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The Nature of Dharmaśāstra Texts

Concept of Dharma and development of Legal tradition

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The Dharmaśāstras have long been center of scholarly debate, research and enquiry leading to a huge body of work produced around them. They have been studied and researched to have a better understanding of continuing social traditions of India. Though a part of dogmatic, normative literary tradition of ancient India, it is not easy to comprehend the real nature of these texts and contextualize their contents as the Dharmaśāstric codes are more like guide lines for sustaining social structure. Such codified instructions to regulate human behavior as per their social standing was not to be found elsewhere in the world. With such unique feature the Dharmaśāstric literary tradition is enthralling scholars from diverse fields to attempt and discuss the śāstras from different perspectives. They have been approached for allusions to society, governance and more often as a part of discourse on legal studies.

To begin any discussion on Dharmaśāstras we must understand that they are textual tradition on *dharma*. Today what we all understand by this term nowhere conveys what it has stood for in the past. So to perceive their nature and intent one should first apprehend the essence of the word *dharma* in literary tradition. P.V. Kane, a notable Indologist and Sanskrit scholar, in his extensive work on Dharmaśāstras[1] explained that the word *dharma* is derived from root *dhṛ*, which literally translates into uphold, to support, to nourish. He located the first reference of this word in the texts of the *śruti* tradition, though its connotations varied in each reference. In ṚgVedic verses I.187.1 and X.92.2 the word is used in agreement with its root word *dhṛ* in the sense of 'upholder or supporter or sustainer', whereas, in most of its passages like I.22.18, V.26.6, VIII.43.24, IX.64.1 etc. the word *dharman* implies 'religious ordinances or rites'. The Atharva Veda verse 12.1.45 calls the earth as one, "which bears people in many places, each according to its fixed domicile, with different languages and various laws (*nānādharmāṇam*)." The word *dharmaḥ* also occurs in the

[1] P.V. Kane, *History of Dharmaśāstra (Ancient and Medieval Religious and Civil Law)*. Vol. I. Poona: Bhandarkar Oriental Research Institute, 1930. 1-3.

AtharvaVeda verse XI.9.17, meaning 'merit acquired by the performance of religious rites'. In the Aitareya-brahmaṇa, it is used in nonfigurative sense as 'the whole body of religious duties'. In Chāndogya-upaniṣad's verse 2.23.1 the word *dharma* stands for peculiar duties of the *āśramas* which can be perceived as its three branches: the first 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 hermit); the third is the *brahmacarin* dwelling in the house of his teacher and making himself stay with the family of his teacher till the last; all these attain to the worlds of meritorious men; one who abides firmly Brahman attains immortality.'

Paul Horsch made semantic and etymological enquiries about the word *dharma* and in the course of his research found multiple renderings of the word *dharma* such as 'law', 'duty', 'custom', 'quality', 'classification', 'adjudication', 'model', etc. He found the conceptual development of the term happened in the Śatapatha Brāhmaṇa (11.5.7.1) where it is discussed that the increasing knowledge results in four *dharmas* for the Brahmanas which define them, namely true Brahmanhood, appropriate way of living, fame, and maturity in the world (i.e., religious influence in the (social) environment). Consequently, the offering of respect, gifts, the protection of property and life are the four *dharmas* the maturing world pays back to the Brahmana. [2]

These references ascertain how the word *dharma* has no fixed meaning, rather it is context and time specific and eventually it clearly stood for '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.' In the same sense the word *dharma* is elaborated upon as guidance to the pupil in the Taittiriya-upaniṣad verse I.11, 'speak the truth, practice (your own) *dharma* etc.' The Bhagavadgitā too uses it in this same sense in the oft-quoted verse '*svadharme nidhanaṁ śreyaḥ*.' The word *dharma* embodies the same sense in the Dharmaśāstra texts. The prominent Dharmaśāstra text Manusmṛti begins with sages requesting Manu to instruct them in the *dharmas* of all the varṇas. P.V. Kane noticed the complex system of *varṇāśramadharma* as the core concept of Dharmaśāstras, which stressed on the ideal behavior as per one's own varṇa at that stage of life, i.e., *āśrama*. Besides these the texts also mention *svadharma* (duty of an individual) *strīdharma* (duty expected of married women) and *rājadharma* (duty of a king). Together all these constituted the codes of Dharmaśāstras.

