* (to uphold, to support, to nourish). In a few passages, the word appears to be used in the sense of ' upholder or supporter or sustainer' as in Ṛg. I. 187.1¹ and X. 92.2². In these two passages and in Ṛg. X. 21.3³ the word *dharma* is clearly masculine. In all other cases, the word is either obviously in the neuter or presents a form which may be either masculine or neuter. In most cases the meaning of *dharman* is ' religious ordinances or rites' as in Ṛg. I. 22. 18, V. 26. 6, VIII. 43. 24, IX. 64. 1 &c. The refrain ' tāni dharmāṇi prathamānyāsan' occurs in Ṛg. I. 164, 43 and 50, X. 90. 16. Similarly we have the words ' prathamā dharmā' (the primeval or first ordinances) in Ṛg. III. 17. 1. and X. 56. 3 and the words ' sanatā dharmāṇi (ancient ordinances) occur in Ṛg. III. 3. 1. In some passages this sense of ' religious rites' would not suit the context, e. g. in IV. 53. 3⁴, V. 63. 7⁵, VI. 70. 1⁶, VII. 89. 5⁷. In these passages the meaning seems to be ' fixed principles or rules of conduct'. In the Vājasaneyasaṃhitā the above senses of the word *dharman* are found and in II. 3 and V. 27 we have the words ' dhruveṇa dharmaṇā'. In the same Saṃhitā

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¹ पितुं नु स्तोषं महो धर्माणं तविषीम् । This occurs in शुक्रयजुर्वेद 34.7.

² इमर्मास्पामुभये अकृण्वत धर्माणमग्नि विदथस्य साधनम् ।

³ त्वे धर्माण आसते जुहुभिः सिञ्चतीरिव ।

⁴ आम्रा रजांसि दिव्यानि पार्थिवा श्लोकं देवः कृणुते स्वाय धर्मणे ।

⁵ धर्मणा मित्रावरुणा विपश्चिता व्रता रक्षेथे असुरस्य मायया ।

⁶ द्यावापृथिवी वरुणस्य धर्मणा विष्कभिते अजरे भूरिरेतसा ।

⁷ अस्विष्टी यत्नु धर्मा युयोपिम मा नुस्तस्मादेनसो देव रीरिषः ।

the form ' dharmaḥ ' (from dharma) becomes frequent, e. g. X.
29, XX. p. The Atharvaveda contains many of those verses of the
Ṛgveda in which the word *dharman* occurs, e. g. VI. 51. 3 (acittyā
chet tava dharmā yuyopima), VII, 5. 1 (Yajñena yajñamayajanta)
VII. 27. 5 (trṇi padā vicakrame). In XI. 9. 17 the word 'dharmaḥ'
seems to be used in the sense of ' merit acquired by the performance
of religious rites[8].' In the Aitareya-brāhmaṇa, the word *dharma*
seems to be used in an abstract sense[9], viz. ' the whole body of re-
ligious duties'. In the Chāndogya-upaniṣad[10] (2. 23) there is
an important passage bearing on the meaning of the word *dharma*
' there are three branches of *dharma*, one is (constituted by) sacrifice,
study and charity (i. e. the stage of house-holder) ; the second (is
constituted by) austerities (i. e. the stage of being a hermit); the
third is the *brahmacārin* dwelling in the house of his teacher and
·· himself stay with the family of his teacher till the last ; all
making ' to the worlds of meritorious men ; one who abides
these attain ·· attains immortality.' It will be seen that in this
firmly in *brahm* ·· *·ma* ' stands for the peculiar duties of the
passage the word ' *dhar*. ·· ·ussion establishes how the word
āśramas. The foregoing brief dis.. ·· ·
dharma passed through several transitions of meaning and how
ultimately its most prominent significance came to be 'the privileges,
duties and obligations of a man, his standard of conduct as a member
of the Aryan community, as a member of one of the castes, as a
person in a particular stage of life.' It is in this sense that the word
seems to be used in the well-known exhortation to the pupil con-
tained in the Taittirīya-upaniṣad (I. 11) ' speak the truth, practise
(your own) *dharma* &c.' It is in the same sense that the Bhaga-
vadgītā uses the word *dharma* in the oft-quoted verse ' svadharme
nidhanaṁ śreyaḥ.' The word is employed in this sense in the
dharmaśāstra literature. The Manusmṛti (1. 2) tells us that the

8 ऋतं सत्यं तपो राष्ट्रं श्रमो धर्मश्च कर्म च । भूतं भविष्यदुच्छिष्टे वीर्यं लक्ष्मीर्बलं बले ॥

9 धर्मस्य गोप्ताजनीति तमयुक्त्युमेवंविद्भिषेक्ष्यन्नयाचाॅ॑भमन्त्रयेत । ऐ. ब्रा. VII. 17;
vide also a similar passage at A. Br. VIII. 13. The form *dharman* occurs
in the Upaniṣads and in classical Sanskrit in Bahuvrīhi compounds, e.g.
अनुच्छित्तिधर्मा in the बृहदारण्यकोपनिषद् and the sūtra धर्मादिनिच् केवलात् (पा.
V. 4. 124).

10 त्रयो धर्मस्कन्धा यज्ञोऽध्ययनं दानमिति प्रथमस्तप एवेति द्वितीयो ब्रह्मचार्याचार्यकुलवासी
तृतीयोत्यन्तमात्मानमाचार्यकुलेवसादयन् सर्व एते पुण्यलोका भवन्ति ब्रह्मसंस्थोऽमृतत्वमेति ।
Vide वेदान्तसूत्र III. 4. 18-20 for a discussion of this passage.

sages requested Manu to impart instruction in the *dharmas* of all the *varṇas*. The Yājñyavalkya-smṛti (I. 1) employs it in the same sense. In the Tantra-Vārtika[11] also we are told that all the dharma-sūtras are concerned with imparting instruction in the *dharmas* of *varṇas* and *āśramas*. Medhātithi commenting on Manu says that the expounders of *smṛtis* dilate upon *dharma* as five-fold, e. g. *varṇadharma, āśrama-dharma, varṇāśrama-dharma, naimittikadharma* (such as prāyaścitta) and *guṇadharma* (the duty of a crowned king, whether Kṣatriya or not, to protect)[12]. It is in this sense that the word *dharma* will be taken in this work. Numerous topics are comprehended under the title dharmaśāstra, but in this work prominence will be given to works on *ācāra* and *vyavahāra* (law and administration of justice).

It would be interesting to recall a few other definitions of *dharma*. Jaimini[13] defines dharma as 'a desirable goal or result that is indicated by injunctive (Vedic) passages.' The word *dharma* would mean such rites as are conducive to happiness and are enjoined by Vedic passages. The Vaiśeṣikasūtra[14] defines *dharma* as 'that from which results happiness and final beatitude.' There are several other more or less one-sided definitions of *dharma* such as ' ahiṁsā paramo dharmaḥ ' (Anuśāsanaparva 115. 1.), 'ānṛśaṁsyam paro dharmaḥ' (Vanaparva 373. 76), ' ācāraḥ paramo dharmaḥ ' (Manu I. 108). Hārīta defined dharma as ' śrutipramāṇaka[15] ' (based on revelation). In the Buddhist sacred books the word *dharma* has several senses. It often means the whole teaching of Buddha (S. B. E. Vol. X. p. XXXIII). Another meaning of *dharma* peculiar to the Buddhist system is ' an element of existence, i. e. of matter, mind and forces[16].'

The present work will deal with the sources of *dharma*, their contents, their chronology and other kindred matters. As the

11 ' सर्वधर्मसूत्राणां वर्णाश्रमधर्मोपदेशित्वात् ' p. 237.

12 हरदत्त on गो. ध. सू. 19. 1 and गोविन्दराज on मनु 2.25 give the same fivefold classification.

13 चोदनालक्षणोर्थो धर्मः । पू. मी. सू. I. 1. 2.

14 अथातो धर्म व्याख्यास्यामः । यतोभ्युदयनिःश्रेयससिद्धिः स धर्मः । वैशेषिकसूत्र.

15 अथातो धर्म व्याख्यास्यामः । श्रुतिप्रमाणको धर्मः । श्रुतिश्च द्विविधा वैदिकी तान्त्रिकी च । quoted by कुल्लूक on मनु. 2. 1.

16 *Vide* Dr. Stcherbatsky's monograph on ' the central conception of Buddhism ' (1923) p. 73.

material is vast and the number of works is extremely ·large, only a few selected works and some important authors will be taken up for detailed treatment. More space will be devoted to comparatively early works.

2. Sources of Dharma.

The Gautamadharmasūtra[17] says ' the Veda is the source of *dharma* and the tradition and practice of those that know it (the Veda).' So Āpastamba[18] says ' the authority (for the *dharmas*) is the consensus of those that know *dharma* and the Vedas. ' Vide also the Vasiṣṭhadharma-sūtra[19] (I. 4-6). The Manusmṛti[20] lays down five different sources of *dharma* ' the whole Veda is (the foremost) source of dharma and (next) the tradition and the practice of those that know it (the Veda); and further the usages of virtuous men and self-satisfaction.' Yājñavalkya[21] declares the sources in a similar strain ' the Veda, traditional lore, the usages of good men, what is agreeable to one's self and desire born of due deliberation––– this is traditionally recognised as the source of dharma.' These passages make it clear that the principal sources of *dharma* were conceived to be the Vedas, the Smṛtis, and customs. The Vedas do not contain positive precepts (*vidhis*) on matters of *dharma* in a connected form ; but they contain incidental references to various topics that fall under the domain of dharmaśāstra as conceived in later times. Such information to be gathered from the Vedic Literature is not quite as meagre as is commonly supposed. In another place[22] I have brought together about fifty Vedic passages that shed a flood of light on marriage, the forms of marriage, the different kinds of sons, adoption of a son, partition, inheritance, *śrāddha, strīdhana*. To take only a few examples. That brotherless maidens found it difficult to secure husbands is made clear by several Vedic passages.

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[17] वेदो धर्ममूलम् । तद्विदां च स्मृतिशीले । गौ. ध. सू. I. 1-2.

[18] धर्मज्ञसमयः प्रमाणं वेदाश्च । आप. ध. सू. I. 1. 1. 2.

[19] श्रुतिस्मृतिविहितो धर्मः । तदलाभे शिष्टाचारः प्रमाणम् । शिष्टः पुनरकामात्मा ।

[20] वेदोऽखिलो धर्ममूलं स्मृतिशीले च तद्विदाम् । आचारश्चैव साधूनामात्मनस्तुष्टिरेव च ॥ मनु-स्मृति II. 6.

[21] श्रुतिः स्मृतिः सदाचारः स्वस्य च प्रियमात्मनः । सम्यक्संकल्पजः कामो धर्ममूलमिदं स्मृतम् ॥ याज्ञ. I. 7.

[22] *Vide* JBBRAS. vol. XXVI (1922), pp. 57-82.

'Like (a woman) growing old in her parents' house, I pray to thee as Bhaga from the seat common to all[23]'. Vide also Rgveda I 124. 7; IV. 5. 5 and Atharvaveda I. 17. 1 and Nirukta III. 4-5. These passages constitute the basis of the rules of the dharmasūtras and the Yājñavalkya-smṛti against marrying a brotherless maiden[24]. This bar against marrying a brotherless maiden seems to have been due to the fear that such a girl might be an appointed daughter (*putrikā*) and that a son born of such a girl would be affiliated to his mother's father. This custom of *putrikā* is an ancient one and is alluded to in the Rgveda, according to Yāska[25]. Rgveda X. 85 is a very interesting hymn as regards marriage ; verses from it are used even to this day in the marriage ritual.[26] It shows that in the remote Vedic age the marriage rite resembled in essence the Brāhma form as described in the Dharmasūtras and Manu.[27] But the purchase of a bride (i. e. what is called Āsura marriage in later literature) was not unknown in the Vedic age. A passage of the Maitrāyaṇīyasaṁhitā (I. 10. 11) is referred to in the Vasiṣṭhadharmasūtra[28] in this connection, viz. 'she who being purchased by the husband'. The Gāndharva form is hinted at in the words[29] ' when a bride is fine-looking and well adorned, she seeks by herself her friend among men '. The importance of the *aurasa* son was felt even in the remote Vedic ages. ' Another (person) born of another's loins, though very pleasing, should not be taken, should not be even thought of (as to be taken in adoption[30])'. The Taittirīya-saṁhitā (VI. 3. 10. 5) propounds the well-known theory of the three debts[31]. The story

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23 अमाजूरिव पित्रोः सचा सती समानादा सद्सस्त्वामिये भगम् । ऋग्वेद II. 17. 7.

24 अरोगिणीं आनृमतीमसमानार्षगोत्रजाम् । याज्ञ. I. 53; *vide* also मनु III. 11.

25 Vide Ṛgveda III. 31. 1. and Nirukta III. 4.

26 e. g. the verse गृभ्णामि' ते सौभगत्वाय (ऋग्वेद X. 85. 36). Vide आप. गृ. सू. II. 4. 14.

27 गो. ध. सू. IV. 4; बौ. ध. सू. I. 11. 2; आप. ध. सू. II. 5. 11. 17; मनु III. 27.

28 वसिष्ठधर्मसूत्र I. 36-37; note आप. ध. सू. II. 6. 13. 11 where the word 'purchase' is tried to be explained away and also पू. मी. सू. VI. 1. 15. 'क्रयस्य धर्ममात्र-त्वम् '

29 भद्रा वधूर्भवति यत्सुपेशाः स्वयं सा मित्रं वनुते जने चित् । ऋग्वेद X. 27. 12.

30 न हि ग्रभायारेणः सुशेवो अन्योदर्यो मनसा मन्तवा उ । ऋग्वेद VII. 5. 8.

31 जायमानो वै ब्राह्मणस्त्रिभिर्ऋणवा जायते ब्रह्मचर्येण ऋषिभ्यो यज्ञेन देवेभ्यः प्रजया पितृभ्यः ।

History of Dharmaśāstra

of Śunaḥśepa in the Aitareya-brāhmaṇa (VII. 3) suggests that a son could be adopted even when there was an aurasa son. The Taittirīya-saṁhitā (VII. 1. 8. 1) tells the story of Atri who gave an only son in adoption to Aurva. The Kṣetraja son of the Dharma-sūtras is often referred to in the earliest Vedic literature. ' What (sacrificer) invites you (Aśvins) in his house to a bed as a widow does a brother-in-law or a young damsel her lover'[32]. The Taittirī-yasaṁhita makes it clear that a father could distribute his wealth among his sons during his own life time ' Manu divided his property among his sons ' &c.[33] Another passage of the same Saṁhita seems to suggest that the eldest son took the whole of the father's wealth ' therefore people establish their eldest son with wealth '[34]. Even in the Vedic ages the son excluded the daughter from inheritance ' a son born of the body does not give the paternal wealth to (his) sister'[35]. A passage of the Taittirīya-saṁhita is relied upon by ancient and modern writers on dharmaśāstra for the exclusion of women in general from inheritance ' therefore women being destitute of strength take no portion and speak more weakly than even a low person'[36]. The Ṛgveda eulogises the stage of studenthood and the Śatapathabrāhmaṇa speaks of the duties of the Brahmacārin such as not partaking of wine and offering every evening a samidh to fire[37]. The

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32 को वां शयुत्रा विधेव देवरं मर्यं न योषा कृणुते सधस्थ आ । ऋग्वेद X. 40. 2.

33 मनुः पुत्रेभ्यो दायं व्यभजत् । तै. सं. III. 1 9 4. This passage is relied upon by आप. ध. सू. II. 6. 14. 11 and बौ. ध. सू. II. 2. 2.

34 तस्माज्ज्येष्ठं पुत्रं धनेन निरवसाययन्ति । तै. सं. II. 5. 2. 7. This passage is referred to by आप. ध. सू. II. 6. 14. 12 and बौ. ध. सू. II.2. 5.

35 'न जामये नान्वो रिक्थमारिक्' ऋग्वेद III. 31. 2. Vide निरुक्त III. 5 for explana- tions of this verse.

36 तस्मात्स्त्रियो निरिन्द्रिया अदायादीरपि पापात्पुंस उपास्तितरं वदन्ति । तै. सं. VI. 5. 8. 2. Here the portion spoken of is really that of the soma beverage. Vide बौ. ध. सू. II. 2. 47 for reliance on this passage and also हरदत्त (on आप. ध. सू. II. 6. 14. 1) and सरस्वतीविलास (para. 21 and 336). Vide also शतपथब्रा. IV. 4. 2. 13 for a similar passage.

37 ब्रह्मचारी चरति वेविषद्विषः स देवानां भवत्येकमङ्गम् । ऋग्वेद X. 109. 5. The शतपथब्रा. (XI. 5. 4. 18) reads ' तदाहुः । न ब्रह्मचारी सन्मध्वश्नीयात्'. Compare मनु II. 177. Vide शतपथब्रा. XI. 3. 3. 1 for samidh.

Taittirīya-saṃhitā (VI.2. 8. 5) relates[38] how Indra consigned *Yatis* to wolves (or dogs) and how Prajāpati prescribed a Prāyaścitta for him. The Śatapathabrāhmaṇa speaks of the king and the learned Brāhmaṇa as the upholder of the sacred ordinances.[39] The Taittirīyasaṃhitā says 'therefore the Śūdra is not fit for sacrifice[40].' The Aitareya Brāhmaṇa tells us that when a king or other worthy guest comes, people offer a bull or a cow[41]. The Śatapatha-brāhmaṇa speaks of Vedic study as *yajña* and the Taittirīya-āraṇyaka[42] enumerates the five *yajñas*, which are a prominent feature of the Manusmṛti. The Ṛgveda eulogises the gifts of a cow, horses, gold and clothes[43]. Another passage of the Ṛgveda[44] (thou art like a *prapā* in a desert) is relied upon by Śabara on Jaimini (I. 3. 2) and by Viśvarūpa on Yājñavalkya as ordaining the maintenance of *prapās* (places where water is distributed to travellers). The Ṛgveda condemns the selfish man who only caters for himself[45].

The foregoing brief discussion will make it clear that the later rules contained in the *dharmasutras* and other works on *dharma-śāstra* had their roots deep down in the most ancient Vedic tradition and that the authors of the *dharmasutras* were quite justified in looking up to the Vedas as a source of *dharma*. But, as said above, the Vedas do not profess to be formal treatises on *dharma*; they contain only disconnected statements on the various aspects of *dharma*; we have to turn to the smṛtis for a formal and connected treatment of the topics of the *dharmaśāstra*.

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[38] इन्द्रो यतीन् सालावृकेभ्यः प्रायच्छत् ।. मेधातिथि (on मनु XI. 45) quotes this. Vide ऐ. बा. 7. 28 and ताण्ड्यमहाब्रा. 8. 1. 4, 13. 4. 17 and अथर्ववेद II. 5. 3.

[39] एष च श्रोत्रियश्चेति ह वै द्वौ मनुष्येषु भूतवंतौ । शतपथ V. 4. 4. 5.

[40] तस्माच्छूद्रो यज्ञेऽनवक्लृप्तः । तै. सं. VII. 1. 1. 6.

[41] तद्यथैवादो मनुष्यराजे आगतेऽन्यस्मिन्वाहैर्युक्षाणं वा वेहतं वा क्षदन्त एवमस्मा एतत्क्षुदन्ते यदग्निं मथ्नान्ति । ऐ. बा. I.15. Compare वसिष्ठधर्मसूत्र 4. 8.

[42] पञ्च वा एते महायज्ञाः सतताः प्रतायन्ते सतताः सन्तिष्ठन्ते देवयज्ञः पितृयज्ञो भूतयज्ञो मनुष्ययज्ञो ब्रह्मयज्ञः । तै. आ. 2. 10. 7.

[43] उच्चा दिवि दक्षिणावन्तो अस्थुर्ये अश्वदाः सह ते सूर्येण । हिरण्यदा अमृतत्वं भजन्ते वासोदाः सोम प्र तिरन्त आयुः ॥ ऋग्वेद X. 107. 2.

[44] धन्वन्निव प्रपा असि त्वमग्न इयक्षवे पूर्वे प्रत्न राजन् । ऋग्वेद X. 4. 1.

[45] केवलाघो भवति केवलादी । ऋग्वेद X.117. 6.

When Dharmaśāstra works were first composed

of Śunaḥśep̄
son could
Taittirīya
only so....

An important question is to find out when formal treatises began to be composed. It is not possible to give a definite answer to this question. The Nirukta (III. 4-5) shows that long before Yāska heated controversies had raged on various questions of inheritance, such as the exclusion of daughters by sons and the rights of the appointed daughter (putrikā). It is very likely that these discussions had found their way in formal works and were not merely confined to the meetings of the learned. The manner in which Yāska writes suggests that he is referring to works in which certain Vedic verses had been cited in support of particular doctrines about inheritance[16]. It is further a remarkable thing that in connection with the topic of inheritance Yāska quotes a verse, calls it a śloka and distinguishes it from a ṛk.[47] This makes it probable that works dealing with topics of *dharma* existed either composed in the śloka metre or containing ślokas. Scholars like Bühler would say that the verses were part of the floating mass of mnemonic verses, the existence of which he postulates without very convincing or cogent arguments in his Introduction to the Manusmṛti (S. B. E. vol. 25 Intro.xc). If works dealing with topics of *dharma* existed before Yāska, a high antiquity will have to be predicated for them. The high antiquity of works on *dharmaśāstra* follows from other weighty considerations. It will be seen later on that the extant *dharmasūtras* of Gautama, Baudhāyana and Āpastamba certainly belong to the period between 600 to 300 B. C. Gautama[48] speaks of *dharmaśāstras* and the word *dharmaśāstra* occurs in Baudhāyana also (IV. 5.9). Baudhāyana speaks of a *dharmapāṭhaka* (I. 1. 9.). Besides Gautama quotes in numerous places the views of others in the words 'ityeke' (e. g. II. 15, II. 58, III. 1, IV. 21, VII. 23). He refers to Manu[49] in one place and to 'Ācāryas' in several places (III. 36, IV. 18 and 23).

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46 अथैतां जाम्या रिक्थप्रतिषेध उदाहरन्ति ज्येष्ठं पुत्रिकाया इत्येके । Vide S. B. E. Vol. 25, LXI (footnote) for Bühler's view refuting Roth's opinion that the whole discussion in the Nirukta is an interpolation.

47 तदेतत्कृश्लोकाभ्यामभ्युक्तम् । अङ्गादङ्गात्सम्भवसि...स जीव शरद: शतम् ॥ अविशेषेण पुत्राणां दायो भवति धर्मत: । मिथुनानां विसर्गादौ मनु: स्वायम्भुवोब्रवीत् ॥

48 गौ. ध. सू. 9.21 ' तस्य च व्यवहारो वेदो धर्मशास्त्राण्यङ्गानि उपवेदा: पुराणम् '. The words पृथग्धर्मविद्श्चय: in गौ. ध. सू. 28. 47 appear to refer to students of धर्मशास्त्र.

49 श्रीॢिग प्रथमान्यनिर्देश्यानि मनु: । गौ. ध. सू. 21. 7.

8. When Dharmaśāstra works were first composed

Baudhāyana mentions by name several writers on dharma, v., for him. janghani, Kātya, Kāśyapa, Gautama, Maudgalya and Hārīta. ahmaṇa tamba also cites the views of numerous sages such as those o'ṁhita Kaṇva, Kautsa, Harīta and others. There is a Vārtika which sp'ȧreya of Dharmaśātra[50]. Jaimini speaks of the duties of a Śūdra as λ es, down in the dharmaśāstra[51]. Patañjali shows that in his days dharmā^{il}of sūtras existed and that their authority was very high, being next to the commandments of God[52]. He quotes verses and dogmas that have their counterparts in the dharmasūtras. The foregoing dis cussion establishes that works on the dharmaśāstra existed prior to Yāska or at least prior to the period 600–300 B. C. and in the 2nd century B. C. they had attained a position of supreme authority in regulating the conduct of men.

In this book the whole of the extant literature on dharma will be dealt with as follows :- -First come the dharmasutras, some of which like those of Apastamba, Hiraṇyakeśin and Baudhāyana form part of a larger Sūtra collection, while there are others like those of Gautama and Vasiṣṭha which do not form part of a larger collec- tion ; some dharmasūtras like that of Viṣṇu are, in their extant form, comparatively later in date than other sūtra works; some sūtra works like those of Śankha-Likhita and Paiṭhīnasi are known only from quotations. Then early metrical smṛtis like those of Manu and Yājñavalkya will be taken up for discussion ; then later versified smṛtis like that of Narada ; there are many smṛti works like those of Bṛhaspati and Kātyāyana that are known only from quotations. The two epics, the Mahabhārata and the Rāmāyaṇa, and the Purāṇas also have played a great part in the development of the Dharma- śāstra. The commentaries on the smṛtis, such as those of Viśvarūpa, Medhātithi, Vijñāneśvara, Aparārka, Haradatta will be next passed

50 धर्मशास्त्रं च तथा । Vide महाभाष्य vol. I, p. 242.

51 शूद्रश्च धर्मशास्त्रत्वात् । पू. मी. सू. VI.7. 6.

52 नैवेश्वर आज्ञापयति नापि धर्मसूत्रकाराः पठान्ति अपवादेरुत्सर्गा बाध्यन्तामिति । महा-
भाष्य vol. I, p. 115 and vol. II, p. 365. पतञ्जलि quotes आश्वाश्व सिक्ताः पितरश्व
प्रीणिताः (vol. I. p. 14) for which vide आप. ध. सू. I. 7. 20. 3 तद्यथाभ्रे फलार्थ
निमित्ते छाया. गन्ध इत्यनूत्पद्यते. पतञ्जलि says 'तैलं न विक्रेतव्यं मांस न विक्रेतव्यम् '
and लोमनखं स्पृष्ट्वा शौचं कर्तव्यम् (vol. I p. 25).

H. D. 2.

in review and then the digests on *dharma* such as the **works of** Hemādri, Todaramalla, Nīlakantha and others.

It is very difficult to settle the chronology of the works on dharmaśāstra, particularly of the earlier ones. The present writer does not subscribe to the view of Max Müller (H. A. S. L. p. 68) and others that works in continuous Anustubh metre followed sūtra works[53]. Our knowledge of the works of that period is so meagre that such a generalisation is most unjustifiable. Some works in the continuous śloka metre like the Manusmṛti are certainly older than the Viṣnudharmasūtra and probably as old as, if not older than, the Vasisthadharmasūtra. One of the earliest extant dharmasūtras, that of Baudhāyana, contains long passages in the śloka metre, many of which are quotations and even Āpastamba has a considerable number of verses in the śloka metre. This renders it highly probable that works in the śloka metre existed before them. Besides a large literature on *dharma* existed in the days of Āpastamba and Baudhāyana which has not come down to us. In the absence of that literature it is futile to dogmatise on such a point.

4. The Dharmasūtras.

It seems that originally many, though not all, of the *dharma-sūtras* formed part of the Kalpasūtras and were studied in distinct *sūtracaranas*. Some of the extant dharmasutras here and there show in unmistakable terms that they presuppose the Gṛhyasutra of the *carana* to which they belong. Compare Ap. Dh. S. I. 1. 4. 16 with Ap. Gṛ. S. I. 12 and II. 5 ; and Baud. Dh. S. II. 8. 20 with Baud. Gṛ. S. II. 11. 42 (and other sūtras)[54]. The Dharmasūtras belonging to all sūtracaranas have not come down to us. There is no dharmasūtra completing the Aśvalāyana Śrauta and Gṛhya sūtras ; no Mānavadharmasūtra has yet come to light, though the

53 Vide S. B. E vol. II, p. IX, but see Goldstücker's Pāṇini (pp. 59, 60, 78) against Max Müller and Prof. D. R. Bhandarkar's Carmichael lectures for 1918, pp. 105-107.

54 अग्निमिद्ध्वा परिसमूह समिध आद्ध्यात् सायं प्रातर्यथोपदेशम् । आप. ध. सू. I. 1. 4. 16; अग्निमिद्ध्वा प्रागग्रैर्दर्भैरग्निं परिस्तृणाति । आप. गृ. I. 12 and इत्यमाद्राया-...यानि दशोणमासवत्र्णिम् । आप. गृ. II. 5; शेवमुक्तमश्कादहेमे (बौ. ध. सू. II. 8. 20) refers to बौ. गृ. II. 11. 42; मूर्छलहाट्नासायत्रमाणा याज्ञिकस्य वृक्षस्य दण्डाः (बौ. ध. सू. I. 2. 16) refers to बौ. गृ. II. 5. 66 and other places where पलाश is one of the याज्ञिक trees.

4. The Dharmasūtras

Mānava Śrauta and Gṛhya sūtras are extant; in the same w: the Śāṅkhāyana Śrauta and Gṛhya sūtras, but no Śāṅkhāyan- sūtra. It is only in the case of the Āpastamba, Hiraṇyak-, Baudhāyana Sūtracaraṇas that we have a complete *kalpa* tra- with its three components of Śrauta, Gṛhya and Dharma sūtras. Tantravārtika of Kumārila contains very interesting observations the this point. It tells us that Gautama (dharmasūtra) and Gobhil; (gṛhyasūtra) were studied by the Chandogas (Sāmavedins) Vasiṣṭha (dharmasūtra) by the Ṛgvedins, the dharmasūtra of Śaṅkha-Likhita by the followers of Vājasaneya-saṁhitā and the sūtras of Āpastamba and Baudhāyana by the followers of the Taittirīya Śākhā[55]. The Tantravārtika (p. 179) establishes it as a *siddhānta* (on Jaimini I. 3. 11) that all the *dharma* and *gṛhya* sūtras are authoritative for all Aryan people. From this it appears that although originally all sūtracaraṇas might not have possessed dharmasūtras composed by the founder of the *caraṇa* or ascribed to him, yet gradually certain dharmasūtras were specially taken over or appropriated by certain *caraṇas*. As the *dharmasūtras* were mostly concerned with rules about the conduct of men as members of the Āryan community and did not deal with ritual of any kind, all *dharmasūtras* gradually became authoritative in all schools.

The *dharmasūtras* were closely connected with the *gṛhyasūtras* in subjects and topics. Most of the Gṛhyasūtras treat of the sacred domestic fire, the divisions of Gṛhya sacrifices, the regular morning and evening oblations, sacrifices on new and full moon, sacrifices of cooked food, annual sacrifices, marriage, *puṁsavana*, jātakarma, upanayana and other *saṁskāras*, rules for students and *snātakas* and holidays, śrāddha offerings, madhuparka. In most cases the Gṛhya-sūtras confine themselves principally to the various events of domestic life ; they rarely give rules about the conduct of men, their rights, duties and responsibilities. The dharmasūtras also contain rules on some of the above topics such as marriage and the saṁskāras,

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55 तन्त्रवार्तिक p. 179 'पुराणमानवान्तिहासव्यतिरिक्तगौतमवासिष्ठशङ्खलिखितहारीतापस्तम्ब-
बौधायनादिप्रणीतधर्मशास्त्राणां गृह्यग्रन्थानां च प्रातिशाख्यलक्षणवत्प्रतिचरणं पाठ्यव-
स्थोपलभ्यते । तद्यथा गौतमीयगोभिलीये छन्दोगैरेव परिगृह्यते । वासिष्ठं बह्वृचैरेव शङ्ख-
लिखितोक्तं च वाजसनेयिभिः । आपस्तम्बबौधायनीये तैत्तिरीयैरेव प्रतिपन्ने । एवं तत्र तत्र
गृह्यव्यवस्थाभ्युपगमादि दर्शयित्वा विचारयितव्यम् । किं तानि तेषामेव प्रमाणान्युत
सर्वेषाम् । (on पू. मी. सू. I. 3. 11).

brahmacarya and snātakas and holidays, on śrāddha and in review. It is therefore not to be wondered at that in the Hemādri-grhyasūtra the topics of the duties of the Brahmacārin the house-holder, of *atithis* and of *śrāddha* are meagrely by as compared with the Āpastamba-dharmasutra. The dharma-dhāts very rarely describe the ritual of domestic life; they merely such upon it; their scope is wider and more ambitious; their principal purpose is to dilate upon the rules of conduct, law and custom. Some sūtras are common to both the Āpastamba-grhya and the dharma sūtra[56]. Sometimes the grhyasūtra appears to refer to the dharmasūtra[57]. There are certain points which distinguish the dharmasūtras (the more ancient of them at least) from smṛtis. (a) Many dharmasūtras are either parts of the Kalpa belonging to each sūtracaraṇa or are intimately connected with the grhyasūtras. (b) The dharmasūtras sometimes betray some partiality in their Vedic quotations for the texts of that Veda to which they belong or in the caraṇas of which they are studied. (c) The authors of the (older) dharmasūtras do not claim to be inspired seers or superhuman beings[58], while the other smṛtis such as those of Manu and Yājñavalkya are ascribed to Gods like Brahmā. (d) The *dharmasūtras* are in prose or in mixed prose and verse; the other smṛtis are in verse. (e) The language of the *dharmasūtras* is generally more archaic than that of the other smṛtis. (f) The *dharmasūtras* do not proceed upon any orderly arrangement of topics, while the other smṛtis (even the oldest of them, viz. Manusmṛti) arrange their contents and treat of the subjects under three principal heads viz. *ācāra*, *vyavahāra* and *prāyaścitta*. (g) Most of the *dharmasūtras* are older than most of the other smṛtis.

5. The Dharmasūtra of Gautama.

This has been printed several times (there is Dr. Stenzler's edition of 1876, the Calcutta edition of 1876, the Ānandāśrama

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[56] e. g. पलाशो दण्डो ब्राह्मणस्य...इत्यवर्णसंयोगेनैक उपदिशन्ति । आप.गृ. IV. 17. 15. 16 and आप. ध. I. 1. 2. 38.

[57] e. g. the आप. गृ. says ' मासि श्राद्धस्यापरपक्षे यथोपदेशं कालाः ' (VIII. 21. 1.). This has in view आप. ध. सू. II. 7. 16. 4-22.

[58] Compare गौ. ध. I. 3-4 and आप. ध. सू. I. 2. 5. 4. 'तस्माद्वयं इवरेषु न जायन्ते नियमातिक्रमात् ' and आप. ध. सू. II 6. 13. 9 तदन्वीक्ष्य प्रयुञ्जान: सीद्त्यवरः.

Sources of Law in the Bhartiya Knowledge System

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At the very beginning it needs to be noted that what we call law now is technically called Vyavahara in the Indian knowledge system. The expression vyavahara signifies law, litigation and judicial procedure. Vyavahara is a part of the larger scheme of Dharma which consists of a comprehensive system of injunctions and prohibitions to regulate people's conduct in their many interactions in different social institutions.

The institution of Dharma in the Indian knowledge system has evolved over a period of nearly three millennia, taking elements from various schools of thought in Indian philosophy. Its early beginnings are in the ritual tradition of Mimamsa school according to which the performance of various Vedic yagyas was Dharma. And the entire structure and procedure of yagyas could be known only from the Vedas. What result (phala) can be obtained from which ritual, can be known only from the Vedas and from no other source. One common result (phala) that can be obtained from all Vedic rituals is swarga or heaven. Now what is swarga, does it exist or not what happens in Swarga - this cannot be known from our normal experiences and these are matters which are settled only by the Veda. Hence in matters of Dharma only Vedas are the valid source of information.

