

15. Exploring the Relationship between Dharma and Law

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ABSTRACT

वेदोऽखिलो धर्ममूलं स्मृतिशीले च तद्विदाम्।

आचारश्चैवसाधूनामात्मनस्तुष्टिरेवच॥६॥

The Veda itself is the root-source of Dharma; also, the Conscientious Recollection of righteous persons versed in the Veda, the Practice of Good (and learned) Men, and their self-satisfaction.
-Manusmriti, 2.6

This shlok from Manusmriti suggests that the Veda is the key source of Dharma.

“Dharma” as interpreted, is the way of life; which differentiates between right and wrong. And so does the Law. “Law” too suggests the way of life, rather than only “Dandniti”. Even when compared with each other, the basis of Law as recognised under Article 38 of The statute of International Court of Justice are treaties, customary rules, judicial work or commentaries and Shrutis, Smrutis, Puranas, Customary Rules are the very basis of Dharma. This article endeavours to understand evolution of the concept of Dharma and Law. It also deliberates about the relationship between Dharma and Law. It also investigates if various laws as interpreted in today’s world like Public International Law, Civil Law, Criminal Law, Constitutional Law etc. Find resonance with the concept of Dharma.

Keywords: *Dharma, Law, Code of Conduct, Behaviour*

Introduction:

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(6) Manusmriti

This verse from Manusmriti suggests that the “Veda” is the key source of Dharma. Dharma can be seen as an aspect of truth and reality. Various religions in India interpret Dharma differently. There can not be a common specific single word which would be incorporating in itself all these interpretations. If we consider the meaning of Dharma as described under Hinduism, it can be a ‘Behaviour which is in consonance with the Vedas’. Which means ultimately that, there are certain mechanisms called *Acharanas* (आचरण) prescribed; as good or bad, or right or wrong; and the behaviour fitting in such *Acharanasis* practicing Dharma. Dharma ultimately if analysed as a concept; means ‘Ethical Goodness’. It is nothing related to religion the way in which this same term interpreted today in the new age.

Manusmriti is also known as 'Manav Dharmashastra' where in; Manu describes rules for observance of Dharma. They are: Patience, Forgiveness, Devotion, Self-Control, Honesty, Sanctity, Reason, Knowledge, Learning, Truthfulness and Absence of Anger. He further, 'if all of these are followed in right balance there will be the union of soul with the supreme reality' in other words; attainment of moksha or ultimate liberation can be experienced. He also

highlights nonviolence; truth, non-converting, control on senses is the spirit of Dharma. According to him; objective of Dharma is not only this; but also, it generates a code of conduct which balances all worldly aspirations and spiritual callings.

In Manusmriti; Danda is superior to Dharma. State is the propounder of Dharma but protects Dharma through Danda. Although the welfare of the people is the important duty of the king but in Manusmriti king is made responsible towards God not towards the people. When we analyse western thought, on these lines we get 'Social Contract Theory' as a result. None other than Thomas Hobbes, John Locke and Jean Jacques are the best-known proponents of the Social Contract Theory. It suggests; 'in the society; people live together after having a implied contract with each other, which binds them in terms of moral, immoral, amoral, right, wrong, acceptable or non-acceptable behaviour in the society. As Socrates tried to explain in the Social Contract Theory and as interpreted from various sources available; it can be seen that, Dharma and Law both tries to bind and individual with thread of right and wrong, sometimes it amounts to be an explicit contract and sometimes it is just an expected behaviour.

The 'Yadnyavalkya Smriti', also popularly known as 'Dharmashastra'; is from the Guptas' time. Emphasis this text pays to the concepts like religious, criminal, civil laws and jurisprudence around this time. With the precision these terms are used in Yadnyavalkya Smriti, they connect more with the modern concept of "Rule of Law", such as the concept of contractual relationship and contractual obligations. Though the modern concept of "Rule of Law" has got more dynamism, Dharma still can be seen very much playing the role of prescribed obligations. It also says King shall appoint judges who are perfect in Vedas and in science. This emphasises that, the system of justice delivery was formed to be as analytical, independent, and scientific as possible. This could only be possible as it was expected to analyse the conduct of any individual on the basis of obligations prescribed as Dharma.

One of the meanings of Dharma provided in Rugveda is 'rules of conduct'.⁶In the Bṛhadaranyakopaniṣad, 'the meaning of *dharma* is extended to law or righteousness in a passage, and also it does establish the supremacy of law'.

All above mentioned references if analysed together with the modern-day concept of law, it provides for key concepts like; rule of law, supremacy of law, right conduct so on and so forth. All these can be treated as salient features of the concept "Law". And also, they are the components of 'Doctrine of Basic Structure' as curated through Indian Judiciary in various cases like Shakari Prasad Case (1951), Golak Nath Case (1967), Kesawananda Bharati Case (1973), and Minerwa Mills Case (1980).

