LEGAL PROFESSION IN ANCIENT INDIA

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Abstract

The following paper discusses about the Legal profession in Ancient India. As per the ancient Hindu Law, every individual has a right to be represented by a person who is more adept at the legal intricacies. The paper discusses about the 'appointment of a vakeel' in Vivadarnavasetu (Ch. III, II). The paper also quotes K. P. Jayaswal and the reasoning of P. V. Kane. Kane states two sources, namely Naradsmriti (1.4) and Sukranitisara. Other luminaries such as U. C. Sarkar and P. Varadachariar have also opined on the aforementioned topic. The paper moves forth to the textual data which is inclusive of Naradsmriti (2.22), Brihaspatismriti (1.142), Katyayanasmriti (89 – 95), Vyasa's Shlokas, Pitamaha, Kautilya's Arthashashtra. In conclusion, the main point of contention is the existence of the legal profession in ancient India. It is very interesting to think that the ancient laws of Dharmashastra did not include the institution of legal practitioners. The texts of Sukranitisara is the most reliable source when it comes to the recognition of the idea of legal representatives.

Keywords: Dharmashashtra, Hindu Law, Vakeel, legal representatives, Sanskrit.

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Introduction

There can be no doubt that parties to a lawsuit in ancient Hindu law had a right to be represented by other persons. The question arises whether or not the representatives referred to in the ancient texts correspond to the pleaders, advocates, vakils or attorneys of modem India. In other words, did ancient Hindu law have the kind of legal procedure in which the rights of the parties were safeguarded through the services of a class of experts, as is the case in present day India and in most other modern legal systems?

The West in the latter half of the 18th century knew looking at Hindu law as it; it did indeed seem as if the question was to be answered in the affirmative. **Halhed's Code of Gentoo Laws** (1777), translating the **Vivadarnavasetu**, did have a section (ch. III, II) explicitly called "Of appointing a vakeel (or attorney)." Its contents are as follows:

If the plaintiff or defendant have any excuse for not attending the court, or for not pleading their own cause, or, on any other account, excuse themselves, they shall, at their own option, appoint a person as their vakeel; if the vakeel gains the suit, his principal also gains; if the vakeel is cast, his principal is cast also. In a cause where the accusation is for murder, for a robbery, for adultery, for eating prohibited food, for false abuse, for thrusting a finger into the pudendum of an unmarried virgin, for false witness, or for destroying anything, the property of a magistrate, a vakeel must not be appointed to plead and answer in such cases; the principals shall plead and answer in person; but a woman, a minor, an idiot [sic], and he who cannot distinguish between good and evil for himself, may, even in such causes as these, constitute a vakeel.

Except the brother, father and son of the plaintiff and defendant, if any other person, at the time of trial, should abet, and speak for either party, the magistrate shall exact a fine from him: if a brother, a father, a son, or a vakeel, should assist, and speak for either party, it is allowed.

As we shall see below, this passage comprises most of the ancient rules connected with representation in court. If the English version gave a faithful rendering of the original Sanskrit, little doubt would remain that the present day vakil had his counterpart in ancient India. The answer to this question must, however, be left open at the moment. The only point we want to stress here is this: from the first translated Sanskrit text onward, scholars were confronted with a picture according to which ancient Hindu law had a system of pleaders similar to the one they were so familiar with in contemporary India. Such an eminent authority as Julius Jolly went one-step further, and drew a conclusion, which under the circumstances was perfectly logical: "Instead of appearing in person, each party has a right to be represented at the trial; thus, even today the vakils, i. e., advocates,

constitute an unusually numerous professional group in India.[1]"

In other words, **Jolly** interpreted the particular attraction on the part of contemporary Indians to the legal profession as the natural outcome of a factor that had its root deep in ancient Indian tradition. In his opinion, the legal profession in ancient India was an important one, and one that attracted many recruits. In his classical treatise on **Hindu Law and Custom** Jolly does not refer to lawyers explicitly. At least one passage of the book, and several statements elsewhere (especially in his translations quoted below) clearly suggest that Jolly firmly believed in the existence of a legal profession in ancient India. Nothing was more natural than that the ideas of the greatest European specialist on Hindu law were drawn upon by other legal historians who had no direct access to the Sanskrit sources and who used Jolly as their main authority. As a result, Jolly's opinion found its way into other Western publications dealing with Hindu law. The existence of legal practitioners in ancient India has also been maintained, quite independently of Jolly, by Indian scholars.