In the Smriti - Purana tradition, the idea of dharma has been combined and amalgamated with man's social roles and responsibilities. The Smriti Purana tradition accepts Vedic and post Vedic rituals as essential parts of dharma but also expands the idea of Dharma to include various social, moral, economic, political, legal and other duties of individuals and social groups as

members of the larger community of human beings. It claims that one can obtain various 'good results' (phala) including swarga by performing one's social Dharma as well. In fact the Smriti Purana tradition goes beyond swarga and claims that one can obtain even moksha that is liberation from the cycle of life and death, the highest result that a human being can achieve from life and in life, all by performing one's social Dharma.

So by the time Dharma Shastra got established as a separate Shastra, Dharma has already been expanded to go beyond mere religious rituals to include all possible rules of conduct for the good of the community and of the individual. This is how I just defined Dharma - as a comprehensive system of prohibitions and prescriptions to regulate human conduct in all possible interfaces - social, economic, political, legal and religious.

Bharatiya dharma shastra is fully conscious of this expansion in the field of Dharma and notes how from mere religious ritual, Dharma has begun to cover a very large canvas in the life of the individual and the community. It is fully aware that human life within this world cannot be governed by the supposedly superhuman and the supernatural. Life has its own problems and dynamics which are rooted in the world, in specific social, political and economic situations and therefore rules governing life in the society have to take cognizance of those situations. They must be rooted in social life and be governed by it.

Therefore in matters of Dharma one must clearly distinguish between matters which are worldly, arise from this world and lead to consequences in this very world from matters which are otherworldly and have consequences in the other world.

Within the area of Dharma, there are different kinds of rules which are backed by personal, social and divine sanctions. Personal sanctions are in the nature of realization of guilt and various

rituals for atonement. Social sanctions are enforced by families, village communities, caste groups and traders' guilds. Divine sanctions are in the nature of punishments awarded in this world in the form of various kinds of sufferings or in hell under a divine arrangement.

But several of these rules of dharma are enforceable by agencies of the state. The rules of Dharma which receive state sanction and support constitute the rules of Vyavahara or law. These form the core of bharatiya jurisprudence.

In the Indian knowledge tradition, rules of social conduct (Dharma) are also primarily attributed to divine sources or the Vedas. However, even while dharmashastra stresses the importance of divine sources, Medhatithi , (an 8th century commentator on the Manu Smriti, while distinguishing between Dharma and Vyavahara declares that rules of Vyavahara i.e. law, are not entirely based on the Vedas and stem from our common experiences. Hence, Vyavahara partakes of the nature of Dharma but is different from it.

It is important to see that dharmashastra gives four sources of Dharma itself, not just Vyavahara. Manu Smriti says - 'Veda or Shruti, Smriti, Sadachara and Atmanah Priyam or atma tushti (whatever is pleasing to oneself or gives satisfaction to oneself) - these four are the sources of Dharma'.

 We will first look at the four sources of Dharma (including Vyavahara) in the Dharma Shastra tradition, namely shruti, smriti, achaar and atma tushti. These are given in the order of precedence. Shruti is believed to enjoy highest authority, Smriti comes next, then sadachara and atma tushti is the least authoritative in this scheme. However, this is too simplistic an understanding as many complex issues are involved in determining the role of each of these in the field of Dharma and Vyavahara.

We will examine each of these in detail now.

Shruti -

The expression Shruti literally means 'that which is heard' i.e knowledge received through listening. In the Indian knowledge tradition this principally refers to the four Samhitas i.e. collections of mantras used in various yajnas and other rituals.

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1. Rig Veda,

2. Yajur Veda

3. Sama Veda and

4. Atharva Veda.

The Rig Veda has more than ten thousand mantras or verses in one thousand twenty eight Suktas. The word Sukta means well spoken or well crafted but here it may be taken to mean a poem.

Rig-vaidika poems are mostly prayers to Vaidika deities like Agni, Indra, Varuna, Vishnu, Soma, Usha and many others. Many Suktas deal with creation of the world, life and death and other philosophical issues. Many Suktas are about various aspects of family and social relations, kingship, polity economy and also magic charms. The Rigveda presents the earliest recorded thoughts and practices about various aspects of life and society in India.

The Yajurveda consists of prose mantras to be deployed in different rituals.

The Sama Veda is very unique and consists of mantras set to music as songs to be sung in rituals.

It is the source of the rich tradition of classical and folk music in India.

The Atharva Veda largely has mantras for wizardry, magic and sorcery, but it also provides information about several medicinal plants and cures for many diseases. At the same time it has several Suktas containing advanced philosophical concepts. Many Suktas contain wise words on society, polity and economy.

The Vedas are believed to be words of enlightened sages who directly perceived or realized the truth in their hearts. They are called Rishis. The word Rishi is derived from the root rish meaning to see or perceive and refers to Seers i.e. a direct perceivers. The Rishis are believed to have directly and internally 'perceived' Dharma. Then they orally transmitted that knowledge to their disciples. The words of the Rishis became Shruti at the end of the disciples who 'heard' the words of wisdom from their teachers. Since the ancient seers had direct realization of Dharma, their knowledge is believed to be self-proven and perfect, requiring no corroboration.

When the disciples of the Rishis (seers) further transmitted that knowledge to their disciples, they did it from their memory of their teachers' sermons i.e. on the basis of what they remembered hearing from their teachers. Thus, the second level instruction by the disciples of the original seers appeared as the Smriti texts. Human memory can be erroneous and for that reason, smritis have the possibility of being distorted.

Shruti, being directly realized knowledge, is believed to enjoy higher validity than smritis whose words are valid only if in conformity with Shruti. In the Bhartiya knowledge system, Shruti or Veda enjoys indisputable validity also because some schools of Bharatiya darshana like Nyaya - Vaisheshika and Vedanta and the Smriti - Purana tradition consider them to be words of the omniscient Ishwara or God. The Mimamsa school considers Veda to be Apaurusheya i.e. not authored by any one and therefore beyond all possible errors. To lend eternal validity to Vedas,

the Mimasakas argue that Vedas have not been authored even by an omniscient God because to say so would imply that the Vedas did not exist before God created them. This would further imply that they did not have any validity in that period. Therefore, according to the Mimasakas, the Vedas have to be admitted to be eternal.

Both the Mimamsakas and the Vedantis argue vociferously for undisputed validity of the Vedas because their entire theses are built on the words of the Vedas. Rituals prescribed by the Mimamsakas and the theory of the Atma propounded as by the Vedantis derive their validity from the Vedas.

On the other hand, many other schools of thought like Nyaya - Vaisheshika and Samkhya prove their claims on the basis of arguments. They do not rely on the words of the Vedas as much as the Mimamsakas or the Vedantis do. Therefore, they do not lay so much emphasis on the authority of the Vedas, though they do recognise Vedas as the highest authorities. Nyaya, as we shall see, opined that even the knowledge received from the Vedas is subject to further verification by reason.

The range of Shruti or Veda is not confined to the four Samhitas. Each samhita also has its three layered supplementary literature consisting of -

i. Brahmanas

ii. Aranyakas and

iii. Upanishads.

The Brahmanas are texts containing details of Vaidika yajnas and other rituals and form the core of the sacrificial tradition of the Mimamsa school.

The Aranyakas are philosophical interpretations of Vedic rituals and seek to turn them into exercises for spiritual rejuvenation.

The Upanishads propound the core Indian philosophical concepts of Atma, rebirth and karma theory and form the basis of all the schools of Indian philosophy.

It may be noted that in the Bhartiya tradition, the word Shruti or Veda in singular signifies all the four Samhitas along with their supplementary literature. When something is claimed to have been written in the Shruti, it could be found in any of the Samhitas, Brahmanas, Aranyakas or Upanishads.

Brahmana texts also contain early speculations on rituals, societal norms and law, grammar, etymology, ganita and jyotisha and several other subject areas. These were later developed into the six vedangas i.e. auxiliary sciences for the study of the Vedas and practice of Vaidika rituals. Shruti or Veda is said to be the source of all other branches of knowledge as well viz. poetry, dance, drama and music etc.

In the domain of Dharma and Vyavahara too, the Veda is said to be the original source because it is the earliest available literature in which there are references to several dharmic and legal issues. However, it needs to be noted that the Vedas only make oblique references to such issues and are not prescriptive like the later smritis.

The question of overriding authority of Vedas (and smritis) presents a very difficult dilemma in the domain of Dharma which is very extensive as Dharma seeks to prescribe rules and regulations for all aspects of human life. This not only covers all human interactions and relations in the social, economic and political spheres but also religious beliefs and ritual practices. What further complicates the matter is that Dharma has also ritualized social, economic and political activities and sought to validate their prescriptions or prohibitions regarding these activities by invoking the authority of the Vedas or the Smritis based on the Vedas.

This makes all social, political, economic, administrative and legal rules and regulations beyond critical review. This makes them absolute and unchangeable and makes the entire social system absolutely rigid. However, the evolution of Dharma Shastra over three millennia shows how ancient and medieval scholars of Dharma Shastra grappled with the problem of textual authority and the need for change.

One interesting tool of interpretation developed by the Mimamsa school and adopted by Dharma Shastra is to distinguish between rules with 'seen (drishta) objectives' (artha) and 'unseen' (adrishta) objectives (artha). The former are the rules whose results cannot be seen i.e. known through our normal means of knowledge. For instance, rules of ritual bath or rules for making offerings to deities or ancestors. Their validity cannot be determined on the basis of our general experience of the world. They have to be accepted to be true because they are prescribed by some authoritative text.

On the other hand rules of marriage and partition or trade and commerce, evidence or court procedures are made with some specific social, economic, political or legal objectives.

Hence, the validity of these rules has to be determined on the basis of their efficacy in fulfilling those objectives. These rules cannot be assigned unseen objectives and pushed beyond critical review.

Thus, within the domain of Dharma, scope is created for bringing flexibility to the system to enable amendment and even notional abrogation of earlier rules.

The 'abrogation' is only notional because texts from the past cannot be purged of rules. However, authors of subsequent smritis have laid down alternative rules thereby providing alternatives to earlier rules. Interestingly all smritis claim authority by claiming that they are based on the Shruti.

Authors of later digests and commentaries benefit from these variations as they get a large pool of rules to choose from and create their own alternative systems - all deriving authority from 'sacred' texts.

This has allowed the Dharma Shastra to negotiate its way out of the dilemma of authority of texts like the Vedas (and the Smritis) and yet make enough room for heralding change where necessary.

Therefore, in conclusion, it needs to be noted that despite its insistence on the authority of the texts, the Bhartiya knowledge tradition has kept Dharma very flexible so that it can adapt itself to emerging situations and remain relevant in all times (sanatana). It's all- timeness lies not in mindless adherence to the letter of the law but in its unique ability to invest past texts with new meanings and make them look always contemporary and relevant.

In Dharma Shastra, including Vyavahara, Shruti plays only a notional role. It is always the Smritis which are cited as authorities. However, as already indicated, there are multiple smritis

which are often at variance with one another. So to prove the authority of one smriti over the other, the test of adherence to Shruti was developed. In other words, a statement from a Smriti was considered to be more authoritative than the other only if it could be shown to be based on some Vedic statement.

Where no Vedic source could be shown for a Smriti rule, the authority of the lost Shruti was invoked. This needs to be elaborated.

It is well known that in the long history of India's textual tradition, several Vedic recensions have been lost. So it is presumed that a Smriti rule which could not be directly trace to a Shruti, is nevertheless valid because it might have emerged from a lost Shruti. This shows how Shruti is seen as the force behind dharmshastra tradition.

The idea of the overriding authority of Shruti over Smriti and custom is somewhat akin to the contemporary practice in constitutional law where the validity of all legislation and executive orders and even social practices is accepted or denied on the basis of it's conformity or otherwise to the letter and spirit of the constitution.

It needs to be appreciated that every normative system needs a strong and inviolable basis to stand upon. In the domain of Dharma and vyavahara, it is the Shruti which provides that basis to the social and legal superstructure, however tentative or fragile the relation between the two might be.

Dharmshastra had to struggle harder when it could not find any Shruti or Smriti rule as authority for prescribing or proscribing any conduct. In such a situation convention or custom was relied upon as the source of Dharma.

However, authenticity or authority of custom was also called in question repeatedly. In this situation dharmashastra fell back upon the written text and held that only customs which accord with Shruti (or smriti) were valid. At the same time Dharma Shastra does not shy away from renegotiating the meaning of Shruti or Smriti texts to make them accordingly with emerging customs.

Social dynamics makes Dharma Shastra adopt a dynamic approach and assign higher authority to Shruti or Smriti or custom as per the needs of desh (place) and kala (time).

Smriti

The word Smriti literally means memory. However, in the Bhartiya knowledge system it refers to all texts written by ancient sages on the basis of their memory of what they had heard from Vedic seers. It is believed that Vedic sages perceived truths directly and spoke them out in the form of the Vedas. Their disciples heard their sermons and on the basis of the memory of what they had heard, they (the disciples) composed the texts called the Smritis.

Although texts belonging to various disciplines are given the generic name Smriti, this expression is largely reserved for texts dealing with Dharma and therefore Smritis are also called dharmashastra. As Dharma Shastra, the Smritis define roles and lay down the duties and privileges of individuals and social groups in their different mutual interactions - social, political, economic and religious. It covers human relations with all other creatures and entities in the universe as well. A significant part of the Smritis deals with religious rituals as well.

Dharma Shastra is aware of the many possibilities of transgression of Dharma by individuals. It has sought to curb such transgression by two modes - prayashchitta and Vyavahara.

The former consists of rites for atonement and purification. Vyavahara on the other hand deals with state administered law. The rules which regulate the exercise of this power by the state are

covered under Vyavahara. The Vyavahara part of Smritis lays down extensive substantive laws, laws of procedure, laws of evidence, rules of pleadings and interpretation of smriti rules. This forms the subject matter of law as understood today.

In the field of law, a large range of texts are covered under smritis. The earliest among them are the dharmasutras. Works like the Apastambiya Dharma sutra, Gautama Dharma sutra, Vishnu Dharma sutra etc. contain material on law and legal procedures.

These are followed by metrical Smritis attributed to sages like Manu, Yajnavalkya, Narada, Katyayana, Brihaspati and many others. The metrical smritis, almost two hundred in number, lay emphasis on different aspects of Dharma - from social conduct, religious rituals like various vratas, fasts, festivals and pilgrimages. They form the basis of the social, religious, philosophical and the legal system that has existed in India for nearly two thousand years. Vyavahara as law forms a very significant part of the Smritis. Many smritis discuss civil and criminal laws, laws of procedure and evidence in detail. They also discuss principles of jurisprudence and provide the philosophical background of the legal system.

Among the metrical Smritis, the one ascribed to Manu is believed to be of highest authority and is frequently cited by later authors. It's importance lies in the fact that it is the earliest available text in India which covers the entire field of Dharma in its various aspects. In twelve chapters it seeks to present a comprehensive scheme of life for individuals and the society leading to the acquisition of the four aims of life namely Dharma, Artha, Kama and Moksha. Chapter VIII of this work is the earliest available exposition of various branches of law covering the traditional eighteen titles of dispute, laws of evidence and procedure.

It must be acknowledged that many of its prescriptions (and of later smritis as well) are out of sync with the current democratic understanding of equality and justice. Yet, there is no denying the fact that the principles, social institutions, beliefs and practices found in this text and in texts based on the Manu Smriti, whether in sync with or out of sync with the current understanding, have influenced and shaped life in India for over two millennia. Going by the spirit of dharamshastra, it can be said people in different times and places, must choose what is conducive for them and omit what is not. As indicated above, despite its strong commitment to a long textual tradition and social conventions, the Bharatiya Dharma Shastra tradition provides enough scope for constant correction and growth.

The Yajnavalkya Smriti which came after the Manu Smriti, for the first time clearly segregates Vyavahara i.e. law from other branches of Dharma. It has arranged all rules pertaining to law and legal procedures in a separate (adhyaya) section called Vyavahara. Yajnavalkya differs significantly from Manu in its treatment of inheritance and partition laws.

Three smritis ascribed to Narada, Katyayana and Brihaspati are of particular importance in the field of legal studies. They specialize in procedural laws, constitution of courts, drafting and pleadings, rules of evidence, review appeal etc.

A very large number of Smritis composed over a long period and probably in different parts of the country suggests that people's practices in different parts and at different times were indeed different. This also suggests that new Smritis were composed to grant ex post facto validity to peoples' practices and to record current practices for posterity. This is a very interesting phenomena which shows how people's practices have impacted the so-called sacred texts which have constantly attempted to update themselves to match with current practices. This continuous interaction between the shastric and the popular is a unique feature of the Bharatiya knowledge

system and can be observed in the growth of almost all disciplines in India, including Dharma and Vyavahara.

All the Smritis are supposed to have equal authority. Interestingly, Smriti texts often differ with one another on several issues. Contradictory rules are often reconciled by taking them to be optional and it is left to the wisdom of the concerned person to choose any of them according to his peculiar requirements. Another way of reconciling apparent contradictions is to show that there is no real contradiction and that different rules applied to different situations. Thus, sufficient scope is created for the operation and application of different rules.

The third layer of texts passing under the name Smriti are commentaries on earlier Smriti texts. These are called tikas or bhashyas. There is a huge commentarial tradition on various Dharma sutras and metrical Smritis. Among them some more important ones are Asahaya's bhashya on the Narada smriti, Medhatithi's bhashya on the Manu smriti and Vijnaneshwara's bhashya on the Yanjavalkya Smriti.

The fourth type of texts under smriti, are digests called Nibandhas. Some of these nibandhas are mere topic wise compilations of verses from different Smritis and are therefore in the nature of anthologies. On the other hand, some nibandhas seek to present a coherent system of laws for being enforced by the patron kings of the authors.

Often commentators and authors of digests have to reconcile contradictions among Smritis or choose from the large pool of Smritis. One great merit of many commentaries and digests is that they discuss in detail the reasons for choosing one rule over the other. This gives readers a good insight into the making of a legal text in different times and at different places. It helps them to understand how the law has evolved and changed with time.

Commentaries and Nibandhas also record vociferous debates between proponents of contrary views on legal (and other) matters. These offer some insight into how laws were operationalised in actual dispute situations in courts of law. One can see here how debate and argument was used as a significant tool to interpret non - legal and legal provisions.

One such very significant debate in Vijnaneshwara's commentary on the Yajnavalkya Smriti can be cited as an illustration.

In some Smritis the widow of a deceased male is not given any share in her husband's property. On the other hand Yajnavalkya makes the widow an equal inheritor with the deceased's sons and places her at the head of the list of inheritors. The issue gets more complicated when it comes to the rights of a sonless widow. Many smritis upheld the claims of the deceased's father or mother or brothers to inherit his property to the exclusion of the widow and the daughter. Vijnaneshwara had to fight an aggressive battle with the opposing side which gave several arguments to support its claim but Vijnaneshwara demolished them all to finally uphold the sonless widow's right to her husband's property.

It is very pertinent to note that in the Indian knowledge system, even the so called sacred texts have be tested on the basis of logic and argument. Nyaya Sutras of Gautama declare that whatever is known through perception and agama i.e. Vedas and other sacred texts should also be verified by anumana i.e. reason and logic. Dharma Shastra also followed this theory particularly in matters concerning Vyavahara, as borne out by Medhatithi's attempts to distinguish Vyavahara from Dharma. Rules of vyavahara, even while falling within the domain of Dharma, are distinct from the rules of Dharma because their validity is to be tested on the basis of rational argument based on our experiences.

However, it must be understood that logic or reason is to be given to arrive at the right interpretation of a text and not to deride, decry or condemn it. There is a difference in approach to Shruti and Smriti. A provision from a Smriti text can be rejected as invalid by showing it is against the Shruti. Shruti itself can be subjected to a critical analysis only to arrive at the right interpretation but arguments cannot be made to reject it as invalid, per se.

This is somewhat similar to the current practice in law where one can argue for or against a particular interpretation of a provision, or ultimately show it to be ultra vires of the constitution. No argument in a court of law can begin with rejecting the very law.

Thus, Vyavahara, even while owing allegiance to the texts, is not fussy or fundamentalist in its attitude towards the so-called sacred texts. It allowed texts to evolve with time and kept them in tune with 'current' rationality. This is where the role of achara as a source of Dharma and vyavahara becomes significant.

Sadachara –

The third source of Dharma is ' sadachara' literally meaning good conduct. Dharma Shastra has had to face complex questions in defining and determining the authenticity of sadachara. Whose conduct can be taken as model conduct to be adopted as binding for all? What kind of moral and intellectual qualities should such social role models possess? Can there be law outside the sacred tradition? Can practices and beliefs of common people determine Dharma or law?

The entire discourse on Achara has evolved while answering these and similar questions. Therefore, there are several aspects of the understanding of Achara in the Bhartiya knowledge system -

I. Sadachara as the conduct of morally elevated persons;

II. Sadachara as the conduct of persons well versed in Vedas (and Smritis);

III. Sadachara as the conduct of community elders and leaders;

IV. Sadachara as current dispositions and practices of people in general ;

These different understandings of Sadachara show how our thinkers are negotiating their way out of difficult issues. One can also clearly see how the sacred and the popular traditions have affected the making of Dharma in the Bhartiya knowledge system. This also indicates that Dharma in the Bhartiya tradition is not elitist as it is constantly tempered by beliefs and practices of common people.

I. Achara and Morality - One input comes from Harita, a frequently qouted thinker in the Dharma Shastra tradition. He defines 'good people' (shishtas) as those who are pure (brahmanya), devoted to gods and ancestors, soft and sweet, not envious, not rude, do not hurt others and possess such other moral qualities.

II. Achara and Veda - Manu and other authorities prescribe that such a 'good person' should have knowledge of the Veda. The expression 'Veda' needs to be understood in the right perspective. In the Indian knowledge tradition, the word Veda is used for knowledge itself. It signifies all shastras based on the veda. This covers all secular disciplines as well, including the vedangas, dharma Shastra, mimansa, nyaya etc.

Thus, a 'good person' should be intellectually sound and should have sufficient knowledge about Dharma and its various aspects to be able to give right advice or to become a role model for others.

iii. Achara as People's Practices - In a yet another understanding of Achara, it signifies people's practices. Both in the field of the larger Dharma and Vyavahara, practices of different regions (desh), communities (jati) families (Kula) and traders' guilds (shreni) are accepted as valid.

In certain matters the opinion and advice of family and community elders was considered to be authentic. Hence, family elders (gram vridhha) and women in the family (Kula stri) are said to be the source from which Dharma could be known. Sometimes, what is practiced by a majority of people (maha janah) in a community is considered to be dharma.

In the long tradition of dharma Shastra, spanning nearly 2500 years, Achara has played a significant role in defining and determining Dharma. In fact, it has facilitated the growth of the textual tradition itself which borrows heavily from Achara.

Starting from the Vedas and evolving into Smritis, commentaries and digests, one can see social conditions constantly changing. Therefore, Dharma Shastra constantly updated itself to bring itself in tune with the ever-evolving perceptions of people about right and wrong. Emerging practices were incorporated into later texts to put them on a stronger footing. This largely explains the creation of a large number of mutually differing texts within the overall tradition of Dharma.

The relative authority of texts and peoples' practices has been an important issue in Dharma shastra. Sometimes people's practices are said to supersede the written text. An authority like the Yajnavalkya Smriti (II. XXX) goes to the extent of saying that rules

given in the Shastra should not be enforced if they become detestable for the people (loka vidvishta). Vijnaneshwara, the celebrated commentator of Yajnavalkya says in his comments on Yajnavalkya II. XX ixt is because of people's opposition that earlier provisions for 'niyoga' were no longer enforced.

Dharma Shastra is equally aware of the possibility of certain practices being very obnoxious and unacceptable to a civilized society. In this situation such practices could be rejected as invalid. But rejection of long observed practices requires good reason. This may be understood by reference to our contemporary debates about certain religious practices in various religions like untouchability in Hinduism or triple talaq in Islam. Both these practices have been outlawed in independent India as being ultra vires of the constitution of India. So today the constitution is the touchstone on which the validity or otherwise of a rule or a practice can be determined. But in Dharmashastra, one falls back upon Vedas and Smritis and obnoxious practices are rejected as being against the Vedas and the Smritis. Vijnaneshvara, in his comments on verse of Yajnavalkya, refers to the practice of prostitution in certain communities as an obnoxious practice to be curbed by the state as against the norms of shruti and smriti. Dharma Shastra also authorizes the state to outlaw such practices through ordinances by the king.

Thus, text and tradition work hand in hand, as complementary to each other and one is held superior to the other according to the needs and requirements of the situation. This only shows that Dharma Shastra was very alive and sensitive to the needs of the society and did not get entangled in any fundamentalist adherence to either text or tradition.

It is a well established norm of vyavahara that decisions should not be based purely on the basis of written texts. This could very well be understood in terms of a contemporary rule of interpretation that one should not go by the letter of the law.

The relation between Shastra and local traditions is an important issue in matters of Dharma. Sometimes it is the Shastra which prevails over practices and sometimes practices prevail over the Shastra and this kind of a constant tussle is very much visible as we see the growth of Dharma Shastra over a period of 3000 years.

Peoples' practices are normally accepted as source of law or Dharma. In fact, it is even said that practices of good people are ipso facto in consonance with Shruti and smriti. On the other hand, obnoxious practices were sought to be curbed by declaring them to be ultra vires of Shruti. A practice which was patently against Shruti or smriti could be outlawed but one that was not patently against the provisions of the Shruti and Smriti was acceptable.

Atma Tushti – Self satisfaction

According to the Manu Smriti what is pleasing to oneself (atmanah priyam) is Dharma and one's satisfaction (atma tushti) is also a source of Dharma. Yajnavalkya makes a similar point in different words – Thoughts borne by pure motivation (samyak samkalpa) can be sources of Dharma. This might be likened to the concept of bona fide acts or acts done in 'good faith' or with good conscience.

By itself, this could make Dharma totally arbitrary and whimsical. Hence, commentators had to introduce several conditions. One is that one's wish prevails only where optional rules are available. One may choose one over the other according to one's preference. The second condition is that only the wish of those learned in the vedic lore can

determine Dharma in cases where there is a doubt about Dharma or where no specific textual authority is available. In such a situation, a team of scholars or even one single scholar appointed by the king, can decide what is Dharma according to his wisdom. This is an important provision as it allows special dharmas to be created for unprecedented situations. In the field of Vyavahara, this gets translated into the law declared by judges (Pradvivak or Sabhapati) in a court of law (sabha).

Shruti

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The Vedas are believed to be words of enlightened sages who directly perceived or realized the truth in their hearts. They are called Rishis. The word Rishi is derived from the root rish meaning to see or perceive and refers to Seers i.e. a direct perceivers. The Rishis then, orally transmitted that knowledge to their disciples. The words of the Rishis became Shruti at the end of the disciples who 'heard' the words of wisdom from their teachers.

When these disciples further transmitted that knowledge to their disciples, they did it from their memory of their teachers' sermons i.e. on the basis of what they remembered hearing from their teachers. Thus, the second level instruction by the disciples of the original seers are termed Smriti texts. Human memory can be erroneous and for that reason, smritis have the possibility of being distorted.

Shruti, being directly realized knowledge, is believed to enjoy higher validity than smritis whose words are valid only if in conformity with Shruti. In the Bhartiya knowledge system, Shruti or Veda enjoys indisputable validity also because some schools of Bharatiya darshana like Nyaya - Vaisheshika and Vedanta and the Smriti - Purana tradition consider them to be words of the omniscient Ishwara or God. The Mimamsa school considers Veda to be Apaurusheya i.e. not authored by any one and therefore beyond all possible errors. To lend eternal validity to Vedas, the Mimasakas argue that Vedas have not been authored even by an omniscient God because to say so would imply that the Vedas did not exist before God created them. This would further imply that they did not have any validity in that period. Therefore, according to the Mimasakas, the Vedas have to be admitted to be eternal.

Both the Mimamsakas and the Vedantis argue vociferously for undisputed validity of the Vedas because their entire theses are built on the words of the Vedas. Rituals prescribed by the Mimamsakas and the theory of the Atma propounded as by the Vedantis derive their validity from the Vedas.

On the other hand, many other schools of thought like Nyaya - Vaisheshika and Samkhya prove their claims on the basis of arguments. They do not rely on the words of the Vedas as much as the Mimamsakas or the Vedantis do. Therefore, they do not lay so much emphasis on the authority of the Vedas, though they do recognise Vedas as the highest authorities.

The range of Shruti or Veda is not confined to the four Samhitas. Each samhita also has its three layered supplementary literature consisting of -

i. Brahmanas

ii. Aranyakas and

iii. Upanishads.

The Brahmanas are texts containing details of Vaidika yajnas and other rituals and form the core of the sacrificial tradition of the Mimamsa school.

The Aranyakas are philosophical interpretations of Vedic rituals and seek to turn them into exercises for spiritual rejuvenation.

The Upanishads propound the core Indian philosophical concepts of Atma, rebirth and karma theory and form the basis of all the schools of Indian philosophy.

It may be noted that in the Bhartiya tradition, the word Shruti or Veda in singular signifies all the four Samhitas along with their supplementary literature. When something is claimed to have been written in the Shruti, it could be found in any of the Samhitas, Brahmanas, Aranyakas or Upanishads.

Brahmana texts also contain early speculations on rituals, societal norms and law, grammar, etymology, ganita and jyotisha and several other subject areas. These were later developed into the six vedangas i.e. auxiliary sciences for the study of the Vedas and practice of Vaidika rituals. Shruti or Veda is said to be the source of all other branches of knowledge as well viz. poetry, dance, drama and music etc.

In the domain of Dharma and Vyavahara too, the Veda is said to be the original source because it is the earliest available literature in which there are references to several dharmic and legal issues. However, it needs to be noted that the Vedas only make oblique references to such issues and are not prescriptive like the later smritis.

The question of overriding authority of Vedas (and smritis) presents a very difficult dilemma in the domain of Dharma which is very extensive as Dharma seeks to prescribe rules and regulations for all aspects of human life. This not only covers all human interactions and relations in the social, economic and political spheres but also religious beliefs and ritual practices. What further complicates the matter is that Dharma has also ritualized social, economic and political activities and sought to validate their prescriptions or prohibitions regarding these activities by invoking the authority of the Vedas or the Smritis based on the Vedas.

This makes all social, political, economic, administrative and legal rules and regulations beyond critical review. This makes them absolute and unchangeable and makes the entire

social system absolutely rigid. However, the evolution of Dharma Shastra over three millennia shows how ancient and medieval scholars of Dharma Shastra grappled with the problem of textual authority and the need for change.

One interesting tool of interpretation developed by the Mimamsa school and adopted by Dharma Shastra is to distinguish between rules with 'seen (drishta) objectives' (artha) and 'unseen' (adrishta) objectives (artha). The former are the rules whose results cannot be seen i.e. known through our normal means of knowledge. For instance, rules of ritual bath or rules for making offerings to deities or ancestors. Their validity cannot be determined on the basis of our general experience of the world. They have to be accepted to be true because they are prescribed by some authoritative text.

On the other hand rules of marriage and partition or trade and commerce, evidence or court procedures are made with some specific social, economic, political or legal objectives.

Hence, the validity of these rules has to be determined on the basis of their efficacy in fulfilling those objectives. These rules cannot be assigned unseen objectives and pushed beyond critical review.

Thus, within the domain of Dharma, scope is created for bringing flexibility to the system to enable amendment and even notional abrogation of earlier rules.

The 'abrogation' is only notional because texts from the past cannot be purged of rules. However, authors of subsequent smritis have laid down alternative rules thereby providing alternatives to earlier rules. Interestingly all smritis claim authority by claiming that they are based on the Shruti.

Authors of later digests and commentaries benefit from these variations as they get a large pool of rules to choose from and create their own alternative systems - all deriving authority from 'sacred' texts.

This has allowed the Dharma Shastra to negotiate it's way out of the dilemma of authority of texts like the Vedas (and the Smritis) and yet make enough room for heralding change where necessary.

Therefore, in conclusion, it needs to be noted that despite its insistence on the authority of the texts, the Bhartiya knowledge tradition has kept Dharma very flexible so that it can adapt itself to emerging situations and remain relevant in all times (sanatana). It's all- timeness lies not in mindless adherence to the letter of the law but in its unique ability to invest past texts with new meanings and make them look always contemporary and relevant.

In Dharma Shastra, including Vyavahara, Shruti plays only a notional role. It is always the Smritis which are cited as authorities. However, as already indicated, there are multiple smritis which are often at variance with one another. So to prove the authority of one smriti over the other, the test of adherence to Shruti was developed. In other words, a statement from a Smriti was considered to be more authoritative than the other only if it could be shown to be based on some Vedic statement.

Where no Vedic source could be shown for a Smriti rule, the authority of the lost Shruti was invoked. This needs to be elaborated.

It is well known that in the long history of India's textual tradition, several Vedic recensions have been lost. So it is presumed that a Smriti rule which could not be directly trace to a Shruti, is nevertheless valid because it might have emerged from a lost Shruti. This shows how Shruti is seen as the force behind dharmshastra tradition.

The idea of the overriding authority of Shruti over Smriti and custom is somewhat akin to the contemporary practice in constitutional law where the validity of all legislation and executive orders and even social practices is accepted or denied on the basis of it's conformity or otherwise to the letter and spirit of the constitution.

It needs to be appreciated that every normative system needs a strong and inviolable basis to stand upon. In the domain of Dharma and vyavahara, it is the Shruti which provides that basis to the social and legal superstructure, how so ever tentative or fragile the relation between the two might be.

Dharmshastra had to struggle harder when it could not find any Shruti or Smriti rule as authority for prescribing or proscribing any conduct. In such a situation convention or custom was relied upon as the source of Dharma.

However, authenticity or authority of custom was also called in question repeatedly. In this situation dharmashastra fell back upon the written text and held that only customs which accord with Shruti (or smriti) were valid. At the same time Dharma Shastra does not shy away from renegotiating the meaning of Shruti or Smriti texts to make them accordingly with emerging customs.

Social dynamics makes Dharma Shastra adopt a dynamic approach and assign higher authority to Shruti or Smriti or custom as per the needs of desh (place) and kala (time).

Smriti

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The word Smriti literally means memory. However in the Bhartiya knowledge system it refers to all texts written by ancient sages on the basis of their memory of what they had heard from Vedic seers. It is believed that Vedic sages perceived truths directly and spoke them out in the form of the Vedas. Their disciples heard their sermons and on the basis of the memory of what they had heard, they (the disciples) composed the texts called the Smritis.

Although texts belonging to various disciplines are given the generic name Smriti, this expression is largely reserved for texts dealing with Dharma and therefore Smritis are also called dharmashastra. As Dharma Shastra, the Smritis define roles and lay down the duties and privileges of individuals and social groups in their different mutual interactions - social, political, economic and religious. It covers human relations with all other creatures and entities in the universe as well. A significant part of the Smritis deals with religious rituals as well.

Dharma Shastra is aware of the many possibilities of transgression of Dharma by individuals. It has sought to curb such transgression by two modes - prayashchitta and Vyavahara.