In the colonial period British government searched for complacent native legal codes for the purpose of judicial administration subsequently arousing their interest in the Dharmaśāstras. As a result many Dharmaśāstra texts were consulted but the twisted and conflicting interpretation of their codes by the *śāstrīs* led Warren Hastings, the first Governor General of Bengal, to lay down certain guidelines for the jurisdiction of Hindu subjects of their area of influence in his *Plan of 1772* and *1780*, known as the *Administration of Justice Regulation*. It made *śāstrīs* responsible for the law they reported from the Dharmaśāstras on listed subjects of social matters like inheritance, marriage, caste and matters related to religion. Even the Supreme Court had two pundits, one expert in Maithilā (Mitākṣarā) and the other in Gauḍa (Bengali) school of law. Dependence on the experts of these two schools for litigation purposes

[2] Paul Horsch, "From Creation Myth to World Law: The Early History of *Dharma*," in *Dharma: Studies in Semantic, Cultural and Religious History*, ed. Patrick Olivelle (Delhi: MLBD, 2009), 4-5.

compelled Sir William Jones to have *śāstric* codes compiled for European Judges by means of which *pundits'* opinion could be rechecked.

This prompted Jones in 1794 to translate Manu's Dharmaśāstra with an understanding of it being a law book, by the name 'Institutes of Hindu Law or The Ordinances of Manu'. To him it was an outstanding document of behavioral codes from India's ancient past. Interpreted as the 'Laws of Manu', it was considered as the decisive authority on Hindu law with respect to India. His work was amongst the first Sanskrit works to be translated into a European language. Burnell (1884, xvi) wrote, 'Jones' translation came at a time when a systematic judicial administration had just begun in the British province of India and hence it immediately became an authority on the laws of the so called Hindus for uncritical lawyers and was in practice even in the 19th century. This led to series of translation works with an understanding of Dharmaśāstras as Hindu Law books. One such effort was seen in Colebrook's book 'Law Digest' in 1797-98, which was written with the perception of Dharmaśāstras to be legal texts with Manusmṛti being the principal smṛti. The Dharmaśāstras were perceived as the ancient Law books also by many Indologists and scholars of legal studies like John D. Mayne, who published a handbook on Hindu Law In 1878, where he claimed that the Dharmaśāstric codes were no doubt practically used in administering the law.[3] Even the Orientalist scholars like Burnell and Hopkins[4] and Bühler[5] believed Dharmaśāstras were 'Law books' used for settling civil and criminal cases and translated Manusmṛti under the same impression.

The post-independence period saw the continuance of the debate of evolution of Hindu legal tradition from the concept of *dharma*. 1n 1958 scholar of legal studies Satyajeet A. Desai described Hindu conception of 'Law' as a branch of '*dharma'* which was later developed in to proper 'Law' by the exertions of commentators and digest writers.[6] J.D.M. Derrett, a prominent Law scholar, agreed with this idea of Dharmaśāstras being law books and argued '*dharma*' was instrumental in binding the diverse cultural communities of the sub-continent together.[7] In his observation śāstras incorporated numerous customs while forming judicial decisions.[8] French academician and legal scholar Robert Lingat's work could be seen as an attempt to understand the nature of Dharmaśāstras and their gradual evolution in to classical Hindu Law. Lingat's findings were mainly based on his readings of P.V. Kane's work on Dharamśāstras. His work earned him the reputation of an authority on the concept of dharma in the *śāstric* tradition among western scholars of legal studies. In his understanding, '*dharma* signified the obligation and binding upon every man who desires that his action should bear fruit, submits to the laws which govern the universe and to direct his life in

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3 *John D. Mayne's Treatise on Hindu Law and Usage*, 12th edition, revised by Justice Alladi Kuppuswami, (Delhi, 1986) 2. [1st pub. London: Stevens and Haynes. 1878].

4 A.C. Burnell, tr., *Hindu Polity: The Ordinances of Manu*, (Completed and edited by E.W. Hopkins), (1st published by Trübner and Company in 1884).

5 G. Bühler, tr., *The Laws of Manu*, (1st ed. by Oxford University Press in1886)

6 Satyajeet A. Desai, ed., *Mulla Principles of Hindu Law*, 17th ed. Vols. I-II (New Delhi: Butterworths, 1998 (1958)).

7 J.D.M. Derrett, *A Critique of Modern Hindu Law* (Bombay: N.M. Tripathi, 1970).

8 J.D.M. Derrett, *Religion, Law and the State in India* (London: Faber and Faber, 1968), 158, fn. 3

consequence.'[9] This meant that for realization of *dharma* each person has to perform his duties, thereby, conveying that structure of law had *dharma* as its axis.