According to **K. P. Jayaswal**, for instance, professional lawyers existed at least from the time of the Manusmrti and perhaps even earlier:

Manu, VIII. 169, shows that professional lawyers were already in exist-ence in the time of the Manava Code. The verse says that the people who suffer for the sake of others are witnesses, sureties and the judges, but that those who are benefited by legislation, are the king ("who gets court-fees"), the creditor ("who gets his decree"), the merchant ("the speculator who supplies money for defence to the defendant and acquires his property in return"), and the Brahmin. This Brahmin is the Brahmin who advised each party on law . . . The definition of vidya-dhana, with its history going back to the Dharmasutras, presupposes the existence of the profession much earlier.

The viewpoint of the Indian dean of dharmasastra is completely different. Concerning the legal profession in ancient times, **P. V. Kane** says:

An interesting question arises whether lawyers as an institution existed in ancient India. The answer must be that, as far as the *Smritis* are concerned, there is nothing to show that any class of persons whose profession was the same as that of modem counsel, solicitors or legal practitioners and who were regulated by the State existed.

However, **Kane** too admits that, "This does not preclude the idea that persons well-versed in the law of the *smritis* and the procedure of the courts were appointed (*niyukta*) to represent a party and place his case before the court."

[1] J. JOLLYH, INDUL AWA NDC USTOM29 9 (B. K. Ghosh transl. 1928).

His reasons for this restriction are mainly three.

1. First, from a story narrated in **Asahaya's commentary** on the **Naradasmrti (1.4)** "*it appears that persons who had studied the smritis helped parties in return for a monetary consideration to raise contentions before the court.*"
2. Next, there are "some important rules" in the **Sukranitisara,** and
3. To these two arguments directly derived from the texts, is then added a general consideration: "*The procedure prescribed by* ***Narada, Brihaspati and Katyayana*** *reaches a very high level of technicalities and skilled help must often have been required in litigation.*"

An equally cautious opinion has been voiced by **U. C. Sarkar** that,

There is no sufficient indication that at the time of the Smritis there was any legal profession in the modern sense of the term. Persons versed in the science of law could give their opinion for the consideration of the king and his councillors. The system was perhaps most analogous to the Responsa Prudentium of the early Romans. The opinions of the legal experts also were not binding on the king. They had no other part to play except giving their opinion.

Others were even much more outspoken. Thus, in **P. Varadachariar's** opinion:

"It is not possible to say anything as to the existence of a legal profession in Ancient India." The same author makes it a point to reject Jayaswal's above-mentioned statement according to which the **Brahman referred to in Manusmrti 8.169** is "*the Brahmin who advised each party on law*":

Mr. Jayaswal thinks that professional lawyers ought to have existed from the days of Manu or at least from the first century A. D. I find it difficult to interpret the reference to Vipra in ***Manu VIII, 169****, as a reference to a "Lawyer Brahmin." The commentaries on this verse lend no support to such a reading.*

The quoted opinion about the legal profession in ancient India at some length, mainly to show the degree of confusion to which the problem has led. Various authors working on an identical set of data have been able to draw from them a number of apparently contradictory conclusions.

Nothing could be more characteristic in this respect than two passages from an issue of the **Madras Law Journal**. At the yearly "***Vakils' Gathering,"*** held in Madras on **April 17, 1909**, the Advocate General had this to say:

The origin of the English Bar is shrouded in the remotest antiquity. It has been traced as far back as Edward I. Turning to the History of India, whether ancient or medieval, you find no glimpses of the existence of the legal profession. For the sake of curiosity, I looked into some of our sacred books. While you find an abundance of rules about causes of

action, pleadings, plaints, written statements, burden of proof, rules of trial and judgment, you find no mention whatever of arguments of Counsel.