The former consists of penances and purificatory rites. Vyavahara on the other hand deals with state administered law. The rules which regulate the exercise of this power by the state are covered under Vyavahara. The Vyavahara part of Smritis lays down extensive substantive laws, laws of procedure, laws of evidence, rules of pleadings and interpretation of smriti rules. This forms the subject matter of law as understood today.

In the field of law, a large range of texts are covered under smritis. The earliest among them are the dharmasutras. Works like the Apastambiya Dharma sutra, Gautama Dharma sutra, Vishnu Dharma sutra etc. contain material on law and legal procedures.

These are followed by metrical Smritis attributed to sages like Manu, Yajnavalkya, Narada, Katyayana, Brihaspati and many others. *The metrical smritis, almost two hundred in number, lay emphasis on different aspects of Dharma - from social conduct, religious rituals like various vratas, fasts, festivals and pilgrimages. They form the basis of the social, religious, philosophical and the legal system that has existed in India for nearly two thousand years. Vyavahara as law forms a very significant part of the Smritis. Many smritis discuss civil and criminal laws, laws of procedure and evidence in detail. They also discuss principles of jurisprudence and provide the philosophical background of the legal system.*

Among the metrical Smritis, the one ascribed to Manu is believed to be of highest authority. It's importance lies in the fact that it is the earliest available text in India which covers the entire field of Dharma in its various aspects. In twelve chapters it seeks to present a comprehensive scheme of life for individuals and the society leading to the acquisition of the four aims of life namely Dharma, Artha, Kama and Moksha. Chapter VIII of this work is the earliest available exposition of various branches of law covering the traditional eighteen titles of dispute, laws of evidence and procedure.

It must be acknowledged that many of its prescriptions (and of later smritis as well) are out of sync with the current democratic understanding of equality and justice. Yet, there is no denying the fact that the principles, social institutions, beliefs and practices found in this text and in texts based on the Manu Smriti, whether in sync with or out of sync with the current understanding,

have influenced and shaped life in India for over two millennia. Going by the spirit of dharamshastra, it can be said people in different times and places, must choose what is conducive for them and omit what is not. As indicated above, despite its strong commitment to a long textual tradition and social conventions, the Bharatiya Dharma Shastra tradition provides enough scope for constant correction and growth.

The Yajnavalkya Smriti which came after the Manu Smriti, for the first time clearly segregates Vyavahara i.e. law from other branches of Dharma. It has arranged all rules pertaining to law and legal procedures in a separate (adhyaya) section called Vyavahara. Yajnavalkya differs significantly from Manu in its treatment of inheritance and partition laws.

Three smritis ascribed to Narada, Katyayana and Brihaspati are of particular importance in the field of legal studies. They specialize in procedural laws, constitution of courts, drafting and pleadings, rules of evidence, review appeal etc.

A very large number of Smritis composed over a long period and probably in different parts of the country suggests that people's practices in different parts and at different times were indeed different. This also suggests that new Smritis were composed to grant ex post facto validity to peoples' practices and to record current practices for posterity. This is a very interesting phenomena which shows how people's practices have impacted the so-called sacred texts which have constantly attempted to update themselves to match with current practices. This continuous interaction between the shastric and the popular is a unique feature of the Bharatiya knowledge system and can be observed in the growth of almost all disciplines in India, including Dharma and Vyavahara.

All the Smritis are supposed to have equal authority. Interestingly, Smriti texts often differ with one another on several issues. Contradictory rules are often reconciled by taking them to be

optional and it is left to the wisdom of the concerned person to choose any of them according to his peculiar requirements. Another way of reconciling apparent contradictions is to show that there is no real contradiction and that different rules applied to different situations. Thus, sufficient scope is created for the operation and application of different rules.

The third layer of texts passing under the name Smriti are commentaries on earlier Smriti texts. These are called tikas or bhashyas. There is a huge commentarial tradition on various Dharma sutras and metrical Smritis. Among them some more important ones are Asahaya's bhashya on the Narada smriti, Medhatithi's bhashya on the Manu smriti and Vijnaneshwara's bhashya on the Yanjavalkya Smriti.

The fourth type of texts under smriti, are digests called Nibandhas. Some of these nibandhas are mere topic wise compilations of verses from different Smritis and are therefore in the nature of anthologies. On the other hand, some nibandhas seek to present a coherent system of laws for being enforced by the patron kings of the authors.

Often commentators and authors of digests have to reconcile contradictions among Smritis or choose from the large pool of Smritis. One great merit of many commentaries and digests is that they discuss in detail the reasons for choosing one rule over the other. This gives readers a good insight into the making of a legal text in different times and at different places. It helps them to understand how the law has evolved and changed with time.

Commentaries and Nibandhas also record vociferous debates between proponents of contrary views on legal (and other) matters. These offer some insight into how laws were operationalised in actual dispute situations in courts of law. One can see here how debate and argument was used as a significant tool to interpret non - legal and legal provisions.

One such very significant debate in Vijnaneshwara's commentary on the Yajnavalkya Smriti can be cited as an illustration.

In some Smritis the widow of a deceased male is not given any share in her husband's property. On the other hand Yajnavalkya makes the widow an equal inheritor with the deceased's sons and places her at the head of the list of inheritors. The issue gets more complicated when it comes to the rights of a sonless widow. Many smritis upheld the claims of the deceased's father or mother or brothers to inherit his property to the exclusion of the widow and the daughter. Vijnaneshwara had to fight an aggressive battle with the opposing side which gave several arguments to support its claim but Vijnaneshwara demolished them all to finally uphold the sonless widow's right to her husband's property.

Concept of Dharma in Bhartiya Knowledge System

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Bharata has been a knowledge producing culture for ages. It has been studying, analyzing and systematizing knowledge itself for a couple of thousand of years. In the early or the Vedic phase the four vedas and six vednagas constituted vidya. The principal subject of inquiry were the Vedic samhitas themselves. Six auxiliary sciences were developed for the study of the Vedas. Two of them shiksha and chhandas dealt with the reading and pronunciation of the Veda. Nirukta and vyakarana with the interpretation of the veda and Kalpa and jyotish with the practical implementation of vedic injunctions, primarily dealing with various kinds of rituals.

The second trend is to be found in the Upanishads where all these vidyas got relegated to the status of avidya i.e. inferior knowledge and the science of the atman became the principal vidya. It needs to be noted that even in the Vedic samhitas, there was enough material which qualifies to be called philosophical and that the Upanishads developed those thoughts further. Questions raised by the philosophical suktas of the Vedas and then the Upanishads prepared the ground for the development of more vigorous philosophy in the form of various schools of Bhartiya darshanas.

From sole or excessive emphasis on ritual and material fruits of rituals and from denial of the world of experience and growing emphasis on renunciation, in the Smriti-Purana- Ithihasa age, Bharata developed a more balanced world view where 'vidya' and 'avidya' or spiritualism and materialismwere sought to be brought together and balanced.

This thought process brought back the focus on many worldly vidyas. The earlier vedangas which began as auxiliaries to the Veda, began to develop as independent sciences, even while retaining their umbilical chord with the veda. This stage saw the flourishing of vyakarana, nirukta, chhandas, jyotish and a proliferation of theories and texts. Darshana also began to flourish to provide and strengthen the idealist and the realist position.

Materialism or Realism provided a fertile soil to the growth of two more subject areas called artha shastra and dharma shastra. Artha shastra as the science of governance, politics and administration deals with political authority. Dharama shastra deals with norms of social conduct. Artha shastra was later subsumed under Dharma shastra. Dharma shastra brought the entire subject matter of artha shastra under the duties of a Kshatriya grihastha.

In the Bhartiya knowledge system, Dharma seeks to control man's coarse desires so as to create suitable conditions for all to live a happy life in the community. It is a programme of action to harmonise all the needs and wants of individuals and communities through dharmic means. Dharma turns man's normal, everyday, natural and instinctive desires and their pursuit into dharmic activities. The expression dharmic includes the legal, the moral and the socially acceptable but is wider than these. It is rooted in Bhartiya cultural and philosophical beliefs. Manu Smriti very succinctly gives the entire theoretical background of Dharma –

'That people should become slaves to desire is not good but there cannot be an absolute cessation of desires.Hence dharma prescribes the path of Vedic karmayogaie engagement with the world under vedic discipline. In the Bhartiya philosophy of desire, artha and kama are recognized as natural to all human beings. Artha means desire for power and wealth and Kama i.e. the desire for all material pleasures. The desire for power and the desire for wealth go together as they beget each other. The artha shastra and the kama shastra themselves are designed to guide the

pursuit of artha and kama under restricted conditions. However, because their principal objective is to promote artha and Kama, their focus is onartha and kama respectively.

A significant takeaway from Dharma shastra is that life needs to be organised. Man has come a long way from the state of nature when no rules was the rule. The very idea of civilization means that man has to make an effort to so organise lives as to facilitate smooth conduct of life and avoid friction and confrontation.

Secondly, Dharma deals with life as a whole. It does not divide the individual into his social, political, economic, religious, rational or irrational self because ultimately every individual and every community is a complex of all these phenomena.

Thirdly, Dharma encompasses the whole world - all existence in this universe, and particularly all possible human relationships. It encompasses all sections of the society from kings to commoners, from highly educated to the illiterate, from those belonging to the highly cultured and polished sections to the less advantaged and from very rich to very poor and from those belonging to the mainstream of the community to those at the periphery and even outside it. Dharma realizes their interdependence and indivisibility.

Fourthly, Dharma further tries to organise the life of the individual in a manner that will harmonise his personal and professional life.

The Dharma scheme of organizing life of the individual and of communities has two pillars – a robust institutional framework and a strong pitch for individual's moral integrity. It has organized individual's personal life along the ashrama system and one's community or professional life along the varna system. For the brahmana, who's vocation is teaching and continuous study all life and performing religious rituals, the dharmashastras prescribes a very

frugal life. In his personal life a brahmana has to lead a life of discipline with no concern for luxuries and even comforts in life. His family is also expected to share that life of discipline. Even the King is required to refrain from all vices in life, particularly wine, women, gambling and hunting. The ideal King in Hindu polity is the Rajarshi – a monk king. He wields all power but exercises it for the benefit of his subjects. Such a plan of life helps the individuals in staying the right course.

Families, village communities, traders' guilds, gurukulas markets, and ultimately the state are important institutions which govern peoples' lives. Despite, many freedoms enjoyed by social organizations, the king appears to be at the helm of all organizations and governs their conduct. Yet, dharma has created enough institutional checks to prevent misuse of power by state authorities. Dharma also asks whether mere institutional mechanisms are sufficient for maintaining order or justice of fairness in the system. It knows that manipulation can lead to the collapse of the best of institutions. It, therefore, presents non- violence (ahimsa), truth (satya), frugalness (aparigraha) as its core values.

A study of dharma texts reveals some significant principles at its core. While it upholds the value of social communities, it strives to protect the dignity of the individual. Therefore, earlier provisions against giving ownership in wealth and property to women, slaves and physically challenged persons are overturned and their right to own and enjoy property is recognized, if not the right to alienate it at will. In matters of legal procedures, dharma is liberal and is willing to accommodate people in stressful or difficult situations. For instance, courts are barred from summoning farmers at harvest time or calling women in general and particularly when they are pregnant. One can see a conscious move to move away from cruder forms of justice. For instance, some of the earlier practices like trial by fire are discounted. Husband's right to chop

off his wife's nose and ears is taken away. Husband's right to throw the wife out of his home is denied.

The most significant principle underlying Dharma rules is of 'factum valet'. It literally means what ought not to be done, becomes valid when done already. It is on this basis that many transgressions of social laws are condoned and accepted. Despite strong protestations about the inviolability of dharmic laws, dharma shastra exhibits remarkable generosity towards transgressors. For instance, while emphatically supporting the superiority of marriage within one's own social group, Dharma shastra allows all inter varna marriages, though children born out of such wedlocks are placed low in caste hierarchy. Premarital alliances are discouraged but an unmarried girl who even gets pregnant is not ordered to be put to death. Her child is given full protection and it is deemed to be the child of the man who marries her or surprisingly is treated as the child of its mother's father. The child even gets to inherit his maternal grandfather's property.

The way Dharma has evolved shows how human beings are rooted in their culture and thoughts and believes and practices, how traditions nurture and sustain communities over centuries and yet it also shows how individuals and communities adapt to newer situations as they find out ways to tackle developing situations, to handle problems which arise from time to time, they learn to manage their own regulations and the regulatory system itself.

The process of evolution of Dharma was influenced both by the elite and the commoners. Sometimes thinker - philosophers have laid down the path to be followed by others, sometimes mighty Kings have succeeded in imposing their systems. Yet, dharma texts show how dharma has changed under the influence of social organisations like family, caste groups, villages and professional guilds which have together worked out some systems.

It is also true that in many cases, particularly in matters of caste hierarchy and privileges of the upper caste, dharma shastra does not record a similar change. In fact, status quo is normally maintained throughout. Deeply entrenched political and economic interests have contributed to the perpetuation of this discriminatory social order.

One very interesting understanding that develops by the study of Dharma shastra is that one has to look at things not just from the perspective of the immediate moment or the immediate past. One has to take a longer view of things to be able to understand any social phenomena. If one across texts beginning with earlier sutras, then move into smritis, the commentaries and later digest's which continue to be written till about 19th century, one will see how things have changed, how conscious efforts have been made to bring about improvements in various aspects of life. One will observe a constant tussle between status quoists and pro changers. There are vigorous debates about whether a new idea or a new practice can be introduced or not. There are arguments against established practices because whatever might have been the beginnings of those practices they ultimately began to impinge upon the interests of a large section and therefore there was a need to take a relook an amend those practices to bring them in tune with the evolving situation and circumstances.

Most significantly, Dharma shastra recognizes peoples' right to reject what they do not find conducive to their times. But Dharma shastra adopts a respectful to prevalent norms. It brings about major changes in dharma even while keeping its faith in it. This is quite like saying that the constitution can be amended without rejecting it. The Supreme Court has developed the idea of a basic structure to determine the limits to which the parliament can amend the constitution.

It needs to be understood that very normative system has to maintain its sanctity and inviolability. Yet it must be flexible enough to accommodate changing aspirations of the people

whose conduct it seeks to regulate. This continuous dialogue between norms and people must happen. And dharma shastra encourages this constant inter action.

Theoretically dharma shastra seeks validity for its prescriptions and prohibitions from Shruti. Shruti or vedas are supposed to be the highest pramana because they are said to be the word of God or described as beginning-less and endless, beyond time and space and hence not vitiated by human frailties and failures. However, in the three thousand years old history of dharma shastra literature, it does not place reliance on shruti or the veda. Here the overriding authority granted to Veda is token or pragmatic. Every normative system requires a strong and solid basis and Veda, because of the greatness attached to it in people's perception, seems to fit the bill well. It needs to be pointed out that more than the Veda, Dharma shastra relies on the smritis – Manu, Yajnavalkya, Vishnu, Narada, Katyayana, etc. to support its prescriptions and prohibitions. Smritis are a believed to be a reliable source of dharma because they are theoretically based on the Veda and their authors are supposed to be great Rishis who have based their observations on the Veda. However, there are close to two hundred smritis with a huge commentorial tradition and a large volume of texts called the Nibandhas. The nibandhas seek to create some system out of the incoherent chaos that smritis have created by giving very contradictory prescriptions. An important take away here is that while Dharma shastra norms are pegged on some textual authority, the huge diversity within the textual tradition brings in a unique flexibility.

Surprisingly, even this huge dharma shastra literature was not able to satisfactorily define and prescribe what is 'good' and sadachara i.e. custom became an overriding source of law. A large part of the Bhartiya society even today follows the traditional or customary laws. These are very diverse and vary from time to time and from region to region. So local customary laws are given an overriding authority in matters of dharma. It is written very clearly in the Yajnavalkya smriti,

that a king must apply the specific dharmas of families, communities and regions while adjudicating matters pertaining to them. One can presume that the huge number of smritis and post smriti works record local customary laws.

A closer reading of the Dharma shastra also indicates that society has never been homogeneous, that at different points in time and at different places and at any given point in time even within the same geographical region, people have had different beliefs and practices. Dharma shastra thus allowed a lot of freedom to local communities to develop their own systems - their social systems, their religious beliefs and practices even their own deities. One can see some broad commonalities between or among those various systems but each of those systems has its own very distinct and sometimes startlingly different practices and institutions. Dharma shastra is fully aware of these differences and is willing to allow people to live according to their own sense of right and wrong.

At least some part of Dharma deals with the supernatural. These are peoples believes and practices regarding supernatural powers like gods and goddesses and processes of their propitiation. Various kinds of rituals, tirtha yatra, upavasa etc. are prescribed and practiced. These elements fall within what may be called 'adristartha' matters i.e. matters which are beyond normal means of cognition, their validity cannot be proved through the known means of knowledge. They are believed to be valid because they are prescribed in authoritative texts or that they have been a part of the tradition. Yet, several scholars within the tradition have not shied away from rejecting past practices and introduce fresh ideas in the society. Bhartiya dharma has been a bold and self critical tradition.It has had the courage to admit the aberrations in dharma which need to be corrected.

Later dharma shastra authors in the early and late medieval period, who lived in a very different world than that of the smritis, had to grapple with many awkward situations. They could not have rejected dharma shastra as such and yet could not have followed all its prescriptions and prohibitions given over the centuries. Therefore, they developed several tools of interpretation whereby they could choose and use the texts as per their needs.

Dharma tradition recognizes that a large part of dharma has a practical and pragmatic or this wordlyie LAUKIKA purpose. Hence the validity of a rule must be and can be ascertained in terms of its efficacy to deliver on its avowed purpose. Kulluka a 12th century commentator on the Manu Smriti discusses the question about the validity of non vedic statements. He cites Shabara Sawmi to say that they are valid because they have a known objective.

Another very significant rule of interpretation is that if a known objective can be ascribed to a rule, it should not be assigned an unknown purpose. This shows that dharma shastra itself is against turning every rule into an alaukika or a sacred one and putting it beyond scrutiny.

Much of dharma deals with social life and mutual inter actions of humans. It is because of extraordinary plurality and diversity in society that dharma has to continuously keep balancing various interests. Clashing interests lead to conflict and therefore the need for tools for conflict resolution. This is exactly the area which the state seeks to govern and control. So politics, government and law become essential parts of dharma.. Resolution of disputes requires some kind of authority over people. It is for this very reason that dharma is put under the over allprotection of the political sovereign. Manu declares the king to be the guarantor of dharma. (VII. XXX)

Here arises a conflict between dharma and Rajaniti. Medhātithti (8th century) argues in detail how rāja dharma of which vyavahāra is a part, is distinct from dharma. Though the word dharma

is suffixed to rāja in rāja dharma, the subject matter, the purpose, and the validating factors of dharma and rājadharma are said to be vastly different. By placing most of human interaction within vyavahara – marriage, inheritance, trade and commerce, banking, transfer of property etc, under vyavahara, Dharma shastras from a very early period have effectively put these under political – human scrutiny.

Dharma shastra also precludes dharma from intruding into the domain of specialized sciences. For instance with reference to the rules about days fit for cohabitation for the birth of a son, Medhatithi says that these rules derive their validity not from the Veda but from Ayurveda. His argument is that Ayurveda is a specialized science and Veda cannot legislate on matters within the domain of specialized sciences. He also says that in questions pertaining to the structure of words Vyakarana has a higher authority than Veda. This is a very significant development and seeks to draw a distinction between religion and secular sciences and also holds that religion should not interfere with secular sciences. Thus, dharma shastra provides a template to avoid rather obnoxious practices defended by some people as dharma.

Even with reference to texts, dharma shastra has developed interpretative tools to deny or somehow scale down the authority of sacred texts. One is to declare that certain sections of the text are non-injunctive in nature and hence not enforceable. These are three kinds of statements in shastric texts - vidhii.e. prescriptive statements, nishedha i.e. prohibitions and Arthavadasor descriptive statements of praise or censure. The Arthavada statements neither prescribe nor prohibit hence they are not enforceable.

One very revolutionary idea that dharma shastra has developed is that laws prescribed by shrutis and smritis become time barred if people begin to detest them. dharma shastra this is something very normal. It rejects several earlier rules and practices which later became totally unacceptable

to people and were therefore not enforced, though they were not edited out of the texts. One such practice was niyoga where a deceased man's wife cohabits with another man to produce a son. This is how many lead characters in the Mahabharata were born. But Manu declares this to be very obnoxious – a pashu dharma ie something that only animals practice. Similarly, there are indications that at some point in time cow meat was indeed eaten in India. But it was later condemned and prohibited. On this analogy Manu's rule granting a special share to the eldest son in father's property was rejected by Vijnaneshwara, the celebrated commentator on the Yajnavalkya smriti. That something has been prescribed by a sacred text does not mean it becomes binding for all people for all times. It can be rejected if people begin to dislike it.

Yet, Dharma shastra does not insult texts even if they contain some unacceptable provisions. It reinterprets such provisions or ignores them or at best declares them to be unenforceable in the changed time and space – desha and kaala and takes the rest of the text as valid.

The Bhartiya philosophy of Dharma holds the key to the resolution of many current social problems. With growing sensitivity to identity issues, it can help India to redefine herself as an open and liberal society which greatly values its past but is not stuck in the past, a society which is ready to learn, adopt and adapt according to the evolving circumstances and march into future with great courage and confidence. Dharma shastra truly defines Bhartiya culture as neither puratana (ancient) nor just adhunatana (modern) but as Sanatana i.e. belonging to all times because it has the unique ability to adapt itself to evolving situations.

Ancient concept of Dharma, *Shruti* and *Smrti*

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Indian Knowledge Systems (IKS) is a division of the Government of India's Ministry of Education which purports to promote Indian systems of knowledge. The Indian knowledge system i.e भारतीय ज्ञान परंपरा rooted in ancient wisdom and philosophy, encompasses a vast array of disciplines including philosophical systems i.e. *darsanas*, astronomy, mathematics, medicine, literature, law, commerce, Town planning, Architecture, *Arthasasatra* (Public administration, finance, and foreign policy) and management. At the core of this system is the Sanskrit language, which has played a significant role in the preservation and dissemination of knowledge throughout Indian history and dating of the Indian literature is a major challenge.

The primary objective of IKS is to promote interdisciplinary research on all aspects of Indian Knowledge Systems. IKS aims to preserve and disseminate indigenous knowledge for further research and its practical applications in society.

Sanskrit is rightly recognised as the greatest possession of India. It is known for its rich content. It has a long tradition of teaching and learning. The ancient knowledge in India was preserved and transmitted orally i.e. मौखिकी tradition. It is not only a language but a ज्ञानभाषा.

It starts from the period of Samhita texts

i.e Ṛgveda – praises of deities

Yajurveda – mantras related to rituals

Sāmaveda – melodies for singing the mantras

Atharvaveda – mantras on social topics

To understand the Veda Vedangas are important. They are limbs of the Veda. Each *anga* is important in the case of body in the same manner vedāngas are important. Six vedāngas are explained in the Ancient Indian tradition.

- Śikṣā - The science of Phonetics and of pronunciation
- Kalpa - The science of Rituals
- Chandas - The science of prosody
- Jyotiṣa - The science of astronomy and astrology
- Vyākaraṇa - Grammar
- Nirukta - The science of etymology

Kalpa or Kalpasūtra (science of ritual) is one of the six auxiliary lores (*angas*) of the Veda. Kalpasūtras are classified into following

i. *śrautasūtras* deal with the rituals in connection with the performance of sacrifice Vedic sacrifices

ii. *Gṛhyasūtras* deal with the various ceremonies to be performed and rites to be undergone by a man beginning from his birth up to his death.

iii. *Dharmasūtras* deal with some of the topics occurred in the *grhyasūtras*. They were closely connected with the gṛhyasūtras in subjects and topics such as marriage and samskaras, rules for *Brahmacharya*, *snātakas*, householder, on *shraddha* and so on but additionally dealt with economic life, politics, government, civil and criminal law.

iv. *śulbasūtras* are directly attached to the rules for measurement and the building of the place of sacrifice. They are called as the oldest works on Indian Geometry. This is in brief the vast span of Sūtra literature.

When we come to the *dharmasūtra* and *Smṛti* literature following are the available dharmasūtras

- Gautama – The earliest of the extant dharmasūtras and specially studied by followers of the Sāmaveda
- Āpastamba – A text Belonging to the Taittirīya branch of the Black Yajurveda.

- Baudhāyana – A text belonging to the Taittirīya branch of the Black Yajurveda.

- Vasiṣṭha –is conventionally ascribed to the Vedic *ṛṣi*, associated with the Ṛg Veda.

Smṛtis are

- Manu – also known as *Mānava-dharmaśāstra* or *Manu-saṃhitā* is the most authoritative of Sanskrit legal texts.

- Yājñavalkya – Yājñavalkyasmṛti is closely connected to śukla Yajurveda

- Nārada – as a law-giver, is more exhaustive than earlier *Smṛtikaras*

- Bṛhaspati – one of the prominent ancient law-givers

The Vedas are the primary source of Hindu Law. The knowledge that arises from Veda is valid itself because the Veda is eternal. It is not a creation of any human being i.e. it is self-valid or autonomous. Veda is first and foremost source of Dharma. Other two sources of Dharma are the Smrtis (Tradition) and good custom or Practice of the Sistas i.e. sadachara or sistachara. Dharmasastra is known as Smrti and it is stated in the Manusmrti as "श्रुतिस्तु वेदो विज्ञेयो धर्मशास्त्रं तु वै स्मृतिः ॥ श्रुति literally means that which is heard and स्मृति that which is remembered (श्रुतिं पश्यन्ति मुनयः स्मरन्ति च तथा स्मृतिम् ।)

The compound expression Dharmasastra is formed of the two words namely धर्म and शास्त्र. Dharma has been one of the most powerful and influential terms in Indian thought and society for several millenia, right from Vedic times upto today. Dharma is one of the most complex expressions which cannot be defined or explained precisely. Etymologically it is derived from the root dhr which means to hold, to bind, to sustain, to support, to preserve etc., The concept has occupied the central place in ancient Hindu thought. It refers to the right or proper conduct and it covers English concepts such as ordinance, law, usage, customary observance, morality, duty, obligation, religion, attribute, and quality.

Let us have a look on some definitions of the term Dharma:

धरति लोकान् इति धर्मः । That which upholds the world

यो लोकान् धारयति येन मानवसमाजो धृत: स धर्म: । That which supports the world and human society.

धारणाद् धर्ममित्याहु: धर्मो धारयते प्रजा: |
य: स्याद् धारणसंयुक्त: स धर्म इति निश्चय: ||

Dharma is so called because of *dharaṇa* or of its nature of supporting. Dharma upholds people at large. So, the Dharma is that which is possessed of *dharaṇa*.

In Pali also the term *dhamma* signifies natural law, world order etc. In Buddhism the term denotes truth, knowledge, morality, and duty. Dharma was not religion in the technical sense but a code of conduct which regulated the whole expression of life.

Mīmāṃsa is one of the orthodox systems of Indian Philosophy which may be understood as Indian Hermeneutics. As per the Oxford Dictionary, the word 'Hermeneutics is stands for the branch of knowledge concerned with interpretation, especially that of the Bible or literary texts.

The term *Mīmāṃsa*, here, stands for *Pūrvamīmāṃsa*. It concerns itself primarily with the interpretation of the Veda. It is known as the science of sentence- interpretation for the same purpose. The Veda was the basis of the ritual culture, prevalent in the then society. *Pūrvamīmāṃsa* interprets the sentences in the context of the performance of various Vedic rituals and the *Uttaramīmāṃsa* i.e. Vedānta interprets the sentences of the Upaniṣad in the context of philosophical enquiry. The contents of the entire Vedic literature are summarised in Dharma and Brahma.

Jaimini was the first who systematized the exposition of Dharma in the *Pūrva Mīmāṃsasūtras*. The purpose of the *Mīmāṃsa* has been stated in the very first sutra as अथातो धर्मजिज्ञासा । It is translated as: Thereafter, therefore, desire to know Dharma. But it becomes meaningful when it is translated as: Then i.e. after studying the Veda because the Veda is meaningful, therefore, one should discuss the meaning of the Veda i.e. dharma. Then the question that naturally arises what is dharma? It is answered in the next sutra as चोदनालक्षणोऽर्थो धर्म: । and चोदना is (इति) क्रियाया: प्रवर्तकं

वचनमाहुः । शाबरभाष्य Codana is a sentence that initiates a person to do the act or that which is indicated by the Vedic injunction as conducive to highest good or goal i.e. attaining the heaven etc. In other words, dharma i.e duty means any matter enjoined by the Veda with a view to attaining a useful purpose (positive and negative) (*vidhivakya*) and which is good for people is dharma. The Vedic sentence श्येनेन अभिचरन् यजेत । lays down a sacrifice called Śyena. The sacrifice is meant for the one who is desirous of bringing about the destruction of his enemies by means of the practice of magical rites. Though, this sacrifice is *Vedapratipadya*, it is not desirable as it is adharma. The Vedic sentences does not say that one should inflict injury to others.

Vaisesika Sutra 1.1.2 says "dharma is what leads to happiness and final bliss or ecstasy. यतोऽभ्युदयनिःश्रेयससिद्धिः स धर्मः ।

In short, Dharma is the strong foundation of the whole universe, by dharma they remove sin or evil, everything rests on dharma so people declare dharma to be the most excellent. (धर्मो विश्वस्य जगतः प्रतिष्ठा धर्मेण पापम् अपनुदन्ति धर्मे सर्वं प्रतिष्ठितम् तस्माद् धर्मम् परमं वदन्ति ।)

In Ramayana the significance of dharma is shown as धर्माद् अर्थः प्रभवति धर्माद् प्रभवते सुखम् । धर्मेण लभते सर्वम् धर्मसारम् इदम् जगत् ॥ From dharma arises artha i.e the pleasure, from dharma sukha i.e. happiness through dharma one attains everything dharma is the very essence of this world.

Actions which are approved by Arya or duty conscious people who are well versed in sacred literature is Dharma and that which is censured by them is Adharma यमार्याः क्रियमाणं तु शंसन्त्यागमवेदिनः । स धर्मो यं विगर्हन्ति तमधर्मं प्रचक्षते ॥

कर्तव्यमाचरन्कार्यमकर्तव्यमनाचरन् । तिष्ठति प्रकृताचारे स वै आर्य इति स्मृतः ॥

Dharma was not religion in the technical sense but a code of conduct which regulated the whole expression of life. Further the concept of Dharma can be equated to the Rule of Law. The term passed through several transitions of meaning and ultimately its prominent significance came to be confirmed to "the privileges, duties and

obligations of man, his code of conduct as a member of the community, as a member of one of the castes as a person in a particular stage of life i.e. in the sense of Ashrama. The application of the term dharma in the sense of Ashrama can be noticed in the Chandogya Upanishad where it is stated that there are three branches of dharma such as those of a house-holder, a hermit and a Brahmacharin. Smrtikaras like Manu, Yajnavalkya use the term dharma as rules for governing the different varnas and stages of life.

The other word Shastra also claims special notice. In it's ordinarily significance in popular language it is rendered as Science i.e. something which lays down principles. However, literally it derives from the root sas to command, would be an order which dictates *sasti sasati, sisyati anena iti* that by which a command is laid or and enforced by *shastra*. So, the word *sas* like the word implies obedience with the further implication that disobedience of the command involves punishment for those who are guilty of disobedience. Therefore, in the popular language *sasana* has come to mean sanction – i.e punishment. The importance of *danda* i.e. punishment as a necessary part for a good government has been fully elaborated in Hindu Law. Therefore, the expression *Dharmashastra* when interpreted in its significance would mean the Rules or Ordinances or Regulations (*Dharma*) which have a binding force (*Shastra*).

Last but not the least there is one more important aspect also. The well-known rule that **every right** has a correlative **duty** is embodied in the word ***Dharma*** which is indicative both of right and duty. In other words, dharma means performing one's own individual and social duties that lead to individual and social welfare. Thus, the sanction of rights was based on the performance of duty which was more vital.

The Smrti literature contains comprehensive rules for the governance of the society as a whole and they were not confined to purely religious matters. The Smrtis did not declare for the first time what the rituals and domestic duties were, but only re-iterated / repeated what was being followed by the people traditionally through ages.

Dharmasastra may be understood as a record of customs from various parts of India and the difference in the Smrtis was due to the different local customs and these Smrtis were not laws made by parliament or some legislature. Medhatithi, in his commentary on the Manusmrti opines as the Smrtis were codifications of the existing customs.

Ludo Rocher in his article (Proceedings of the American Philosophical Society, June 1993, Vol. 137 No.2, pp. 254-267) "Law Books in an Oral Culture: The Indian Dharmasastra" quotes "In 1722, the British authorities in Calcutta decided that, to be fair to the Indians, they should administer to them not British laws, which the Indians did not know and would not understand, but the local Hindu and Muslim laws, which they not only understood but had held in high esteem for centuries". The problem was that these law books which are known as "Dharmasastra" were in Sanskrit and to understand and to translate these original texts of Dharmasastra, they had to learn Sanskrit. Another point is the activity of Translation implies the translation of values and culture also, it is the responsibility of a translator that he should know the cultural background. If a text is interpreted properly then alone it serves the purpose of translation and it will be authentic.

The British came to India for trade but later they become rulers. In the British period Hindu and Muslim judges were appointed to help the judges for correct interpretation of their own laws. In this period various digests have been composed or compiled for them.

In ancient India crime was regarded as a sin and people used to condemn it. The primitive societies lacked the institution of government to enforce a prescribed code of conduct that is now called as law, but in ancient civilized societies all pervasive concept of Dharma was evolved.

Hindu law is generally believed to have been derived mainly from the Dharmashastras which have been preceded by and elaborated from the Dharmasutras. The

Dharmasutras are one of the subdivisions of the Kalpasutra. The third type of Sutra is the Dharmasutra which professes to be treatise on law.

In classical Indian thought deviation from the path of *Dharma* will result the *arājakatā.* The Indian legal tradition always stressed on *Dharma* and righteous conduct in life. In fact , this idea will be found to be prevailing in all the *Smrits* also. The first verse of *NaradaSmrti* opens as follows :

धर्मैकतानाः पुरूषा यदासन् सत्यवादिनः । तदा न व्यवहारोऽभून्न द्वेषो नापि मत्सरः ॥

नष्टे धर्मे मनुष्याणां व्यवहारः प्रवर्तते । द्रष्टा च व्यवहाराणां राजा दण्डधरः स्मृतः ॥

When people were solely bent on dharma and were truthful then there was neither administration of law and justice nor hatred, nor jealousy; but when dharma disappeared among men, administration of law and justice came to be introduced and in ancient times the king was declared to be the decider of disputes and the chastiser of the quality. The king was the custodian of social order. The first and foremost duty of the king is to protect his subjects. प्रजासुखे सुखं राज्ञः प्रजानां च हिते हितम् । नात्मप्रियं हितं राज्ञः प्रजानां तु प्रियं हितम् ॥१.१९.३४).

Such textual statements and their translations confirm the perception of declining Hindu self-controlled ordering and strengthening of the ruler's position as justice administrator.