Among all these perceptions about the concept of *dharma* evolving into legal codes a fresh insight is provided by Sanskrit scholar Sheldon Pollock, who identified śāstra as the production of systematic knowledge in Sanskrit. He comprehended the prime position of the śāstra in Indian cultural tradition and inferred that in effect any organized activity known to pre-modern Indian society is discussed and synchronized in śāstra. He traced its evolution back to the Vedic period and proposed this tradition progressed out from the paradigm of strict regulation of ritual action required for the performance of the Vedic ceremonies. He explains that as Brāhmaṇas were performer of sacrifices they were expected to lead a strictly regulated life closely associated with rituals. Gradually, these practices were put into codes of behavior. Pollock elucidates that the term śāstra comprehensively denotes the perception of "system of ideas" or "philosophical system" but its real impact was perceived as literary tradition of codified rules for the positive and negative regulation of some given human practices.[10]

Donald R. Davis, an Indologist, has extensively worked on interaction between law and religion in medieval India and studied the Dharmaśāstra tradition as a system of religious law and jurisprudence. In his opinion the classical Hindu law was a variegated grouping of local legal systems which were compiled in cohesive manner by a common jurisprudence of legal theory, the Dharmaśāstra tradition. He questions the credibility of Dharmaśāstra tradition as a codified law for he believes that the ancient lawgivers like Manu and Yājñavalkya were mythological figures than some real persons and more so points to the lack of historical evidence for the enforcement of Dharmaśāstra rules by any ruler or state.[11]

Werner F. Menski endorses Donald R.Davis's view and objects to the idea of equating '*dharma'* with 'law' by 'Orientalist' scholars. He carried Robert Lingat's[12] hypothesis forward, and observed that *dharma* gradually transformed in to 'traditional Hindu law'. Therefore, he proclaimed that the traditional Hindu law developed as an interlinked and chronologically overlapping sequence of sub-systems, with inherent dynamisms of various stages of development imbued with flexibility. To him it was a massive distortion of the concept which obstructed the development of a true understanding of '*dharma'* and the gradual formation of the legal codes. His close analyses of the Dharmaśāstric texts had made him disclose that there is no sequence to the information contained in this literary form. There are different textual layers which overlap and interact, as they were collection of customs and traditions from quite different times and regions. Menski calls them, 'overlapping building blocks, a series of conceptual steps towards the mature

9 Robert Lingat, *The Classical Law of India* (New Delhi: Thomson Press.1973), 5.

10 Sheldon Pollock, "The Theory of Practice and Practice of Theory in Indian Intellectual History,"*Journal of the American Oriental Society*, 105.3 (1985): 499-519. Pollock discusses *śāstra* literary tradition branching into transcendent (apauruṣeya) and human (pauruṣeya). *Śāstra* of transcendent origin contains four Vedas, four Upavedas and six Vedaṇgas. *Śāstra* of human origin consists of eighteen Purāṇas, (logic or philosophy) Ānvīkṣikī, Mīmāṃsā and the Smṛtitantra. Initially having a descriptive character it matured in to prescriptive mode. Pollock translates *śāstra* as 'theory' also meaning 'a scheme of ideas.'

11 Donald R. Davis, Jr. *The Spirit of Hindu Law* (Cambridge: Cambridge University Press, 2010).

12 Lingat, *The Classical Law of India.*

growth of a coherent traditional Hindu legal framework in its gradual transition from dharma to law.'[13] He accentuated that Manusmṛti is by nature a guidebook on *dharma* and not a code of law.[14]

Deriving from his conceptual analysis of Manusmṛti Menski identified four major stages of development within the traditional Hindu law. Of them first stage was of the macrocosmic universal order system '*ṛta*' of the Vedic age. From his readings of the Dharmaśāstra texts he understood that in principle Hindus were put under an obligation to contribute to cosmic order through their way of life, including rituals. Consequently, the second stage was of self-controlled order '*dharma*' focusing on microcosmic social order. In the third stage external force in the form of '*daṇḍa*' (punishment), embodied in the person of king, was recognized as an essential element to maintain this microcosmic order, thereby giving up the concept of self-control as a tool to maintain social order. The king is presented as the guardian and protector of *dharma*.[15] Lastly, in the fourth stage formal judicial procedure '*vyavahāra*' evolved for dispensing justice.[16]