However, in a discussion of the Advocate General's address an anonymous author makes the following statement:

In this, the learned Advocate General would seem to have fallen into an error, and notwithstanding his statement that he had looked into the Sanskrit books and arrived at that conclusion, we should think there is express authority in the Sanskrit books the other way. The following passages from the **Sukranitisara** would clearly show that the Vakils were not unknown in ancient or medieval India, as the Advocate-General would seem to think.

THE TEXUAL DATA

NARADA:

A first point to be noted is that representation in a law court is not referred to before the **Naradasmirti**. Truly enough, the earlier texts on Dharmasastra are not very explicit with regard to law in general and legal procedure in particular. This absence of explicit data allows of a twofold interpretation. Either representation did exist from an earlier time, but Narada was the first one to mention the institution explicitly, or representation did not exist before Narada. We prefer not to go beyond presenting the alternatives. Tentatively, in view of the silence of Manu (like Varadachariar, we cannot follow Jayaswal's interpretation of Manu 8. 169) and of Yajnavalkya we lean slightly toward the latter alternative.

In the **Naradasmrti** we are faced with two slokas which definitely refer to representation in the court. The first verse **(Introduction 2.22)** is as follows:

arthina samniyukto va pratyarthiprahito 'pi va

yo na bhrata na ca pita na putro na niyogakrt

In Jolly's translation, this means:

If one deputed by the claimant, or chosen as his representative by the defendant, speaks for his client in court, the victory or defeat concerns the party [himself and not the representative][2].

This is another piece of evidence of Jolly's belief in the existence of a class of lawyers. The words "for his client" are nowhere present in the Sanskrit text; literally the latter says: "for somebody" or "for him," referring thereby to the claimant and the defendant.

On the other hand, it is clear that reference is made in the text to two persons who carry on litigation for two other persons, the decision binding the latter and not the former:

1. One who is samniyukta by the plaintiff, and

[2] J. JOLLYT, HE MINORL AWBOOK2S9 (Sacred Books of the East 33, 1889).

2. One who is prahita by the defendant.

Both terms are clear without being precise; they refer to persons "appointed," "proposed" by either party.

The second stanza of **Narada (Introduction 2.23)** is this:

yo na bhrata na ca pita naputro na niyogakrt

pararthavadi dandyah syad vyavaharesu vibruvan.

Jolly translates:

He deserves punishment who speaks in behalf of another, without being either the brother, the father, the son, or the appointed agent; and so does he who contradicts himself at the trial[3].

As in the preceding verse-*yo yasyarthe vivadate*-here too, reference is made to "somebody stating the affair of another" or "somebody speaking for another" (*pararthavadin).*

Moreover, among the eventual *parartha-vadins* figure: the father, the son, the brother, and the niyogakrt. The latter especially is important for our purpose. Jolly, in the light of his idea referred to above, translates: "the appointed agent." We do not dare to go so far, but we do notice that *niyogakrt* ("he who performs *niyoga*") derives from the same verbal root preceded by the same pre-verb which we already met with in the preceding *sloka:*

there it was samniyukta, here it is niyogakrt. The only, but important, conclusion to be drawn from this is that, according to Narada, a party could give to another person a niyoga ("appointment") to speak for him in the court.

Unfortunately, nothing allows us to draw any more specific con-clusions. Both verses apparently go together and deal with the same topic, but they have no contextual relation either with the preceding or with the following slokas.

We would venture to say, with **S. Varadachariar**, about the first verse:

"*Such a declaration would be uncalled for if the passages were to refer to a professional class whose profession itself was to represent others."*

In any case the verse then indicates that there are **two classes of "persons speaking for somebody else,"** those explicitly enumerated and all others;

1. The former may make false statements in the court without being punished, the others may not.
2. In the second place, it is also possible that the *preverb vi* does not change the meaning of *bruvan; vibruvan* then simply means "speaking." In that case the verse prescribes punishment for anybody who speaks in lieu of a party

[3] *Id.*

to a lawsuit, except for the brother, father, son, and *niyogakrt*.

