

DHARMA: THE SOUL OF HINDU JURISPRUDENCE

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Abstract

When we talk about jurisprudence, we tend to remember only Western philosophers, jurists and schools of jurisprudence. On the other hand, our indigenous philosophers, jurists and schools remain untouched and unknown. Dharma has been associated with varied meanings today. The original meaning of the term is 'duty'. The entire Hindu jurisprudence relies on this one word and its varied meanings. The paper tends to explore and educate the students on the ancient Hindu philosophies associated with jurisprudence. It is also surprising to find that the various schools of jurisprudence, which we study today, were already a part of ancient Hindu jurisprudence. The paper sheds light on the ancient practice of law and duty by different philosophers. The resting ground of law being equivalent to morality.

Keywords: Dharma, Hindu, Jurisprudence, Morality and law, Legal philosophers, Schools of law

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INTRODUCTION

“*Dharmo Rakshati Rakshitah*”¹

*Who shelters and defends the law, the law defends
and shelters.*

In India, the development of jurisprudence and legal theory owes much to the ancient Hindu legal thinkers and legal philosophers. There have been great Indian jurists such as Narada, Jaimini, Yagnavalkya, Manu, Kautilya, Gautama etc. These legal thinkers founded and developed their own system of law and jurisprudence on sound principles of reasoning and human welfare, which excels in many aspects with other ancient legal systems.

The Hindu jurisprudence is rooted in Hindu religion and custom. It is based on religious precepts and rituals. The fundamental truths of Hinduism are *Brahma* (God), *Dharma* (righteousness, the path which is in conformity with man's inner and true nature and leads him on to salvation in his own unique, though also subtly universal way) and *Karma* (act accumulating merit or demerit according to the test of Dharma).

Man has to do *Karma*, and go along the path of *Dharma* and attain Brahma. This attainment (or the ultimate goal of a man's life) is called *Moksha* (Salvation or liberation from the cycle of death and birth and all of the suffering and limitation of worldly

existence). Naturally, till he attains *Brahma* or *Moksha* he is governed by *Dharmasastras*, or laws which seek to guide him in his *Karma* so that it may accord with *Dharma* and lead him on to *Moksha* or *Brahma*. Inference can be drawn that the sources of *Dharma* or law can never be man made or king made law, but should be something eternal, unalterable and all embracing as far as such sources can be gotten by moral men.

As *Brahma* is the author and regulator of *Dharma*, his words, the *Vedas* (religious literatures containing holy or sacred eternal knowledge) are the supreme foundations of law and its ultimate source. The *Dharma* is that which is ordained by *Vedas*. *Dharma* may be said to **include three things – religion, duty and inseparable quality of a thing or order.**

THE LEGAL SYSTEM IN PRE-COLONIAL INDIA

Before the advent of British rule in India, the legal system mainly embodied customary, moral cum religious rules as ordained in the ancient Hindu religious texts called the '*Dharmashastras*'. The source of Hindu philosophy or the 'beliefs, values, thinking and way of life' of people living in India has its roots in the revelation of the deity, the revelation itself being the outcome of divine reason. This divine reason is not arbitrary.

¹ Verse XV, Chapter XVIII, Manu Smriti

Law is discoverable by reason, because the will of God and human reason coincide. Earlier, the philosophical knowledge was compiled by the great sages or '*rishis*' who were also repositories of the revelation. Later on, these religious teachings were written and compiled in the form of texts by the sages. The primary source or the bases of these texts were '*sruti*' literally meaning, 'that which is heard', and '*smriti*' literally meaning 'that which is remembered'.

The Vedas are the supreme foundations of law and its ultimate source. The *Dharma* is that which is ordained by the *Vedas*. The Dharmasastras were the treatises on religious and legal duty written in Sanskrit language. All Dharmasastras derives its authority with reference to the Vedas, though few, if any, of the contents of most Dharmasastra text can be directly linked with extant Vedic texts.

The voluminous textual corpus of Dharmasastra was taken by early British colonial administrators to be the law of the land for Hindus in India. Ever since, Dharmasastra has been linked with Hindu Law, despite the fact that, its contents deal as much more with religious life as with law. In fact, a separation of religion and law within Dharmasastra is artificial and has been repeatedly questioned.

Dharmasastra is important within the Hindu tradition –

First as a source of religious law describing the life of an ideal householder and

Second, as a symbol of the summation of Hindu knowledge about religion, law, ethics etc. The British however, mistook the Dharmasastras as codes of law and failed to recognize that these Sanskrit texts were not used as statements of positive law until they chose to do so. Rather Dharmasastras contains what may be called jurisprudence, i.e. a theoretical reflection upon practical law, but not a statement of law of the land as such.

DHARMA: MEANING

The word Dharma is clearly derived from the root '*Dhr*' (Sanskrit Language) which denotes 'upholding, supporting, nourishing and sustaining'. The Sanskrit term *Dharma* signifies the underlying order in nature and human life and behavior considered to be in accord with that order. Ethically, it means 'right way of living' or 'proper conduct', especially in religious sense. With respect to spirituality, Dharma might be considered 'the way of the higher truths'.

Dharma is the central concept in religions and philosophies originating in India. Common translation and glossary include right way of living, divine law, path of righteousness, order, faith, natural harmony, rule, fundamental teachings and duty. Dharma may be used to refer to rules of the operation of the mind or the universe in a

metaphysical system or to rules of comportment in an ethical system.

Dharma explained according to various Religious texts and Jurists

Dharma and law are not the same. Dharma refers to a wider range of human activities than law in the usual sense and concerns both religious and legal duties.

