

## INDIGENOUS LEGAL SYSTEMS: A GLIMPSE INTO ANCIENT INDIAN JUSTICE

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**Hemendra Singh Khangarot\***

### ABSTRACT

This manuscript explores the concept of the Legal system in ancient India, the texts and the system through which justice and peace were maintained in the ancient era. The concept of *Dharma* connected with ethical living and cosmic order, Manusmriti's servings as a source of law, Kautilya's view on the king's responsibility and *dharma* as the highest authority, The decentralised approach of the court system characterised by the concept of *dharma*, which emphasised restorative justice and the resolution of disputes through mediation and negotiation with their accessibility to all people, regardless of their social status or caste to maintain social order and justice is described in detail.

**Keywords:** Dharma, Vedas, Papa-Punya, Karma, Manusmriti, Ethics, Upanishads.

### INTRODUCTION

In ancient India, the justice system was guided by the sacred texts of the *Vedas* and the concept of *dharma*, which emphasised moral order and righteousness. Three significant documents shaped the justice system: the concept of *Dharma*, *Manusmriti* the legal text and the *Arthashastra* treatise on governance. The justice system was complex and all-encompassing and its purpose was to uphold righteousness and administer justice in the society.

### Dharma

The word "*dharma*" originated from the Sanskrit language which literally means decree or custom. It is the eternal and inherent nature of reality regarded as cosmic law underlying right behaviour and social order.

*Dharma* is a complex and profound concept that originated from the *Vedas*, the supreme source of knowledge for humans. The *Vedas* are *Sruti* (heard knowledge) meaning they were passed down from ancient priests to their disciples. The *Vedas* contain comprehensive knowledge on

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\*BA LLB, FIRST YEAR, BHARATI VIDYAPEETH (DEEMED TO BE UNIVERSITY) NEW LAW COLLEGE, PUNE.

everything from military to politics to everyday life. It describes *dharma* as anything that is right, just and moral which aims for the welfare of the state and mainly for its people.<sup>1</sup>

*Smriti* or remembered knowledge is another source of *dharma*. *Smriti* texts are interpretations of the *Vedas* and include the *Manusmriti*, *Arthashastra*, and other important legal and philosophical works.

People follow *dharma* because of an idea explained in a verse from the *Brihadaranyaka Upanishad* which is, “*punyo vai punyena karmana bhavati, Papah Papeneti*”, meaning ‘People become good when they do good things and bad when they do bad things’, in other words, ‘every one reaps what he sows’ and *dharma* determines what is considered good and what is bad. *Dharma* is the principle of righteousness.

The importance of *dharma* can be seen in the fact that even the King was not above it, he was guided by *dharma*. If he failed to follow it, the *Dharmashastrakara* gave the right to the public to rebel against an unjust, arbitrary, and unrighteous king or government. The treaties of Manu, Kautilya and others contained many rights and duties of both the king and the public and even recognised individual rights like the right to private property, personal wealth, ethical conduct, etc., which were bound by the law to the interest of society at large.<sup>2</sup>

According to *the Vedas, Upanishads and Gita* “*Dharma with rta or truth is a cosmic principle*” means that the moral code of conduct (*dharma*) is interconnected with the fundamental laws of the universe (*rta*). This means that living a good and ethical life is not only beneficial for individuals and society, but it is also in alignment with the way the universe works.

In *Mimamsa* philosophy, *dharma* is defined as the moral code of conduct to be observed by all human beings in every sphere of their activity and for all times to come.

### **Manusmriti**

The *ManuSmriti* is a Sanskrit legal text that is considered to be one of the most authoritative sources of law for followers of *dharmic* religions. It codifies the principles of *dharma*, which is the moral code of conduct that followers of *dharmic* religions are expected to follow. It

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<sup>1</sup> Shantanu Rathore, ‘Dharma and law’ (lawctopus)

<[www.lawctopus.com/academike/dharma-and-law/#\\_ftn1](http://www.lawctopus.com/academike/dharma-and-law/#_ftn1)> accessed 12 January 2024

<sup>2</sup> *Ibid*

covers a wide range of topics, including social structure, family law, criminal law, Rules to be followed by the king, rituals and religious practices and others. Basically, The *manusmriti* talks about how people live in the world, what life is really like, and how it should be lived.<sup>3</sup>

### **Kinds of dharmas in Manusmriti “*Sapta Dharmas*”:**

***Samanya dharma***: General rules and duties that are almost universal in nature, such as truth, non-violence, and control of the senses. These ethical duties are expected to be practised by a person in life in order to contribute to the building of an enlightened society.