In the same manner as Menski scholars like Govind Das, Ludo Rocher did not envisage Dharmaśāstras as Indian legal tradition rather found it befitting to call them collection of customs and traditions which should not be equated with law. Govinda Das doubted these texts as complete codes of law as he felt that 'rules' mentioned in them could not have been rigidly enforced by political authorities of their time.[17] For Ludo Rocher the commentaries and digests, on Dharmaśāstras, did not represent the law of the land by any means. To him they were more of 'panditic, learned commentaries on ancient authoritative texts.'[18] Another scholar N.C. Sen Gupta, who worked on ancient law, too claimed that customs played a major role in the development and determination of law in the śāstric tradition. It appeared to him that regional customs crystallized in to law through a gradual process of discussions in *pariṣad* meetings among scholars of the community.[19] M.C. Hoadley and M.B. Hooker while studying Javanese Law described Dharmaśāstras as Indian cultural texts, which were private in nature, produced by male persons of a specific class in society, implying that they did not have pan Indian impact and were for selective audience with specific aim.[20] Whereas S.A. Desai claimed that the Manusmṛti's author compiled a wide-ranging code binding on all.[21] Such universal application of the Manusmṛti is also affirmed by Kuppuswami,[22] who held the Dharmaśāstras (what is recollected or remembered) to be of human origin, containing wisdom which supposedly had been in the memory of the sages who were the repositories of the knowledge of *'śruti'* (revelation). Richard W. Lariviere, a Sanskritist and scholar of Dharmaśāstric studies commented that Dharmaśāstras were collections

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13 Werner F. Menski, *Hindu Law: Beyond Tradition and Modernity* (New York: OUP, 2003) 78-79.

14 Menski, Ibid. 98.

15 Satyajeet A. Desai, ed. *Mulla Principles of Hindu law.* 35. Desai found evidence of greater importance given to the Hindu ruler (rājā) who operated at various levels, from head of family to clan chief, village head, and real king.

16 Menski, Opcit, 81.

17 Nityanand Pant Parvatiya, ed. *The Real Character of Hindu Law: The introduction to the Vyavahāra-bālambhaṭṭī of Bālambhaṭṭa Pāyagunde* (Benares: Chowkhamba Sanskrit Series 41, 1914).

18 Ludo Rocher, "Changing Patterns of Diversification in Hindu law," in *Identity and Diversification in Cults and Sects in South Asia* (Philadelphia, 1984) 31-44.

19 N.C. Sen Gupta, *Evolution of Ancient Indian Law* (University of Calcutta Tagore law Lectures, 1950) (London: Arthur Probsthain, 1953), 13.

20 M.C. Hoadley and M.B. Hooker, *An Introduction to Javanese Law* (Tuscan, Arizona: University of Arizona Press, 1981), 1-9**;** and also J.D.M. Derrett, *Religion, Law and the State in India* (London: Faber & Faber, 1968).

21 Desai, Ibid. 19.

22 Alladi Kuppuswami, ed., Opcit.

of aphorisms, guidelines, and advice which could be drawn upon when required to inform and validate a judge's, or a guru's, or a king's opinion. They were helpful in administration of law but could not be equated with the 'codes' in the modern, western sense. Therefore, to him Dharmaśāstric codes did represent the law of the land in real sense.[23]

While attempting to develop an understanding as to the true nature of Dharmaśāstras one is intrigued by W.B. Hallaq,[24] a scholar of Islamic legal studies, who raises a very pertinent point while arguing for *Sharī'a* not having distinction between law and morality and much practical significance, is actually a colonial discourse and brings forth the limitation of the linguists as concepts are defined by language and thus provides not only the framework to the concepts but also controls them. Such kind of perception seems inevitable, for when we discuss any law; our definitive stand would be to expect that it should measure up against what we consider to be 'our' supreme model. He argues that past societies did not distinguish between state and society as such, for them regulation of personal behavior was an essential part of law. The state and society did not have distinct identities then, hence, a lot of confusion as to their nature as legal codes. The same appears to be true for the Dharmaśāstra texts, for they nowhere distinctively differentiate between law and morality and state and society. Hence, it is important to look into the compilation method of Dharmaśāstra texts. An overview of the arrangement of topics within the texts will help us to figure out their objectives.

