

Concept of Administration of Justice in Ancient India: An Analysis

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Abstract

“Justice has always evoked ideas of equality, of proportion of compensation.

Equity signifies equality. Rules and regulations, right and righteousness are concerned with equality in value. If all men are equal, then all men are of the same essence, and the common essence entitles them of the same fundamental rights and equal liberty. In short justice is another name of liberty, equality and fraternity.”

Keywords: Administration; Ancient; Justice; Dharma; Fundamental Rights; Liberty; Equality and Fraternity.

Introduction

The history does not depict the existence of the judicial system to administer the justice. In the before Vedic period the aggrieved party used to sit (as a dharna) before the house of wrong doers (accused) and create the pressure on him to settle the case to his satisfaction. Later, started adopting the simple procedure by modifying existing one to suit the circumstance and started administering the justice by the tribe and clan assemblies. The village elders started acting as judges and awarding the punishments in accordance with the nature of crime committed. While delivering the judgment the local customs, adopted, were followed where the natural justice i.e “treating all are equal before the law formula” was not administered and Varnas (caste system) have been made the basis for delivering the judgment and it was practiced and believed that the judgment given on the basis of Varnas was having sanctity of divinity which was biased one. The law and morality both were given importance and considered during the administration of Justice. It is very difficult to

trace out the truth of existence of different types of laws of ancient times such as Civil and Criminal. The Judicial system of that period may be understood by the three shastras such as Dharmashastra, Neetishashtra and Arthashastras. The King of that era was the prominent person holding all the powers and used to spend some time regularly to study the cases and deliver the judgment by punishing the wrongdoers but the law in the rule was Dharma shastara subject to local and other usages which are consistent with the shastras.

Concept of Justice

Ancient India was essentially Hindu-ruled. And its foundation of judicial system was based on the concept of ‘Dharma’, or rules of right conduct, as outlined in the puranas and smritis(remembrance) which explains vedic scriptures. The King had no independent authority but derived his powers from ‘Dharma’, which he was expected to uphold. So, Dharma denotes ‘rule of law’. Hindus followed the concept of ‘Dharam’ and therefore the legal framework in Ancient India was uniform [1]. And also Dharma is used to mean Justice (Nyaya). Justice

means Nyaya and what is good to society that is justice. An also what is right in given circumstance, moral, religion, pious or righteous conduct, being helpful to living beings, giving charity or alms, natural qualities or characteristics or properties of living being and thing, duty, law and usages or customs having the force of law, and also a valid Rajashasana (royal edict) [2].

Administration of Justice in Ancient India

The period between 800 B.C and 320 B.C is described as the age of law and philosophy. In this period people was followed only the Dharmasastras and the king was considered as the highest of the judiciary.

According to Brihaspati, "Relations, companies (of artisans), assemblies (of cohabitation) and other persons duly authorized by the king concurring violent crimes (shahasa)." Then there were the treaties of "Sukranitisar" which laid fundamental principles of law. The first treaties were the composition of 'Arthashastra' by Kautilya [3].

In ancient period king administer only accords with the smites. An important feature of the judicial system of ancient India was the special courts of criminal jurisdiction called the Kantakasodhana Courts.

The Artha-shastra says, "Three commissioners (pradeshtarrah) or three ministers shall deal with measures to suppress disturbance to peace (kantakasodhanam kuryuh). According to the Artha-shastra these courts took cognizance not only of offences against the States but also violations of the law by officials in the discharge of their official duties. Thus if traders used false weights or sold adulterated goods, or charged excessive prices, if the labourer in the factory was given less than a fair wage or did not do its work properly, the Kantakasodhana courts intervened to punish the culprits. Officers charged with misconduct, persons accused of theft, dacoity and sex offences had to appear before the same court. These Courts had all the characteristics of administrative courts. The existence of an Administrative Code is indicated in the fourth part of the Artha-shastra [4].

The Vedic Period

The Vedic Period (or Vedic Age) is the period during which the Vedas, texts related to early Indo-Aryan religion, were being composed, during the period of roughly the mid second to mid first millennium BCE [5].