Danda or punishment governs all subjects and punishment alone protects them. Danda remains alert or is awake at night when the whole world is asleep. Therefore, wise people consider *danda* as dharma i.e the very essence of righteousness. दण्डः शास्ति प्रजाः सर्वा दण्ड एव अभिरक्षति । दण्डः सुप्तेषु जागर्ति दण्डं धर्म विदुर्बुधाः ॥ (मनु 7.18)

From the above discussion regarding the nature and origin of the Dharmashastras and the meaning of the term Dharma used therein, it seems that Dharma could not mean civil law, private of public law in the modern sense of the term.

The *Smṛtis* arrange their contents and treat the subjects under three principle heads i.e. *acāra* (code of conduct), *vyavahāra* (law) and *prāyaścitta* (expiations).

The term Vyavahara has been used in the Smrtis and the commentaries in the sense of legal procedure, litigation or dispute. The concept is used as a device to settle disputes and to uphold cosmic order. Legal matters are discussed under the name *vyavahāra* in the *Smṛti* literature. *Smṛtikāras* or ancient law-givers have been ascribed the various aspects of *vyavahāra* or judicial procedure. It is from this aspect that Vyavahara has been derived and genesised thus :

वि नानार्थे अव सन्देहे हरणं हार उच्यते । नानासन्देहहरणात् व्यवहार: इति स्मृत: ॥

According to this verse *vi* means various, *ava* denotes doubt, *hāra* means removal. So *vyavahāra* means that which removes various doubts. If a person complains to the king or to his officers disregarded by others in a way contrary to the *Smṛtis* and the established usage, then that subject is called as *yavahārapada* or titles of law. It is explained by Yājñavalkya in the *YājñavalkyaSmṛti*. In the commentary *Mitākṣarā* the commentator comments as व्यवहार: तस्य पदं विषय: । i.e. the topic or subject matter of dispute.

1. Transgression of Law as laid down in the *Smrti* or established by usage
2. Injury to someone other than the transgressor
3. Intervention of the King in his judicial capacity.

In *Smṛti* literature there are eighteen grounds for litigation or *vyavaharapadas* which are discussed by almost all *Smṛtikaras*. About legal procedure Bṛhaspati in his *BṛhaspatiSmṛti* states as-

द्विपदो व्यवहार: स्यात् धनहिंसासमुद्भव:। द्विसप्तकोऽर्थमूलस्तु हिंसामूलश्चतुर्विध: ॥
पदान्यष्टादशैतानि धर्मशास्त्रोदितानि च ।

It means law suits are divided into two groups. The first group of law originating from wealth which consists of fourteen titles and those arising from injury to beings consist of four titles. Bṛhaspati, one of the prominent ancient law-givers, was probably the first jurist to make a clear distinction between civil and criminal law. Though, this division does not exactly correspond to the division of law into civil and criminal but we may say that the category of *arthamūla* as the result of lobha i.e covetousness and

that of *himsāmūla* to be result of *krodha* or enmity or *kama* (desire). In all, there are eighteen titles of law which has been accepted by all *Smṛtikāras*. But the classification into eighteen titles is not also a restrictive provision. Narada and later Smrtikaras expressly stated that sub-heads of conceivable legal disputes could be innumerable.

Hindu law primarily known as customary law. e.g. customary rules could tell us that when a man dies his property should go to his son. But if there is no son then who will inherit his property? This was not answered by custom and this requirement was fulfilled by the Smrtis, commentaries and digests in ancient India. To explain -

Yajnavalkya in his Yajnavalkya Smrti has given the order of succession of a person who has no son and has departed for heaven i.e. another world. The order is his wife and the daughter, both parents, brothers, their sons, etc., and on the failure of the prior among these the next in order would be the heir in the property.

On failure of these i.e., wife and daughter the parents i.e., the father and the mother are successors to the property. Here, in the absence of daughter the parent's right of succession is laid down. However, the question arises whether mother should be preferred to father or vice versa or whether both the parents take the property jointly. In the English translation by M.N.Dutta father is given first in the list. The commentary Mitaksara prefers the mother to the father and to support his view the commentator Vijnaneshwara comments three possible interpretations as द्वन्द्वस्मरणात् तदपवादत्वादेकशेषस्य धनग्रहणे पित्रो: क्रमो न प्रतीयते तथापि विग्रहवाक्ये मातृशब्दस्य पूर्वं श्रवणात् प्रथमं माता धनभाक् तदभावे पितेति गम्यते ।

   i. In dissolving the compound word *pitarau* the word *mātā* comes first

   ii. Even when the *ekaśeṣa* compound (literally the one remainder) is not used as in the case of *mātāpitarau*, the word *mātā* comes first.

   iii. In the case where a man has several wives and several sons by each wife, the propinquity / closeness between a particular son and his mother is greater than between him and the father. किंच पिता सपत्नीपुत्रेष्वपि साधारण: । माता तु न साधारणीति प्रत्यासत्त्यतिशयोस्तीति । स्मृति चन्द्रिका II. Vijnaneshwar states that because the father is a common parent of all and the mother is a

particular parent, the rule of propinquity / proximity / nearness alone has the final determining factor for the mother as a preferential heir than father.

iv.   Therefore, it is more proper that the mother should take the property and on failure of her, the father is successor to the property.

Observations:

1. The original conception of Hindu Law was almost religious and philosophical and there were duties than of rights.

2. In the treatise "Hindu Law and Usage" Sir Henry Maine quotes "Hindu Law is the law of Smrtis as expounded in the Sanskrit commentaries and digests which, as modified and supplemented by custom, is administered by the courts".

3. The customs of a particular country in a particular given period are like a mirror in which the conditions of the people of that country are reflected and customs kept changing as society progressed.

4. The study of legal history of ancient India gives some insights of the social system in the then society. Law does not operate in vaccum, but it is related to and functions in the society in which it is applied. Dharmashastras are very rich sources of Legal and Social history of India. It contains systematized discussions of all major legal topics. Therefore, it is very much necessary to understand the legal history of ancient India.

5. Today the world is different and many things in the tradition may seem irrelevant in modern times as time is changing very fast and science has advanced to a very great extent. But there are certain principles which will remain there for ever and which will be tested on today's needs, but will never be discarded. This is an ongoing phenomenon as interpretation is the basic need of humanity. Human nature has remained the same through ages. Hence many of these rules are still applicable only the contexts and details may have changed.

6. The implementation of National Education Policy 2020 will open the doors to learn Sanskrit to those students who have background of Science, Commerce, Management, Law, so on and so forth. But it would be great opportunity as well as challenge for the Sanskrit scholar to prove the potential of Sanskrit to cater the need of students with different or other than Sanskrit background. What is needed is a genuine interest in going deep into this age-old ancient Indian knowledge system i.e.भारतीय ज्ञान परंपरा

Vyavahara or Law in Bharatiya Tradition

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'Dharmaśāstra' is a Sanskrit term meaning the sastra or discipline that deals with dharma i.e. social, religious and legal obligations. Dharmaśāstra contains and prescribes norms and principles pertaining to an individual's duties in relation to oneself, one's family, one's community, the state and even divine powers.Dharmaśāstra has three parts: *Ācāra, vyavahāra,* and*Prāyaścitta.* These Sanskrit can be translated as, *right conduct, law and litigation* and atonement, respectively.

Vyavahāra as Law :

The vyavahārasectionof Dharmaśāstra deals, specially, with legal institutions, legal theory, substantive and procedural laws. Vyavahāra as 'law' constitutes the set of rules for settling disputes under the overall supervision of the state (the king). Rules of vyavahara, taken almost wholly from the large corpus of smritis, may not flow directly from any political authority, they are nonetheless, to be interpreted and enforced through the agency of the state. In matters of vyavahara the state is given overriding authority over other institutions.

Earlier smriti writers like Manu and Yajnavalkya treated Vyavahara as an organ of dharma. However, Medhatithi, an eight century commentator on Manu Smriti, distinguished vyavahara from Dharma. In his discussion on verse 2 of Chapter VIII of the Manu Smriti, he established vyavahara as an independent shastra or discipline with its own prameyasi.e subjects of study and pramanas i.e. proofs and causal train. It relies more on Nyaya or Anumana i.e. reason based on practical experiences to interpret the text. At the same time vyavhara keeps coming back to Dharma as its moral and spiritual basis. This develops into a unique system which embraces dynamism while remaining rooted in its moral and spiritual core.

Vyavahara Literature:

Principal texts pertaining to vyavahara are dharma sūtras, smṛtis, commentaries and digests. Kautilya's Artha shastra (third century BCE ?) has also contributed significantly to the growth of vyavahara. This is a huge corpus spanning a period of nearly three thousand years.

Going by conjectures, the earliest available texts on law, the DharmaSūtras, were written around 500 to 200 BCE. Among these, the Dharma sutras ascribed to Apastamba, Gautama and Vishnu have more organized material on law.

Kautiya's Artha shastra (300 BCE ?) has devoted one full section to legal metters.

The Metrical smṛitis are believed to have been composed between 200 BCE to 500 CE.There are about 200 Smritis available of which Manu, Yājñavalkya, Nārada, Kātyāyana, and Brihaspati, are the important ones as they are cited the most by later authors. Manu smriti, the earliest of the available smritis, in its eighth chapter shows a very mature and comprehensive system of laws. Therefore, it is a significant document for study of the Indian legal system.

There is an assumed sequence among the texts of *Dharmaśāstra*, for instance, between Manu and Yājñavalkya. The latter constantly refers to Manu, departs from Manu, agrees with Manu, mentioning his name. Therefore, this is a good reason to believe that Yājñavalkya existed and wrote afterManu. However, there are others authors whose period cannot be determined even by way of reliable conjectures.

Smritis represent many different legal traditions from different times and different parts of India. They represent also the constantly evolving and changing contours of laws under the overall larger shruti-smriti umbrella. Not many of them present the whole picture of the law, often dealing with only with some particular aspects. Therefore, they differ significantly on several issues. It is left to the commentators and later digest writers to iron out those differences and present a more coherent system of law.

Major smritis had been composed by 500 CE(?) . Commentaries (*Bhāṣyas*) on existing smritis followed. The major commentaries,*Bhāṣyas,* were written during sixth and tenth centuriesAmong these Medhatithi's commentary on Manu Smriti and Vijnaneshwara's commentary on Yajnavalkya smriti stand out for their detailed exposition.

Then came the digests (*Nibandha*) i.e. compilations of law primarily commissioned by local rulers. Digests i.e. *Nibandhas,* continued to be written during a more extended period. We have two very interesting digests written during much recent period. The *Vivadarnava Setu*,[1] popularly called 'Halhed's Gentoo Code' (Code of Law or the bridge over the ocean of disputes) was commissioned by British East India Company at the insistence of Governor-General Warren Hastings, in the late eighteenth century. A decade later, another digest, *Vivadabhangarnava*[2], also known as, 'the ocean of dispute settlements' was written by a committee commissioned by East India Company, at the request of the great Indologist, Sir William Jones.

Commentators and authors of digests have made a unique contribution to the growth of law in India. First, they created viable and coherent systems out of the many and often contrary smriti rules. Two, they introduced remarkable techniques of interpretation to achieve this result. Three, the commentators, particularly, complemented their original texts to make them more complete by borrowing materials from other smritis. Four, digests, being mostly commissioned by local chieftains also reflect regional variations in laws to suit local exigencies. Five, both commentators and digest writers sometimes go into many theoretical aspects of law and help us to better understand the philosophy behind various substantive and procedural laws.

Three Parts of Vyavahara

Vyavahāra has three aspects. First, substantive laws or *Vivadapadas*, which discuss matters that can be raised in a court of law. There is a clear understanding of actionable issues, what is right, and what is wrong and what matter can be raised and litigated before a court of law.[3] A large part of Dharmaśāstra rules are concerned with vivada padas.

Second part is called '*Vyavahāramatrika',* or rules of procedure to be followed in a court of law. These also cover laws of evidence.

Third and the most essential part of the Hindu legal system is a very detailed and robust discussion on the philosophy of vyavahara. It contains the fundamental norms and values underlying the legal system or the fundamental norms on the basis of which the validity of any rules, law or laws was to be determined. It constitutes the core of the legal system and judicial process. This part of vyavahāra originated from a more comprehensive understanding

of the idea of human life within Bhartiya culture. It has more to do with the socio-cultural values of people. However, the philosophy behind the laws and the law as such are not always available in Vyavahāra text. Much of this is to be inferred, constructed and reconstructed based on available rules and practices.

Vivada Padas - There have been, traditionally eighteen (18) titles of disputes called *Vivada Pada* or *Vyavahāra Pada*.[4] But additions and subtractions, to this number have been made through the time. These titles can be arranged and classified, under more contemporary and intelligible headings.

- Mutual conduct of men and women is put under *StripumDharma* ;
- Family laws are covered under marriage and maintenance(Vivaha), partition and inheritance (dayabhaga);
- Community laws covering the conduct of persons belongs to various social institutions such as village, caste, and traders' guilds, etc. are discussed under samaya – anatikrama;
- Laws of debts and deposits are found in the *Rinadana* and *Nikshepa*sections;
- Laws about employer-employee relationships, service conditions, wages and other liabilities of employers and employees are found under several vivada padas – abhyupetya – ashushrusha, vetana- adana, swami -pala-vivada;
- Laws of trade and commerce are discussed in sections on kraya–vikraya - anushaya, and fraudulent sale by a non-owner) (a-swami- vikraya) ;
- Laws of Business - joint commercial undertakings i.e. partnerships is discussed in sambhuyasamutthanam);
- Laws of boundary and land disputes *sīmā-vivāda* ;
- Laws of betting andgambling are found in dyuta – samahvaya;

Criminal laws are categorised under four categories:

- Verbal and Physical aggression, including using abusive languages or simple and grievous injuries. (*Pāruṣya*)
- Theft - includes adulteration, sale of fake goods, making counterfeit coins (*Steya*)
- Forced Actions -Robbery, kidnapping, murder, destruction of property (sahasa)

- Crimes against women - including inappropriate behaviour, inappropriate touch, molestation, and rape (*Strīsaṃgrahaṇa)*

Vyavahra Matrika[5] - the code of procedure shows a fairly advanced level of development. It provides for constitution of courts, qualifications of judges, appointment of various court officials and their duties.[6]*Matrika* contains detailed rules for drafting of petitions, replies, rejoinders, summoning of parties and witnesses, rules of evidence, qualifications of witnesses, documentary evidence, and rules of adverse possession.[7]Vyavahara texts also talk of divine evidence in the form of oaths and ordeals. It needs to be mentioned that while earlier smritis did mention some very gory kinds of ordeals, later authors reduced their goriness and even discounted the utility of divine evidence. Matrika sections also contain rules for writing of judgments, review, and appeal.

Vyavahara Jurisprudence

Comparing ancient and medieval Hindu law with contemporary Indian law, one might argue that the vyavahāra system lacked in many ways.But that is well understood. Society and economy have become more complex now and so has the law. With its emphasis on caste (or varna) as a factor for determining culpability and the quantum of punishment, the Vyavahāra system falls, miserably short of the contemporary values of democracy, equality and liberty.

However, certain features of Vyavahara need to be highlighted.

- it is quite mature and detailed in its treatment of all aspects of law;
- it has an unbroken tradition of close to three thousand years;
- while staying close to the shastra tradition, it exhibits great flexibility;
- it has not shied away from introducing far reaching changes in many laws, for instance in the laws regarding women's right to property;
- it has given precedence to logic and practical needs over rigid adherence to the letter of the law or even tradition;
- it has encouraged vigorous debates to arrive at rulings (vyavastha) on various aspects of law;

An important aspect to be considered while evaluating the Bhartiya Legal tradition is that it sprouts from the genius of the land and is heavily inspired by the philosophy of life and world that permeates Indian culture.Vyavahara, as a part of Dharma, seeks to strengthen social order, even while it introduces several changes in it. It is designed to enable all to obtain material advancement (dharma, artha and kama) and ultimately liberation i.e. *moksha* from the cycle of life and death.

The most fundamental principle at the base of all *vyavahāra*śāstra is maintaining peace and resolving conflicts. There is an awareness of the need to resolve conflicts and allow people to live happily without of fear and pain. The smritis realised the importance of protecting the weak. For example, *Manusmriti*says the king should enforce *dharma* (law) because, if the state does not protect the weak, the strong will roast the weak on skewers.[8]

A perusal of the texts written over a longer period also shows a constant interaction and give and take between law and society. Vyavahara recognises that too much intrusion by the state in people's lives is neither welcome nor possible nor is it possible to resolve all disputes without the punitive power of the state. Hence, families, Villages, traders' guilds, and other social organisations are allowed to settle their disputes internally. There are, however, chances of miscarriage of justice. To prevent such possibilities of miscarriage of justice, at the local level, all social organisations, that are given the authority to settle disputes between their members, are also sought to be brought under the king's supervision.[9]

Three very important elements of vyavahara were *Desh* (place), *Kala* (time) and *Patra* (person or individual). All rules are supposed to be understood and interpreted in the context of *Desh, Kala* and *Patra*. Dharmaśāstra agrees that there can be different rules for different people at different times and locations and also for different people within the same location and time. Thus, not all laws could be universally applicable. These principles leave sufficient scope for regional variations within and under the larger Dharmaśāstra umbrella. One famous example of the application of this principle, in medieval texts, is that people, in North India, were not permitted to marry their cousins whereas the practice was prevalent in the south.

Matul Vivah, i.e. marriage with the maternal uncle, was valid among some communities in the south, but that was not allowed for other communities even in that region.

Vyavahara believes that socio-economic - conditions in the society are ever changing and hence law must have the flexibility to respond to changing situations. This flexibility is inbuilt into vyavahara because as mentioned, different smritis laid down very different laws. This allowed commentators and digest writers ample opportunity to choose one rule over another from a large reservoir or to modify and reinterpret laws from one source with reference to other smritis.

Vyavahara upholds the majesty of dharma and belives that laws and the delivery of justice must itself be fair and just. Therefore, it prescribes several qualifications for judges. They should be free from all biases for or against anyone. They should not act arbitrarily. They must be very knowledgeable and must rely on the shastras and on the advice of experts in various shastras. They must be free from anger, greed and fear.

Bhartiya legal tradition is based on the principle that vyavahara i.e. law must protect the weak and promote the good of all . Therefore, texts constantly endevour to self - correct laws which turn out to be detrimental to the interests of the community at large. It is with this spirit that from the rule of primo geniture, vyavaharashfted to the rule of equal distribution of inheritance among all heirs or gave women the right to inherit. People's changing perceptions, their likes and dislikes play a significant role in the evolution of vyavahara laws. It is due to this that earlier sanction to Niyoga was withdrawn. Thus, vyavhara as law has been a dynamic system and was able to keep itself alive and relevant for several millennia.

<u>Chanakya's Concept of State and Law</u>
[First Lecture]

Prof. (Dr.) Jose P. Verghese

General Introduction

Jurisprudence is a concept of western origin, and for them it means knowledge of law, or the philosophical basis for any particular legal system. Etymologically the term comes from a Latin term '*Jus*' which not only means 'law' but also, 'right' and 'obligations.' The closest equivalence to '*Jus*' in Latin, could be '*Adhikar*' in Sanskrit, coming from the root, '*adhikre*' which is a quality that is attached to the individual holder and includes all that are attached to an individual, such as 'right,' 'obligation' or 'power' that would govern his conduct or behavior in a given society.

When it comes to the Indian scene, the basic concepts one must look for are the concepts of *Satya*, *Rta,* and *Dharma.* These were best expressed by Sage *Aghamarshana,* in *Mandala* 10, Hymn 190[1] of *Rg-veda,* in terms of *Tapas* (the Cosmic Fervour), *Satya* (the Truth, the Cosmic Reality), and *Rta* (the Cosmic Order). According to him, it is from *Tapas* that arose (*adhyajata) Satya* and *Rta.*[2] The sage asserts that *Tapas,* the Cosmic Fervour, was the creative principle from which the Cosmic Order (*Rita)* and Truth (*Satya)* were born. *Satya,* the truth, represents the entire reality, which was created from non-existence; it is reality that is existence. '*Sat*' etymologically means 'the existence' or 'that which is.'

Rta, the Cosmic Order, on the other hand, denote the principles that govern that reality, the principles that would govern the entire universe from time it began to manifest itself; it is the expression or Order that operates within the realm of *Satya*. *Rta* is the universal and cosmic principle that hold together the *Satya* that exist; *Rta* is, therefore, that which goes forth in a natural or orderly manner. It is what sustains thye entire nature, and the principles and ideals that govern reality or existence. *Rta* enables the natural Order to continue to exist without break; it ensures the proper functioning of Nature and

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[1] This is the last hymn of the entire *Rg-veda.*
[2] *RV.* (10.190.1), "*Rtam cha Satyam cha abhiddhaat tapaso adhyajata…*"

provides for humans through rain, plants, light, fire, arable land, food, and following the self-sustaining cycle of Nature. Thus, *Rta* can be considered to be the natural and cosmic laws of existence, the Laws of Nature; and it is the principle that underlies all that regulates. [3]

> 'It is *Rta* that causes the sun (our solar system) to revolve the Milky Way, the earth to revolve around the sun, the seasons to cycle through year after year and so on. *Rta* is the bond between the 5 great states: *Agni* (Energy), Vayu (Wind/Gas), *Apah* (Water/Liquid), *Prithvi* (Earth/Solid) and *Akasha* (Space). The interaction of these states is the world we experience and can observe, their relationships with each other is *Rta*.'[4]

It was based on *Rigveda* that law of divine wisdom was invoked, in which all things in heaven and on earth are governed. The expression chosen for the Universal Order and law, was '*Rta*'. The expression '*Rta*' also came to mean the fountain of justice to be followed by men. One of the prayers in *Rigveda* shows: 'O *Indra, lead us one path or 'Rta', on the right path.*'[5] This was considered as natural law or law of reason; the unwritten law. Vedic philosophy, establishing the 'cosmic order' was conceived by the sages, known as the *Brahmarshies* or the *Kavis* who after meditating in their hearts discovered the truth (*Rta*) that sustains itself, without requiring any dependence on matters of divine or supernatural; this Order (*Rta)* is, perfection in its fullness. *Brihadarnyaka Upanishad* declares: "That is perfect, this is perfect. The perfect proceeds from the perfect. Even if perfect is taken away out of the perfect, what remains is also perfect."

The Nature is often personified, and by means of *shabda,* wherefrom the Universal Order is perceived, especially its rhythmic movement, and the same is described as *Rta*. The term means a sort of 'rhythm' perceivable in the cosmos, but originally meant 'the cosmic order'. Hiriyanna summarizes the concept in the following manner: '*Rta* originally meant "cosmic order," the maintenance of which is the purpose of all gods; there is order in the universe because its control is in righteous hands. Gods are the 'real trustees' or 'guardians of *Rta*'.[6]

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[3] Adapted from Mukunda Raghavan, holds Juris Doctorate in Law from Boston University and is a free-lance thinker, who had contributed to 'Meru Media' 4 years ago, and made available on the internet, and taken on 22.12.2022.
[4] Ibid, from Mukunda
[5] R.V. (10.133.6).
[6] Hirrianna , Op. Cit. (1948), p.12.

In the positive sense, *Rta* refers to the Universal Order. That is the only truth (*Satya)*, and that is what sustains everything of the Universe. The opposite of it, is '*an-rita'* which denotes destruction. As such everything in the Universe has an inbuilt quality, not to cause any destruction (*an-rita),* rather, everything continues to exist in conformity with the perceived universal Order.[7]

The orderliness in the nature which *Rigveda* calls the '*Rta',* the Universal Order, seems to have made the sages to visualize that it is this orderliness that controls the seasons, the day and night, the dawn and sunset, countable days, weeks, months and years., in short the nature's law.

Where *Rta* is the principles of Cosmic Order, it is *Dharma* that is the application or the understanding of *Rta* in the universe. *Dharma* comes from the root "dhr" which means 'upholding, or 'supporting' and *Dharma* means that which upholds or supports. *Dharma* is what upholds both *Rta* and *Satya* in the world of existence. Where *Satya* is the foundation, *Rta* the abstract and objective principles, *Dharma* is *Rta* in actual action and understanding of the world. *Dharma* is purpose, laws, morality, righteousness, the nature of a thing and so on. Whereas *Rta* is immutable and clear, *Dharma* is mutable and can be difficult to grasp. Where *Rta* might be the precept that one must adhere to truth, *Dharma* is how must one adhere to truth, hence the dictum, *'Satye stitho dharmah.'*

Prakriti

According to *Kautilya, Prakriti* briefly stated means the Ruler and his kingdom (*Raja rajyamiti prakriti-samkshepa:*[8]. He elaborates this concept of *prakrti* in chapter I of Part VI of the *Sastra.* Etymologically, the term '*Pra-kriti'* means 'that which is highly useful to each other.' It seems that the term gets such a meaning from the term '*Kriti'*-- that which is done or accomplished. Added to this is, perhaps, the fact that the term contains the esoteric alphabet of Sanskrit, 'r' in '*kriti*'. And that relates the concept of *Prakriti* to the concept of '*Rta',* which means the 'cosmic order' that sustains itself. Another way of looking at the term '*Prakriti'* is by its *Pada-vishleshana;* in that *'Prakriti'* would seem as '*prak-rith-i'* thereby again the term seems to include the

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[7] *Kautilya* believed that only such a situation can bring about peace and prosperity in the world. It is interesting to note that in the phrase, '*Satyameva jayate, na an-rita',* it is clearly indicated that the opposite of '*Satya'* is not '*A-satya',* rather it is '*An-rita',* to denote absence of '*Rta'.*

[8] K.A. (8.2.1).

esoteric alphabet of Sanskrit, 'r' in the term '*Prakriti'* to give it a meaning that *Prakriti* is related to the 'cosmic order' (*Rta).* Thus, the meaning *Prakriti* is that which is incredibly useful to each other and sustains itself as part of the cosmic order.

Dandaniti

The most ancient notion that existed in the Indian continent that is considered to be the closest to understand 'State' is *Raja-niti* and the concept of 'Law' is *Dandaniti.*

This Part is devoted to deal with all about *Dandaniti,* which according to *Sastra* is nothing but the established 'Rule Order' as the same is the strongest means in the hands of the Ruler to maintain a just and humane political order in the given circumstances. It is to be noted that the tradition of *Dandaniti* starts from the time of the most revered *Acharyas,* namely, *Brihaspati* and *Sukracharya.*

It is *Dandaniti* through which the Ruler protects his subjects with the power of the sceptre (*Danda)* and uses them impartially and in proportion to the established guilt (*dosham*), equally against everyone, whether it is his own son or his enemy. What the Ruler actually, does is to conform his subjects to the right conduct, without letting to commit any transgressions of the established regulations of their conduct. The *Acharyas* had declared, as follows; to quote, 'It is the power of the royal sceptre (*danda*) that alone is considered to protect the subjects in this world and beyond, provided the Ruler uses that power equally over everyone, whether it is his son or his enemy, but only in proportion to each one's guilt.'[9]

According to *Brihaspati,* the regulators of the behaviour of the subjects, were four-fold: '*Dharma-Vyavahara-Charitra-Nripajna.'*[10] This was also shown as the declaration of the *Acharyas,* that these regulators are four-fold; i.e., (1) the obligations relating to *Varnasrama Dharma,* (2) the obligations arising out of day-to-day relations among the subjects, known as *Vyavahara',* (3) the obligations arising out of the customary practices that are prevalent in a given period of time, region, village or place, or among the four *varnas* or among the *sanghas,* known as the *Charitra,* and (4) the obligations arising out of the pronouncements of the king, known as the *Rajasasana.*[11] It is also worth noting that when these regulators are applied to the day-to-day instances

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[9] Vide, K.A. (3.1.42) given in a *Sutra* form: "*Dando hi kevalo lokamparam chemam cha rakshati/ Rajna putre shatrau cha yadhadosham samam dhritah//*"

[10] Quoted from Kangle, '*The Kautilya Arthasastra"* Part II, Motilal Banarasidass, Delhi (1972), Reprint (2010). By way of a Note to K.A. (3.1.39) at Pg. 195.

[11] Vide, K.A.(3.1.39), "*dharmaśca vyavahāraśca caritram rājaśāsanam...*" Kangle Op.Cit. Pat I, at Pg.17.

of transgressions,[12] they generate income that would add to the treasury, for which accounting has to be done by the director of records (*Akshpatalamadhyakshah*).

Acharyas have laid down some more details[13] but briefly, as to how to regard these four-fold regulators, whenever the Ruler applies them to the day-to-day instances of transgressions. The following are eight principles collected from the existing traditional knowledge, which are incorporated in the *Sastra:* (1) The Ruler shall be the sole expounder of *Dharma* (*dharmapravartaka*), whenever it shows any sign of decay, and it is his duty not to let that happen and protect *Varnasrama-dharma;* in the light of these, he shall always show the right path to the subjects. (2) It is the duty of the Ruler to let the people observe *varnasrama-dharma* without there being any obstruction; by doing so the Ruler is assured of fulfilling the observance of his own obligations, known as *Rajadharma.* If the Ruler does not protect his people and thereby disturbs the social order, the wielding of the royal sceptre (*danda*) is considered of no use. (3) Whenever there arises a question as to which of the four shall have the priority among the four legs, *Varnasram-dharma*, the process of dispute resolution (*Vyavahára*), the established custom (*Charitra*), and Royal Ordinances (*Rájasásana*), the last one must be preferred to the next in the reverse order. (4) The basis of *Varnasram-dharma* is Truth (*Satye sthito dharma),* the process of dispute resolution (*Vyavahára*) depends on evidence (*sakshisu),* the established custom (*Charitra*) depends on the sum-total of what is practiced by the men in the past, and what the Ruler commands is the *Rajasasana.* (5) It is the power of the royal sceptre (*danda*) alone that would protect the subjects in this world and beyond, provided the Ruler uses that power equally over everyone, whether his own son or his enemy, and in proportion to each one's guilt. (6) The Ruler shall rule in accordance with the precepts of *varnasramadharma,* follow the prescribed process of dispute resolution (*Vyavahára*), without violating the established customs (*charitra*), conventions and usage (*samsthá*), all of which supplemented by his own reasonable commands; and only then he can claim success forever. (*chaturantám mahí*m). (7) If there arises any difficulty for the Ruler to follow whether the principles of the established customs, conventions and usage (*samsthá*), or to follow the principles of *varnasramadharma,* he is free to follow either the precepts of *Sastra* or the established customs, conventions and usages (*vyavakarikam*). Nevertheless, the principles of *varnasramadharma* shall guide him in

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[12] Vide, K.A. (2.7.2), *"......deśagrāmajātikulasamghānām dharmavyavahāracaritrasamsthānam.."*
[13] All these are given in a *Sutra* form, vide K.A. (3.1.38-47).

case of any contradictions, in matters concerning the prosperous living (*Artha*) of the subjects. (8) But whenever the *Sástra* happens to be in conflict with the logical commands of the Ruler (*Dharmanyáya*), then his logical reasoning (contained in the *Rajasasana*) shall be held to be authoritative; any other prescribed teachings are to be discarded.

All these four-fold regulators are further elaborated and codified in the *Sastra,* for the purposes, stated in the *Sastra* itself. It was stated, what was done was to gather, as far as possible, all the existing teachings into a compendium, which for centuries had stood established, at the instance of these ancient **Acharyas.** Thereafter, wherever necessary, these teachings were amended, shortened and brought them together in such a way that it may demonstrated to the world, how to make the best form of a *Sastra,* enabling everyone to acquire and maintain the earth for rendering it for a prosperous living, i.e., by maintaining and nurturing the 'nature' (*prakriti)* for the benefit of the mankind (*prthivya labhe palanopaya*). To quote, 'It is hereby declared that this *Sástra* has been prepared as far as possible (*yavantharthasastrani*) as a compendium of all existing *Sástras,* established by the ancient Teachers (*purvacharyai: prasthapitahni*) by amending, (*prayashstani*) shortening and bringing them together (*samhritaika*) in order to acquire and maintain the earth for prosperity (*prthivya labhe palanopaya*).'[14]

It was further declared that the terms and concepts used in this *Sastra* have been fairly established through centuries. The meaning of the words, the doctrines,[15] and the sense that they convey, are clearly settled, without any ambiguity. All these are included in the *Sastra* in such a manner that they are easily comprehensible to anyone; and *Sastra* has meticulously avoided indulging in any kind of textual elaborations, which may only help to confuse the subject-matter, and thereby reduce the authoritativeness of the *Sastra.* It may also alter the sense and doctrines that have already been established and crystalized through centuries. Whatever changes and amendments made are necessary only for the purpose that, even a part of it may not be altered at all. This text can only be applied, in accordance with the changing time, place and circumstances. In case, any change or alteration is to be effected to the text, those who attempt to do it must have the same level

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[14] Vide, K.A., (1.1.1& 15.1.5) *"Prithvibhya labhe palane cha yavantyarthhasaarthani purvacharyaih / Prasthapitani prayashsthani samhrityaikamidamarthhasaastram kritam /1/*

[15] Note the term '*tatwartha';* '*tatwa'* is substance, is 'doctrine' or basic element as used in Sankhya *darsana*. And '*artha'* here means 'the meaning' or the substance, as used in *Artha-sastra* and not as 'economics'. To mean 'the meaning' or the substance as economics, could have been imported from the West, for whom 'the meaning' of everything is economic. That seems to be the reason, even when UN was conceived, observing the then prevalent disorder in the world after the second World War, the predominant effort was establish a 'World Economic Order.'

of erudition and scholarship as that of the original *Sastra-kar* himself. Any reckless alterations and amendments, without understanding the soul of the *Sastra* shall by all means to be avoided. The author is afraid, the above said warning shall apply to translations of the *Sastra* as well. The text reads as follows: 'Let it be known that this *Sastra* has been composed by *Kautilya* in words, the meaning of which has been definitely settled, with precise words, doctrines and sense (*tatwartha-pada-nishchitam)*, and in a manner that is easy to grasp and learn (*sukhagrahana-vigneyam),* free from unnecessary textual elaborations (*vimukta-grantha-vistharam). '16*

Again, it has been asserted that there were indeed several errors and discrepancies among the writers of commentaries on *Sástra* in the past. Let there be no doubt of any kind that the present composition shall be treated as the finally established *Sutras* and commentary of the *Sastra*. This assertion was necessary so that no one shall dare to make any kind of textual elaborations, which only contribute to confuse the subject-matter, and thereby reduce the authoritativeness of the *Sastra,* by making unauthorised *Tikas or Bhasyas*.[17] The text reads as follows: 'Observing that there are several errors or discrepancies among the writers of commentaries on *Sástra*, Vishnugupta himself has composed these *sutras* and commentary (*bhashyam*).'[18]

Transgression of the Four-fold Obligations and the Theory of *Rta-Rna-Danda.*

Before discussing what *Sastra* prescribes in detail about the four-fold regulators governing the beviour of the subjects, and the transgressions that may occur for the Ruler to remedy successfully in order to achieve overall prosperity, it is necessary to explain the concept of *R-na-R-ta* relationship, and what punishments (*Danda*) have to follow as a remedy against the transgressions.