Concept of Dharma in Dharmaśāstras

A close reading of Manusmṛti, discloses that its main focus is on upholding the *varṇa* and *āśrama* appropriate behavior of an individual for which it laid down many directives in the form of codes of behavior referring to them as '*dharma,'* that are to be observed within a patriarchal household. Broadly, these codes can be classified as following – *dharma* of *varṇas* (injunctions based on *varṇa* alone such as 'a brāhmaṇa should never drink wine'), *āśramadharma* (such as 'begging' and 'carrying a staff' enjoined on a *brahmacārī*), *varṇāśramadharma* (rules of conduct enjoined on a man because he belongs to a particular class and is in a particular stage of life, such as 'a brāhmaṇa *brahmacārī* should carry a staff of *palāśa* tree), *guṇadharma* (such as expiation on doing what is forbidden), *sādhāraṇadharma* (what is common to all humanity, viz., *ahiṁsā* and other virtues). The elaboration of *dharma* is closely associated with upholding the social structure and Dharmaśāstras required the King to maintain it as his *rājdharma*.

The Dharmaśāstric textual tradition was envisaged on the notions of '*ācāra*', '*vyavahāra*' and '*prāyaścita*'. This scheme of classification appears in Yājñavalkyasmṛti for the first time which divides *dharma* into these three subtopics: *ācara*, *vyavahāra* and *prāyaścita* i.e., household rituals and duties, legal procedure, and penance. Finally, when digests of *dharma* material first began to appear in the twelfth

[23] Richard Lariviere, "Dharmaśāstra, Custom, 'Real Law' and 'Apocryphal' Smṛtis," in *Recht Staat und Verwaltung im klassischen indien*, ed. B. Kölver (Munich: Oldenbourg, 1997), 97-110. Reprinted in Journal of Indian Philosophy 32 (2004): 611-627.

[24] Wael B. Hallaq, *Sharī'a; Theory, Practice and Transformations* (New Delhi: Cambridge University Press, 2009), 1.

century, extensive compendia on subtopics within older dharma schemes (legal procedure, gift, ancestral rites, kingship, etc.) came into vogue, though no fixed list of such topics existed. These three divisions, therefore, are primarily ways to organize the contents of these texts and they also reveal the detail-oriented enumeration of rules for ritualistic and legal practices that characterize both theological and legal writing. The tenth century Dharmaśāstra commentator Medhātithi made exactly the same point in his commentary on Manusmṛti, Manubhāṣya: 'The authors of the traditional texts use the word *dharma* sometimes in the sense of actions which forms the subject of injunctions and prohibitions and sometimes in the sense of the things that arise from the performance of those actions and persist until it has given its reward.'[25] It is this ambiguity that allows *dharma* to be seen as both law and merit.[26]

The three sources of *dharma* are spelled out in Gautama[27] and Vasiṣṭha[28] Dharmasūtras: the 'Veda', 'Tradition', and 'Good Custom'. To this Manusmṛti added one more source the 'Self-satisfaction'. Henceforth, 'Veda', 'Tradition', 'Good Custom', and 'Self-satisfaction;' are distinctly declared to be the foundations of *dharma* in Manusmṛti.[29] Among these sources the authority of 'Vedas' in resolving any matter was supreme. Only if they were silent about an issue it was to be solved as per 'Tradition', the next in order was 'Good Custom' and lastly, when none of them provided an answer the 'Self-satisfaction' was given credence. Dharmaśāstras themselves are not very coherent about their view on the sources of *dharma* and their hierarchy. Though Manusmṛti in its second and twelfth discourses diligently discusses the superiority of Vedas but in its very first discourse Manu, the person, is an established and unquestionable authority on *dharma*. Hence the concept of *dharma* forms the base of legal procedure elaborated in the Dharmaśāstras.

Judicial Structure and the King as the protector of Dharma

Medhātithi in his commentarial work Manubhāṣya[30] advises cases to be investigated and decided in conformity with the ordinances of scriptures as they being the source of *dharma* were revered and feared by the people, who abide by them and for this reason did not deviate from their declared right path. He saw a correlation between the necessities to have judicial procedure and proper functioning of kingdom. He felt it was prerequisite structural requirement closely linked to the well being of people as in their daily lives they were subjected to unseen evil and vices like hatred, jealousy, greed and so forth; which disrupts the normal functioning of a kingdom and leads to legal disputes between individuals or group of people. The significance of judicial procedure is further emphasized in Manubhāṣya by declaring the fines imposed on criminals as a crucial source of income for the King along with taxes and duties.[31]

25 Manubhāṣya II.6
26 Donald R. Davis, Jr., Opcit.
27 GDS I.1-2.
28 VDS I.4-6
29 MS., II.12
30 Manubhāṣya VIII. 2
31 Ibid. VIII. 1-2