The *Karna Parva* of the *Mahabharatha* (a religious epic) - verse 58 in chapter 69 says “*Dharma is for the stability of the society, the maintenance of social order and the general well being and progress of humankind. Whatever conduces to the fulfillment of these objects is Dharma*”.

The *Brihadaranyakopnishad* (a religious text which is part of Vedas) identified Dharma with truth and declared its supreme status. It says –

“*There is nothing higher than Dharma. Even a very weak man hopes to prevail over a very strong man on the strength of Dharma just as (he prevails over the wrongdoer) with the help of the King. So what is called Dharma is really truth. Therefore people say about a man who declares the truth that he is declaring Dharma and about one who declares Dharma they say he speaks truth.*”

Focusing on aspects of Dharma, **Kautilya**(a Jurist) in his *Arthashastra* (a book) has indicated it as – “*the basis for securing and preserving power over the earth.*”.

The *Bhagwad Gita's* (a religious epic) reference to the essential aspect of ancient Hindu

thought concerning law was, the clear recognition of the supremacy of Dharma and the clear articulation of the statutes of Dharma; somewhat in terms of the modern concept of the Rule of Law .i.e. of all being sustained and regulated by it.

THE CONCEPT OF DHARMA

According to Hindu scriptures, Dharma stands for “religious rights, fixed principles of rules of conduct and the whole body of religious duties.”

The English writers in their attempt to give a precise and accepted definition have stated that Dharma includes religious, moral, social and legal duties and can only be defined by its contents. In the ancient legal system of India, Dharma and law were synonymous terms because the latter essentially constituted a part of the former.

According to **Jaimini** (a jurist) Dharma is founded on revelation which is conducive to the welfare of the society.

According to *Manu Smriti* (a religious text) conduct is the basis of Dharma and ‘it is not what you think, but what you do that constitutes your Dharma. In ordinary sense Dharma is taken to be synonymous with religion though in fact it has a much wider import. Religion and law are only the facets of Dharma. Thus, the term Dharma also embodies the present notion of law.

In the widest sense, Dharma suggests all-pervading rules or order that upholds the universe. This inexorable and unalterable order makes the universe what it is. Thus, Dharma is much broader than what law connotes and is used in various other senses such as conduct, right, duty and functions of the legal order. The fundamental principle underlying Dharma is uniformity or regularity of order, which is universally accepted.

From the point of view of a common man the term Dharma may be said to include three things, namely – religion, duty, and inseparable quality of a thing or order.

In the absence of a better expression, Dharma has been translated as religion in English language. In strict sense of the word ‘religion’ may be said to be obedience to the law of God. In a second sense Dharma stands for *Kartavya* (duty).

For example – *Rajdharm* (duty of ruler), *Grabstha dharm* (duty of a family man), *Nari dharm* (duty of a woman) and so on.

A man devoid of a sense of Dharma or duty is a veritable beast because it is the rationality in a man which distinguishes him from other animals. In all other matters such as food, sleep, fear, sex, etc. he is identical with a beast except that he has been endowed with power to think and distinguish between good and bad.

In the third sense, Dharma connotes essential characteristic features of a thing or object. For example - Dharma of Fire (*Agni*) is to burn anything and everything without discrimination. Similarly, the Dharma of water is to extinguish fire. This is unchangeable and indisputable.

Manu (a Hindu Law commentator) observed, “*Dharma is that which is followed by those learned in Vedas and what is approved by conscience of the virtuous who are free from hatred and inordinate affection.*”

He pointed out that Dharma is a noble feeling born from within the heart, which has approval of virtuous people. However, he stressed that mere noble feeling is meaningless unless it is translated into action. To constitute Dharma, both noble motive and action are required. Manu has described the *fourfold indices of Dharma*, i.e.

- *sruti* (that which is heard),
- *Smriti* (that which is remembered),
- *Sadachar* (good conduct) and,
- That which is pleasing to one’s conscience.

The conduct according to Dharma meant performance of duty towards others and the society in the interest of the community as a whole.

In Manu’s conception of Dharma, we find complete blending of religion, morality and law. It may be stated that the *Sadachar* (good conduct) aspect of Dharma corresponds to

law, which in modern context means a code of conduct, which regulates human behavior and mutual relations of the individuals and with the state.

CONCLUSION

In conclusion, higher moral law over and above the positive law embodying certain values of universal validity like Dharma (righteousness) and Moksha (salvation) were expounded by ancient Indian philosophers and thinkers about five thousand years ago with a view to establish a harmonious social order by striking a balance between the inner and outer spiritual aspects of life. The quest for equilibrium, harmony, knowledge and truth inspired the Indian minds. The major goals of life were to be attained, controlled and regulated according to the dictate and direction of Dharma.

The ethos of the Indian way of life was characterized by an all pervading law called the Dharma. It is the Dharma, which was neither a cult or creed nor a code in the western sense but the right law of life and the true ideal of living and social ordering. It is

this law of Dharma, which is neither static nor rigid nor absolute but relative, dynamic and evolving, always changing according to the needs and development of society.

Thus, Hindus excelled in propounding philosophical ideals and constructing scientific concepts and methods, which have deeply influenced the law and life of the people. The spirit of intellectual inquiry which possessed the Hindu mind led them to question experience, to question the environing world, to question their gods and the tenets and of their traditional faith. They were not hampered by the tyranny of religious dogmas or political authority or even pressure of public opinion. They sought and elaborated the law of Dharma and truth with single-minded devotion rare in the history of thoughts.

The law of Dharma in ancient India made a bold attempt of building an organized social life wherein each individual realized his goals within the parameters of social norms or morality. It is the supreme law, which sustained individuals together in society.