The *Acharyas* had laid down that it is the duty of every subject to follow all the obligations prescribed by the Ruler (*Rajasasana*) issued in furtherance of *Raja-niti*, dictated by the established customs (*charitra),* conventions and usage (*samstha),* those arising from the day-to-day transactions, undertaken by the subjects, for a prosperous living (*vyavahara*) and the obligations and duties prescribed as *Varnasramadharma*. All

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[16] Vide, K.A., (1.1.19) "*Sukhagrahanavigneyam tatvarthapadanishchitam kautilyeya kritam sastram vimuktagranthavistharam"/19/*

[17] In fact, what *Kamandaka* did later, as asserted by Kangle, vide, Op. Cit. Part III at Pg. 280, where it was shown that *Kamadaka's Nitisara* was to a large extent responsible for the neglect of *Kautilya*'s *Sastra.*

[18] Vide, K.A., (15.1.74) "*Drashtva vipratipathhim bahudha shastreshu bhashyakaranam /*
    Swayameva vishnuguptashchakar sutram cha bhashyam cha //74//"

these are '*prakritya*' to be followed by the subjects. Infraction of any of these obligations will have adverse effect on *Prakriti* and it will be visited by the long arm of the '*Danda*', destined to rectify them. The infractions that occur due to the transgressions committed by the subjects, are debt (*R-na*) incurred on the *prakriti* itself. The transgressions, namely, the *dosha, atyachar, aparadh* or *maha-apradh*, will be appropriately met with the power of the '*Danda*' of the Ruler, by imposing appropriate '*danda*' (or punishment), in accordance with the dictates of *Raja-niti*, as and when the violations of those rules of obligations occur. *R-na* (debt), therefore, restores the equilibrium that is likely to be disturbed, and by suffering the punishments, the erred individual pays back the 'debt' he owed to the society at large, and maintains the universal equilibrium, the *R-ta.* This in substance is '*Danda-niti'*.

All the obligations that arise for a Ruler to maintain a just and peaceful social order are naturally flowing from and are a part of the Universal Order ('*R-ta'*). When those first principles are translated as affecting the ruled, their obligations are perceived as a 'debt' ('*R-na'*) to the society. The Ruler is compelled to act for the protection of his people, when there would be violent and aggressive actions by the wrong doers, then it is the duty of the Ruler to protect the people and ensure that they conform to all the obligations prescribed for attaining prosperity. It is also laid down, that the debt ('*R-na'*), that are to be paid back when more serious violations of obligations take place, it would be treated as or may go against or contribute towards or considered as possible violations by the Ruler himself, and even as going against the Universal Order ('*R-ta'*). Thus, *danadaniti* has a direct relation to the Universal Order *('R-ta'*) as well as to the obligations of the Ruler and of the ruled.

Theory of Obligations: *Varnasrama-dharma*.

The first of these regulators is *Dharma,* i.e., all the specific obligations attached to the four *Varnas* as well as the four *Asramas,* usually known as *Varnasrama-dharma.* The duties of those belonging to the *brahman varna* shall be (1) to study; (2) to teach; (3) to perform sacrifices;(4) to officiate in others' sacrificial performances; and (5) to give and receive gifts.

Kshatriaya-s belong to the ruling class, and they are in the royal lineage. They are generally known as the protectors of land and the life of the people.[19] They display marked preference for nobility and preservation of the royal lineage, which was of prime concern for *Kautilya*. Even if the son revolts, he shall not be killed, rather he shall be exiled.[646] If the son is not worthy to be the king, attempts should be made to get him to father a son[20]; or else, his daughter should be designated to bear a son to carry on the royal line.[21] If the king could not have a son, he may attempt to do so by allowing his wife to beget a son from a kinsmen or a princely neighbour[22]. If a situation arises, that his only son might be required to be handed over as a hostage, the advice is that instead of his only son, he may offer himself over as hostage[23]. It is better to give a daughter as hostage instead of his only son, since 'the daughter is not an heir, and is useful only for others and costs more to the receiver.'[651] *Kautilya* prefers a legitimate son to an illegitimate son, even if the latter is wiser, 'because the legitimate son is better able to command the loyalty of the people.'[24] People will naturally obey a high born king even though he is weak. A man of nobility has a natural capacity to rule. The duties assigned to them are: (1) to study; (2) to perform sacrifices; (3) to give gifts; (4) to do military services; and (5) to protect life.

The *Vaisyas* are known generally as traders and merchants. The duties assigned to them are: (1) to study; (2) to perform sacrifice; (3) to give gifts; (4) to do Agricultural activities; (5) to pursue cattle breeding; and (6) to engage in trade.

Sudras as agriculturists, artisans and craftsmen are the backbone of the productive capacity of the country. Entertainers also belong to this *varna*.[25] New settlements were mainly inhabited by *Sudra* agriculturists.[26] Even if he had bound himself and his family, for economic reasons, his children would not lose their status as *Arya*.[27] A more numerous army of *Sudras* (or for that matter that of *Vasyas*) were

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[19] Vide K.A. (14.3.35). [646] Vide K.A. (9.3.14).
[20] Vide K.A. (1.17.48).
[21] Vide K.A. (1.17.49).
[22] Vide K.A. (1.17.50).
[23] Vide K.A. (1.17.15-31). [651] Vide K.A. (1.17.16).
[24] Vide K.A. (7.17.21,22).
[25] Vide, K.A. (1.3.8).
[26] Vide K.A. (2.1.2).
[27] Vide K.A. (3.13.13). [656] Vide K.A. (9.2.21).

preferable to a smaller *kshatriya* army.[656] The duties assigned to them under this Rule are: (1) to serve the twice-born (*dvijati*); (2) to engage in agriculture; (3) to engage in cattle-breeding; (4) to do trade (*varta*); (5) to engage in the profession of artisans; and (6) also the profession of courtbards (*karukusilavakarma*).

The four *asramas* are *brahmacharya* (a stage until marriage), *grihasta* (stage of settling down with a family after marriage), *vanaprastha* (a forest recluse) and *parivrajaka* (a wandering ascetic). *Grihasta* is the one who settles down with a family after marriage. His duties shall be: (1) to earn livelihood by his own profession; (2) marry into families of the same *varna*; (3) have intercourse with his wedded wife after her monthly ablution; (4) worship gods, ancestors and guests; and (5) eat only after taking care of the dependents.

The duties of those belong to the *asrama* of *Brahmacharya* is the stage of life of a student until marriage. His duties are: (1) Learning the scriptures; (2) Tending the ritual fires; (3) doing ceremonial ablution; (4) living by begging; and (5) residing devotedly with his teacher even at the risk of his own life, or in the absence of his teacher, with the teacher's son, or with an elder classmate.

Vanaprastha, is a stage of life in the forest as a recluse. The duties attached to this stage of life shall be: (1) observance of chastity; (2) sleeping on the bare ground; (3) wearing matted locks; (4) wearing deer-skin; (5) fire-worship; (6) ceremonial ablution; (7) worship of gods, ancestors, and guests; and (8) living upon food stuffs procured from forests.

Parivrajaka is the stage of living as a wandering ascetic. The duties attached to this stage of life shall be: (1) complete control of the senses; (2) abstaining from all kinds of work; (3) disowning wealth; (4) keeping away from the society; (5) begging in different places; (6) dwelling in forests; and (7) maintaining both internal and external purity.

Apart from that there are a few obligations that are applicable to all, irrespective of the fact that one belongs to a specific *Varna* or *Asrama*. And these are: One, non-violence to living beings (*ahimsa*); it literally means, 'abstaining from killing' and this obligation must be understood in a wider sense that 'abstaining from giving pain to others in thought, word or deed' (*manasa-vacha-karmana*); two, 'truthfulness' (*satyam*); three, 'uprightness' (purity or cleanliness) (*shaucham*); four, 'freedom from malice'

(*anasuya*); it can also mean absence of envy. In fact, it is the absence of one of the vices, '*mana*' which means, jealousy, or anger excited by jealousy or haughtiness; five, 'compassion' (abstain from cruelty or maliciousness) (*a-nrshamsyam*); six, 'forgiveness' (*kshama*).[28] Since they are applicable to all *Varnas* and *Asramas,* it must be remembered that these six obligations are also applicable to *sudras* as they are considered to belong to one of the four *varnas.* Since *Dharma* as understood is the basic morality, which is binding on all the subjects, it must be taken to cover all those specific obligations binding on all, irrespective of whether one belongs to a particular *varna* or *asrama.*

It was declared that 'as the guardian of all obligations relating to *varnasramadharmas,* it is the duty of the king who must re-establish all the obligations relating to *varnasramadharmas,* when the subjects show signs of decline (stage of perishing, *nashyatam*) from following the established code of such obligations (*sarvadharmanam*), initiate to work out strong foundations (*dharma-pravarthak*), so that the subjects are made to observe all the obligations (*achara-rakshanat*), arising from the four *varnas* and of the four *asramas.*'[29]

There is a tendency to treat the term '*Dharma*' as 'the law' among those trained in the western jurisprudence, and beginning to learn about the ancient Indian concepts. The term '*Dharma*' was always understood as the obligation one has to follow, or the duties prescribed for the people belonging to different *varnas* or those living in the four stages of life. These are directly addressed to the individuals, and are written in the hearts of the individuals; it is for that reason, it is stipulated that whenever any controversy arises, those controversies must be resolved primarily on the basis of *Rajasasana,* and thereafter on the basis of established customs, and thereafter the rules prescribed for day-to-day dealings; and only the final resort must be made with reference to the principles enunciated to the individuals by way of the obligations to be fulfilled by the individuals.

It is further asserted that '*Dharma*' (means, *varnasrama-dharma)* is firmly established in truth (*Satye sthito dharma)*. As far as *Sástra* is concerned that must be

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[28] Vide, K.A. (1.3.13). "*Sarveshamahimsa satyam shauchamanasuyaanrishamsyam kshama cha*"/13/

[29] "*Chaturvarnasramasyayam lokasyachararakshanath /
Nasyatam sarvadharmanam raja dharmapravarthakah*" //38//, K.A. (3.1.38).

understood as referring to those obligations arising out of *Trayi* and pertaining to *varnashrama Dharma* only.[30]   One of the main concerns for such stipulation is to establish a social order with peace and harmony first among the individuals, based on the (*Trayi*) Triple *Vedas*.[31] It is from the *Trayi* that the individuals can obtain the discernment about what one has to follow so that he may live with peace and tranquillity and thereby to establish a social order conducive to the perceived Universal Order *('R-ta')*.

The primary duties of all, irrespective of what *varna* he belongs, or what stage of life he lives, are that he shall observe own duty, and that would lead him to *Svarga* and to infinite bliss (*Anantya*). But when they are violated, the world will perish due to the mixing of castes and duties. For that reason, *Kautilya* says, the Ruler shall never allow people to swerve from their duties; for whoever upholds his own duty, ever adhering to the established customs, and following the rules of *varna* and the stages of life, will surely be happy both after death as well as in this life. For, *Kautilya* declares that the world would never perish, if the people observed the injunctions of the *trayi*, rather it will only prosper.[32]

The obligations arising out of day-to-day relations *Vyavahara*

What is described just herein above was about the first of the four regulators, written in the heart of each individual, as a member of each *varna* or *asrama*, or irrespective of one belongs to any of the *varna* or *asrama*. The second regulator governing the beviour of the subjects, and where the Ruler is required to remedy successfully all the transgressions that may occur, in order to achieve overall prosperity, is known as *Vyavahara,* which is ordinarily governing the inter-personal obligations, when two or more individuals happened to interact with each other.

These obligations of the people, have specific reference to their behaviour and they will have some bearing upon the life for a prosperous living, which is the demand of *Prakriti.* All those behaviours that impede such progress are treated as transgressions and are punishable with fine of varying degrees, which is expected to contribute to the wealth of the Ruler and his efforts to build a sumptuous Treasury. These contain specific

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[30] See, K.A. (3.1.40).
[31] See, K.A. (1.3.4).
 "*Esha trayidharmaschaturvarnam varnanamanam cha svadharmasthapanadaupakarikah*." /4/ "The *dharma* contained in the *trayi* will be beneficial/useful for the king to establish the respective *dharma* applicable to each of the four-fold *varnas* and *asramas*".
[32] K.A. 1.3. (14-17).

regulations by which the people are protected from the behavior obnoxious to the peaceful and prosperous living and for that purpose the Ruler would regulate such behavior, by removing from them all those elements that may look like the thorns that would harm the peaceful life of the people. The Ruler would punish them exemplarily, even by resorting to physical punishments. Nevertheless, the over-all emphasis is on punishment in the form of fine as that would enrich the Ruler as well as his Treasury.

The meaning of the term, *'Vyavahara'* must be understood from the *Sastra* itself: (1) 'Whenever there arises a question as to which of the four shall have the priority among *Varnasrama-dharma*, the process of dispute resolution (*Vyavahára*), the established customs (*Charitra*), and Royal Ordinances (*Rájasásana*), the last one must be preferred to the next in the reverse order;'[33] (2) 'The basis of *Varnasrama-dharma* is 'truth' (*Satye sthito dharma),* the process of dispute resolution (*Vyavahára*) depends on evidence (*sakshisu),* the established custom (*Charitra*) depends on the sum-total of what is practiced by the men in the past, and what the Ruler commands is the *Rajasasana.'[34]* Thus, this term *Vyavahara* has close association with the established customs, (*charitra),* and conventions and usage (*Samstha).* And these are to be supplemented by *Rajasasana,* applying these Rules to the day-to-day life. But whenever any dispute arises regarding the application of these regulators, the application of the dictates of *Rajasasana* would take precedence over the established customs, conventions and usage, as well as the Rules of *Vyavahara.* (3) 'If there arises any difficulty for the Ruler to follow the principles of the established customs (*charitra*), conventions and usage (*samsthá*), or to follow the principles of *varnasramadharma,* then he is required to follow the precepts of this *Sastra* or of the established customs, conventions and usages (*vyavakarikam*); the principles of *Dharma* as described just herein above shall guide him in case of any contradictions, in matters concerning the prosperous living (*Artha*) of the subjects.'[35] Therefore, *Vyavahara* in substance, is that which is established through customs, conventions, and usage but codified by the *Sastra,* again giving preference to what have been laid down by the *Acharyas.* All these are found in the first chapter of Book 3, which deals with *Dharmasthiyam,* where these are found in detail, namely what are the regulations pertaining to transactions (*vyavahara*) in general, the punishments prescribed in cases of transgression and other allied discussions. It is to be noted that the process of redressal

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[33] K.A. (3.1.25).
[34] K.A. (3.1.26).
[35] K.A. (3.1.30).

prescribed is not a private affair between the parties, i.e., it is not a '*Lis inter partes*', rather it is accompanied by an enquiry as to the extent of transgressions of the prescribed obligations, which the subjects are duty bound to fulfil, and in case they do not, the punishments are to follow.

These can also be considered as the substantive part of all *Vyavahara*: (1) About **marriage relations**: It begins with the eight forms of marriage and the obligations arising out of Marriage (*Vivaha-dharma:*) followed by the Rules regarding the Property of the woman (*Stridhan),* the obligations towards the first wife, (*Adhivedanikam)*, the duties of the present wife (*Shushrusha),* followed by Rules of Maintenance (*Bharma),* Cruelty (*Parushyam),* Disaffection (*Dvesh:*) Misconduct (*Atichara),* and Rules regarding Prohibition of receiving favours and entering into prohibited transactions (*Upahara-vyavahara-pratishedha:).* The other provisions relating to situations like abandoning matrimonial home (*Nishpatana:),* going away with another man (*Pathyanusaranam),* short absence from home (*Hrasva-pravas:*) and about long absence from home (*Dirgha-pravas:*) etc. follow.[36] (2) The Rules on **'Inheritance' (*Dayakrama:*)** and on **Division of property** among the sons (*Putravibhaga:*) The details with which he deals with the subject is amazing indeed and it indicates his deep knowledge of the subject and with his acquaintance with the ancient past. An important aspect one should keep in mind is his treatment of *Sudra* as one of the *Aryas* but the lowest of the four *Varnaṣ.* Another important aspect is, while dealing with the customary practices, he includes the customary practices among the *Sanghas* as well. The Rule provides that there shall be no partition of the father's property while the father is alive; and the sons get no ownership in such property if the parents are alive. It is also to be noted that the Ruler will take all the property except what is required for the maintenance of the legal heirs like the widow and the other dependents, and also that are required for the last rites. No share is assigned to a person who has been thrown out of one's own *Varna.* This is applicable to those belonging to *Sudra Varna* as well. The sons begotten by a *Bráhman* from a *Súdra* woman get one share of the personal property of the *Brahman* father. A son begotten by a *Brahman* from a *Sudra* woman gets $1/3^{rd}$ share from the father's property. The son begotten by a *Bráhman* from a *Súdra* woman is called *Nisháda* or *Párasava*; a *Kshatriya*

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[36] K.A. (3.2.1-48); (3.3.1-32) and K.A. (3.4.1-42).

from a *Súdra* woman is known as *Ugra*; a *Vaisya* from a *Súdra* woman is no other than a *Súdra;* sons of this sort get 1/3rd share of the property.[37]

(3) All about the **immoveable property** (*Vastukam*) is spread over in chapters 8 to 10 of Part III of the *Sastra*. These cover house construction (*Grihavastukam)*, sale of immoveable properties (*Vastu-vikraya:),* boundary disputes (*Sima-vivada:),* dispute about the fields (*Kshetravivada:),* determination of boundaries (*Maryada-sthapanam),* obstructions (*Badha-badhikam),* the destruction of pasture lands, fields, and roads (*Vivita-kshetra-pathha-himsa:)* and non-performance of the customary agreements *(Samayasyanapakarma)*.[38] (4) This is followed by the subject of **Repayment of debt** (*Rna-danam*), which includes recovery of debts and interest chargeable, the witnesses to give evidence. These are followed by Rules for a variety of transactions which are deposit, pledge, entrustment, gifts, ownership, sale without ownership, etc. (5) This is on **labour** (*Dasakarmakarakalpah*) covers the subjects on servants pledged for food (*Udara-dasas*), servants (*karma-kara*) engaged for wages (*vetanam*), labourers (*bhritaka*) and group of labourers (*Samghabhrita:*) employed for wages (*Bhritakadhikara:*). The fee payable for sacrificial works (*Sambhuya-samuddhanam*) to the *Yachakas* are also dealt with therein. And (6) is all about the **sale and purchase of goods.**

The obligations arising out of the customary practices: *Charitra*

The obligations arising out of the customary practices that are prevalent in a given period of time, region, village or place, or among the four *varnas* or among the *sanghas,*[39] were known as the *Charitra*. The *Acharyas* seems to have defined what *Charitra* is; according to them *Charitra* is 'the view held commonly by men' (*caritram samgrahe pumsām)*.[40] In some of the *sutras, caritra* is referred to as '*samstha'* and Kangle has rightly translated it as 'settled custom.'[41] This is because, what the *Acharyas* believed was that the body of customs and practices, which had been faithfully observed from generation to generation were analysed and arranged under suitable heads in the early schools of *Dandaniti*. The differences that occasioned in those formulations were due to the predilections of individual teachers of the schools. And

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[37] K.A. (3.5.1-33); (3.6.24) and K.A. (3.7.1.40).

[38] K.A. (3.8.1-28); K.A. (3.9.1-38) and K.A. (3.10.1-46).

[39] Vide, K.A. (2.7.2), *".....deśagrāmajātikulasamghānām dharmavyavahāracaritrasamsthānam.."*

[40] Found in *Sutra* form in K.A. (3.1.40). It is to be noted that in 43 as well as in 44 in the same context *Charitra is referred to as 'Samstha'*

[41] K.A. 3.1.43, 44)

sometimes it was due to regional variations or because of changes necessitated due to the changed circumstances. Nevertheless, there was some kind of a fundamental unity found in those formulations.[42] It was difficult for the Western commentators to comprehend these formulations of customs as they were accustomed to a system of promulgated law by a divine authority. Often, they despised the Indian system as it is said to have originated from status and not from contract, in accordance with promulgated law; and Indian system was yet to grow from status to contract the latter treating as superior system to the former.[43]

Most of these customs were codified and incorporated in the *Sastra,* under various heads as explained in the paras just above, under the caption, 'The obligations arising out of day-to-day relations: *Vyavahara.'* These were understood as *Samayacharah,* conventional practice, or established usage, as they were coming from *Samayah,* means convention, conventional usage, an established rule of conduct, a custom, or usual practice. *Sastra* recognised some of these customary practices; for example, it was provided in a *Sutra:* 'Those who, with their united efforts, construct roads or buildings of any kind (*setubandha*) that are beneficial to the whole country (*desa*) and thereby not only they beautify their villages (*grama-shobha*), but also keep a watch on them to see whether they are in conformity with the favourable concessions by the Ruler (3.10.46). In another *Sutra,* it is provided that to let out the water from the tanks, etc., to places other the designated ones, or out of turn, is punishable; so too the persons who recklessly obstruct the flow of water from the tanks, shall also be liable to pay fine (3.9.38).

Some of the instances of non-observance of these customs and conventions (*samayasyanapakarmah)* are given in detail in the *Sastra.[44]* These are applicable to the respective region (*desa) varna (jati),* family (*kula*) or the *gana sangha* where these customs and convention are prevalent with respective variations. Some of these may be explained: (1) Everyone in village shall cooperate in the work of preparation for a public show and come along with his family. There shall be co-operation in preparing for a public play or spectacle, and no one shall refuse to give his aid in a work beneficial to all. (2) The fine levied from a cultivator who comes to a village for work, and does not work, shall be taken by the village itself; and such a person shall refund not only double

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[42] Kanle III pg. 225.
[43] The author is referring to the opinion of Sir Henry Maine.
[44] Vide, K.A. (3.10-45).

the amount of the wages he received promising to work, but also double the value of food and drink with which he has been provided. If the work is one of sacrificial performance (*prahavaneshu*), then also he shall pay double the amount of the wages. (3) Any person who does not cooperate in the work of preparation for a public show, shall, together with his family, forfeit his right to enjoy the show (*prekshá*). (4) If a man who has not cooperated in preparing for a public play or spectacle is found hearing or witnessing it under hiding, or if anyone refuses to give his aid in a work beneficial to all, he shall be compelled to pay double the value of the aid due from him. (5) The order of any person attempting to do a work beneficial to all shall be obeyed (3.10.35-39). (6) Disobedience in such a case shall be punished with a fine of 12 *panas*. If others unitedly beat or hurt such a person so ordering, each of them shall pay double the amount of the fine usually levied for such offence. (7) If a *Bráhman* does not take part in the combined performance of any sacrifice of his village, he shall not be punished, but may only be persuaded to do so (3.10.40-45). (8) The Ruler shall show special favours and appreciation to those who, with joint effort, construct causeway (*setu-bandha*) on roads for easy passage, which is beneficial to the whole region.

The Obligations arising out of the Ordinances of the Ruler: *Rajasasana.*[45]

The *Rajasasana* is a factor which warrants a special mention. It is this aspect that bolsters the immutability of *Sastra.* The Ruler is left to apply all Rules of *Sastra* in the manner they apply to different places, time, and circumstances. *Kautilya*, after going through all the existing *Sástras* and observing all practices in vogue, prescribed in this *Sastra* definite rules in detail. The definiteness of the prescribed rules of *Rajasasana* need not be doubted at all, and its supremacy shall be thus presumed.

It is the *Raja-dharma* or the *Raja-niti* of the monarch to establish a political order by a regulated administration (*karyanushasanena svadharmasthapanam*). *Sastra* has been rightly codified incorporating all the fundamental principles, custom, conventions, rules, and regulations, involved in the governance of the *Chakravartikshetra,* as these were all evolved through centuries of additions and pruning. *Sastra* has been composed after considering, and based on, as many *Sástras* as were available and established by *Acharyas.*[46]The Ruler has to govern in terms of the *Sastra* following the norms which are

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[45] Vide, K.A.(2.10.1-45)
[46] K.A. (1.1.1) *"…yavantyarthhasarthani purvacharyaih prasthapitani…"*

based on *varnasrama-dharma, vyavahara, charitra,* and *Rajasasana;* and when any doubt arises as to which one among them is having binding force over the other, the order of precedence shall be the last one over the previous.[47]

One of the important aspects the *Acharyas* insist is that it is the duty of the writer to formulate the *Sasana* in a manner befitting the position of the person addressed to; and the writer (*lékhaka*) of a *Rajasasana* must pay adequate attention to the *jati*, family (*kulam)*, social rank (*sthan*), age, learning (*sruta*), occupation, property, character (*síla*), blood-relationship (*yaunánubandha*) of the addressee, as well as the place and time of the composition.[48]

Next important consideration the *Acharyas* demand is that these Ordinances are normally issued for any one of the 13 purposes: They are calumination (*nindá*), commendation (*prasamsá*), inquiry *(prchha)*, narration (*ákhyána)*, request *(atharthana),* refusal *(pratyakhyan)*, censure (*upálambhah)*, prohibition (*pratishedha*), command (*chódaná*), conciliation (*sántvam*), promise of help (*abhyavapattih*), threat (*abhibartsanam*), and persuasion *(anunaya).[49]*

Further the *Acharyas* had exhorted in this matter which is very elaborately dealt with in verses 38 to 46 of chapter 10 of Book 2 of the *Sastra,* which are found again in *Sutras*. What these verses demand are: There shall be the following forms of *Sasana,* namely, First, the *Sasana* of Declaration (*Pragnapana*); this includes declarations like, 'this was what is communicated', 'this is the truth of what is communicated,' or 'what is expressed in the presence of the Ruler is excellent' etc. Second is the *Sasana* of Command, (*Agna*), which in substance is order of the Ruler about the punishment or favour, normally given to his servants. Third, is the *Sasana* of restitution (or exchange, *paridana*), which are those by which any honour is conferred, or some favour is granted in times of distress or favours given by way of a gift. Fourth, the *Sasana* of Remission, (*pariháralékha),* which indicates any special remission granted to any *Varna*, cities, villages, or region. Fifth is the *Sasana* of authorisation (*nisrishti*), which are expressed when any authority is delegated, or when any particular work is entrusted. Sixth is the *Sasana* of information through a messenger, (*pravrittilékha*), which are issued when any

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[47] K.A. (3.1.39) "*Dharmashcha vyavaharashcha charitram rajasasanam/ Vivadarthashchadushpadah pashchimah purvabadhakah//39//*"

[48] K.A. (2.10.5), this is in a *Sutra* form.

[49] K.A. (2.10.23-24), these are also in *Sutra* form.

specific divine happenings occur, or announcing the truth of an incident that occurs in his kingdom. Seventh is the *Sasana* by way of Reply, (*pratilekh*); these are interpretation of any document presented to the Ruler and his official response to it. And eighth is the *Sasana* of general Proclamation (*sarvatraga*), and these are orders of general application, such as those pertaining to the safety or comfort of travellers, those affecting the roads, or the country in general.

Apart from these that are prescribed by the *Acharyas,* there are a variety of instructions that are being added by the *Sastra* on its own. These include the qualifications of the writer (*lékhaka*) of the *Sasana,* who shall be an *amatya*, acquainted with all conventions and usage, smart in composition, good in legible writing and capable of reading and understanding a document (*lekhana-vachana-samartha*). He must be well acquainted with the *jati*, family, social rank, age, learning (*sruta*), occupation, property, character (*síla*), blood-relationship (*yaunánubandha*) of the addressee, as well as the place and time of writing. It is his duty to formulate the *Sasana* in a manner befitting the position of the person addressed to. He must ensure the quality of a *sasana,* covering proper arrangement of subject-matter (*arthakrama*), relevancy (*sambandha*), completeness, sweetness, dignity, and lucidity for the content. And the *Sasana-s* are issued for are normally issued for any one of the 13 purposes: They are calumination (*nindá*), commendation (*prasamsá*), inquiry *(prchha)*, narration *(ákhyána)*, request *(atharthana),* refusal *(pratyakhyan)*, censure *(upálambhah)*, prohibition (*pratishedha*), command (*chódaná*), conciliation (*sántvam*), promise of help (*abhyavapattih*), threat (*abhibartsanam*), and persuasion *(anunaya).*

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POLITICAL IDEAS OF ANCIENT INDIA

Prof. (Dr.) Jose P. Verghese

Vedic Society: Aryans and *Dasyus*; The *Varnas*; Vedic Period: *Samiti, Sabhas; Vedic* Kings; Emergence of Oligarchies: The *Gana-Sanghas;* Monarchy in the Post *Vedic* Period; *Gana-Sanghas* in Post *Vedic* Period; Mahabharata reference to *Gana-Sanghas;* Sixth Century B.C.: *Gana Sanghas* in Panini; *Andhaka-Vrishni Gana-Sanghas; Gana-Sanghas* in Buddhist Literature; The Sixteen *Janapadas;* The *Shakyas;* The *Lichchavis;* The Rules of Procedure followed by the *Gana-Sanghas;* Monarchies in the Sixth Century B.C.; Contributions from Buddhist and Jaina Traditions; Persians and Greek in India; Rise of Magadha as an Empire.

Introduction:

In the previous chapter on constitutionalism, and an enquiry as to what extent it was at work during the colonial rule have been dealt. The present chapter proposes to look into whether there were any factors that can be traced to relate to the origins of Indian constitutionalism, and whether there existed any traits or elements that could be pointed out as the rudiments of it in the ancient history.[1]

The author would like to start with the work of Sh. K.P. Jayaswal, who has ably discussed some relevant topics, such as, the Sovereign Assembly of the Vedic times, the Hindu Republics from 1000 B.C., Hindu Kingship from Vedic times, the *Janapada* and the *Paura* from 600 B.C., the Council of Ministers under Hindu Monarchy from 700 B.C., Taxation from 1000 B.C., and Hindu Imperial Systems since 1000 B.C…etc.[2]

Kautilya refers to 18 or 19 authorities, and that goes to indicate that politics have been studied for centuries before his time. The literature on Hindu Politics may be dated as far back as 650 B.C., which is pre-Budhist, as they recognize

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[1] For this chapter, the author is heavily depending upon the works of two authors mainly, one, that of Sh. K.P. Jayaswal, and his work entitled 'Hindu Polity, A Constitutional History of India in Hindu Times", Eastern Book House, Pataliputra Path, Rajendra Nagar, Patna, Bihar, 1988 (1924) and two, that of Ghoshal, U.N – 'A History of Indian Political Theories', 1886, Oxford University Press, 1959.

[2] Id., at Pg.3.

Artha, that is, *Artha-Sastra,* as chief science for the guidance of successful Rulers. Citing the authority of Haradatta, Jayaswal states that the *Artha-Sastra* literature had existed before the earliest *DharmaSutras* were compiled.[3] It is worth noting that both *Artha-Sastra* as well as *Dharma-Sastra* are considered as *Vedas,* by *Kautilya,* and both as components of *Itihasa-Veda.*[4]

Originally the treatises on political theories were called *'Dandaniti''*, a nomenclature that one finds find first adopted by *Ushanas*, while the term *Artha-Sastra* was first used by Brihaspati. The title *Danda-Niti* is ascribed to Prajapati, in *Mahabharata,* where it is sometimes called *Raja-Sastra,* so as to mean the 'a complete Code of conduct for the Rulers' and *Raja-Dharma* to mean the 'Obligations of the Rulers'. Later the terms *Niti* ('Rule' or 'Principles') and *Naya* ('Policy' or 'Principles') seems to have superseded the old words *Artha* and *Danda.* Subsequently, the work from *Sukra* began to be known as *Sukra-Niti-Sara* and that of Bihaspati as *Brihaspati-Sutra*[5]*,* one of the *Artha-Sastra* literature, now available in *Sutras.*[6] The original works of these two writers which are now lost were known as *'Baharspatya Artha-Sastra'* and *'Ausanasa Artha-Sastra.*[7]

Jayaswal has brought out an important aspect, which was otherwise not known to the literati. According to him there were many authors whose works were lost and whose names one had not heard before in connection with political aspects. One only knows certain fragments from here and there, and that too from what were written about them who belonged to that group of *Artha-Sastra* writers. In the ancient literature it is often uncertain whether a passage comes from a *Dharma-Sastra* or from *Artha-Sastra* source. Since it is found that *Dharma-Sastra* authors also had their views on politics, and they generally gave a chapter on

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[3] Id. Pg.4.

[4] K.A. (3.1.5). ('K.A.' stands for Kautilya's *Artha-Sastra,* and numerals refers to Part, chapter, and verse respectively.)

[5] *Brihaspati-Sutra* now available is the one edited by F.W. Thomas. *Sutras* are generally quotations from any previous literature, and here they are to be considered as political maxims or aphorisms.

[6] Jayaswal, Op. Cit. Pgs. 5-7.

[7] Id. Pg 11.

political aspects. A quotation from the *Dharma-Sastra* work may hardly be distinguishable from an *Artha-Sastra* opinion. But when one gets a passage on a point which is exclusively dealt with by the *Artha-Sastra* writers, it can be concluded with some degree of certainty that the writer is of an *Artha-Sastra* authority, and that the passage came from an *Artha-Sastra* book.[8] Thus considered from this angle, one can safely conclude that there were about 20 writers on *Artha-Sastra* whose names are not to be found at all[9].

Vedic Society: Aryans and Dasyus

Aryan migration into India involved cultural interactions, linguistic changes and defining social status among both the host groups and those arriving. Rig Veda suggests that the Aryans maintained proximity with other people inhabiting the area. The linguistic evidence does indicate that the migrating Indo-Aryans incorporated elements of Dravidian and *Munda*, languages known only to Indian subcontinent.[10]

Aryans were shown as great warriors, militarism and division of labour were practiced among them; they were engaged in composing hymns of adoration and devotion and had mastery in the technique of sacrifices and ceremonies, in their anxiety to know the unknown beyond.

Originally, they were confined to *Saraswati* area of Afghanistan, later to *sapta sindhu* and thereafter to Gangetic plains, all along carrying their language, rituals, and social customs in order to settle as agro-pastoralists. The geographic knowledge of the authors of the Rig Vedic hymns were always with reference to rivers, covering eastern Afghanistan, the Swat valley, Punjab and the Gangetic watershed, the earlier semi-arid areas more conducive to cattle rearing

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[8] Id. Pg. 9-10.
[9] See *Infra* what Kautilya has to say at Pg.
[10] Thapar Romila, Op. Cit., at Note 7, Pp. 106-7. Also see, S.C. Roy, 'Munda and their Country'.

than agriculture, indicating that the Aryans were essentially pastoralists, with practice of some agriculture.[11]

There is a general agreement that initially there were only two *varnas*, *Arya-varna* and the *dasa-varna. Varna* referred to not only the difference in colour, but also to the language, ritual, deities and customs.[12] Due to the life-long struggle for the possession of land and cattle, wars between them were not uncommon.[13] Often the Aryan clans would venture into the *dasa* settlements in search of fodder for the cattle and horses, and these raids were reciprocated by the *dasa* and *panis* by incursions into Aryan settlements to lift cattle.[14]

There is sufficient evidence to show that the Aryans were in constant combat with *dasa-dasyus,* who were considered as non-Aryan aborigines. At one place *dasyus*[15] were contrasted with the Aryans [1.51.8.][16];[160] *Indra* attacked and slayed the *dasyus* with his thunderbolt [1.100.18]; at another place the *Aswins* were found destroying the *dasyus,* [1.117.21.]; *Indra* had crushed *Vritra,* the spider-like son of *Danu*, and conquered the *dayus*, [2.11.18.]. The warriors of *Aryas* were praised as they surpassed their *dasyu* rivals, [2.11.19]. *Indra* was said to have quickly humbled the *dasyus* in war, [6.18.3.]; and *Agni* is called upon to expel the *dasyus* from their dwellings, [7.5.6.], indicating the inroads the Aryans might have made into the dwelling places of the *dasyus,* the non-Aryans. Definitely the Aryans were in combat with *dasyus,* and reference in *Rigveda* are indicative of those struggles which the Aryans had won, and praises are showered upon them and their leaders, because in their efforts they succeeded in protecting the *Arya-varna, (aryam varnam*) [3.34.9]

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[11] Ibid., Pp. 108-111.