Within Manusmṛti the evidence of evolution of legal procedure from the concept of *dharma* is quite apparent from the sections describing judicial procedure at length right from the emphasis on the appearance of king, number of judiciary members, to the type of witnesses required for the settlement of judicial cases. The eighth discourse of the text discusses in detail the functioning of judicial system where it talks about the constitution of the '*dharma-sabhā'* and also lists different cases under the eighteen titles which are to be heard by this '*sabhā'*. The type of cases enlisted under the eighteen titles which could be challenged in the court of justice were – non-payment of debts; pledges; sale without ownership; partnership and non-delivery of what has been given; non-payment of wages; breach of contract; revocation of sale and purchase; disputes between master and servant; disputes about boundaries; assault and slander; theft; violence; also adultery; the law between man and women; partition; dicing and games with animals.[32] Enumeration of types of crimes point towards the *vyavahāra* (judicial system) being an essential part of Manusmṛti.

The first twenty-four verses of this chapter stresses on King's participation in impartation of justice. It directs the King to daily hear the cases falling under suggested headings separately.

> *Pratyahaṃ deśdṛṣṭaiśca śāstradṛṣṭaiśca hetubhih* |
> *aṣṭādaśasu mārgeṣu nibaddhāni pṛthak pṛthak* || [MDS VIII.3]

Manu also specifies that a King who is desirous of inspecting the '*vyavahāra'* (proceedings of judiciary) should come to the '*sabha'* subdued in manners and dress, along with the brāhmaṇas and ministers well versed in *mantras*, i.e. Vedas.

> *Vyavahārāndidṛkṣustu brāhmaṇaiḥ saha pārthivaḥ* |
> *Mantrajñair mantribhiś caiva vinītaḥ praviśet sabhām* ||[MS VIII.1]
>
> A King desirous to inspect suits, should, subdued, enter the
> assembly with brāhmaṇas and ministers who know mantras.
>
> *Soasya kāryāṇi sampaśyet sabhyaireva tribhir vṛtaḥ* |
> *Sabhāmeva praviśyāgryamāsīnaḥ sthita eva vā* || [MS VIII.10]
>
> Let him (the King), being accompanied by three members
> of the court, view his affairs, having entered the high court,
> (and) seated or standing.

In addition to King's the constituent elements of judicial committee, '*sabhā'* are also affirmed in the eighth discourse of Manusmṛti.

> *Yasmindeśe niṣīdanti viprā vedavidastryaḥ* |
> *Rājñaścāadhikṛto vidvānbrahmaṇastāṃ sabhāṃ viduḥ* || [MS VIII.11]
>
> In whatever country (the) three Brāhmaṇas learned in
> the Veda and the King's learned deputy sit, the wise
> Brāhmaṇas have said that assembly is of Brahmā.

The verse gives its detailed description from which it appears that the *dharma-sabhā* was a committee consisting of three brāhmaṇas well-versed in Vedas and a deputy authorized by the King. These *dharma-*

[32] MS VIII. 4-7

sabhās seems to have no fixed written rules to guide them in deliverance of judgments. The only precondition was that judgment based on '*dharma'* should be in agreement with Vedas, customs of different castes, people and families and rules-regulations of guilds.

> *Jātijānapadāndharmāṅ śreṇīdharmāṅśc dharmavit |*
> *Samīkṣya kuladharmāṅśca svadharmaṃ pratipādyet* || [MS VIII.41]
>
> (A King) knowing what is right (*dharma*) should cause his own law (*dharma*) to be established, after making careful inspection of the laws (*dharma*) of the different castes and the country-folks, and of the laws of the (different) guilds, and of the laws of the (different) families.

Manusmṛti directs the King to enter the court accompanied by brāhmaṇas and experienced councilors,[33] who were required to help in the investigation of cases implying that King should not decide cases alone but in consultation with them. Medhātithi explains that in order to proclaim his sovereignty he should act so.[34]. He infers from the instruction given in *Manusmṛti*, "King himself 'looking into' (*paśyediti*) the suits," is in context with his authority to inflict punishment as a part of his duty of protecting the people. Brāhmaṇas being well versed in rituals and scriptures were to look into cases of expiation (*prayaścita*). They were entrusted with the task of supervising the performance of expiation as per rule by the violator.