Vedas, Vedangas, and Upanishads gives the information about the Indian judiciary. Vedas are four in number namely: Rigveda, Yajurveda, Samaveda and Atharva veda. And vedangas namely: Siksha, Chandas, Vyakarana, Nyrukta, Jyotishya and Kalpa. Eighteen Upanishads, supplemented to the respective Vedas and other texts which together constitute the Shrutis are mainly religious book. However, they contain some rudiments of law. Vedas are the sources of Dharma [6]. It is difficult to trace law from the Vedas, except by following the indications of positive (Vidhis) or negative (Nishedas) indications. There are several Vidhis and Nidhis which formed foundation of the Smriti laws in later period. Some of such Vidhis and Nishedas are: tell the truth, never tell untruth, never hurt anyone, follow dharma, treat your father and mother as god, perform only such acts which are not forbidden, etc.

According to the Hindus, the foundation head of Dharma or law is the Vedas or revelation, but there are no special chapters in Vedas treating of law [7].

The Smritis and Dharma Sutras Period

The Smritis means literally what was remembered, are the recollections handed down by the sages of antiquity of the precepts (commandments) of god. According to some sages the number of Smritis is 36. Yajnavalkya mentioned 20 Smritis in his smriti. The Dharma shastras are the smritis written in verses. The Dharma sastra existed even before BC 600 to 300 [8].

During the Vedic period, the society was composed of patriarchal families. The head of the family had full authority over the individual members of the family. As time passed, gradually, individual rights came to be asserted as different from family. To meet the requirements of a changing society, laws and treatises. Regulating the rights and liabilities of individuals are in the form of Sutras (aphorisms).

Dharma Sutras

The earlier works which laid down the law in the form of sutras were divided into three classes:

Dharma Sutras

dealing with civil and criminal law.

The important Dharma Sutras were of Gautama, Baudhayana, Apastamba, Harita, Vasista and Vishu.

Gautama

The Dharma Sutras of Gautama is the oldest of the text on law. It lays down law both on religious and legal matters. It contains law relating to inheritance, partition and stridhan.

Gautama attached adequate importance to tradition and practices of cultivators, traders, herdsmen, moneylenders and artisans. He detailed the law of marriage.

Baudhyana (500 to 300 B.C)

The Dharma sutra of Baudyana had not come down to us in original shape as some portion of it had been destroyed. He treated variety of subjects including inheritance, sonship, adoption and marriage.

Apastamba

The Dharma sutra of Apastamba has dealt with certain aspects of law of marriage and of inheritance besides criminal law. It has been regarded as an authoritative work.

Harita

The Dharma sutra of Harita is considered of great authority of Apastamba. The doctrine of res-judicata in Hindu law is ascribed to him.⁹ This rule propounded by him shows that at so early a stage, the idea of finality of judgment, as an important rule in the administration of justice, was visualized and incorporated [10].

Vashista

Vasista attaches great importance to the custom and usage and recognizes them as supplement law. He has dealt with various topics of law, such as marriage, sonship, inheritance, adoption as also the sources of law.

Vishnu

Vishnu is referred to as one of the law writers Yajnavalkya. The major portion of this work is in prose form and the concluding portions are in the form of metrical verses. He deals with various topics of civil law, such as marriage, inheritance, debts, treasure trove etc., as also criminal law. Vijayani is a commentary on Vishnu dharma sutra, by the well known writer Nanda pandita. The work is translated into English by Dr. Jolly and is published in

S.B.E.Series vol. III [11].

The Smriti

Smriti smrti (Sanskrit) [from the verbal root smri to remember] What is remembered; unwritten teachings handed down by word of mouth, distinguished from srutis or teachings handed down in traditional writings. The Hebrew word qabbalah has a literally identical meaning.