BRHASPATI:

The **Brhaspatismrti (1.142)** in its turn contains at least one sloka connected with representation:

apragalbhajadonmattavrddhastribalaroginam

purvottaram vaded bandhur niyukto 'nyo 'nyatha narah

Jolly translates:

For one timorous, or idiotic, or mad, or overaged, and for women, boys, and sick persons, a kinsman or appointed agent should proffer the plaint or answer [as his representative][4].

Again Jolly uses the term "appointed agent," this time to render the Sanskrit term ***niyukta.*** We on our side merely notice the use of niyukta, a variant form for Narada's samniyukta and niyogakrt. Brhaspati's stanza raises, however, a number of *questions which are important* if one wants to understand what he meant by niyukta.

1. First, Jolly's translation omits one word from the Sanskrit text: *'nyo ("other").* Since we no longer have access to the original context, we cannot a priori reject either of the following interpretations:
    1. a kinsman, or another man who is *niyukta*, i. e., either a kinsman or somebody who is not a kinsman but a *niyukta*;
    2. a kinsman or another *niyukta*, i.e., anybody who had been *niyukta* by the party.

    In the former alternative *niyukta* might eventually refer to a specific class of representatives; in the latter alternative it could mean no more than "designated" generally.

2. A second problem raised by Brhaspati's text is connected with a variant reading found in the Vyavaharacintamani (no.74 of our edition) and in the Viramitrodaya on Yajnavalkyasmrti 2. 6.

Here the second line reads:

purvottaram vadet tadvad aniyukto 'thava narah.

That means: "In the same way even a person who has not been deputed may speak first or last for "In this case too, *aniyukta*-and, for that matter, *niyukta*-comes closer to the general "designated" than to the technical meaning of an "appointed agent."

KATYAYANA:

Of all dharmasastras, the **Katyayanasmrti** seems to have been most prolific in

[4] JOLLYs, upra note 11, at 288.

connection with representation. **P. V. Kanel**[5] collected no less than seven slokas on the subject; in his translationl[6] he arranged them under the title "**Substitutes or recognised agents of parties**." The first two distichs **(Katyayana 89-90)** are as follows:

samarpito 'rthina yo 'nyah paro dharmadhikarini

prativadi sa vijneyah pratipannas ca yah svayam.

adhikaro 'bhiyuktasya netarasyasty asamgateh

itaro 'py abhiyuktenap ratirodhikrtom atah.

Kane translates:

A person though other [than the defendant,] if put forward by the defendant before the judge [as defendant] should be regarded as the defendant and he also who is accepted [by the plaintiff] himself [as the defendant]. It is the right of the person charged [to give a reply] and not of another person, since the latter is unconnected [with the dispute]; [but] even a stranger may be allowed [to have the right to defend] if he is put for-ward [as the defendant] by the person charged [by the plaintiff].

These verses, the original of which is lost, present a number of variant readings in the later commentaries in which they have been quoted. Several Sanskrit words are problematic and might be given different translations from those proposed by Kane.

We must, however, remark that the words "a stranger" used by Kane are definitely too precise and too strong; the Sanskrit words *itaro 'pi* say nothing more than "even another person" without any further specification.

Katyayana 91 does not present any new problem: it corresponds word for word with **Narada (Introduction 2.22).**

In view of **Varada-chariar's** remarks quoted above, we can hardly agree with Kane's statement that "this verse contains the germs of the modern profession of pleaders."

Katyayana 92 reads as follows:

dasah karmakarah sisya niyukta bandhavas tatha

vadino na ca dandyah syuh yas tv ato 'nyah sa dandabhak,

i.e., in **Kane's** translation: Slaves, menials, pupils, persons deputed, and relatives, these should not be punished when they speak [on behalf of another, their master, etc.]; anyone other than these [if meddling in litigation] deserves punishment.

Here we have a clear enumeration of those who may represent a party:

1. *dasah*,
2. *karmakarah*,
3. *sisyah,*
4. *niyuktah*, and
5. *band-havah.*

Thus, a *niyukta* is a specific kind of representative (*vadin or prativadin*), along with

[5] P. V. KANE,K ATYAYANASMROTNI V YAVAHAR(Ala w and procedure) 14-15 (1933).