[12] Ibid., P.112.

[13] Basu, Prafullachandra, *Indo-Aryan Polity,* P.S.King & Son Ltd., London, 1925, pp. 47-54.

[14] Thapar Romila, Op.Cit. Pp. 114.

[15] Originally *Dasyus* seems to have had no pejorative connotation, since the suffix '-*yu'* denoted respect, as in Athharvaryu, Abhimanyu, Saryu river etc. [160]

[16] The references are to the verses of *Rig-veda.*

At another place *Indra* is shown as destroying the cities of the *dasyus (dasi-purah)* [1.103.3.]; *purah* here is fort or city; at another place one finds that these were built using iron and metal (*ayasi* and *ayas*)[2.20.8.]. The combined effort of *Indra* and *Agni* is said to have overthrown 90 strongholds (*purah*) ruled over by *dasas* ('*dasa-patnih-purah'*) [3.12.6.]; *Indra* is believed to have demolished the cities of *dasas* [4.32.10.]. Another passage shows that the *dasas* had their own clan organization *(dasir-visa)* [2.11.4.]; the reference to '*vis'* is certainly unrelated to that of Aryan '*vis'*; and '*visah* is also often translated as '*praja'* with reference to Aryans. There is no reason to believe that the same applied to the *visah*s of the *dasa-dasyus* as well. This may lead one to conclude that the non-Aryan *dasas* were not belonging to any servile class, and much less to that of the *Aryans*; since the above references do indicate that many of the *dasyus* were highly civilized and lived in cities; not all of them lived in caves; it is true that some of them were found in caves; and it is believed that they after war seems to have escaped to safer abode, to save themselves from destruction or annihilation at the hands of the Aryans; *Indra* is said to have located one of the non-Aryan chiefs by name *Sambhara* dwelling in the mountains for 40 years. [2.12.11.]

The main reason that depicts the *dasyus* as uncultured or savage-like seems to be that they do not have religious practices like that of the Aryans; they are called a-vrata, those without any *vratha* or religious practice,[1.51.8.]; and an a-*vratha dasyu* may be destroyed as a wooden vessel burnt in fire, [1.175.3.]; declares shame on *a-vrata dasyu,* [6.14.3.]. They are *a-brahmana*, meaning impious or without any devotion [4.16.9.]; they are *a-yajyu,* with no practice of sacrifice, or *mridhra-vach* [7.6.3.]; they are *anya-vrata*, as they follow strange rites, they are *a-manusham*, enemy of men, or *a-yajvan*, who does not offer any sacrifice to gods, or *adevayu*, who does not invoke the blessings of gods, hence they must be smitten to death, [8.70.11.]; they are depicted as *a-karman*, without any religious rites, [10.22.8.]

They are also generally referred to with contempt and despise, are described as '*anas anaso dasyn amrinah*', meaning 'those with nasal voices', and difficult for the Aryans to understand, [5.29.10.]. Max Muller seems to suggest that *anasa* means nose-less, in contrast to the Aryan's prominent nose. They are described as those with black skin (*Krishnatwach*), [1.130.8.; 9.41.1.]

In short, *dasyus* were not that uncivilized or aboriginals living in forests or caves; they lived in cities, had forts built with iron and metals; they lived in peace in their own *vis,* dwellings and were generally prosperous, wealthy and powerful, until for some reason or the other, some of them happened to be at war with the Aryans. Since no other details are available about them, and the only source is *Rigveda,* the knowledge about them must be inferred from the verses of *Rigveda,* written always to praise the Aryan warriors and their chiefs, the details of which are given, only when they won the war and not otherwise. Therefore, the descriptions of the non-Aryans must be treated as one sided and incomplete, as the reference to *Dasa-dasyus* in *Rigveda* is not a detailed one.[17]

Even though *Dasa-dasyus* were ordinarily referred to as non-Aryans, they were found to be functioning within the Aryan fold, as servants. Perhaps the *dasas* who were originally non-Aryans, once defeated in war, were either slain or subjugated into the Aryan service for menial jobs. A worshipper in *Rgveda,* alludes to diligent service from *dasas* [7.86.7.]. The possession of *dasas* is compared to that of numerous cattle, [10.62.10]. In one of the passages, the deity is asked to give among other things, the troops of *dasas*, obviously the reference being after defeating them in war [1.92.8].

There were expressions of contempt, hatred, and hostility towards *Dasyus*, prayer for their destruction and use of weapon against them. They were described as wily and impious; prayer to destroy their wealth (abundant in references). They were mostly aborigines, but not savages; there were stringent prohibitions against inter-dining and inter marriage relations; yet racial mixture

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[17] Basu, Op. Cit. at Note 36, at pp. 47-54.

did take place; frequent wars with Aryans were also mentioned. Even beyond the pale of *Dasyus,* there still existed large aboriginal tribes or groups.[18]

The Varnas

'According to recognized version, in the earliest society represented by the bulk of *Rigveda,* these probably belonged to different classes and professions, but none, not even the priestly and warrior classes, were hereditary; the warriors were drawn from the people at large, and any person with requisite qualifications could officiate as priest.'[19]

As mentioned above, initially there were only two *varnas: Arya* and *Dasa (Dasyu).* The *dasyus,* as conquered population, were incorporated into the Aryan society, but as '*sudras*; nevertheless, in practice, a *Brahmana* could still take a *sudra* wife, but not vice versa.[20] There is a marked transition from *Rig-vedic* division of *varnas* into '*arya varna'* and *'dasa varna',* to the later *vedic* tradition which recognizes four *varnas, brahma-kshatra-vaishya-sudra*[21]. 'It was in *Satpatha Brahmana* that the *sudra* was hit hardest with invidious distinctions.'[22] 'The *Vasistha Dharmasutra* (XVIII.1) tells us that the offspring of a *sudra* male and *brahmana* female becomes a *chandala*, ie., an out caste.'[23]

Definitely 'it is the period of *Sutras* that witnessed the gradual deterioration of the position of the *sudras*; this process can be traced, step by step from three broadly distinguishable chronological strata in the Sutras, namely, (1) the *Srauta-sutras*, (2) the *Grihya-sutras*, and (3) the *Dharma-*

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[18] Ibid., P. 55f.

[19] Majumdar R.C., *Ancient India,* 1927, (8th edition, 1977) Reprint Motilal Banarasidass Publishers Private Limited, Delhi, 2007, at Note, 27, at p. 454.

[20] R.V. 10.109; A.V. 5.17.

[21] Bandyopadhyay, Narayan Chandra, *Hindu Polity and Political Theories,* Printed at Printwell Publishers, Jaipur, 1989; at Note 25, at p.122.

[22] Majumdar, Op. Cit., at Note 27, at p. 454.

[23] Ibid at p. 515.

sutras.'[24] During this era the glaring social evil known as 'untouchability' also began to be in practice.[25]

In *Purush-sukta* of *Rigveda*, the terms, *'brahmana', 'rajanya', 'vaisya'* and *'sudra'* were mentioned.[26] Some of these verses are quoted below:

> "2. *Purusha* is the entire visible world; he is also the Lord of immortality; he is food for all living beings."

> "3. …….all beings are one-fourth of him; his other three fourths abides in heaven."

> "4. "Three-fourth of *Purusha* ascended (into heaven), the other fourth that remained in this world proceeds repeatedly, and diversified in different forms, went to all animate and inanimate creation."

> <center>x   x   x</center>

> "10. From this was born horses, cows, goats, sheep and all animals that are with two rows of teeth."

> "11. When they immolated *Purusha*, into many portions did they divide him? What was his mouth called what his arms, what his thighs, what were his feet called?"

> "12. His mouth became the *brahmana,* his arms became the *rajanya*, his thighs became the *vaisya;* the *sudra* was born from his feet."

> "13. The moon was born from his mind; the sun was born from his eyes; *Indra* and *Agni* were born from his mouth; *Vayu* from his breath."

> "14. From his naval came the firmament, from his head the heaven was produced, the earth from his feet, the quarters of space from his ear, so they constituted the world."

Dasa as a term in *Rig-veda* meant those who belong to other cultures. Later on it was used to mean one who laboured for others. Still later this function was assigned to *sudras,* who provided labour in occupations ranging

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[24] Ibid at p. 513.
[25] Ibid at p. 456.
[26] R.V. 10.90.1-16., and in *Atharva-veda*, 1.9.3.; 10.6.31.

from agrarian to craft specialization, and still later to less attractive, even menial labour.[27]

But there was an interim period where the *dasas* who belonged to *non-aryan* cultures were assimilated into Aryan fold, during which time they were being called *sudra*, but still part of the *varna* system belonging to *arya.* During this period, a *sudra* who was an *arya,* could work as a *dasa,* which meant labourer or even *udaradasas,* (mortgaged to work as a servant to liquidate a debt). They could still continue to be regarded as *arya*, and for that matter even a *Brahman* could become an *udara-dasa* during this period. The *sudras* during that period were agriculturists, and even they were recruited as members of the army. Some of the chiefs of these *dasa* clans or *sudra* clans were kings, and the first ever Emperor in India was said to be a *sudra* (of *Nanda* dynasty)

Similarly, in the early period, there was no mention of *'jati'*, while during the later period *'jati'* meant the 'caste' to which a low status (non-*dvija)* person belonged, and carried all kinds of disabilities.[28] However, during the intermediate period, mentioned above, *'jati'* was 'the caste' to which any of the *arya* belonged. All the *aryas*, especially in the rural areas, belonged to one or the other *'jati'* which meant *'a caste'* and were bound by the rules of obligations, whether customary or conventional or even any established usage of the respective 'caste' or *'jati'.*

Vedic Period: Sabha-Samiti:

Reference to *'sabha'* and *'samiti'* are in abundance in the *vedic* corpus. The term *'sabha'* is found in several places in *Rig-veda* (7.28.6.; 7.4.9.; 8.34.6.). It is also used for a meeting place for discussion (6.28.6.) or a place for some social interaction, (7.1.4.). *Sabha* also denoted a hall of assembly for discussion and debates (2.24.13). Another important word used is *'samiti'* for 'assembly'.

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[27] Bandhopadhyay, Op. Cit. at Note, 25, at p. 123.
[28] Ibid at p. 123-4.

Often it is shown as related to a particular clan or large co-ordination of clans,[29] a *vis* or that of the *praja* (the subjects). At one place the presence of kings at *samiti* is mentioned (9.92.6) and at another place in *Rig-veda* (9.92.6) the king is shown to have proceeded to the Assembly (*samiti*).[30] 'Jana' in *Rigveda* refers to people in general and *vis* to own people, i.e., people belonging to the same clan. Inter-clan or *gotra* wars are referred to as '*viso-yudhmah*'.[31]

In the later *vedic* period also these ideas are used to express an assembly. At one place, there is reference to '*sahba-saha*' which meant an assembly of priests (10.71.10), and another place the same term is used to denote, the dicing hall (10.34.6).

In the later *vedic* period also the presence of kings at *samiti* is mentioned (10.97.6). In another reference there is a mention that after the election of the king, he is asked to come to us, and the allusion is said to be to a *samiti,* (10.173,174). Nevertheless a few authorities refer to *samiti* , as an early forms of oligarchies.[32] (9.92.6; 10.97.6)

> "As the kings (*rajanah*) assemble together in the *samiti,* the plants (*oshadhi*) gather together in him who is called a physician, he who heals disease and destroys demon." (10.97.6.)

The last verses of the last book of *Rigveda* (10.191.2-4.) is important, and perhaps it sums-up the whole concept of '*samiti*':

> "Meet together, talk together, let your minds apprehend alike."

> "Common be the prayer of this assembly, common the acquirement, common the purpose, associated be the desire; I repeat for you a common prayer, I offer for you with a common libation."

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[29] Basu, Op. Cit. at Note, 36, at pp. 67-8.

[30] "*Raja na satyah samitiriyan*", *Rgveda Samhita*, vol. iv Parimal Publications, Varanasi, India (2002).

[31] Basu Op. Cit. at Note, 36, pp. 45-47.

[32] Ibid., at pp. 68-69.

Common be your intention, common be your hearts; common be your thoughts, so that there may be a thorough union among you."[33]

These verses are referring to the formation called the '*samiti*'. Reference in *Rig-veda* is more established, such as the utterances of an

unsuccessful candidate to the royal throne who wanted to take it over by force:

"Superior am I, and have come here with a force capable of doing all things. I shall make myself master of your aims, your resolutions and your Assembly (*samiti*)." (10.166.4.)

In *Atharva-veda* it is declared that *sabha* and *samiti* are like sisters, and as such one must conclude that they are distinct bodies or gatherings.

"May the Assembly [*sabha]* and meeting [*samiti]*, the two daughters of *Prajapathi*, concurrently aid me! May he with whom I shall meet co-operate with me; May I, O ye Fathers, speak agreeably to those assembled!"

"We know thy name, O Assembly: 'mirth' verily is thy name; may all those that sit assembled in thee utter speech in harmony with me!"

"Of them that are sitting together I take to myself the power and the understanding *[vijnana]*: in this entire gathering [*samsad*] render, O *Indra*, me successful [*bhagin*]!"[34] (All the squire brackets are added)

In *Atharva Veda* there is reference to a Brahman who was cursing and threatening the king who seems to have misappropriated his cow, saying, "The Assembly (*samiti*) is not complacent for him (the king who oppresses the Brahmans); he does not guide his friend according his." (Av 5.19.) In fact, the

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[33] "*Sam gachhaddhvam sam vadaddhvam sam vo manamsi janatham /   Deva bhagam yaddha purve smajanana upasathe //*" [10.191.2]
"*Samano mantrah samitih samani samanam manah saha chittamesham/   Samanam mantramabhi mantraye vah //*" [10.191.3]
"*Samani va Aakuthih samana hridayani vah /*
*Samanamasthu vo mano yaddha vah susahasathi // " [10.191.4]
[34] Av. 8.12.1-3 SBE Vol 42. (ed Max Muller.) Oxford University Press, 2000 (1897).

verses that preceded and followed were more severe than where the reference to *samiti* was appearing.[35]

The general opinion seems to be that reference to '*sabha*' is to an assembly of villagers, (at one place just as a place of amusement) and '*samiti*' a central body of tribes which the king attended, (and a place where discussions take place), while *Atharva Veda* clearly states that they are 'sisters': 'Let both the '*sabha*' and '*samiti*', the two daughters of *Prajapati,* accordant, favour me.' (7.12.1); in verse 3, the term '*samsad*' (in the sense of gathering) is also used. In verse 12.1., the term '*parishad*' is also used to denote assembly. In one place 'samiti is shown as the place where the kings assemble: "…the kings assemble together in the *samiti*…"[36]

To denote the gathering of the *vis,* the word *sabha* is often mentioned, while *sabha* is also mentioned as a hall where the game of dice is played for the purpose of gambling. The references are many to denote a more august assembly of men often for the purpose of discussion and debate. It is also interesting to note that the kings did attend such gatherings. The reverence accorded to these gatherings do play an important aspect both for the king as well as for the subjects, so that both are at accord with them and respect as well as look at them with awe, and several prayers are addressed to such bodies.[37]

At another place, "He moved out toward the tribe. After him moved the Assembly *[sabha]* and gathering *[samiti],* and the army and the strong drink." (Square brackets are added).[38] In 2.27.1-7, on the other hand, the entire chapter is devoted to the use of charms for winning in debates against the *Asuras*.[39] Majundar further mentions from what direction the debating party should enter

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[35] Majundar Op. Cit. at Note, 27, at p.106.
[36] R.V. '..*samagmat rajanah samitaviva*'. (10.97.6)
[37] Majundar, Op. Cit. at Note, 27, p. 109.
[38] Ref. Av. 15.9.1-2,Transl. by Whitney, quoted in Majundar, Op.Cit. at Note 27, at p.114.
[39] Muller Max, F. & Bloomfield, M, Sacred Books of the East, Vol. 42, 'Hymns of the *Atharvaveda*', Motilal Banarasi Das, 2004 (1897) at pp.137-8.

the hall and that they should be wearing some kind of amulet and chewing some root of a particular plant.[40]

From the Vedic literature one finds that the life and activities of the race were expressed through popular assemblies and institutions. Reference to *Vidatha* (Council) as a popular institution of Vedic times, is found both in *Rig Veda* and *Atharva-Veda*[41] signifying predominantly the religious life. As such it seems to be an institution that preceded the institutions of *Samiti* and *Sabha.*

The term *Samiti (sam+iti)* means 'meeting together', i.e., an assembly. It was this assembly that elected the kings in the Vedic period. In the prayer-hymns of both the *Atharva-Veda* as well as the *Rig-Veda,*[42] there is a prayer for 'common Samiti' and 'common policy' (*samano mantrah, samitih samanih*), 'common aim' and 'common mind' (*samanm vrtha saha chittamesham).* According Jayaswal, *mantra* means all matters of the state, that were discussed in the *Samiti.*[43] The Ruler usually attended the *Samiti* and that is referred to in *Rig-Veda,* 'like a true king going to the *Samiti'* (*raja na satya samitoriyanah).*[44] The inference here is that it was considered to be the king's duty to attend the *Samiti,* and if he did not, it would be considered 'untrue'. The deliberations in the *Samiti* were mostly regarding the affairs of the kingdom with authority and agreeable to those present. One of the prayers in *Atharva-Veda* goes like this.

These passages do indicate a free right of discussions "May the enemy not win the debate….Overcome the debate of those that debate against us, render them devoid of force! "Overcome thou the debate of him that is hostile to us, O Indra! Encourage us with thy might! Render me superior in debate;"[45] and the anxiety of a participant to win over the opinion of others.

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[40] Majundar, Op. Cit at Note 27, at p. 111.

[41] *R.V., I.60, III.38.5, II.1.4, III.26.6* and *A.V.I.13.4;* all quoted from Jayaswal, Op. Cit. Pg. 21.

[42] *R.V.* X.191.3; *A.V.* VI. 64., quoted in Jayaswal, Op. Cit. Pg. 13.

[43] Ibid.

[44] *R.V.* IX.92.6, also *R.V.* X 97.6. All quoted from Jayaswal, Op. Cit. Pg. 13.

[45] *A.V.* II.27. Quoted from Jayaswal, Op. Cit. Pg. 14.

All these indicate that *Samiti* was not a product of early Vedic period, as the references to it are found in the later portions of *Rig-Veda*. At another place in *Atharva-Veda,* the *Samitis* of the whole land are referred to as 'the assembled Samitis' (*ye samgrama samitayah)*; and *samgrama* means the 'villages together'.[46]

Sabha in *Atharva Veda* is mentioned as a sister of *Samiti*, and both the daughters of Prajapati. At [VII.13], it is shown,

> "May the *Samiti* and *Sabha, the daughters of Prajapati*, concurrently aid me. May he with whom I shall meet co-operate with me; may I O Ye Fathers, speak agreeably to those assembled."

> "We know thy name, O Assembly: *Narishta* verily is thy name. May all those that sit assembled in thee utter speech in harmony with me."

> "Of them that are sitting together I take to myself the power and the understanding in this entire gathering, O Indra, render me successful."[47]

'*Narishta'* here means 'a resolution of many' that cannot be broken or violated. Thus, what the above text signifies is that 'all those that sit assembled in Thee, utter speech in harmony with me'. The discussion that takes place is to be regarded as free and fair, and the decisions that the *Sabha* takes are binding on all and inviolable, indicating that *Sabha* is almost as important as the *Samiti.*[48]

'*Sabha'* which is to be understood as 'a body of men sitting together and shining', and as a younger daughter of Prajapati, one must assume, it holds a definite authoritative role as an institution, and the members are highly respected. They are like the Fathers or the Elders of the society, and the head of it, it seems, was known to be the *Sabha-pati.*[49] Although the other aspects of its functions are not clear, there is a reference in *Rig-Veda* describing the friends of one who came back successful from the *Sabha,* 'joyful' and 'delighted', and the man himself as 'free from blame'.[50]As one finds in the references from *Rig-Veda,* the rise of *Sabha*

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[46] *A.V.* XII. 1.56. Quoted from Jayaswal, Op. Cit. Pg. 15.
[47] *A.V.* XII. 1.56. Quoted from Jayaswal, Op. Cit. Pg. 18.
[48] Jayaswal, Op. Cit. Pg. 19.
[49] Ibid.
[50] *R.V.* X.71.10. Quoted from Jayaswal, Op. Cit. Pg. 20.

in Vedic period seems to be of the latest and it is referred therein in diverse senses, such as denoting a hall, a house, etc., but definitely this institution had administrative functions to discharge, to supplement that of the *Samiti*.[51]

Vedic Kings

Jayaswal, with the support of Magasthenes, asserts that monarchy was the normal and the only form of government known. Vedic kings were elected by the people assembled in the *Samiti*, and usually the election was unanimous. It is *Samiti* that appoints him, and he is asked to hold the kingship. It is expected that he would not fall from his office and will crush his enemies. Both *Rig-Veda* as well as *Atharva-Veda* contains what is known as the Song of Election:

> "Gladly you come among us; remain firmly without faltering; all the people want you; may you not fall of the *Rashtra*.

> "Here be you firm like the mountain and may you not come down. Be you firm here like Indra; remain you here and hold the *Rashtra*.

> " Indra has held it firm on account of the *Havi* offering; for it Soma as well as the *Brahmanaspati* has said the same.

> "Firm as heaven, firm as earth, firm as the universe, firm as the mountains, let this *Raja* of the people be firm.

> "Let the *Rashtram* be held by you, be made firm by the Raja Varuna, the God Brihaspati, Indra, and also Agni.

> "Vanquish you firmly, without falling, the enemies, and those behaving like enemies you crush under your feet. All the quarters unanimously honour you, and for firmness the *Samiti* here appoints you."[52]

The election in the Vedic age appears to be simple in form; nevertheless, the king is elected by the people, and he is expected to fulfil certain duties towards the people. In return, he is to enjoy certain privileges, as he accepts his office. It also indicates that he agreed with his electors. The terms of kingship in the Vedic age are writ large in these *mantras*.

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[51] Jayaswal, Op. Cit. Pg. 21.

[52] *A.V.*VI.87-88. Quoted from Jayaswal, Op. Cit. Pgs 193-194. The same hymn occurs also in *R.V.* X.173.

In another passage, while exalting the position of the king, the function of the Vedic King is shown as distribution of the natural wealth, and that does indicate that one of the chief concerns of the king is the prosperity of the people:

> "The people elect you to rulership (*rajya)*, the wide glorious quarters elect you. Be seated on this high point in the body of the *Rashtra* and from there vigorously distribute the natural wealth."[53]

> "Fix thy mind upon the bestowal of wealth. Then do thou, mighty, distribute wealth among us." [54]

Yet another function shown in the last verse of *Rig-Veda* of the Song of Election quoted above, is to collect taxes from the people, as the sole taker, indicating that no one else but the King alone is entitled to it. It is worth noting that the king is to ascend to the raised seat, signifying that the place of the king is the highest point of the body of the *Rashtra*.[55]

> "Come thou to the people (*vish)* for thou has agreed concordant with the people."[56]

It was customary to make the king seated on a throne covered with the skin of a lion, tiger, or leopard; the symbolism attached to it seems to indicate prowess:

> " Thyself a tiger, do thou upon this tiger-skin stride through great regions. All the clans (*vish)* shall wish for thee."[57]

And all these go to show that there was a well-defined monarchy in existence during the Vedic period. It was a creation of the people, attached with conditions. He accepts the authority of the *Samiti* that appoints him, to be always above him.

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[53] *A.V.*III.4.2. Quoted from Jayaswal, Op. Cit. Pg. 194.
[54] *A.V.*III.4.3. Quoted from Jayaswal, Op. Cit. Pg. 197.
[55] See, Jayaswal, Op. Cit. Pg. 195.
[56] *A.V.*III.4.4. Quoted from Jayaswal, Op. Cit. Pg. 197.
[57] *A.V.*IV.8.4. Quoted from Jayaswal, Op. Cit. Pg. 196.

Emergence of Oligarchies, the Gana Sanghas

A general reading of Indian history gives the reader a general impression that the whole of the history belongs to the kings, and nothing else. But the pre-*Kautilyan* period is conspicuous in the emergence of three kinds of polities - chiefdoms, confederacies, and establishment of kingdoms. It is often believed that the latter two confronted with each other for asserting dominance, and at the same time, both were taking assistance from the first for their successful expeditions. These confederacies were known as '*Gana-Sanghas*'.

Emergence of *gana-sanghas* was remarkable in northern and western region, especially because in such polity, power was defused, satisfaction of the members of the group was limited, and requirement of administrative or coercive machinery was minimal. The marked difference in their appearance to any historian is said to be the existence of an assembly hall, in contrast to a palace or court, in the case of kingdoms.

But it seems to be a bit difficult to believe that *gana-sanghas* and chiefdoms grew up as an alternative to emergence of kingdoms. Perhaps, prior to the advent of the Aryans, the entire region (may be the entire country for that matter) had only clan-based chiefdoms to look after their own affairs. The idea of a king, probably with the idea of 'divine origin' attached to that concept, was of Aryan origin; while in non-Aryan societies, chiefdoms seem to have grown up into confederacies (*ganasanghas* being the Indian version of these confederacies). It is for that reason perhaps that they kept themselves away from the strict *vedic* or *varna* rules, and that they gave birth both to Budhism as well as Jainism. Buddha grew-up in *Kapilavastu*, a town of *shakya* clan, and Mahavira came from *jantrika* clan, which was part of *Vriji* confederacy at Vaishali. The ideologies and belief system were rooted in *Gana-sanghas*. It is for this historical reason that the Brahmanical sources disapproved *Gana sanghas* as they did not follow the *varna* rule, and the *Gana-sanghas* grew up opposed to monarchical as well as *varna* rule. Clan loyalty was strictly adhered

to in *Gana-sanghas*, while caste loyalty was the focus in the Brahmanical society.

The term '*gana-sangha*' or '*gana-rajya*' refers to those who claim to be of equal status; '*sangha*' means 'assembly' and '*rajy*a' refers to 'governance'. '*Gana*' refers to members of a confederacy clan or a family belonging to a clan. The governance of the territory is through an assembly of equal members. Therefore *gana-sanghas* are known as 'republics' or 'oligarchy' and markedly different from kingdoms. These consisted often of a single clan, or confederacy of clans. That is the reason why some of them were said to belong to *sudra* clans, as the *vedic* population might have regarded them to be so. But all of them were steadfast in rejecting *varna* rule or *vedic* orthodoxy. In any case, they do not honour the *Brahmin,* or observe the *vedic* ritual.

Monarchy in Post-Vedic Period

During this period, the monarchy in *Bharat-varsha* began to show itself as a unique system of governance for administration of the country. Unlike the growth of the system that occurred elsewhere, ancient India developed it with certain specific characteristics, as is evident from its understanding etymologically. On the one hand the word '*Rajan'* has its roots in *'Rat'* as in '*Samrat'*, and on the other, it developed to include its duty, 'to please' (*ranj).* It is in this sense that monarchy remained a normal and the only form of known government from Vedic times. *Aitareya Brahmana* announces it as 'firmly established in mid-land where monarchy held its own',[58] inaugurating a marked departure from Vedic form of monarchy. 'Mid-land is the land from Kurukshetra to Prayaga- the valleys of Jamuna and the Ganges, which became the seat of the Aryan conquerors and Aryan monarchy. For *Aitareya Brahmana,* it was 'the *Samrajya',* with literal meaning, 'a collection of monarchies'.[59] The theory found therein goes like this: The 'Devas', the original worshipers did not have any kings.

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[58] See, Jayaswal, Op. Cit. Pg. 189-90. Reference here to *Aitareya Brahmana* is *A.B.* III pg.93.
[59] Id. at pg 190.

In their struggle against the Asuras, they discovered that they were repeatedly defeated, only because they had no kings, while Asuras had, and that was why they were successful. So, they agreed to elect a king.

"The *Devas* and *Asuras* were fighting….the *Asuras* defeated the *Devas*….The *Devas* said, 'It is on account of our having no king that the *Asuras* defeat us. Let us elect a king. All consented."[60] According to Jayaswal, the reference here is to the tribal stage of the Aryans in India and that it is suggestive of the fact that the institution of kingship is borrowed from the Dravidians. Whatever be the historical truth of it, and whether it was an improvement upon the 'contractual monarchy' found in the Vedic hymns and the Songs of Election, one thing was clear that kingship was elective, and the king at the time of Coronation, is made to take an oath that he should rule according to law.[61]

Coronation became further elaborate, ritualistic and technical during the age of Brahmana literature, where the Monarch began to control wider areas; the prominent among them where one finds the details are *Aitareya Brahmana* and *Satapatha Brahmana.* The *Rajasuya* form of Coronation was the most common one; sometimes it is supplemented with *Sarva-medha* (a sacrifice for universal rule) form to indicate the territorial aspects of the ceremony.[62]*Rajasuya*   is performed in three parts, the first part consists of some preliminary sacrifices, the second, the most important part – *Abhishechaniya* - consisting of various rites and formulae, and the third, certain post anointing ceremonies.

The ceremonial vows are universally adopted, and the terms are given in *Aitareya Brahmana* in a *mantra* form:

"Let the *Kshatriya* be sworn through this Great Coronation of the Indra-ritual. He is to repeat with faith: Between the night I am born and the night

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[60] *A.B.* I.14. Quoted from Jayaswal, Op. Cit. Pg. 190.
[61] Id. at pg 190-91.
[62] Vide, Jayaswal, Op. Cit. Pg. 199.

I die, whatever good I might have done, my heaven, my life, and my progeny may I be deprived of , if I oppress (injure) you."[63]

It is noteworthy that the text indicates no divine agency, rather it is purely human, and the content is of contractual in nature. This *mantra* is always used in all forms of rule, such as *Samrajya, Bhaujya, Svarajya, Vairajya, Parameshtya, Rajya, Maha-rajya, Adhipatya* or *Sarva-bhauma,* the Monarchy proper. The *mantra* is prompted by the officiating priest on behalf of the people.[64]

The Coronation ceremony, therefore, do indicate that kingship was a human institution, elected by people, engaged in contractual terms, to be performed with the co-operation of other functionaries. It is an office of trust, containing a promise to lead the country to prosperity and growth, and all these aspects are expressed, and therefore kingship leaves no room for becoming an arbitrary rule.[65]

Aitareya Brahmana did not treat monarchy a hereditary institution, as there was no reference in the ceremony to previous consecrations. It looks, hereditary form was a subsequent development, and the rudiments of the same can be found in *Aitareya Brahmana* itself. It is stated that when the lifetime king-elect is subjected to Coronation, the term, '*Bhuh'* is used, when it is to refer to two generations, then the term used is '*Bhur-Bhuva'* is used, and when it refers to three or more generations, then the term '*Bhur-Bhuvasvah'* is used, indicating thereby that Coronation can be performed at one time for more than one generation.[66]

Aitareya Brahmana, after enumerating the *Sangha* group of kingdoms, places several varieties of monarchical group of kingdoms. (1) Monarchy (*Rajya),* (2) Great (High) Monarchy (*Maha-rajya)*, which is large monarchy, larger than its neighbours, (3) Over-Lorship (*Adhipatya),* where a dominant monarchy exercised suzerainty on the kingdoms outside its frontiers, sometimes known as *Chakravartin;* and (4) Pan-Country Sovereignty (*Sarvabhauma)* where a person

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[63] *A.B.* VIII.15. Quoted from Jayaswal, Op. Cit. Pg. 210.
[64] Id. At Pg. 211. It is to be pointed out here, that it is same *mantra* that is recited during the ritual of the *Sanghas* as well.
[65] Vide, Jayaswal, Op. Cit. Pg. 219.
[66] *A.B.* VIII.7-12. Quoted from Jayaswal, Op. Cit. Pg. 220.

desires to become 'the sole monarch of the land up to its natural frontiers, upto the sea, over all human beings.'[67] The last one would claim the whole area (*sarva-bhumi)* within natural boundaries.[68]

The chief features of monarchy during this period can be summarized as follows: (1) the kingship was a human institution; (2) it was elective, and the electorate comprised of the whole People; (3) kingship was a contractual engagement; (4) the king had to function in co-operation with other officers of the kingdom; (5) held an office of trust, that contained a promise to lead the country to prosperity and growth; (6) he could not act arbitrarily; (7) was not above law, but was subject to it; (8) was mostly territorial.[69]

Gana-Sanghas in Post-Vedic Period

The general understanding is that monarchy was the only form of rule in the early Vedic period, but the post-Vedic age witnessed emergence of self-governing forms of governance. The emergence of this phenomena is well explained in the scholarly work of historian Romila Thappar.[70]According to her the Aryans were originally confined to *Saraswati* area of Afghanistan, later to *sapta sindhu* and thereafter to Gangetic plains, all along carrying their language, rituals, and social customs in order to settle as agro-pastoralists.[71]The geographic knowledge of the authors of the Rig Vedic hymns were always with reference to rivers, covering eastern Afghanistan, the Swat valley, Punjab and the Gangetic watershed, the earlier semi-arid areas more conducive to cattle rearing than agriculture,[72] indicating that the Aryans were essentially pastoralists, with practice of some agriculture. Often the Aryan clans would venture into the *dasa* settlements in search of fodder for the cattle and horses. These raids were reciprocated by the *dasa* and *panis* by incursions into Aryan settlements to lift cattle.[216] Thus, in the

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[67] *A.B.* VIII.15f. Quoted from Jayaswal, Op. Cit. Pg. 360.

[68] 'Natural boundaries' is expressed by *Kautilya* as *Chaturanta* an empire up to the four limits. See, Jayaswal, Op. Cit. Pg. 361f, for further understanding of these groups of monarchy.

[69] Taken from Jayaswal, Op. Cit. Pg. 219-220.

[70] Vide, Thapar Romila, *The Penguin History of Early India, From the Origins to AD 1300*. Penguin Books, New Delhi, 2002. Pgs. 108-114.

[71] Id. At Pg 108.