The smritis were a system of oral teaching, passing from one generation of recipients to the succeeding generation, as was the case with the Brahmanical books before they were embodied in manuscript. The Smartava-Brahmanas are, for this reason, considered by many to be esoterically superior to the Sruta-Brahmanas. In its widest application, the smritis include the Vedangas, the Sutras, the Ramayana, the Mahabharata, the Puranas, the Dharma-sastras, especially the works of Manu, Yajnavalkya, and other inspired lawgivers, and the ethical writing or Niti-sastras; whereas the typical example of the sruti are the Vedas themselves considered as revelations. Shruti means that which is "heard" or received as direct oral revelation from a superior being, considered by orthodox Hindus to be equally holy to smriti; yet in ancient times the most sacred and secret teachings were never committed to writing but were invariably passed on from teacher to pupil with "mouth at ear" and at "low breath," whether among the Egyptians, Persians, Chaldeans, Greeks, Romans, Druids, Chinese, or Hindus [12].

Dharmasatras are the *major texts or documents* which formed the legal framework in Ancient India. Dharmasatra has following smritis:

1. The Manusmrti (200BC-200CE)
2. The Yajnavalkya Smrti (200-500CE)
3. The Naradasmrti (100BC-400CE)
4. The Brhaspatismrti (200-400CE)
5. The Katyayanasmrti (300-600CE) [13]

Manu Smriti (200BC-200CE)

This Smriti or the code of manu forms an important landmark in the legal history of India. The pre-eminent position attained by Manusmrti as early as the 2nd century gives the indication that it must have come into existence much earlier to 2nd century and in course of time secured place by virtue of its merit and popular acceptance. As the opening of the manusmrit indicates, the smriti in its present form appears to have been recast or complied by sage Brighu. This happened probably somewhere between

200 B.C and 200 A.D and that he gave the title of "Manusmriti" to the code so compiled [14].

The Manusmriti divided in to twelve chapters and consists of 2,694 verses. It is written in a simple and fluent style. The subject matter of the twelve chapters are:

- a. Creation of the Universe.
- b. Definition of Dharma and Source of Dharma.
- c. Celibacy – Studentship – Marriage.
- d. Mode of life – means of subsistence and householder's code of conduct.
- e. Rules governing food.
- f. Rules governing forest hermit.
- g. Rajadharama.
- h. King's duty relating to administration of justice. This includes.
 - a. 18 titles of law
 - b. King and judge
 - c. Other persons as judges
 - d. Constitution of sabha
 - e. Duty of restore stolen wealth
 - f. Creditor's means to recover debts
 - g. Grounds on which the plaintiff may fail in his suit [15].

Yajanavalkya Smriti (200-500CE)

The importance of Yajanavalkya lies in arranging the materials of the Manusmriti in a more systematic and concise fashion.

Yanavalkya was the first to mention specifically three popular courts, namely, Kula, Sreni and Puga arranged in the ascending order of importance, the kula being lowest court for arbitration in small matters. With these courts "we well compare the village, caste and family panchayats of modern times" [16].

J.C.Ghose remarks about Yajnavalkya Smriti as "Now it should be remembered that though Manu's authority is unquestioned by all Hindus, it is the law of Yajanavalkya by which they are really governed. Yajanavalkya's authority is supreme in India".

This Smriti Consists of 1010 Verses Divided into 3 Chapters

- a. Achara or ecclesiastical law contains 368 verses.
- b. Vyavahara or Civil and Criminal law contains 307 verses.
- c. Prayaschitta or atonement for sins committed contains 335 verses [17].

Narada Smriti (100BC-400CE)

Narada was the first to give a code free from a crowding of religious and moral principles. He proclaimed that the laws and ordinances passed by princes and rulers could override even the smritis. He thus thought of the doctrine of civil law. He differed in several respected from that Manu proclaimed. He allowed remarriage of widows. He declared that a father had absolute right to distribute or given his property as he wished among his sons, but he did not recognize the widow as an heir. He gave the adopted son ninth rank.

Narada smriti was compiled somewhere about 200 A.D. He was fully conscious of the social, economic and political changes taking place in the social set up in his treatment of law. He was well alive to the realities of life. His smriti is remarkable for its progressive views on various matters. The procedural law laid down by this smriti contains provisions relating to pleading, evidence (oral and documentary) as also the procedure required to be adopted by the courts of law.

Brihaspati Smriti (200-400CE)

The smriti of Brihaspati was compiled somewhere between 3000 and 400 A.D. He was the first jurist who made clear distinction between civil and criminal justice.