Medhātithi notes down the existence of hierarchical pockets of judicial authority to solve the matter in their area of influence but the King remained the highest judicial authority. In accordance to that though the King was expected to enter the court accompanied by brāhmaṇas, the nature of their duties was totally distinct. Medhātithi discloses that while the right of the brāhmaṇas and others was limited only to the pronouncement of judgment and not its enforcement, the King's right extended to the infliction of punishment. The motive of the King in impartation of judgment was ensuring proper administration of his kingdom, whereas on the other hand, for the brāhmaṇas and others it was more of settling doubtful points for the benefit of the people, '*sanśayacchedāderaparopakārakatvam'*. Medhātithi reaffirms that whenever dispute arise between two individuals/groups the matter should be properly investigated in accordance with *vyavahāradarśane* (*vyavahāra* scriptures) and settlement should be brought about by the King. This would validate the supremacy of the King's authority.[35]

A detailed discussion about the role and duty of King in the propagation of *dharma* based justice is also done in Yājñavalkyasmṛti, which too authorizes the King to punish the culprit in order to establish proper administration in his kingdom.

> *Tadavāpya nṛpo daṇḍaṃ durvṛtteṣu nipātayet |*
> *Dharmo hi daṇḍarūpeṇa brahmṇā nirmitaḥ purāḥ* || [YS I. 354]
>
> Having obtained such (a kingdom), the king should hold

[33] MS VIII. 1, 10
[34] MS VIII. 2
[35] Manubhāṣya VIII. 1-2

out the rod of justice to the wicked. Formerly virtue was
made by Brahma in the shape of punishment.

The text assigns the King responsibility of imparting justice in an unbiased manner and not to be affected by the closeness of relationship. None can escape the punishment of the King whether the person is King's brother, son, preceptor, father-in-law, or his maternal uncle.[36] Glorification of the righteous King was done by declaring that the King obtains the same benefit by performing his duty without deviation as through the performance of sacrifices done with thousand gifts.

Yo daṇḍyāndaṇḍayedrājā samyagavadhyāṅśrca ghātayet |
Iṣṭaṃ syātkratubhistena samāptavaradakṣiṇaiḥ || [YS I.359]

The king, who punishes those who deserve punishment
and kills those who deserve death, reaps the fruits of
sacrifices well-performed with a thousand sacrificial presents.

The Yājñavalkyasmṛti requires the King to look in to the administration of justice daily encircled by members,[37] which alludes to the 'members of the *sabhā'*, who participated in judicial procedure with the King. By punishing members of his own family, caste, division and class, and the subjects the King puts them in the right path and also upholds the *dharma*.[38]

Kulāni jātīḥ śreṇīśrca gaṇānjānapadānapi |
Svadharmāccalitānrājā vinīya sthāpyet pathi || [YS I.361]

Having duly punished (men of his own) family,
caste division and class, and the subjects, the
King should place them in the (right) path.

Process of Investigation

The judicial system was debated and gradually developed in the *śāstric* tradition. The concept of *dharma* paved way for the means to check the evasion of desired behavior. Settlements of disputes were categorized in to four, viz., familial matters, matters dealt at the level of *śreṇi* with the right to fine in case any party disobeys its judgment, the professional groups *gaṇa* settling disputes within the groups or its members and last but not the least supreme authority to pass a judgment was given to the King. Though Yājñavālkyasmṛti speaks of reopening of a case, if any party feels dissatisfied by King's verdict, but to be defeated and closed with the payment of double penalty, thereby, checking any attempt to question the King's authority. 'Double the penalty' indicates that the involved parties paid the procedural fee.

Yo manyetājitoasmīti nyāyenāpi prājitaḥ |
Tamāyāntaṃ punarjitvā dāpayed dviguṇaṃ damam ||[YS II. 309]

[36] YS I.358
[37] YS I.360
[38] YS I.361

Medhātithi simply says no to reopening of cases decided by the King.

> *Pratyahṃ deśadṛṣṭaiśca śāstradṛṣṭaiśca hetubhīḥ |*
> *Aṣṭādaśasu mārgeṣu nibaddhāni pṛthak pṛthak* || [MS VIII.3]
>
> Day by day (he should judge) separately (cases)
> under the eighteen titles by reasons drawn from
> local usage and the treatises.