[72] Id. At Pg 111.

beginning there were only two *varnas*, *Aryavarna* and the *dasa-varna*.[73] The dominant Aryans depicted *dasas* often as those with flat nose, or with reference to language, as those with no mouth.[74]

Rig Veda, according to Thapar, mentions inter-tribal conflicts; *Sudas,* the chief of *Bhratha* clan, were attacked by a confederacy of ten clans on the banks of river Ravi, but the former was victorious. The families or clans owned cattle, but the pastures were common. Clashes and raids were so frequent that they were not confined to inter Aryan clans, rather they extended also to *dasa* clans.[75]

According to her what probably gave rise to *gana-sanghas* are factors like, permanent settlement in a particular area, giving rise to geographical identity to a clan, or a confederacy of clans, subsequently giving concrete shape by claiming possession of the territory they occupy, and then naming it after the ruling clan. In order to maintain possession of the area covered, *gana-sanghas* formed themselves into a political organization.[76]

The term '*gana-sangha'* or '*gana-rajya'* refers to those who are partners in the business of governance and are of equal status. While '*sangha'* means 'assembly' (of the ruling class), '*rajy*a' refers to 'governance' and '*Gana*' refers to members of a confederacy clan or a family belonging to a clan. The governance of the territory is through an assembly of equal members. Therefore, *gana-sanghas* are known as 'republics' or 'oligarchy' and markedly different from kingdoms. The members of this confederacy are not elected. They consisted mostly of a single clan, or confederacy of clans and often that of *kshatriya* clans; some of them are of *sudra* clans as well. But all those who were rejected from the *varna* system or *vedic* orthodoxy, are not taken as members. In any case, they all desist from

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[73] Id. At Pg. 142. *Varna* in those days referred to not only the difference in colour, but also to the language, ritual, deities and customs [218] Id. At Pg. 112.

[74] Id. At Pg.114.

[75] Id. At Pg. 114. It is interesting to note that the Rig Vedic reference to *dasa, dasyu* and *asura* are also found in *Avesta* as *daha, dahyu* and *ahura.* Vide, Pg. 108.

[76] Vide, Thapar Romila, Op. Cit. at Pg. 137. [221] Vide, Id. At Pgs. 147-48.

honouring the *Brahmin*; they also do not observe the *vedic* ritual. They maintain only two classes, ruling class and the *dasa* working class. All matters are discussed and debated by the Assembly (the *Sangha*); and if a unanimous decision could not be reached, it was decided by vote.[221]

As seen above, *Dasa* as a term in *Rig-Veda* meant those who belong to other cultures, while later, it used to mean the one who laboured for others. Some of the clans were given the status of *Arya* and others like *Puru* as *asura rakshasa* who are said to belong to *dasa* ancestry. Just like various local rituals were assimilated into *vedic* worship (many examples in *Atharvaveda*), many of the *non-Arya* clans of different culture were also allowed to associate with Vedic rituals (eg. *Nishadas*) and they were taken into the existing social hierarchy.[77]

It appears that in the later Vedic literature such as *Aitareya Brahmana*[78] or *Taittiriya Brahmana,* non-kingly forms of governments were found. They were known as *Gana-Sanghas. Gana* means 'numbers'; *ganarajya* would then mean the rule of 'numbers', 'the rule by many'. And *Sangha* was another term for numbers. Therefore, the *Gana*-states later on used to be known also as *Gana-Sanghas.*[79]

According to Jayaswal, *Gana* and *Kula* were the two main divisions of the *Sangha* states. Between them there were various technical classes with a variety of forms of governance; and in all the ceremony of consecration (*abhisheka*) the entire population took part.

The seven forms governments noted by him are as follows:

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[77] Vide, Id. At Pgs. 122-23.

[78] *Aitareya Brahmana, Aitareya Upanishad, and Aitareya Aranyaka….* Known in the name of *Itara,* who was the mother of Mahidasa who is said to be author of these ancient Sanskrit literatures.

[79] Vide, Jayaswal, Op. Cit. at Pg.24.

(1) The *Bhaujya* (of the *Bhojas)* form of government[80] setting out the rules that govern this *gana-Sangha* is referred to by the *Aitareya Brahmana*[81]. There are references in the literature referring to *Rashtrikas* and the *Bhojakas* as collective bodies with sovereignty. *Bhojas*, sometimes in history, is found as a sub-division of the *Yadavas*, which was part of the twin republics called the *Andhaka-Vrishnis.* According to *Aitareya Brahmana* the *Satvats,* which is the ancient name for the *Yadavas*, were one of those people who observed the *Bhaujya* constitution. The *Andhaka-Vrishnis* were in the Kutch region (earlier the Kathiavad Agency) of Western India. Gujarat was one of the most ancient seats of *Bhaujya;* but it is likely that *Satvats* had spread southwards as the *Aitareya Brahmana* places them also in the south.[82]

(2) *Svarajya* form of government[83]: According to *Aitareya Brahmana* this is a peculiar type of non-kingly rule that prevailed in Western India. Ruler in this type of governance is called *Svarat* to mean the 'Self-ruler'; and he is always the 'leader of equals', elected from among the members of the *GanaSangha.[84]* This form of government, with a developed set of rules for its governance was prevalent among the *Nichyas* and the *Apachyas* of the Western India. *Nichyas* were those occupying the land bordering near the mouth of the Indus and the *Apachyas*, the region just above that.

(3) *Vairajya* form of government[85]: *Aitareya Brahmana* describes this form of government as the ones that has no king at all and it existed among the *Janapadas* of the North, ie., 'by the side of the Himalayas'. All the members of the concerned *Janapada* were anointed (*abhishika)* as kings. *Aitareya Brahmana* specifically mentions that this form of rule was prevalent among the Uttara-Madras and Uttara-Kurus. Madras in general were a marked *Gana-Sangha,* while Uttara-Madras were

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[80] Jayaswal calls it the '*Bhaujya* constitution'.
[81] *Ait. Br*., VIII.14, Quoted from Jayaswal, Op. Cit. at Pg.79.
[82] Vide, Jayaswal, Op. Cit. at Pg. 80.
[83] Jayaswal calls it '*Svarajya* constitution'.
[84] *Ait. Br*., VIII.14, Quoted from Jayaswal, Op. Cit. at Pg.80-91.
[85] Jayaswal calls it *Vairajya* constitution.

a special group and they were noted for prosperity and life of enjoyment.[86] The seat of this group is said to be 'Sakala' which is the modern Sialkot.

(4) *Rashtrika* form of Government[87]: They are located in the West, but also spread across Eastern India mostly in Gujarat, next to Saurashtra.[88] They are sometimes known as *Rashtrika-Sapatya* meaning the 'board of leaders'; members of these boards are elected. They are ordinarily referred to as belonging to the group of Bhojas and Pettanikas and were all having nonmonarchical form of government.

(5) *Pettanika* form of Government[89]: *Aitareya Brahmana*[90] names them '*Bhoja pitaram'* which means that this group follows hereditary ruling system though they are non-kingly like the *Bhojas* or *Rashtrikas,* but in a 'perverted form'.[91] They were mostly found in Western India, but later on seems to have spread to Eastern part of India also.

(6) *Dvairajya* form of Government. This was another non-monarchical form of government; *Dvairajya* means 'the rule of two'. Nevertheless, it was a distinct form of *Gana-Sangha* rule. It is so peculiar in its functioning that Kautilya refers to it as those that are prone to rivalry and mutual conflicts leading to destruction. Theoretically such a form of government is unthinkable and un-workable. Yet India did have this form of *Gana-Sangha* Rule, and with success.[92]

(7) The non-ruling Government: Jayaswal explains that this form of government is called *Arajaka* or non-ruler or idealistic constitution. This form was derided by many writers who could not fathom the ideal of this form of *Gana-Sangha.* It only

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[86] *Kautilya* deals with this form of government (VIII.2) and considered it to be a bad form of government, vide, Jayaswal, Op. Cit. at Note (18) to Pg.83.

[87] Jayaswal calls it '*Rashtrika* constitution'. Vide Jayswal, Op. Cit. at Pgs. 84-85.

[88] *Su-rashtras* are mentioned by Kautilya as a separate *Gana-Sangha.*

[89] Jayaswal calls it '*Pettanika* constitution'

[90] *Ait. Br.*, VIII.12, Quoted from Jayaswal, Op. Cit. at Pg.85.

[91] This form of government was not unknown to Indian history. *Mahabharata* relates this system to Avanti, when it was under Vinda and Anuvinda, two rulers governing jointly.

[92] Jayaswal gives a parallel notion of joint family system, otherwise unknown to most other countries, where joint ownership of property, enjoyed jointly were flourishing, without any rivalry, conflict or annihilation, which those people who were unfamiliar with such notion were afraid of successful existence. Vide, Jayswal, Op. Cit. at Pgs. 85-86.

meant that instead of taking any particular rule from any ruler or for that matter, from any one of the group of men that ruled, the rules these *gana* followed were those adopted by mutual agreement, arrived at by the members of the *Gana.*[93] This system, instead of being ridiculed, should have been the subject of praise. The ancient India had practiced this form of 'democracy' without naming it so. *Arajaka* here meant only 'no man-ruler state', and not the tyrannical rule, the Greek thinkers were referring to.

Mahabharata **reference to** *Gana-Sanghas:*

Mahabharata gives a fair idea about the functioning of *Gana-Sangha,* which had developed a clear foreign policy, full-fledged treasury, standing army highly skilled in warfare, well settled laws for governance, and discipline being maintained. In short, it depicted a well-organized non-kingly form of government.[94]

The Sixth Century BC

Six hundred B.C. is ordinarily taken as the beginning of the history of north India. It is during this century that the birth of Gautam Buddha, and Mahavira took place from two well-known *Gana-rajyas*. This period is also marked by the attack of the Achaemenid Emperor Cyrus, on the northwestern parts of India, especially the states of *Kambhoja* and *Gandhara.* The *Pali Pitakas* mention 16 great countries (*Maha-janapadah*), existing during this period; of these, the *Janapadas* of *Virjjis* and *Mallas* were the two most known *Gana-Sanghs.*

Gana-Sanghas **in Panini:**

During Panini's time (about 500 B.C.) there were many *GanaSanghas* in existence, and by 600 B.C.[95] all over North India. What Panini refers to are the political *Sanghas* and not the religious *Sanghas* which came into existence from

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[93] Vide, Jayswal, Op. Cit. at Pgs. 107-112.
[94] Reference to this is given by Jayswal, Op. Cit. at Pgs. 86-89.
[95] Reference is to the well-known 16 *Janapadas.*

the time of Buddha only. One thing is note- worthy that the members of the *Sanghas* during this period were not definitely belonging to any *Varna.* They included non-Brahmans and non-Kshatriyas, belonging to any other *Varna* provided they lived in a defined territorial area, carrying a definite name attached to it.

The first group of *Sanghas* Panini mentions is known as the group of *Ayudhajivin Sanghas.* The nomenclature *Ayudhajivin* meant that the members, as a rule, observed the practice of using arms, or military, and not 'those who live the profession of arms'.[96]That is to say, the members of these *Sangha* are to be skilled in military arts. They lived in large territories, comprising of several cities, and they were extraordinarily rich, prosperous and had well organised civil administrative structure. They were free communities with military skill, having a single text of written rules. The members were all devoted to these rules. They had an elected leader, whom the members often addressed as 'the *raja'*.

These *Sanghas* were almost entirely situated in the Vahika Country, that is, mostly the Punjab (i.e., the undivided Punjab of the British period); and extended to the *Vahika* land, i.e., the Sind valley and Punjab. The reference here is to the valleys of the five rivers, including the Sindhu as the sixth.[97] These *Sanghas* were: (1) the Virka, (2) the Damini The *Sambhas* (3) to (8) had a common nomenclature, namely, the Trigartta-Shashtha or the League of Six Trigarttas, and they were (a) the Kaundoparatha, (b) the Dandaki, (c) the Kaushtaki, (d) the Jalamani, (e) the Brahmagupta, (f) the Janaki (or the Jalaki); and (9) the Yaudheyas and others, and (10) Parsva and others.[98]

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[96] Vide, Jayswal, Op. Cit. at Pgs. 30-33.
[97] The six Trigarttas were at the foot of the Himalayas, in the Punjab, about Jammu or Kangra. Vide, Jayswal, Op. Cit. at Pg. 35.
[98] These *Sanghas* were named in Vide, Jayswal, Op. Cit. at Pg. 33.

Besides these martial *Sanghas,* Panini mentions six other communities having the characteristics of *Sanghas.* They are (1) the Madra, (2) the Vriji,[99] (3) the Rajanya, (4) the Andhaka-Vrishni, (5) the Maharaja, and (6) the Bharga.

The *Andhaka-Vrishni Sangha:*

As was discussed above *Aitareya Brahmana* refers to these *Gana-Sanghas,* and that they are likely to be the *Satvats,* which is the ancient name for the *Yadavas.* They followed the rules of governance of the *Bhaujya* system, which was a non-monarchical kind, and their rulers were called *Bhojas.* Strictly speaking *Andhaka-Vrishnis* did not have a *rajan* in their setup, and in some of the literature it is found that they have been cursed for not having a king.[100] As mentioned above the *Andhaka-Vrishnis* were mostly in the Kutch region of Western India; and Gujarat was one of the most ancient seats of this *Gana-Sangha.*

According to Panini, the Sanghas had their own individual *anka* and *lakshana. Anka* is a mark which is a symbol adopted by the changing governments from time to time. An elected ruler or body of rulers adopted their own special *anka* and the same was given up when these set of rulers went out of office. Thus, *anka* signifies an individual mark, often used with initial letters representing the leader or the legend attached to the *Sangha.* While it is a figure found in the punch-marked coins that is called the *Lakshana,* often it is the figure of an animal, or river, town, or the like. Panini described it as the heraldic crest of the *Sangha* that were employed on their seals, coins and standards, as the official mark of the *Sangha.*[101] The coins of *Andhaka-Vrishnis* were struck in the name of *Rajanya* and *Gana: 'Vrishnirajanya-ganasya'.*[102]

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[99] *Vriji*-s will be explained in the next section; and *Bhargas* were known as the 'Easterners', found in Vatsa territory, south of *Mallas* and not far from *Videhas.* They were the most prominent group of non-monarchical people living in groups extending from Kosala and Kosambi, eastwards. Vide, Jayswal, Op. Cit. Note 27 at Pg. 36.

[100] It is said that even in the first century B.C. their coins were struck in the name of this *Gana.* Vide, Jayswal, Op. Cit. Note 27 at Pg. 36-37.

[101] Vide, Jayswal, Op. Cit. Note 27 at Pg. 36-40.

[102] Id. Pg.37.

Panini further clarifies that *Andhaka-Vrishnis* had two *Rajanyas* among them, that being 'the leaders of the families consecrated to rulership.[103] *Andhaka-Vrishnis* indeed had a joint set of rules indicating that the powers of governance was vested in two *Rajanyas,* with their respective *vargas* representing each division. For example, Akrura was an Andhaka leader, and at a given time, one of the two who headed the *Gana-Sangha.* This indicates that a group of *Gana-Sangha* was led by two opposing parties (*varga)* as its leaders-in-rule. At the same time, it is to be noted that as far as the *Andhaka-Vrishnis* were concerned, they had both Andhaka *Rajanya* and the Vrishni *Rajanya,* both elected leaders.[104]

Gana-Sanghas in the Budhist Literature

Buddha was born in a *Gana-Sangha,* the *Sakyas.* He had *Sangha* neighbours around him, and he grew up among them. He was the son of the Elder of the *Gana* and it was the king of Kosala who destroyed the independence of *Sakyas* as a *Gana,* during his lifetime. But when he established his own religious *Sangha,* he named it *Bhikku-Sangha,* and adopted most of the organisational structures and the rules and usages of political *Sangha.*

He had demonstrated at one time, in spelling out the best features of a *Sangha,* because of which they were considered invincible. The following were the seven principal features, which he also thought to be the several conditions of the welfare of a community. They were applicable equally to both the religious as well as the political *Sanghas:* (i) The members shall hold full and frequent assemblies; frequent meeting together is unavoidable; (ii) They shall 'meet together in concord', 'rise in concord' and 'carry out the *Sangha* business in concord'; (iii) So long as they enact anything that are not already established, abrogate nothing that has been already enacted, they act in accordance with the ancient institutions of the *Vajjians;* (iv) So long as they honour and esteem and revere and support the *Vajji* elders, and hold it a point of duty to hearken to their

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[103] In the concerned literature, it is found that it is common to have dual groups of leaders, as found in *Andhaka-Vrishnis.* Id. Pg.38.
[104] Vide, Jayaswal, Op. Cit. at Pgs. 38-39.

words; (v) So long as no women and girls belonging to them are detained among them by force or abduction ; (vi) So long as they honour and esteem and revere and support the *Vajjian Chaityas* (the sacred monuments, ie., follow the sacred laws established); (vii) So long as the rightful protection, defence and support shall be fully provided to the Arhants among them, ie., follow the established practice; and (viii) So long as the *Vajjians* be expected not to decline but to prosper.[105]

Sixteen Janapadas

Six hundred B.C is ordinarily taken as the beginning of the history of north India. It is during this century that (1) Urbanisations of Gangetic plain, (2) Formation of earliest states, (3) Rise of Magadha as an Empire, (4) Birth of Gautam Buddha, (5) Birth of Mahavira, and (6) the attack of the Archaemenid Emperor, Cyrus on the north western parts of India, especially the states of *Kambhoja* and *Gandhara* took place.[106]

The Buddhist traditions confirms existence of *Gana-Sanghas* prevalent in the 6th century B.C. mostly in the Northern parts of India. Out of the sixteen *Maha-janapadah, Pali Pitakas* mention, two of them, namely the *Virjjis* and *Mallas,* were *Ganasanghas.* The rest all had kings as their head. These were, (1) *Anga,*[107] (2) *Magadha,*[108] (3*) Kasi,* with capital at Kasi, modern Benaras; (4) *Kosala,* with capital at Sravasti on the borders of Nepal; (5) *Virijji,* the country of the Vajjians, who were composed of eight confederate clans, of whom the Lichchavis and the Videhas were the most powerful. The capital of the Videhas was Mithila, and that of Lichchavis, Vaisali; (6) The country of the *Mallas,* were divided into two independent clans, and whose territory was on the mountain slopes to the east of the Sakiya land; (7) *Cheti,* the country of Chedism, who perhaps had two distinct settlements, one in Nepal and the other to the east or south-east of Kosambi; (8) *Vasta* or Vamsa, of which Kosambi was the capital. It lay north of Avanti and

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[105] Vide, Jayaswal, Op. Cit. at Pgs. 43-44.
[106] Vide, Thapar, Op. Cit. at Pg. 61-62.
[107] They had occupied the region near modern Bhagalpur, with capital at Champa;
[108] Occupied an area in South Behar, with capital at Rajagriha and afterwards at Pataliputra;

along the banks of Jumna; (9) The country of the *Kurus*, with its capital at Indraprastha, was near modern Delhi; (10) The country of the two *Panchalas,* to the east of the land of the Kurus, had capitals at Kampilya and Kanauj; (11) The *Matsya* country lay to the south of the Kurus and west of the Jamuna; (12) The country of the *Surasenas,* had its capital at Mathura, to the south-west of the Matsya country and west of Jumna; (13) The country of the *Arsakas* was on the banks of the Godavari, with its capital at Potana or Potali; (14) *Avanti,* afterwards called Malava, had its capital at Ujjayini; (15) *Gandhara* (modern Khandahar), including Eastern Afghanistan and North-western Punjab, had its capital at Taksha-sila; (16) *Kamboja,* the country near modern Sindh, had its capital at Dwaraka.

On the other hand, the Buddhist literature describes many of the *Gana-Sanghas*, including the one from which Buddha himself arose and lived, namely, the *Sakyas*. These *Gana-Sanghas* covered the land to the east of the kingdoms of Kosala and Kausambi (Vatsa), and to the west of Anga, from the districts of Gorakhpur and Ballia to the North of Magadha and the south of Himalayas. The *Virjjis* and *Mallas* were the most important groups. Eight of these prominent ones are given here-below: (1) The *Sakyas* with their capital at Kapilavastu; (2) The *Kolias* of Ramagrama; (3) The *Lichchavis* with their capital at Vaishali; (4) The *Videhas* , with their capital at Mitthila (in the District of Dharbhanga (the last two were con-jointly called the *Vrijjis* or the *Vajjis)*; (5) The *Mallas* who covered a large area to the south of the Shakyas and east of Vrijis, divided into two units, with their capitals at Kusinagar (Kusinara) and at Pava; (6) The *Moriyas* of Pippalivana*;* (7) The Bulis of Allakappa, which was a minor community and neighbours of Mallas of Kusinagara; and (8) The Bhaggas (Bhargas) who were the neighbours of the kingdom of Vatsas of Kausambi.[109]

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[109] Vide, Jayaswal, Op. Cit. at Pgs. 44-45.

The Sakyas

The *Sakyas* had their capital at Kapilavastu, and was an independent *Gana,* whose council was said to have been composed of around 500 members. The *Sakyas* are said to have had a special kind of rule that each citizen could have only one wife. As mentioned earlier, it was the king of Kosala who destroyed the independence of *Sakyas* as a *Gana,* during the lifetime of Buddha.[110]According to Jayaswal, a wrong impression was given by the western writers that these *Gana-Sanghas* should be better considered as clans. These *Ganas* had long passed the tribal stage of the Indian society, with a specific identity of *Gana-Sanghas,* though some of them, very likely had a territorial or tribal basis.[111] But most of these Indian versions of *Gana-Sanghas* were so advanced in their administrative structure and the format of governance that it would be too simplistic to consider and reduce them as clans.

In fact, the *Sakyas* carried out their administrative and other functions in public assembly wherein both the young and the old alike were present, in the Common Hall (*Santhagara*) at Kapilavastu. It was in this hall, while in session that all the issues especially those relating to their relationship with neighbouring *Sanghas* or kingdoms were discussed. It was also in this Hall that Ananda, the first counsel of Buddha who announced the death of Buddha, as they were all present there to consider that very matter.[112]

The Lichchavis

The *Lichchavi* rulers (*Gana-rulers)* were the most prominent ones in so far as the organisational set up was concerned and the rules they followed for the governance of the *Sangha.* Their leadership consisted of four high offices: The *Raja,* the *Upa-Raja,* the *Senapati* and the *Bhandakarika* (the

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[110] Vide, Jayaswal, Op. Cit. at Pgs. 44-47.
[111] Id. At Pg. 46.
[112] Id. At Pg. 47.

Treasurer).[113]The government was in the city of Vaisali which had a system of triple fortifications. Even though these were the four high administrative authorities, the rule (*rajjam*) was actually vested in the inhabitants (*vasantanam*), 7707 in number, probably the foundation families belonging to the ruling class, and all of whom were entitled to rule (*rajunam*). There was election from among them to the four titles above mentioned. The total population was much larger divided into outer and inner citizens (Vaisalians), 1,68,000 in number. The rulers underwent the ceremony of consecration by anointing.[114] They all assembled in the Assembly Hall not only to discuss the political and military matters but also agricultural and commercial. The literature further refers to the *Lichchavi Gana* in session appointing a *Mahattaka* or a distinguished envoy for an assignment to deliver a message 'on behalf of the *Lichchavis* of Vaishali', to the neighbouring *Sngha*. And that shows that it is the *gana* that transacted business on behalf of the whole people.

It is clear from the following passage that in their Council every member had an equal right of speech or voting; and everyone wanted to be the next leader: "….amongst them (the Vaisalians) the rule of having respect for the high, the middle ones, the oldest, the elders is not observed; everyone considers himself to be the *raja,* 'I am the *raja,* I am the *raja'.* No one becomes the follower of another."[115]

The president (*raja)* of *Lichchavi* was treated as 'the first among many' (*Unus unorum)* and all his final decisions including that of the punishments awarded to the erring citizens, were recorded on the 'rolls' (*'paveni patthakan),* with details of the nature of the guilt, the punishment awarded to them. It is pertinent to mention that no citizen could be punished unless all three

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[113] The title *Raja* and *Up-Raja* here do not refer to the kingly sovereignty as ascribed to the real kings in the monarchical kingdoms. It is to be seen that Buddha's father, an ordinary simple citizen (*Suddhodana Sakiyan)* was also called a *raja.*
[114] Vide, Jayaswal, Op. Cit. at Pgs. 47-48.
[115] Quoted from Jayaswal, Op. Cit. at Pg. 49.

functionaries, namely, the *Senapati, Uparaja* and the *Raja* approved it, after considering them separately, and without dissent.

There was a system of holding a first level hearing of the case before the *Vinichchaya Mahamattas* ina regular manner. Thereafter, the matter would be referred, if necessary, to the *Sutra-dharas,* who were well-versed in *vyavahara/dandaniti.* The final decision, in all serious cases was taken by the *Ashta-kulakas* 'the eight noble men'. Thereafter, it would be sent to the three functionaries for approval, as mentioned above.[116]Jayaswal asserts that these measures were adopted to safeguard the liberty of citizens.

In the region there were two other strong monarchies, the Kasi-Kosala and the Magadhan Empire. Both were bitter enemies of each other. The *Gana-Sanghas* usually went with the Kasi-Kosala kingdom, as the Magathan Empire were more interested in attaching the small kingdoms and *Gana-Sanghas*, while the former were willing to keep them under their suzerainty, allowing them to retain their identity. The *Gana-Sanghas*, among themselves, were also united in league with each other, so much so that the *Videhas* and *Lichchavis* came to be known as *Samvajjis.* During the last years of Mahavira, the *Lichchvvis* even established a Joint Council with nine members added from the *mallas,* and designated as *Gana-rajas* and was referred to in the Buddhist literature as 'eighteen confederate kings'. The Council was in allegiance with the Kosalan monarchy, as the Vaisalians had once a bitter battle with Ajatasatru of Magadha which they lost.

The composition of the Joint Council shows that the member states had equal votes and that the federation was based on terms of equality, even though

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[116] Vide, Ibid. Jayaswal claims that the system of the presented procedure was more or less the same as those described in the Buddhist literature (*Atta-katha)* as well as the Sanskrit literature (*Mahabharata).* He claims, "In the opinion of the author of *Mahabharata* criminal justice system in a republic should be administered by experts through the President (*nigrahah panditaih karyah kshiprameva pradhanatah)(Shanti-parva, Ch.107,27)* that the elders of the Kula Court (=Kulaka)

the *Mallas* were not a great political power. Yet, both had equal membership and had equal voice in the deliberations.

Summarising various authorities from Buddhist and Sanskrit literature, the Greek writers, *Kautilya* etc., K.P. Jayswal has chronicled about 76 of such *Gana-Sanghas* existing in the region in those days.

Rules of Procedure followed by the Gana-Sanghas

Jayaswal further describes in detail the procedure of deliberations that used to take place in those Gana-Sanghas in general terms.[117] Referring to Buddhist literature, he narrates an incident of the king of Kosala besieging the capital of Sakyas and wanting them to surrender. The Sakyas decided to convene the Assembly to discuss whether to surrender or not. There was a difference of opinion in the Assembly and it was decided to put the issue to vote. "The voting resulted in favour of the proposed capitulation and the city was capitulated."[118] This indeed was an instance of a procedure for deciding a particularly important political matter, by voting and in accordance with the opinion of the majority.

The rest of the procedure explained by Jayaswal in the same chapter is based on the theory that Buddha adopted the procedures of the GanaSamgha (political) system into his Bhiku-Sangha (religious) deliberations, which was an acknowledged fact of history. And he further elucidates the impeccable procedures followed, such as 'the seating arrangements'[119] for the members in the assembly, front row seats reserved for the elders with say ten years or more standing, while deliberations take place.

The procedure to move for a 'resolution' (*pratijna)[120]* began with the words, 'Let the venerable *Sangha* hear me'; this was followed by speeches by those who disapprove of the resolution. Once the resolution was repeated thrice and the members remained silent, the resolution was treated as carried through.

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[117] This is given in Ch. XI of the Work Cited, at pages 90-106.
[118] Jayaswal, Op. Cit. at Pg. 90.
[119] Vide, Jayaswal, Op. Cit. at Pg. 91.
[120] Vide, Jayaswal, Op. Cit. at Pgs. 91-93.

The 'rule of quorum'[121] was strictly observed; with 20 as the quorum prescribed for the smallest *Sangha*. The resolutions carried through without the prescribed quorum were normally declared as invalid and inoperative. It was the duty of one of the members to notify the lack of quorum, and it was called *'gana-puraka'*.

Besides, there were rules prescribed for what would be the 'consequences of disregarding the procedure'.[122] All resolutions were to be passed by 'voting' (*chhanda*)[123]; even the 'absentee votes'[124] were to be counted, unless objected to. It was also common that voting took place unless the resolution was passed unanimously; to pass them with the 'majority' (*bahutara*), voting had to be carried and that too by using coloured voting-tickets known as *Salakas*.[125] That kind of voting was called *Salaka-grahana,* and one who conducted the voting was called *salaka-grahaka.*

The Assembly gathered for whatever purpose, was to make sure that the members avoided 'pointless speeches.' This was generally implemented by appointing a committee, to which the right of deliberation was delegated. After due deliberation it communicated its decision to the *Sangha.* This procedure was called 'proceeding-in-presence' (*Sammukhavinaya).*[126] The legitimacy of this procedure was based on the principle of representation.

Once a question was decided in accordance with a valid procedure, it could not be re-opened: 'Having been once settled, it is settled for good.'[127] The other rules of procedure followed were, the 'procedure of censure' against those members who did not control themselves during the deliberations and showed 'contradiction, cantankerousness and similar misdemeanour in speech'. Re-opening a settled matter was also considered to be a misdemeanour. Once the

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[121] Id. Pg 93.
[122] Vide, Jayaswal, Op. Cit. at Pg. 93-95.
[123] Id. At Pg. 94.
[124] Ibid.
[125] Id at Pgs. 94-95.
[126] Vide, Jayaswal, Op. Cit. at Pgs. 96-98.
[127] Id. At Pg. 98.

Assembly decides a matter without quorum, such deficiency could not be rectified by another fuller Assembly. The Buddhist literature also mentions about proper recording of the procedures by one who is always present at the deliberations without quitting his seat, for whatever reason. It is mentioned that the *Lichchavis* had kept all the reords of the proceedings, resolutions and the decisions arrived at the deliberations in the Assembly, at the instance of those 'recorders of the house', who were always men of high position.[128]It is worth noting that the *Lichchavis* are recorded to have had a book of precedents.[129]

Jayaswal concludes that even in 6th century B.C., 'a clear picture of a highly developed stage, marked with technicality and formalism in language, with underlying concepts of legalism and constitutionalism of a most advanced type. This presupposes a previous experience extending over centuries. The *Jnapi,* the *Pratijna,* the Quorum, the Salaka (ballot voting), the procedure of majority, the reference are all mentioned by the Buddha without any definition, that is, as terms already current'.[130]

Monarchies in the Sixth Century B.C.

Six hundred B.C. marks an era of emergence of kings and kingdoms. It was during this period small towns began to grow up as centres of administration or revenue collection; but many of these seem to have sprung up also as centres with economic linkages of production and exchange, with activities related to the artisans and merchants. Because of that, linkages with villages were unavoidable, not only because these were revenue and administrative centres, but also due to concentration of people in these towns for production purposes, these continued their dependence upon the villages for food. These urban centres themselves developed formations or associations of craftsmen and artisans, and of merchants

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[128] Id. At Pgs. 98-99.

[129] Id. At Pg.106.

[130] Id at Pgs. 99-101. Jayaswal also states that these rules were strictly applied to the *dharma-Sangha,* as a spiritualised achievement for his ultimate purpose of a 'propaganda of conquest' as a member of the *Gana, Sakhya*: "To achieve success in his spiritual designs, he had to perpetuate the republic of *dharma* (*Dharma-Sangha),* and to perpetuate the republic of *dharma*, he adopted the constitution and the constitutional procedure of the republic of politics." Id. At Pg. 101.

for transport and distribution of items of trade produced for exchange. These urban formations and associations also exerted considerable influence on the administration and governance.

Contributions from Buddhist and Jaina Traditions[131]

According to Buddhist traditions, *Rajya-sastra* was composed not by Bhrigu and Angira, but by their sons Sukra and Brhaspati, where one finds references to kings who issues their orders (*sasana)*, which is also known as *Raja-sasana.*[132] Reference to *Mahasammata*, who is depicted as a 'sage-ruler', without any divine connotation has already been made above. Reference has also been made above to the descriptions of the type of power, again without having anything to do with divine sources.[133]

The Buddhist tradition is overly critical about the dogmatic Brahmanical theory of four Varnas; instead, it extols social equality, stating that deformed limbs, and dark-skinned persons can be found in all Varnas.[134]. In these literatures, reference to *Janapada* is to denote the entire people excluding the capital city, under one king or *gana-sangha*, and *desha* seems to indicate no other *janapada* except one's own, and grama, a subdivision of *Janapada* but area-wise. The king is to perform political functions from the royal throne and dispenses *danda* against those found guilty. Buddha used to call himself a *Dharma-rajah* and was surrounded by four maharajahs. Some of the kings are said to have had 500 *amatyas*. An ideal kingdom is 'just and righteous' and exists for the purposes of 'abundance, welfare, justice and peace'.[135]

The Jaina traditions,[136] also describes the functions of a king to be the protector of the subjects and the earth (*Praja-bhumipa*). He must be proficient in *Danda-niti (Danda-niti-visarada*); he should abstain from all kinds of evil actions

[131] To this part I am indebted to Varma, Dr. V.P., Op. Cit., Pgs. 159-180.
[132] Ibid at Pg. 161.
[133] Vide *supra* Pg.
[134] Vide, Op. Cit. Varma, V.P. at Pgs. 164-65.
[135] Ibid., at Pg. 167-69.
[136] Ibid at Pg. 175-79.

and should deal with the virtuous and those with evil tendencies, separately. Apart from the payment of fine, there were seven kinds of punishments to be inflicted upon the guilty, in proportion to their guilt. They are *Hakkara, Makkara, Dhikkara, Paribhasa, Mandali-banda, Karagara* (imprisonment) and *Chavi-cheda* (mutilation). If the king inflicts unjust punishment, he must pay a fine of an amount calculated at 30 times, the amount of the original sum imposed as fine. The traditions further mention about the four *purushartha, Darmaartha-kama-moksha. Isvara* or *Deva* is considered as the highest *Purusha*. He is the 'supreme power' and the 'destroyer of darkness' and committed to the pursuit of common good. There are references to six kinds of passions, the king should avoid, the acquisition of four kinds of knowledge (*Raja-vidya*), the *vyasanas,* the *Amatyas, Janapada, Durga*, the treasury, and *vyavahara.*

The Persians and the Greeks in India

The Iranians or the Persians and the Indians of the Aryan stock were bifurcated in the ancient past, one entering Persia and the other into India. But relations between them were not forgotten. In those days, the boundaries of India and Persia were not well defined and naturally in the bordering areas of the two countries a mixture of Persian and Indian languages and manners and customs were in vogue. It was the eastern part of Persia that was lying adjacent to north-western India, then known as the *Chakravartkshetra.* Those from the side of India were not at all expansionists in nature; but those from the Persians side were and several times they had attempted to conquer the north-western Indian districts.

In the sixth century B.C., the north-western region of India (now in Pakistan) was divided into several small independent states. The most noteworthy of these states were Gandhara, Kamboj and Madra. When Bimbisara was expanding Magadha into an empire, the north-western parts, i.e., *Uttarapatha* was still divided into small independent states with no political unity among them.