[6] Id. at 133-34.

slaves, menials, pupils, and relatives; all others are excluded.

Katyayana 93-95 deal with the same subject

brahmahatyasurapanasteyagurvanganagame

anyesu catipapesu prativadi na diyate;

manusyamarane steye paradarabhimarsane

abhaksyabhaksane caiva kanyaharanadusane

parusye kutakarane nrpadrohe tathaiva ca

prativadi na datavyah karta tu vivadet svayam.

Kane's translation is as follows:

A representative [of plaintiff or defendant] is not allowed in [charges of] brahmana murder, drinking wine, theft, sexual intercourse with the wife of an elder [incest] and in other grave sins. A representative should not be given in man slaughter, theft, indecent assault on another's wife, eating forbidden food, kidnapping of a maiden and intercourse with her, harsh-ness . . ., counterfeiting coins and measures, and also in sedition; but the man himself [the plaintiff or defendant] should engage in the dispute.

The interesting point here is that all representatives (*prativadin*), i.e., including the *niyukta*, are excluded in a number of specific lawsuits.

VYASA:

One of **Vyasa's slokas** comes very close to the one by **Brhaspati** quoted above:

kulastribalakonmattajadartanam ca bandhavah

purvapaksottare bruyur niyukto bhrtakas tatha.

Although this stanza does not seem to have been particularly popular with the commentators (it occurs only in few medieval compilations), it provides us with a new element: the payment of the representative.

Unfortunately, again two interpretations are possible.

1. The representatives "who may speak up for women of good family, children, madmen, idiots, and disturbed persons, concerning the plaint and the defense," are either *bandhava* ("a relative"), *niyukta* whom we have met with above, and *bhrtaka* ("a person receiving a remuneration"), or *bandhava* ("a relative"), and *niyukto bhrtaka* ("an appointed person who receives a remuneration").
2. In the latter case the relative, who is unpaid, is opposed to the *niyukta* who earns a salary. In our view the more faithful interpretation is: a relative, a *niyukta*, and a *bhrtaka*. In that case we do not learn anything new about the *niyukta,* and about the term *bhrtaka* we can merely say that it is connected with *bhrti* ("salary").

PITAMAHA:

pita mata suhrd vapi bandhuh sambandhino 'pi va

yadi kuryur upasthanam vadam tatra pravartayet;

yah kascit karayet kimcid niyogad yena kenacit

tat tenaiva krtam jneyam anivartyam hi tat smrtam,

Which were thus interpreted by **Scriba**:

The king should conduct a lawsuit when the father, the mother, a friend, a relative, or a servant appear [as representatives]. Whenever somebody appoints another person to act in his behalf, it is as if the act was done by himself, and it cannot be annulled. [7]

The first *sloka* is unambiguous: the king should allow a party to be represented by his father, mother, friend, or relative. However, the second stanza, following the first, again allows various interpretations. Either it means that any one of those referred to before, when acting through *niyoga*, acts in the other person's name. On the other hand, it indicates that anybody speaking for anybody else through niyoga is his real representative. In that case, *niyoga* does not refer to an "appointment" given to a specific class of representatives, but it suggests that anybody can be anybody's *niyukta*.

COMMENTARIES AND NIBANDHAS:

Pitamaha's verses conclude our survey of the available materials on representation as far as the ancient dharmasastras are concerned. To these we might now add the medieval materials drawn from the commentaries and *nibandhas*. However, after a careful examination of the Sanskrit texts, we decided not to include these materials, since they do not add any really new data to those already discussed. None of the commentaries or *nibandhas* quotes all relevant passages from the older treatises. Even those that cite most of them try to adapt them into a coherent system, a task that was not easy and that led to highly varied results. Inasmuch as we have tried to provide all possible interpretations for the dharmasastra passages we are confident that we have included all interpretations proposed by the commentators. The latter would be important for our purpose only if they showed a definite development in one direction or another, e.g., in the direction of gradual recognition of real lawyers. This is not the case; here as elsewhere the commentators did not aim at introducing any novelties. Their sole purpose was a correct interpretation of the ancient texts as such.