***Raja dharma***: Duties and responsibilities of the king towards his subjects, to ensure justice, peace, welfare and prosperity in the kingdom under his rule. The king is expected to devote his life to the service of the people.

***Stree dharma***: This means *the dharma* of women. It Outlines the duties, responsibilities, and character of women. It describes the idea that women can only achieve salvation through complete devotion to their husbands.

***Dampaty dharma***: Describes The code of conduct that a husband and wife should observe in their married life. Duties of husband and wife towards each other, towards their family and children, and in the larger society.

***Ashrama dharma***: Describes the stages of life and the responsibilities of each stage in the life of man, such as:

- First stage *Brahmacharya* (student life): It is the knowledge-gaining stage of life in which self-control over body desires must be practised.
- Second stage *Grihastha* (householder life): Performance of marriage, raising a family, earning a living and contributions to the community are the responsibilities of a person during this stage of life.
- Third stage *Vanaprastha* (retirement life): The duties of this stage are to detach from worldly goods and material concerns and devote time to quietness, solitude, the study of the religious scriptures and engaging in spiritual activities and meditation.
- Fourth stage *Sannyasa* (renunciate life): This is the final stage of life, it is a stage of detachment from material possessions including family and friends. Sanyasis are

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<sup>3</sup> ‘Manu-smriti’ (Britannica) <[www.britannica.com/topic/Manu-smriti](http://www.britannica.com/topic/Manu-smriti)> accessed 14 January 2024

expected to foster spirituality in others, encouraging them to seek a deeper understanding of the universe and their own place within it.

**Varna dharma:** Defines duties of the different varnas (Brahmins, Kshatriyas, Vaishyas, and Shudras) towards each other in society.

- *Brahmins*- priests, teachers, intellectuals.
- *Kshatriyas*- warriors, kings, administrators.
- *Vaishyas*- agriculturalists, traders, farmers.
- *Shudras*- workers, labourers, artisans.

**Apaddharma:** This means *dharma* appropriate at the time of calamity or duty when in distress. It describes certain specific rules to be followed by individuals when they are caught in a crisis or great critical situation. These could act as guides and help them to overcome or face the distressing situation without sacrificing the *dharma*.

### **Kautilya's Arthashastra**

Kautilya's *Arthashastra* sees law and *dharma* as two closely interconnected concepts. *Dharma* is the ultimate source of all law, and the king is responsible for upholding *dharma* and enforcing the law. Kautilya defined law as "the command of the king." However, he also recognized that the king's law must be consistent with *dharma*. *Dharma* is a complex concept that encompasses a wide range of ethical and moral principles, including justice, truth, and right conduct.

Kautilya prescribed that any matter of dispute shall be judged according to four bases of justice:

1. *Dharma* (sacred law)
2. Evidence (witnesses)
3. Custom (tradition)
4. Royal edicts (law as promulgated)

If different laws clashed, *dharma* was the most important and had the highest authority. The ordering of the other laws was case-specific. The king was the embodiment of virtue and a protector of *dharma*. He was also governed by his *dharma* as any other citizen. If the king did something that went against the accepted idea of *dharma*, groups or individual citizens could question him freely and it is the responsibility of the king to answer.

Kautilya's *Arthashastra* outlines a system of civil, criminal and mercantile law. He codified a wide range of legal concepts, such as a procedure for interrogation, torture, and trial, the rights of the accused, what constitutes permissible evidence, a procedure for autopsy in case of death in suspicious circumstances, what constitutes defamation and procedure for claiming damages, and valid and invalid contracts.

Kautilya's *Arthashastra* is a remarkable work of political and economic thought. His views on law and *dharma* are still relevant today. He emphasised the importance of a just and impartial legal system, and he recognized the need to balance the power of the king with the rights of the people.<sup>4</sup>

As Kautilya correctly mentioned in his well-known verse—

*“In the happiness of his subjects lies the King’s happiness;*

*In their welfare his welfare.*

*He shall not consider as good only that which pleases him but,*

*Treat as beneficial to him whatever pleases his subjects”<sup>5</sup>*

## **COURT SYSTEM IN ANCIENT INDIA**

There were four types of courts in ancient India: movable courts, stationary courts, courts deriving authority from the king, and courts presided by the king himself. The most important court was the king's court, which was presided by the king himself or by a learned Brahmana appointed by the king.