It was in 535 B.C. that Cyrus (600-530 B.C.), the founder of the Achaemenid dynasty, for the first time, occupied *Kambhoja* and *Gandhara.* Cyrus'

Indian invasion was thought to be a failure. It was in 518 B.C., that Darius I annexed parts of Punjab and Sindh and occupied Gandhara, and Taxila, its capital. Darius who came to the throne (522-486 B.C.) seems to have extended the Persian Empire upto northern Punjab (518 B.C.). This part of India was the 20th Province of the Persian Empire and the annual revenue earned from this province was gold dust of the value of ten lakh pound-sterling. One-third of the total revenue of the Persian Emperor came from the Indian Province. The administration was in the hands of governors known as '*satrapa*'.

The region was believed to be the most fertile and populous part of the Achaemenid empire. Indian subjects were also enrolled in the Achaemenid army. The Persian rule in northwestern India lasted for nearly two centuries. During this period there must have been regular contact between the two regions. From Arrian also, one can know that the Indian soldiers fought for Darius III against Alexander in the battle of Gaugamela.

During 380 to 338 B.C. the influence of Achaemenid Empire on India was weakening and came to an end by 330 B.C. when Alexander subdued them. Taxila was a plausible location for the capital of Achaemenid India, as it was situated at the crossroad of the main trade roads of Asia, and was probably populated by Persians, Greeks, and other people from throughout the Achaemenid Empire. The 'University of Taxila' became the greatest learning center in the region, and allowed for exchanges between people from various cultures.

It was in *Taksha-shila,* where *Kautilya* appears to have gone as a student in 344 B.C. at the age of 16. It is interesting to note that was time the Nanda dynasty began to be established in Magadha. In those years, *Gandhara* was considered to be the wealthiest of the provinces; it had several cities, and the prominent among them was *Taksha-shila* (*Taxila,* as the Greek called it), which was known as a centre of Indian and Iranian learning, and later the Hellenistic knowledge was added to it. *Kautilya* continued to be a teacher. Taxila developed

as a world-centre of learning, and exchange of ideas used to take place here.[137] It was a great Centre of Vedic and Buddhist learning.

Taxila (*Taksha-shila*), the capital of *Gandhara,* was existing where today the modern Kandahar, Eastern *Afghanistan* and North- Western Punjab exist. *Gandhara* was one of the 16 *Janapadas* that were flourishing in the sixth Century B.C. In about 518 B.C. Darius the Great had annexed Taxila to the Persian (Iranian) Achaemenid Empire.

Kautilya seems to have arrived (most probably from South India) at Taxila at the age of 16 and had undergone the *shiksha* from there. He continued there as a teacher of *Arthasastra,* which was a *Veda,* and a part of *Itihasa-veda.* He seems to have mastered the subject and formulated the entire *Arthasastra* during these years and a final shape was given to it by the time he turned 40 years of age, i.e., by 330 B.C.[138]

It was in the winter of 327-326 BC that Alexander the Great marched into India.[139] He crossed the Hindukhush Mountains from Bactria, and proceeded to Swat valley, and then crossed Indus and reached Taxila. He entered an alliance with Ambi, the king of Taxila. The Brahmins of the city were opposed to this. Plutarch mentions that Alexander had several of them hanged to death.[140] After settling king Porus with his own territories, he crossed river Chenab, and then Beas. As his army refused to go further, he did not proceed to Gangetic basin and the return march began in October 326 B.C.

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[137] Thappar, Pp.133-138.

[138] There are authorities that claim that *Kautilya* was born around *370* B.C. and died in 283 B.C., during the reign of Bindusara, the father of Ashoka, at the age of 87. At the time of death, he was a dejected man as he was accused of killing the wife of Chandragupta Maurya, his protégée. He had, as the tradition goes, in fact, administered poison to her as an antibody treatment, so that she may escape death by poisoning at the instance of enemies. It is a fact that after her death, he had married a Greek woman.

[139] Alexander had crossed over to Asia Minor in 336 B.C., immediately after he became the king of Macidonia and after two battles with the Iranian emperor, Darius III, he devastated the Achaemenid Empire.

[140] 'The Brahmans were known to the Greek as 'the Indian teachers of philosophy', and some of them acted as advisors to princes. Alexander had groups of them hanged in Sindh as well on the accusation that they had successively induced two local rulers, Musicanus and Sambus, to oppose him.' Vide Irfan Habib and Vivekanand Jha, "Mauryan India', Tulika Books, Delhi (2004) 2011 at pg. 3.

According to a prevalent legend, it was at his time, when the Brahmanas were put to death on a large scale by Alexander that *Kautilya* travelled east to Pataliputra, capital of the then powerful kingdom of Magadha, under the Nandas, apparently to seek help against the Greeks. However, he was insulted and thrown out by the then Ruler Nanda of Magadha. *Kautilya* decided to return to Taxila, and on his return journey he met a boy, who was later to become Chandragupta Maurya.

Alexander's conquest was in 327-25 B.C. This provided a definite 'marker' for arranging the sequence of historical events in India. It was recorded that Alexander's army refused to march ahead when they heard about the vast army and the strength of the Nandas of Magadha, a dynasty that was in place in Magadha since 344 B.C. Alexander decided to return and died at the young age of 32 at Babylon on his way to Macedon.

Chandragupta Maurya overthrew Nanda in 322 B.C.; and his annexation of North-western India took place during 311-305 B.C. It may be mentioned here that the Persian title of '*satrapa*' (governor) continued to be used by the Indian provincial governors as '*kshtrapa*' for quite a long time.

After the death of Alexander, *Kautilya* and his protégé used every opportunity to put together a band of rebels and attempted to overthrow the Nandas but failed. Legends have it that Chandragupta had to flee to the forests to escape the wrath of Nanda Rulers. After a couple of years, *Kautilya* and Chadragupta succeeded in amassing a large army, probably from several forest tribes (*atavi)* and *gana-sanghas* and were able to take control of part of the north-west part of the country before proceeding to the Gangetic plains. Around 321 BC, they defeated the Nanda Ruler of Magadha, and emerged as a power to reckon with establishing control over the entire central India.

Around 305 BC, they confronted the Macedonians who were then in power in the north-west part of India. Seleucus Nikator, one of the trusted generals of Alexander, who oversaw the region then, was finally defeated around 303 BC. A

treaty was concluded between the two, and Chandragupta gained control over the area of Baluchistan and Afghanistan. Seleucus was obliged to give his daughter in marriage to the Maurya king.[141]

Rise of Magadha as an Empire

The earliest reference to the Magadha people occurs in the *AtharvaVeda* where they are mentioned along with the *Angas, Gandharis,* and *Mujavats; Magadha* was one of the sixteen *Mahājanapadas* mentioned in the Buddhist literature.

The Monarchical rule probably started by King Bimbisara (544–492 BCE) of the *Haryanka* dynasty who pursued an expansion policy, and *Magadhha* became a reckoning political power, first conquering *Anga* to the east; after murdering his father, Ajatashatru (492–461 BCE) continued the policy of expansion and annexed *Kosala*, though initially he had lost the war. It was he who nurtured Pataliputra as a center of commerce and later became the capital of *Magadha.* After a prolonged war with *Lichchavis* finally subdued them as well, becoming a formidable imperial entity.

Concluding Remarks

In this chapter the author was attempting to scan through the political background of *Satra,* to find out how the *Sastra* had grown to maturity, taking into it the sap from the cultural past, determining a continuum in the political set-up of the *Chakravartikshetra.* It has covered the emergence of various societal groupings even from the 'Vedic Society', such as, the 'Aryans and *Dasyus*', the 'Varnas', groupings like '*Vidatha'*, *'Samiti',* or *'Sabhas',* during the *Vedic* period. Emergence of monarchies in that period is dealt with in 'Vedic Kings', followed by 'Emergence of Oligarchies: the *Gana-Sanghas'.* This aspect is further

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[141] Vide, Sanjeev Sanyal "The Land of the Seven Rivers, A brief History of India's Geography, Penguin Books, 2013, at Pp. 90, 92-93. What Shri. Sanjeev Sanyal has stated with regard to these events are accepted by the present author and would avoid a prolonged debate on the topic. Similar was the opinion of Dr Shama Shastri, which was widely accepted by most of the writers on *Kautilya*, including Shri. R.P. Kangle. (R.P. Kangle Part III, pg. 59.) Shri. Shama Sastri in the preface to his English version of *Arthasástra* on 15.1.21915 gives his own reasoning that are worth adapting.

elaborated in two parts, to cover the emergence in early India, namely, '*Gana-Sanghas* in Post Vedic Period', and 'Mahabharata reference to *Gana-Sanghas'*. In the Sixth Century B.C., there occurred a transition from mythical/philosophical world view to a more enlightened way of looking at the political set up. This aspect of political set up of ancient India, has not been noticed well enough by the historians, and much less in the pollical history literature. This is elaborated in various sections, like '*Gana-Sanghas* in Panini', '*Andhaka-Vrishni Gana-Sanghas', 'Gana-Sanghas* in Buddhist Literature', the 'Sixteen *Janapadas',* the '*Shakyas',* The '*Lichchavis',* and the 'Rules of Procedure followed by the *Gana-Sanghas'*. This is followed by a section on 'Monarchies in the Sixth Century B.C.', 'Contributions from Buddhist and Jaina Traditions', Persians and Greek in India; and finally, about the 'Rise of Magadha as an Empire'

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धर्मशास्त्रीय न्याय-प्रक्रिया का सामान्य परिचय

प्रो. कृष्णा शर्मा

समन्वयक धर्मशास्त्र विद्याशाखा,
केंद्रीय संस्कृत विश्वविद्यालय,
जयपुर परिसर।

धर्म एव हतो हन्ति धर्मो रक्षति रक्षितः।
तस्माद्धर्मो न हन्तव्यो मा नो धर्मो हतोऽवधीत् ॥ (मनु ८/१५)

धर्मशास्त्र के अनुसार विधि का वर्णन करने एवं इस चराचर जगत को प्रतिष्ठित व संतुलित करने के लिए धर्म को ही मुख्य आधार माना है धर्म को आधार मानते हुए भारतीय विधि व्यवस्था में अष्टादश विवादपद अर्थात 18 विवाद एवं राजधर्म, व्यवहार विषय का निरूपण किया गया है जिसका सामान्य परिचय विधिवेत्ताओं, विधि के प्रवक्ताओं, विधि के रक्षकों, विधि के अध्येताओं एवं छात्रों के लिए ही नहीं अपितु भारत वर्ष के प्रत्येक नागरिक को इसका ज्ञान होना अत्यावश्यक है बहुत से नियम देशकाल एवं परिस्थिति के अनुसार परिवर्तित होते रहते हैं और किंतु कुछ नियमों पर विद्वद्जनों के द्वारा विचार विमर्श किया गया तथा कुछ भारतीय विधिशास्त्र के नियम ऐसे भी हैं जिन्हें यथावत स्वीकृत किया गया है नियमों के व्यावहारिक भाग का तो परिवर्तन किया जाता रहा है और परिस्थिति के अनुसार आगे भी परिवर्तन किया जाता रहेगा किंतु उनका आधार जो धर्म है उसके मूल को कभी परिवर्तन नहीं किया जा सकता इसलिए समाज में सदाचार युक्त श्रेष्ठ आचरण एक अनुपम एवं अद्वितीय आदर्श प्रस्तुत करते हैं और यही विधि के मूल भी है भारतीय न्याय व्यवस्था का आधार धर्म है और प्रारंभिक वैदिक काल में विधि ऋत के रूप में ही प्रचलित थी उसकी शक्ति सर्वोच्च थी इसी के आधार पर समाज का संगठन करने का प्रयास किया गया। ऋत् द्वारा समाजीकरण में ब्राह्मण ग्रंथो का तार्किक धर्म के रूप में विकसित हुआ तथा समाज द्वारा राज्य की उत्पत्ति हुई विधि समाज का आदर्श थी और कल्याण का साधन भी थी अतः इसी विकास स्तर में भी विधि का संबंध समाज कल्याण रहा जिससे समाज एवं राज्य में विधि को उच्च स्थान प्राप्त हुआ। धर्मशास्त्र के अनुसार विधि को प्रतिपादित करने वाले अनेक ग्रंथ प्रचलित हैं किन्तु उसमें से मिताक्षरा एवं दायभाग को मुख्य माना गया है मिताक्षरा याज्ञवल्क्य स्मृति की टीका है जिसके लेखक विज्ञानेश्वर है

मिताक्षरा सम्प्रदाय चार उपसम्प्रदायों में बंटा है, | जिनमें प्रमुख ग्रन्थ मिताक्षरा के अतिरिक्त कुछ पूरक ग्रन्य भी हैं जो उसके कुछ सिद्धान्तों को रूपान्तरित भी करते हैं, -

1. वाराणसीसम्प्रदायः -- वीरमित्रोदय,

2. मिथिलासम्प्रदायः विवादरत्नाकर, विवादचन्द्र एवं विवादचिन्तामणि

3. मुम्बई, गुजरात, मुम्बईद्वीप-उत्तरीकोंकणनंच सम्प्रदायः - व्यवहारमयूख ।

4. द्रविड़-मद्रास वा सम्प्रदायः स्मृतिचन्द्रिका, वरदराज का व्यवहारनिर्णय, पराशरमाधवीय सरस्वतीविलास ।

कुछ प्रान्तों में नियमों का अन्तर अवश्य है किन्तु बंगाल को छोड़कर सम्पूर्ण भारत में मिताक्षरा की प्रमुखता रही है। इस ग्रंथ द्वारा भारतीय विधि व्यवस्था एवं व्यवहार को देखने की प्रक्रिया को सरल रूप से प्रस्तुत किया गया है । कौनकात्यायन के द्वारा व्यवहारपरिभाषा के रूप में उल्लेख प्राप्त होता है कि-

वि' नानार्थे 'अव' सन्देहे हरणं हार उच्यते ।

नाना सन्देहहरणाद्व्यवहार इति स्मृतः ॥

अर्थात् व्यवहार शब्द में तीन अंश है- वि+अवहार। वि शब्द अनेकार्थ (विविध रूप अर्थ) का वाचक है। अवशब्द का सन्देह रूप अर्थ माना है। 'हरणं हारः' भाव व्युत्पत्ति के आधार पर हरणक्रिया को हार शब्द से कहा है। अभिप्राय यह है कि नाना प्रकार के सन्देहों के निवारण जिससे सम्भव हो, वही व्यवहार है अर्थात् विविध सन्देह का निवारण करने वाला व्यवहार होता है। जब कोई व्यक्ति स्मृति (धर्मशास्त्र) तथा आचार (शिष्टाचार) के विरुद्ध मार्ग से किसी अन्य व्यक्ति को अभिभूत करता है, तो वह व्यक्ति दुःखी होकर न्याय को प्राप्त करने के लिये राजा या राजा के द्वारा नियुक्त अधिकारी के समक्ष व्यवहारपद अर्थात् विवाद के विषय को उपस्थित करता है, आवेदन प्रस्तुत करता है, तो वह व्यवहारविषय बन जाता है, अर्थात् उसी को व्यवहार का विषय माना जाता है। समुचित न्याय प्राप्त करना ही उसका उद्देश्य होता है । वादी प्रतिवादी में से जिस व्यक्ति पर अपराध करने का संशय होता है उस पर अभियोग लग जाता है और अभियोग शब्द के लिए मिताक्षरा में कहा गया है कि

वादी प्रतिवादी में से जिस व्यक्ति पर अपराध करने का संशय होता है उसको अभियोगी कहा जाता है प्रतिज्ञा, उत्तर, संशय, हेतु, परामर्श, प्रमाण, निर्णय तथा प्रयोजन उसके अङ्ग होते हैं। उसी के प्रस्तुतीकरण को (अभिग्रह) या आरोप शब्द से कहते हैं। वह दो प्रकार का होता है- शङ्काभियोग तथा तत्त्वाभियोग।

१. वस्तुतत्त्व के विद्यमान न रहने पर भी संसर्गमात्र के आधार पर जो अभियोग प्रस्तुत किया जाता है, वह शङ्काभियोग है।

२. एवं जो वस्तुतत्त्व के दर्शन (प्रत्यक्षीकरण) के आधार पर आरोप प्रस्तुत किया जाता है, वह तत्त्वाभियोग होता है।

तत्त्वाभियोगः

तत्त्वाभियोग भी दो प्रकार का होता है- प्रतिषेधात्मक और विध्यात्मक।

१. मेरा सुवर्णादि लेकर नहीं देता है- यह निषेधात्मक अभियोग है

२. तथा यह व्यक्ति क्षेत्रादि का अपहरण करता है- यह विध्यात्मक अभियोग है।

न्यायव्यवस्था सम्पादन के लिए कभी-कभी आसेध की भी व्यवस्था करनी पड़ती है।

'राजाज्ञयावरोध आसेधः' अर्थात् राजा या राजा के द्वारा नियुक्त अधिकारी के द्वारा अवरोध का विधान किया जाता है, उसी को आसेध कहते हैं। वह आसेध चार प्रकार का होता है-, ,

१ स्थानासेध - आप इस स्थान - विशेष से अन्यत्र नहीं जा सकते हैं, इस प्रकार के आसेध को स्थानासेध कहते हैं।

२ कालासेध - आप सन्ध्या काल पर्यन्त कहीं भी नहीं जा सकते हैं, उसको कालासेध कहते हैं।

३ प्रवासासेध - आप किसी अन्यदेश में नहीं जा सकते हैं- यह प्रवासासेध कहलाता है।

४ कर्मासेध - आप इस कर्मविशष को नहीं कर सकते हैं- यह कर्मासेध कहा जाता है।

इस प्रकार से जिन विवादों को देखने के लिए धर्मशास्त्रीय न्यायिक प्रक्रिया प्रयुक्त की जाती है उन विवादों की संख्या के विषय में धर्मशास्त्र में भी अलग अलग मत प्राप्त होते हैं किन्तु साधारणतया विवादों की संख्या 18 मानी गई है।

अष्टादश विवादपद या 18 प्रकार के विवाद निम्नलिखित हैं:

1. ऋणादानम् :- ऋण लेने और देने से संबंधित विवाद।

2. निक्षेपः :- किसी वस्तु को जमा करने या रखने से संबंधित विवाद।

3. अस्वामिविक्रयः :-बिना स्वामित्व के वस्तु के विक्रय से संबंधित विवाद।

4. सम्भूय-समुत्थानम् :- साझेदारी से उत्पन्न विवाद।

5. दत्तस्यानपाकर्म :- दिए गए दान की वापसी से संबंधित विवाद।

6. वेतनादानम् :- वेतन या मजदूरी से संबंधित विवाद।

7. सविद्-व्यतिक्रमः : - अनुबंध के उल्लंघन से संबंधित विवाद।

8. क्रयविक्रयानुशयः :- खरीद-फरोख्त से उत्पन्न विवाद।

9. स्वामिपालविवादः :-मालिक और सेवक के बीच के विवाद।

10. सीमाविवादः :- भूमि की सीमाओं से संबंधित विवाद।

11. वाक्पारुष्यम् :- अपमानजनक भाषा से संबंधित विवाद।

12. दण्डपारुष्यम् :- शारीरिक हिंसा से संबंधित विवाद।

13. स्तेयम् :- चोरी से संबंधित विवाद।

14. साहस : - आक्रमण या हिंसा से संबंधित विवाद।

15. स्त्रीसंग्रहणम् :- महिलाओं के अधिकारों से संबंधित विवाद।

16. स्त्रीपुंधर्मः :- विवाह और पारिवारिक विवाद।

17. विभागः : - संपत्ति के विभाजन से संबंधित विवाद।

18. द्यूतसमाह्वय : - जुआ और सट्टेबाजी से संबंधित विवाद।

इन 18 प्रकार की विवादों को देखने के लिए धर्माधिकरण अर्थात न्यायालय में जाकर न्याय प्रक्रिया का पालन करना पड़ता है न्यायिक प्रक्रिया के अंतर्गत उसके चार मुख्य स्तंभ माने गए हैं जिन्हें व्यवहार के पादचतुष्टय के नाम से जाना जाता है

व्यवहारस्य पादचतुष्टयः-

1.भाषापादः- 'प्रत्यर्थिनोऽग्रतो लेख्यं' इति भाषापादः

'प्रत्यर्थिनोऽग्रतो लेख्यम्' अर्थात् प्रत्यर्थी के समक्ष वाद का लिखना भाषापाद कहलाता है। यह पहला अंश है।

2.उत्तरपादः- 'श्रुतार्थस्योत्तरं लेख्यम्' इत्युत्तरपादो द्वितीयः

अर्थात् भाषापाद को सुन लेने के बाद प्रत्यर्थी जो उत्तर लिखता है, वही उत्तरपाद कहलाता है। यह व्यवहार का दूसरा अंश है

3.क्रियापादः- 'अर्थी लेखयेत्सद्यः' इति क्रियापादस्तृतीयः

अर्थात् अर्थी (वादी) अपने साध्य की सिद्धि के लिये साधनों का उपन्यास करता है। वह क्रियापाद कहलाता है। यह व्यवहार का तीसरा अंश है।

4.साध्यसिद्धि पादः- 'तत्सिद्धौ सिद्धिमाप्नोति' इति साध्यसिद्धिपादश्चतुर्थः

अर्थात् साधनों की सिद्धि से ही जयलक्षण साध्यसिद्धि को प्राप्त करता है। यह व्यवहार का चौथा सिद्धिपाद है। इसी को चतुष्पाद् व्यवहार कहते हैं।

इस प्रकार से व्यवहार के पाद चतुष्टय द्वारा विवाद का निस्तारण करके सत्य को प्रकट किया जाता है उस सत्य के उद्घाटन के लिए प्रमाणों की आवश्यकता होती है धर्मशास्त्र में जिन प्रमाणों का वर्णन प्राप्त होता है उसमें निम्न प्रकार के प्रमाणों को दर्शाया गया है

प्रमाणम्

स्मृत्योर्विरोधे न्यायस्तु बलवान् व्यवहारतः ।

दो स्मृतियों अर्थात् स्मृतिवाक्यों का विषयभेद होने के कारण परस्पर विरोध होने पर उत्सर्गापवाद (सामान्यविशेष) रूप न्याय प्रबल होता है अर्थात् वही निर्णायक होता है और लोकव्यवहार से उस न्याय का ज्ञान होता है।

अर्थशास्त्रात्तु बलवद्धर्मशास्त्रमिति स्थितिः।

उशना आदि के द्वारा प्रणीत राजनीतिशास्त्र के अपेक्षा मन्वादि- प्रणीत स्मृतिशास्त्र प्रबल है- यही शास्त्रीय मर्यादा है। राजनीतिरूपी अर्थशास्त्र भी धर्मशास्त्र का एक अङ्ग है, उसका अलग कोई अस्तित्व नहीं है। इसीलिये कहा है कि 'राजनीतिलक्षणमर्थशास्त्रमिह विवक्षितम्'।

अर्थशास्त्र और धर्मशास्त्ररूप स्मृतिशास्त्र का परस्पर विरोध हो, तब अर्थशास्त्र की अपेक्षा धर्मशास्त्र प्रबल है। यही शास्त्र की मर्यादा है।

सत्य का उद्घाटन करने के लिए प्रमाणों की आवश्यकता होती है इसी हेतु धर्मशास्त्र में निम्न प्रकार से प्रमाणों की व्याख्या की गई।

प्रमाणं लिखितं भुक्तिः साक्षिणश्चेति कीर्तितम्।
एषामन्यतमाभावे दिव्यान्यतममुच्यते। २/२२

मानुषिकप्रमाणम्

१. लेख्यप्रमाणम्

राजकीय लेखप्रमाण तीन प्रकार के होते हैं;-

१ शासनपत्रम् -- (राजकीय भूमि अर्थात् राजा द्वारा दी गयी भूमि का ब्यौरा) अर्थात् राजप्रदत्त भूमि का पत्र २ जयपत्रम्-- (किसी मुकदमे की जीत का फैसला), ३ प्रसादपत्रम्-- (बहादुरी के इनामएवं भक्तवत्सलता पर राजा

द्वारा दिये गये पुरस्कार का लेखप्रमाण)। वसिष्ठने राजकीय लेखप्रमाण के चार स्वरूप बताये हैं- शासनपत्रम्, जयपत्रम्, आज्ञापत्रम् (सामन्तों तथा अन्य कर्मचारियों को दी गयी आज्ञाएँ)

तथा, प्रज्ञापनापत्रम्

२. भुक्तिप्रमाणम्

पश्यतोऽब्रुवतो भूमेर्हानिर्विंशतिवार्षिकी। परेण भुज्यमानाया धनस्य दशवार्षिकी ॥

भूमि से असम्बद्ध व्यक्ति के द्वारा देखते हुए (प्रत्यक्ष) तथा प्रतिषेध न करते हुए (निषेध के अभाव में) बीस वर्ष तक उपभोग करने के पश्चात् धन-स्वामीके स्वत्व की निवृत्ति हो जाती है और हाथी, अश्व आदि धन के दश वर्ष तक विना किसी के प्रतिषेध के भोग करने पर दश वर्ष के पश्चात् उस स्वामी का स्वत्व निवृत्त हो जाता है।

३. साक्षीप्रमाणम्

समक्षदर्शनात्साक्ष्यं श्रवणाच्चैव सिद्ध्यति'

स च द्विविधः - कृतोऽकृतश्चेति। साक्षित्वेन निरूपितः कृतः। अनिरूपितोऽकृतः।

तत्र कृतः पञ्चविधोऽकृतश्च षड्विध इत्येकादशविधः --

लिखितः स्मारितश्चैव यदृच्छाभिज्ञ एव च।

गूढश्चोत्तरसाक्षी च साक्षी पञ्चविधः स्मृतः ॥ इनके भेदों को भी नारद ने ही बताया है- लिखित, स्मारित, यदृच्छाभिज्ञ, गूढ तथा उत्तरसाक्षी- ये कृत पाँच प्रकार के हैं।

षड्विध अकृतसाक्षी

षड्विधस्याप्यकृतस्य भेदो नारदेन दर्शितः (1/151)-'.

ग्रामश्च प्राड्विवाकश्च राजा च व्यवहारिणाम्। कार्येष्वधिकृतो यः स्यादर्थिना प्रहितश्च यः।

नारद ने छः प्रकार के अकृत साक्षी के सम्बन्ध में भी बताया है। उन्होंने कहा है कि ग्राम, प्राड्विवाक, राजा, अर्थी के द्वारा कार्य में अधिकृत, प्रहित तथा कुल के विवादों में कुल्य - ये छः अकृत साक्षी होते हैं।

कुल्याः कुलविवादेषु विज्ञेयास्तेऽपि साक्षिणः ॥' इति । 'प्राड्विवाक' ग्रहणं लेखकसभ्योपलक्षणार्थम्; "लेखकः प्राड्विवाकश्च सभ्याश्चैवानुपूर्वशः । नृपे पश्यति तत्कार्यं साक्षिणः समुदाहृताः ।

दैविकप्रमाणम्
१. दिव्यम्-

<div align="center">
तुलाग्न्यापो विषं कोशो दिव्यानीह विशुद्धये ।
महाभियोगेष्वेतानि शीर्षकस्थेऽभियोक्तरि ॥
</div>

तुला, अग्नि, आप (जल) विषतथा कोश नाम के पाँच दिव्यों का इस धर्मशास्त्र में वर्णन है। सन्दिग्ध अर्थ (वाद) के सन्देह- निवृत्ति के लिये उनको देना चाहिए। तुलादि दिव्यों का महाभियोग में ही प्रयोग किया जाता है। अभियोक्ता (वादी) को दण्ड का अधिकारी सिद्ध होने पर तुलादि का प्रयोग करे। धर्मशास्त्र के अनुसार दिव्य प्रमाण का किसी भी विवाद में उपयोग नहीं कर सकते हैं तब तक की व्यक्ति स्वयम उसे स्वीकार नहीं करेगा तब तक दिव्य प्रमाण का उपयोग नहीं कर सकते है क्योंकी दिव्य प्रमाण का चुनाव मनुष्य स्वयं तब करता है जब वह न्यायाधीश या राजा के फ़ैसले से संतुष्ट नहीं होता है तो वह दिव्य प्रमाण को ग्रहण करने के लिए अपील करता है अतः कलियुग में दिव्य प्रमाण का उपयोग वर्जित है किन्तु शपथ के रूप में आज भी दिव्य प्रमाण की उपस्थिति देखी जा सकती है सामान्य लोग भी अब अपनी बात को प्रमाणित करने के लिए किसी की भी शपथ को ग्रहण करते हैं तो वह दिव्य प्रमाण का रूप ही माना जाता है जिस प्रकार से न्यायालय में किसी भी बात को कहने से पहले वादी प्रतिवादी या साक्षी है कोई भी अपनी बात रखता है उससे पहले उसको श्रीमद्भगवद्गीता की शपथ ग्रहण करनी पड़ती है इस प्रकार से अपने आपको विश्वास के साथ प्रस्तुत करना या किसी दूसरे को विश्वास दिलाना यह भी एक दिव्यंका ही स्वरूप है किन्तु इसका का कलियुग में स्वतंत्र रूप से उपयोग नहीं किया जाता है

इस प्रकार से भारतीय न्याय व्यवस्था में प्राचीन ग्रंथों के अध्ययन द्वारा यह विदित होता है कि न्याय व्यवस्था का निर्माण समाज को सुचारु रूप से चलाने के लिए तथा समाज में प्रचलित समस्याओं का निराकरण करने के लिए किया गया है उन में 18 प्रकार के विवादों में से यहाँ पर 'विभाग' नामक व्यवहार का उदाहरण के रूप में उसका सामान्य परिचय यहाँ प्रस्तुत किया गया है।

दायभाग
विभाग-

<div align="center">
विभागोऽर्थस्य पित्र्यस्य पुत्रैर्यत्र प्रकल्प्यते ।
दायभाग इति प्रोक्तं तद्विवादपदं बुधैः ॥ (नारद)
</div>

नारद के मतानुसार- जहाँ पैतृक सम्पत्ति का पुत्रों द्वारा विभाजन किया जाता है उस व्यवहार पद को विद्वानों के द्वारा दायभाग की संज्ञा दी गई है।

दायशब्दः- "दीयते इति व्युत्पत्त्या दायशब्दः, ददातिप्रयोगश्च गौणः, मृतप्रव्रजितादिस्वत्वनिवृत्तिपूर्वकपरस्वत्वोत्पत्ति फलसाम्यात्, न तु मृतादीनां तत्र त्यागोऽस्ति" ।। 4।

दाय शब्द की व्युत्पत्ति 'दा' धातु से है अर्थात् जो दिया जाता है वह दाय है किन्तु दाय में 'देना' क्रिया गौण है क्योंकि मृतकादि स्वयं स्वत्व का त्याग नहीं कर सकते। अतः यहाँ मुख्य बात है स्वत्व की निवृत्ति एवं पर स्वत्व की उत्पत्ति। स्वत्व की निवृत्ति कई प्रकार से हो सकती है जैसे मृत, संन्यासी एवं पतित होने पर

ददातिप्रयोग = गौणः, मृत, प्रव्रजित के स्वत्व = निवृत्ति । पूर्व परस्वत्व = उत्पति । फलसाम्यात्, न तु मृतादीनां तत्र त्यागोऽस्ति ।

क्योंकि मृतकादि स्वयं स्वत्व का त्याग नहीं कर सकते।

यदि कुर्यात्समानंशान् पत्न्यः कार्याः समांशिकाः ।
न दत्तं स्त्रीधनं यासां भर्त्रा वा श्वशुरेण वा ॥

जब पिता अपनी इच्छा से सभी पुत्रों का समान विभाग प्रदान करके विभाजन करता है, तब जिन पत्नियों को पति अथवा श्वसुर के द्वारा स्त्री धन प्राप्त नहीं हुआ है, उन पत्नियों को भी पुत्रों के बराबर ही भाग देकर विभाजित कर देना चाहिए अर्थात् पत्नियों को भी पुत्र के बराबर ही भाग देना चाहिए।

विशेष :-

चाहे सम विभाग हो या विषम विभाग, तथापि द्रव्यार्जन करके स्वयं धनसम्पन्न पुत्र को भी कुछ भी थोड़ा स्वल्पमूल्य का भी वस्तु देकर विभाजित कर देना चाहिए। काल में उसके पुत्र के मन में दायग्रहण की इच्छा हो सकती है और विवाद पैदा होने की संभावना हो सकती है। इसकी निवृत्ति के लिए विभाजन आवश्यक है। दूसरी बात यह बतायी गयी है कि पिता के द्वारा न्यूनाधिक विभाजन किया हुआ निवृत्त हो सकता है, यदि शास्त्रोक्तविधि का अनुसरण नहीं किया गया है। अतः विषम विभाजन में शास्त्रीय-विधि का परिपालन करना आवश्यक है

विभजेरन्सुताः पित्रोरुर्ध्वं रिक्थमृणं समम् ।

माता-पिता के मरने के पश्चात् पुत्रगण माता-पिता के धन और ऋण का समान विभाजन कर लें।

पितृद्रव्याविरोधेन यदन्त्स्वयमर्जितम् ।
मैत्रमौद्वाहिकं चैव दायादानां न तद्भवेत् ॥

पैतृक धन का उपयोग किये विना ही स्वयं जो कुछ द्रव्य उपार्जित करता है अथवा मित्र के द्वारा या विवाहादि सम्बन्ध से जो धन प्राप्त करता है, वह धन भाईयों का नहीं होगा अर्थात् उस धन में भाईयों का दाय नहीं होगा।

क्रमादभ्यागतं द्रव्यं हृतमप्युद्धरेत्तु यः ।
दायादेभ्यो न तद्द्याद्विद्यया लब्धमेव च ॥

पितृ-परम्परा से समागत धन को यदि किसी ने बलपूर्वक ग्रहण कर लिया हो और दुर्बलता के कारण पिता ने उसको प्रत्यावर्त्तित न कर सका। पुत्रों में से कोई भी समर्थ व्यक्ति उस का उद्धार कर लेता है, तो उस धन में भाईयों का दाय नहीं होगा। उद्धार करने वाला व्यक्ति ही उसका अधिकारी होगा। उसी प्रकार अध्यापन आदि से प्राप्त धन में भी किसी का दाय नहीं होगा।

निष्कर्ष रूप में कहा जा सकता है कि भारतीय विधिशास्त्र के सिद्धांत आज भी प्रासंगिक हैं और समाज में न्याय और समरसता सुनिश्चित करने में महत्वपूर्ण भूमिका निभाते हैं। भारतीय विधिशास्त्र में धर्म का प्रमुख स्थान है, जो न केवल व्यक्ति के जीवन में नैतिकता और कर्तव्य का बोध कराता है, बल्कि समाज में न्याय और अनुशासन स्थापित करने में भी सहायक होता है। धर्मशास्त्र में अष्टादश विवादपदों का विवरण न्यायिक प्रक्रिया को स्पष्ट और संगठित बनाता है। इन विवादपदों के माध्यम से समाज में विभिन्न प्रकार के विवादों का निष्पक्ष और न्यायसंगत समाधान किया जा सकता है।