Brihaspati deals with some of the important branches of substantive law such as rules of partnership, agency and civil wrongs. He speaks of four stages of judicial procedure, namely;

1. Filing of plaint
2. Filling of reply
3. Trial of the suit, and
4. Passing the decree.

Katyayana Smriti (300-600CE)

The Katyayana Smriti was compiled somewhere between fourth or fifth century A.D. It is not available in its entirety but about 600 of his verses have been cited in the Smriti Chandrika. The great importance of this smriti lies in the variety of subjects which it deals with. It deals with substantive as well as adjective law.

According to Katyayana, land belong to the subjects and not to the king. The king is only the protector of the interests of his subjects in return for which he is entitled to land revenue [18].

Other Works

Other works includes the Arthashastra of Kautilya, Ramayana and Mahabharata as follows:

Arthashastra of Kautilya

Arthashastra of Kautilya does not fall in the category of Dharma Sastras, it is the most important and a masterly treatise on statecraft. The author of this great work is Vishugupta commentary know as Chanakya, who was the Prime Minister of the Magadha Empire during the reign of Chandragupta Maurya. Chandragupta Maurya became the king in 322 B.C and his son Bindusara ascended the throne in 298 B.C. it is during this period that Chanakya lived and wrote this famous work Arthashatra, sometime between 322 and 300 B.C. it is necessary to set out the contents of the fifteen parts or books of his Arthashastra to give an idea at a glance about the extent of the subject matter covered by Kautilya on various topics relating to law, constitutional law and other affairs of the state.

- i. Education, training and discipline to be imparted to a king to equip him to discharge his onerous responsibilities ably and efficiently, such as appointment of ministers and other officers of the state and other matters relating to its administration.
- ii. Duties of various executive officers of the state.
- iii. Law and its administration.
- iv. Suppression of crime.
- v. Miscellaneous matters- such as steps to be taken in emergencies, pay scales for state officers, duty of Chief Minister for ensuring continuity of the rule on the demise of king, etc.
- vi. Seven constituents of state- Rajamandala – for discussion of states relations with neighbours.
- vii. Foreign policy.
- viii. Methods to overcome various calamities to the state.
- ix. Military code- kinds of troops to be mobilized for an expedition and proper seasons for the expedition and precautions to be taken.
- x. Fighting methodology at war.
- xi. Steps to be taken by a would be conqueror.
- xii. Designs to be adopted by a weaker king when threatened by a stronger king.
- xiii. Conquest of the enemy by various methods.
- xiv. Remedies and plans to be adopted in getting rid of enemies of traitors.

- xv. Object of and purpose achieved by Arthshastra [19].

The two Epics- Ramayana and Mahabharata

The Ramayana and Mahabharata are the two known epics of the Aryans. They are concerned with events which took between 100 and 700 B.C. They are not books on the topics of Dharmashastra. However, Valmiki and Vyasa, who are held in highest esteem by the society, have incorporated important principles of Dharma. Rama killed Rakshasa to protect Dharma. Rama, as the eldest son was entitled to succeed to his father's kingdom. Mahabharata contained the topics of law in the Shantiparva. Some of the important topics covered are; coronation rights, evils of anarchy, Rajdharma, importance of punishment and penalties.

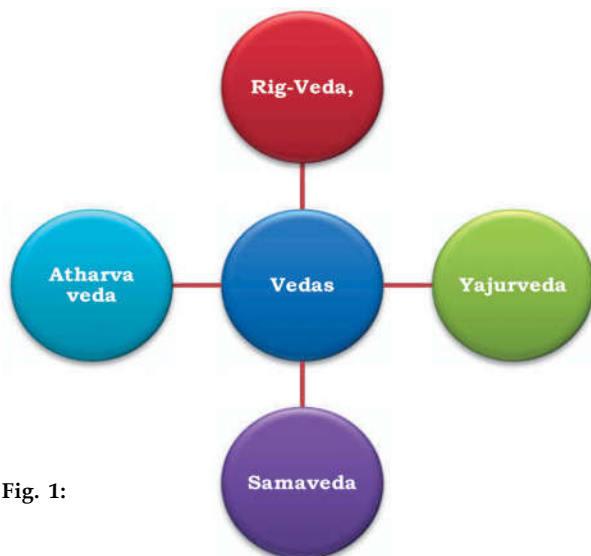


Fig. 1:

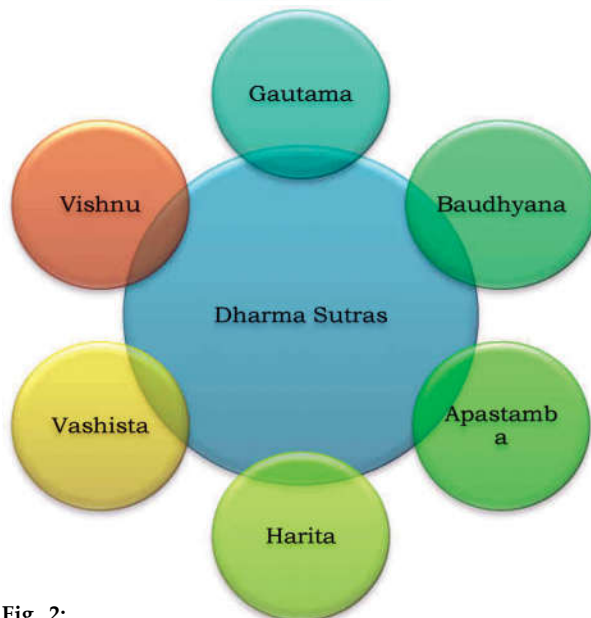


Fig. 2:

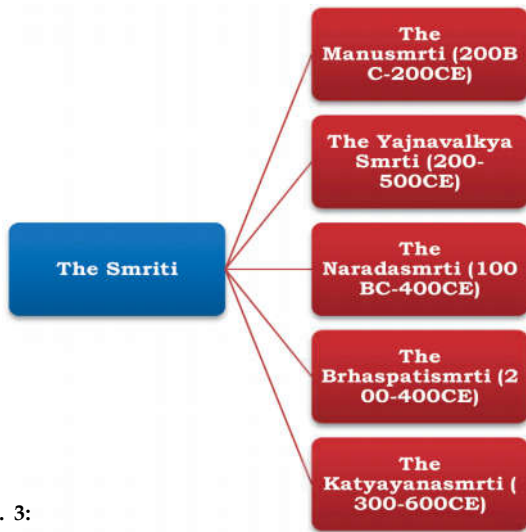


Fig. 3:

The two epics have the source of Dharma (justice) in ancient time [20]. In ancient period laid down that administration of justice was one of the fundamental duties of the state, guidelines were laid down to ensure rendering of justice impartially. Important of them are: According to Yajnavalkya “cases should be decided according to law (Dharma sastra) without being influenced any anger or greed”. According to Sukraniti, there are five causes which give rise to the charges of partiality (against the judge). They are:

- a. Raga (affection in favour of a party)
- b. Lobha (greed)
- c. Bhaya (fear)
- d. Dvesha (ill-will against a party) and
- e. Vadinoscha Rahashrutihi (the judge meeting and hearing a party to a case secretly)

According to Manu, guilty must be punished whoever he may be, “the ruler should not leave an offender unpunished, and whatever may be his relationship with him, whether the guilty is father or a teacher or a friend or mother of wife of a son or a domestic priest. If the guilty are not punished there will be no rule of law” [21].

Conclusion

Ancient times, the judicial institutions were considered as prominent wing of society where administration of justice was being delivered. The King was delivering the justice by practicing the Rajadharma where there is no discrimination. As per Brihadaranykopenishad, the power of Kingship was not sufficient and hence the excellent Dharma “the law” was created which is superior to King and it enabled the king to protect the people. The law (or

Dharma= Justice) is defined as “Law is the King of Kings, nothing is superior to law; the law aided by the power of the King enables the weak to prevail over the strong”. Administration of justice in ancient India was well structured though it was in a rudimentary stage in those days. This system provides an excellent foundation upon which the modern system of administration of justice have been built up and structured.

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