If a case involved professionals and any investigation in that regard would affect their professional community, they were all entitled to take part in the investigation. The guilds ensured that the disputes of its members, familial or professional, were resolved at their level. To guarantee that parties involved should not deviate from its decisions, they charged adequate security before engaging in the investigation. Medhātithi sees this security as a means to ascertain abiding by its decision or pay stipulated fine in case of defiance. The text also refers to '*gaṇa'* (tribe) comprising of professional people who moved together in a group, e.g., masons, temple-priests etc. This body also decided cases of disputes among its members and for enforcing its decisions it even constituted a committee to supervise. Unlike guilds members of '*gaṇa'* always worked collectively which infused it with lot of power over its members, so much so that Medhātithi declares the disputant members being afraid of its '*gaṇa'*. The next in order judicial authority were the '*adhikṛtaḥ'* (authorized persons) which Medhātithi explains stood for *traividyovidvānbrāhmaṇaḥ* (brāhmaṇa learned in three Vedas) and they had the authority to speak on all disputed points of law. But in all judicial matters King was last court of appeal and Medhātithi asserts that his decision could not be challenged. This is so as he wields power from his stature as King, the sovereign authority of the land.

> *Kulāni śreṇayaścaiva gaṇāścādhikṛto nṛpaḥ |*
> *Pratiṣṭhā vyavahārāṇām gurvebhyastūttarottaram* || [NS I.8]
>
> Families, guilds, tribes, authorized person, and the
> King constitutes the very foundation of case proceedings;
> and among these the following is superior to the preceding.

It implies that incase of dispute within the family members or relatives, the matter was first to be discussed and resolved at the family level with the condition that both parties had to abide by that decision. If however, one party had no confidence in the members resolving the matter because of their being closely related to the other party the case was then referred to the guilds (*śreṇi*), their professional community, who was believed to resolve the issue more assiduously as they did not want any matter associated with their guild should go to the King, fearing that it will provide an opportunity to the King's officer to interfere in the working of their guild.

Manu also subscribes to the notion that the king's judicial authority is subordinate to law and he is merely a law-enforcer. But at the same time he tries to clothe the king with the divine authority and seems to support the theory of divine right of king with a view to strengthen his hands. While dealing with the duties of the king the text lays emphasis on the importance of *daṇḍa,* the secular instrument in the hands of the kings for enforcement of law. It connotes the secular power of punishment, which the king, as enforcer of law, possesses to prevent breach of law and to inflict punishment on the wrongdoers. Thus the punitive element behind the enforcement of law is unambiguously stressed in Manusmṛti.

Jātimātropajīvī vā kāmaṃ syādbrāhmaṇabruvaḥ |
Dharmaprvaktā nṛpatern tu śūdraḥ kathaṃcana || [MS VIII. 20]

Even a so-called brāhmaṇa, who makes a living by his caste only, may, at pleasure be the propounder of the Law for the King, but not a Śūdra under any circumstances.

Yasya śūdras tu kurute rājño dharmavivecanam |
Tasya sīdati tad rāṣtraṃ paṅke gauriva paśyataḥ || [MS VIII.21]

The kingdom of that king for whom the investigation of Law is done by a Śūdra, while he himself is looking on, suffers, like the cow in a morass.

This flexible tradition evolved in to an institution of justice in Manusmṛti with a detailed description of constituent element of court of justice. The court of justice was headed by the King, who was the last authority of appeal but his powers were not supreme or unlimited. He was accompanied with brāhmaṇas and councilors who were well versed in Vedic knowledge and customs.[39] Medhātithi and Kullūka emphasize dispensing of justice as the prime duty of the King.

Conclusion

The term *dharma* conceptually developed from an abstract notion of 'to uphold' or 'to support' as it is first seen in association with Indra and Varuṇa in the ṚgVedic hymns, describing the mythological creation of the world, implying 'hold' and 'support',[40] to a more concrete form of norms of behavior regulating one's conduct in private and public spaces. The word sees the conceptual transition from *svadharma* (personal behaviour) to *varṇāśramadharma* (behavior as per one's *varṇā* and stage in life) in the Dharmaśāstras. The *dharma* became a tool to embed *varṇā* hierarchy and *āśramadharma* in society as life was envisaged in four stages, i.e., *āśrama*, each stage had different set of *dharma* (duties). The role of King like Varuṇa, the custodian of cosmic order '*ṛta*', was to maintain social order by upholding *varṇāvyavastha*. He was assisted in this by the *dharma-sabhā* and judicial procedure was to be in accordance with the Vedic tradition, the main source of *dharma*. The term *dharma* thus evolves into legal norms in the Dharmaśāstric literary tradition with the intent of upholding *varṇā* hierarchy based social structure infused with gender disparity.

[39] MS VIII.1-
[40] RV 2.17.5, 18.15.2, 8.41.10, 10.44.8