ARTHASHASTRA:

Kautilya has no reference at all to representation in the court. The only text which is partly relevant is this **(3.20.22):**

devabrahmanatapasvistribalavrddhavyadhitanam anathanam

[7] K. SCRIBAD, IE FRAGMENTDEE SP ITAMAHAT. EXTU NDU EBERSETZUN(1G90 2).

anabhisaratam dharmasthah karyani kuryuh,

i.e., in **R. P. Kangle's** translation:

The judges themselves shall look into the affairs of gods, Brahmins, ascetics, women, minors, old persons, sick persons, who are helpless, when these do not approach [the court].[8]

The situation is completely different in the **Sukranitisara**. Here we are provided with a long passage dealing with representation in the court. In G. Oppert's edition (Madras 1882) the text runs as follows:

vyavaharanabhijnena hy anyakaryakulena ca

pratyarthinarthinata jjnah karyahp ratinidhist ada.

(4.5.108)

apragalbhajadonmattavrddhastribalaroginam

purvottaram vaded bandhur niyukto vathava narah.

(109)

pita mata suhrd bandhur bhrata sambandhino 'pi va

yadi kuryur upasthanam vadam tatra pravartayet;

(110)

yah kascit karayet kimcin niyogad yena kenacit

tat tenaiva krtam jneyam anivaryam hi tat smrtam.

(111)

niyogitasyapi bhrtim vivadat sodasamsikim v

imsatyamsam tadardham va tadardham ca tadardhikam; ***(112)***

yatha dravyadhikam karyam hina hina bhrtis tatha

yadi bahuniyogi syad anyatha tasya posanam; ***(113)***

dharmaino vyavaharaino niyoktavyo 'nyatha na hi

anyatha bhrtigrhnantamd andayec ca niyoginam.

(114)

karyo nityo niyogi na nrpena svamanisaya

lobhena tv anyatha kurvan niyogi dandam arhati.

(115)

yo na bhrata na ca pita na putro na niyogakrt

pararthavadi dandyas syad vyavaharesu vibruvan.

(116)

manusyamarane steye paradarabhimarsane

*abhaksyabhaksanec aiva kanyaharanadusane**;(***

119)

parusye kutakarane nrpadrohe ca sahase

pratinidhir na datavyah karta tu vivadet svayam.

(120)

B. K. Sarkar's translation of verse 108 reads:

Representatives have to be appointed by the plaintiff and defendant who do not know the legal procedure or who are busy with other affairs. [9]

One important word in the text remains untranslated: the representative should be *taijna* ('knowing it"). It is tempting to have *taj* ("it") refer to *vyavahara* ("legal procedure") in the first line, and to say that whenever a party is not an expert on legal procedure he should

[8] R. P. KANGLE, THE KAUTILYAA RTHASASTRAP, ARTI I 293 (1963).

[9] B. K. SARKAR, THE SUKRANIT(IS acred Books of the Hindus 13, 1914).

be represented by a person who is an expert on such matters. If this is the case, the verse comes very close to describing a class of professional lawyers.

Sarkar himself must have had this in mind when he added the following note to his translation: "Pleaders and lawyers are to represent such persons and state their cases as their own." However, we cannot accept that *taj* refers to *vyavahara*.

From verse 118, in which a son is to be accepted as a representative of his father on the condition that he is *tajjna* ("knowing it"), it is clear that *tajjna* means "'knowing the circumstances of the case." In other words, the representative, to be acceptable, must have known the party whom he represents intimately enough to be fully aware of the circumstances in which the contested activities took place.

Verses 109, 110 and 111 bring nothing new; apart from a few insignificant variant readings, they are identical with the passages from Brhaspati and Pitamaha quoted above. Much more important are the following four verses (112-115).

This is **Sarkar's** translation:

The lawyer's fee is one-sixteenth of the interests involved (i.e., the value defended or realised). On the other hand, the fee is one-twentieth or one-fortieth, or one-eightieth or one hundred and sixtieth portion, etc. Fees ought to be small in proportion as the amount of value or interest under trial increases. If there be many men who are appointed as pleaders in combination they are to be paid according to some other way. Only the man who knows the law and knows the Dharma should be appointed [as pleader]. The king should punish the pleader who receives fees otherwise. The pleader is to be appointed not at the will of the king. If the pleader acts otherwise through greed he deserves punishment.