H.L.A. Hart in his book "The Concept of Law" says; 'Laws are the rules made by humans'. John Austin also had been a strong believer of; "Law is a command of sovereign". Under positive law theory all followers have argued against the old concept of natural law and divine law. Whereas, under the concept of Dharma, such non acceptance of the concept of natural law is hard to find.

Therefore, it can be inferred, that if the definitions of Dharma and Law are to be compared then they may mean different genres. But if compared according to ethos, they can be seen as the interdependent, interrelated once. Rather the concept of 'Dharma' can be seen as a predecessor of the new age concept of 'Law'. When Salmond says; "the law may be defined as the body of

principles recognized and applied by the state in the administration of justice”; he interprets law as dharma only, as understood in Yadnyavalkyasmruti or Manusmruti.

In furtherance of understanding the concept of law, these jurists and thinkers have divided it in the various types. Such as; Imperative Law, Physical or Scientific Law, Natural or Moral Law, Conventional Law, Customary Law, Technical Law, International Law and Civil Law. According to specific legal systems these types are further divided and these types are separately dealt with. But under the concept of Dharma, for example in Manusmriti; the concept in itself does include rules of right conduct in respect of such different bodies like; religion, administration, economics, etc. Categorisation of subject matter also differs according to the times when concept has evolved. Manusmriti, Yadnyavalkyasmriti, Kautilya's Arthashastra, all these works together do talk about duties, government, law, civil, criminal court systems, ethics, economics, markets and trade, diplomacy, peace, sovereign control, justice, rules of procedures, complaints, proofs, witness, grounds, re-evaluation of judgments etc. If all taken together and compared with the modern concept of Law, the term Law as defined under Article 13 of the Constitution of India, 1950, takes us to the inference that; Dharma as a concept evolved through ages. These societies interpreted Dharma almost on similar lines but most importantly as the righteousness. It also later on extended its wings to various systems and recognised a sound system of law as the basis of welfare state. In the same manner, the modern concept of law as well has evolved through various systems prevailing at that time, and ended up providing for specifications related to various legal systems, popularly recognised by the names of countries where they are prevailing like Indian Legal System, English Legal System, etc. The ultimate aim of both Dharma and Law can be termed as “a righteous life” leading towards welfare state or Moksha-Liberation. They differ in terms of degree of ethos but both go parallelly.

Sources of modern law are divided into two, material sources and formal sources (for all types of law). Material sources are further divided into legal sources such as legislations, precedents, customary law, conventional law and formal sources like statutes, judicial precedents, foreign judgments, judicial opinions etc. Article 38 of the Statute of International Court of Justice reiterates the same. It treats conventions or treaties, customary law, general principles recognised by civilized nations as the primary sources of law and qualified publications, juristic works as the secondary sources of law. In Manusmruti as well, as quoted above; unambiguous listing of the sources of Dharma is provided. It contains vedas, smritis, conduct of learned; good people, and one's own conscience.

If compared together we can say; Dharma provides the specific base for law. As dharma mainly does talk about right or wrong, moral or immoral, and also concretely about duties of individuals and various classes of individuals. Law furthers the concepts conceived by dharma. It more concretely does talk about rights as well along with duties of individuals and various classes of individuals. It also recognises various entities and institutions to have duties and rights for better balance in various systems in the society.

If put the terms 'Law' and 'Dharma' on same pedestal they may look same, as a common conjunction point for both amounts to be morality, they are different from each other in application.

‘Dharma’ as understood today, signifies of specific categories, moral ethical values, conduct, motive, mainly stability and harmony in the universe, but it does not stand as a synonym for religion or righteousness only. Until various components of Dharma are turned into the rules applicable by law, they hold no good. The way unification of takes place in cases of international law, to attach universality as an attribute to Dharma, it must be transformed in the form of law. It is not the faith which regulates the law-and-order situation in the society but concrete rules, provisions of law are required for the effect. Therefore, Dharma can be seen as the spirit of law, but law shall be in force to let dharma sustain.

Yadnyavalkyasmṛiti as well can be seen as a text which is related to dharmashastra tradition. It is mainly divided into three khandas; namely Achara Khanda (Customs), Vyavahara Khanda (Judicial Process), and Prayashchitta Khanda (crime, punishment, penance). This text was composed after Manusmṛiti and therefore we can say that; the concept of Dharma more prominently started evolving as legal system from this text.

Today’s legislations as well are divided into mainly two types’ procedural laws and substantive laws. They derive their subsistence from a legal system they belong to. This can be traced exactly in the “Social Engineering” theory by Roscoe Pound, “Law is social engineering which means a balance between the competing interests in society”.

Dharma and law as seen above may sometimes differ in their degrees of application, but the principle in which they are based is exactly same. Basis for both is ‘morality’. Both evolved out of the needs of the respective societies. Law as interpreted today, definitely is not a synonym for religion. Rather Dharma and Law both aims at social engineering and keeping the balance intact for any society.

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