There were also a number of popular courts, such as the *Kula* court, the *Sreni* court, and the *Puga* court.

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<sup>4</sup> Mukesh Tomar, ‘From (Raghav (Raghavghei2@gmail - Com) ) - ID (254) - History Final’ (Scribd) <[www.scribd.com/document/474983837/From-Raghav-raghavghei2-gmail-com-ID-254-History-Final-docx](http://www.scribd.com/document/474983837/From-Raghav-raghavghei2-gmail-com-ID-254-History-Final-docx)> accessed 14 January 2024

<sup>5</sup> Akshay Ranade, ‘Arthashastra: An Insight in Kautilyan Views on Law and Justice!’ (Youth Ki Awaaz) <[www.youthkiawaaz.com/2011/12/arthashastra-an-insight-in-kautilyan-views-on-law-and-justice/](http://www.youthkiawaaz.com/2011/12/arthashastra-an-insight-in-kautilyan-views-on-law-and-justice/)> accessed 15 January 2024

*Kula* Court: The *Kula* court was an informal body of family elders, who settled disputes among members of the family. It was the first level of court in ancient India. The *Kula* court was presided over by the eldest member of the family, and its decisions were binding on all members of the family.

*Sreni* Court: The *Sreni* Court was a court of guilds that settled disputes among guild members. Guilds were associations of merchants and craftsmen who followed the same trade or profession. The *Sreni* court was presided over by the head of the guild, and its decisions were binding on all members of the guild.

*Puga* Court: The *Puga* Court was an association of persons drawn from various castes and following different professions but staying in the same village or town. It was the third and final level of court in ancient India. The *Puga* court was presided over by the elders of the village or town, and its decisions were binding on all members of the community.

The *Kula*, *Sreni*, and *Puga* courts were maintained by a group of people and were important because they provided a way for people to resolve disputes without having to go to the king's court. The role of these courts was just like Alternative Dispute Resolution, mediation and arbitration in today's context. This was important because the king's court was often expensive and time-consuming to access. They provided a way for people to resolve disputes quickly and efficiently.

King's court was composed of three types of courts: *Adhikrita* (court appointed by the king), *Sasita* (king's court) and *Nripa* (king himself).<sup>6</sup> The Functioning of all these courts in the ancient era ensured the maintenance of social order and peace in the kingdom.

## CONCLUSION

The ancient justice system in India was deeply rooted in the principles of *dharma*, as outlined in sacred texts such as the *Vedas*, *Manusmriti*, and Kautilya's *Arthashastra*. *Dharma*, encompassing moral order and righteousness, played a central role in guiding both individuals and the king in their actions. The concept of *dharma* was not only a moral code but also inter-

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<sup>6</sup> Utsav Mandal, 'Ancient Judicial System' (Legal Service India) <[www.legalserviceindia.com/legal/article-7176-ancient-judicial-system.html](http://www.legalserviceindia.com/legal/article-7176-ancient-judicial-system.html)> accessed 15 January 2024

thread with the fundamental laws of the universe, emphasising the interconnectedness of ethical living with the cosmic order.

The *Manusmriti* provided a comprehensive guide to *dharma*, categorising different types such as *Samanya dharma*, *Raja dharma*, *Stree dharma*, *Dampatya dharma* and others. It served as a source of law for followers of *dharmic* religions by offering guidelines for various aspects of life and society.

Kautilya's *Arthashastra* viewed law and *dharma* as closely connected, with the king responsible for upholding *dharma* while enforcing the law. The significance of *dharma* was highlighted, with the understanding that in case of conflicts among various laws, *dharma* held the highest authority.

The court system in ancient India reflected a decentralised approach, with different courts like the *Kula*, *Sreni*, and *Puga* courts providing accessible means for dispute resolution at various levels. These courts, along with the king's court, contributed to maintaining social order, peace and justice in the society. Overall, the ancient Indian justice system was a sophisticated and holistic framework, grounded in the principles of *dharma* and aimed at upholding righteousness in society.