The only problem in these verses is the expression "who receives fees otherwise" in 114. Sarkar duly states the two possibilities in a note to this translation: "He may be punished if he takes exorbitantly or if he practices without knowing the law, etc." After what has been said in the former half of the stanza, we would be inclined toward the second alternative, with Kane: "if the representative takes wages without knowing these."

However, the first alternative should not be excluded either: if 112cd-114ab are more recent insertion into the text, the latter part of 114 originally belonged together with the former part of 112. In that case "otherwise" means: "otherwise than one sixtieth part."

Verse 116 is identical with Narada's Introduction 2.23, and verses 119 and 120 correspond to Katyayana 94-95.

Besides the points which we had become familiar with from the dharmasastras, we do find in the **Sukranitisara** a number of new and interesting elements:

1. Representatives are appointed by parties who are *vyavaharanabhijna* ("who do not know the rules of legal procedure");
2. The payment of the *niyojita* or *niyogin* is dealt with in great detail;
3. The *niyogin* is to be appointed by the party, not by the king.

CONCLUSION

As indicated at the outset, the principal reason for raising the question of the existence of lawyers in ancient India was the awareness of the existence of such a professional class in modern Indian law, and in Western law as well. Consciously or unconsciously, the general background of the investigations on ancient Hindu lawyers as of many other aspects of research on Hindu law-has been one of defensiveness. Was it possible that such a wonderful legal system as the one depicted by dharmasastra did not include the institution of legal practitioners?

An excellent example of this tendency to look for "the gems of the modem profession of pleaders" is **P. V. Kane** who, notwithstanding his admirably sound approach, when translating **Katyayana 91**, could not withhold from adding the note cited above.

Even **Judge S. Varadachariar**, who completely denies the existence of a legal profession in ancient India, unwittingly takes up the defense of Hindu law. He cites examples of various other ancient legal systems that did not know a legal profession either.

In our opinion, the ancient Hindu legal system was such that a legal profession not only did not exist, but that it was not called for and hardly could have existed. The reasons that led us to assume that a legal profession did not exist in ancient India are at least three in number.

1. First, the only term which might eventually have referred to professional lawyers was *niyogin, niyukta, or niyogakrt*. We are not much concerned about the fact that there is no uniformity of nomenclature. There are other examples of well established institutions in ancient Hindu law which did not enjoy a uniform terminology. But we are concerned about the fact that **not a single text on dharma pays any special attention to the *niyukta* as such**. If he had been an important and constant element of the law court, we may be assured that some dharmasastra would have elaborated on the qualifications to become a *niyukta* -e.g., under the heading *niyuktaguna*- and on the

disqualifications which would have prevented a person from entering the profession.

All participants in a lawsuit have been duly enumerated and described in the texts; the authors of the dharmasastras would have fallen short of their duty if they had not paid attention to one of these participants, the "lawyer."

2. Secondly, if the main purpose of *niyoga* had been a more effective presentation of the party's interests than he could normally provide himself, we do not see why *niyoga* was so fiercely opposed in what we may call major criminal cases.

Katyayana's three slokas (93-95) which deal with this aspect of the problem seem to indicate that, when it came to really serious cases, *niyoga* was prohibited. From this we must infer that ***niyoga* was allowed only as long as the case was a less serious one.**

Whenever a party was unable or unwilling to appear in person, he was allowed to be represented by another person in minor cases; but he had to appear personally in major issues. Such a criterion is hardly compatible with the role of a professional legal adviser as we conceive it today.

3. This second argument leads us to a third, namely**, the existence of a class of professional representatives was not called for in Hindu law.** This argument is undoubtedly the most important and most basic one. Administration of justice in ancient India was the concern of the king; it was part of *rajadharma.* Several rules in the dharmasastras lay down that the king is responsible for punishing those who deserve to be punished. But it is added that the king is also responsible for the innocent not to be punished.

So, as we see it, professional lawyers did not exist and could hardly have existed.

To this, we now want to add a restriction. As it so often happens in ancient Hindu law and in Hindu civilization generally, in the case of legal representation too, a certain degree of development must have taken place in the course of the centuries. The Indian sage in those days was a specialist in all of the texts related to a particular Vedic school. His specialized knowledge concentrated on a specific version of the Vedic *samhita* and all its related texts: *brahmana, aranyaka, upanisad, srautasutra, grhyasutra, dharmasutra*, etc. There were no specialists on dharmasastra, and, a fortiori, no specialists on law that were part of it. However, the situation changed. The texts on dharma grew away from the Vedic schools. Gradually there may have come into being a specialized group of learned men whose main interest was dharma, and the various dharmasastras such.

Finally, as the amount of textual material increased, we may assume that certain experts, without detaching themselves completely from other aspects of dharmasastra and from Hindu learning generally, accumulated a very specialized knowledge of one aspect of dharma: *vivada* and *vyavahara*, or, in modern terminology, law. It is very possible that at this stage the nature of legal representation (*niyoga)* also underwent a certain change. We do not want to exclude the possibility that, at that moment, in a number of cases legal competence played a role in the choice of a representative.

We are even willing to accept that **Vyasa** refers to the very special circumstance in which the representative was paid for his services. However, no written source allows us to draw the conclusion that the experts on legal matters ever developed into a professional group whose regular activities consisted in representing parties in the court. The impression, which we gather from the texts, is that, even in cases where the representative was chosen because of his special competence on legal matters, and, a fortiori, in all other cases, the necessary condition for a person to represent a party was the existence, between the former and the latter, of a certain form of close personal relationship. In this connection we want again to refer to the categories of *niyukta* enumerated by **Narada (Introduction 2. 23):** brother, father, son, and by **Katyayana (92):** slaves, menials, pupils, etc.

Some of these terms were vague enough to be interpreted very broadly, and we can very well see how a party who wanted to be represented in the court may have tried to fit into these categories a person who knew the dharma rather than one who did not. But the main requisite was the personal relationship stressed by the dharmasatras, not the representative's legal competence.

Here again, it is true that the representative, *Smartadurdhara*, is said to be an expert on dharma, but nothing points to him as a professional lawyer. On the contrary, he is a friend of the family, and, as such, serves as their adviser. He does represent the party in court, but only after having assured the judge that he is entitled to do so because "he and his ancestors were friends of the family." In other words, he does not act as a professional expert *(vyavaharaina)* but as a personal friend *(suhrd);* the fact that the *suhrd* is *vyavaharaina* is purely coincidental. Finally, our interpretation is also confirmed by the above quoted passage from the **Sukranitisara,** about which we want to add a few words here. There is no doubt that, of all sources examined, the **Sukranitisara** is the one, which most strongly reminds us of the modern legal profession.

The main support for this statement is the detailed description of the representative's

remuneration (verses 112-114). However, it has been so far overlooked that at least part of these verses (112cd-114ab), although reproduced in Oppert's edition, actually occurred in one manu-script only; they were missing in all four other manuscripts and in the printed version used by Oppert. We would not hesitate to consider them as a very recent addition to the original text. As a matter of fact, the entire **Sukranitisara,** as we have it today, is of recent origin. It seems to us that it is a recent compilation, based upon a number of ancient rules-some of the verses are simply identical with those quoted from the dharmasastras -but into which were inserted certain very modern ideas, even ideas belonging to the colonial period. We would not be surprised if the rules about the representative's remuneration belonged to this latter category.

Under the circumstances it is all the more noteworthy, as **Varadachariar** puts it, *"that it provides for the appointment of a 'representative' not only on the ground of the party's ignorance of Vyavahara but also on the ground of his being otherwise busy."* Thus, even such a very recent text as the Sukranitisara, which seems to have known a real professional class of lawyers and does not hesitate to incorporate it into the classical system of dharmasastra, does not exclude the idea that the legal representative and the person represented by him should be linked by a personal tie of blood relationship, friendship, etc. This, more than anything else, shows that this traditional element was a very important one, probably the most important of all in legal representation according to classical Hindu law**.**