

## **Jurisprudence in Ancient India**

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### **Abstract**

*To trace the evolution of law is the first step towards knowing the legal development of any society. The progress can be traced through various ages by systematically perusing the laws right from the ancient period. In the present context, the journey through eons is for the purpose of knowing the ways of administering justice in ancient India. The beginning of this beginning is from the vivid account of the legal system in ancient India, contained in various sacred scriptures. The ancient India was a Hindu civilization and it is a matter of pride and satisfaction to know that in that period not only did literature, philosophy and religion scale great heights but the law also explored and advanced into new domains. The jurisprudence of this period is essentially mixed with religion.*

### **Keywords**

*Hindu Scriptures, Dharmashastras, Ordeals.*

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## Introduction

The aim of every judicial administration, around the world is to meet out justice. The same was the case with the judicial system existing in ancient India. The fundamental principle on which law was based was Dharma. Law was the instrument by which means Dharma was maintained and promoted and Dharma epitomized truth, justice and equity. It was Dharma that governed the people and also the King. Justice demands truth and only on knowing and then ascertaining the truth can justice be done. Now, the objective is to know as to how the truth was obtained and ascertained in ancient India. In the Vedic period, there is little evidence as to the administration of justice or the code of any law. This is because the law and the religion were hardly distinguishable. Law was of divine origin and eternal and followed by all. The Dharmasutra period sees the systematic emergence of law. The King was duty-bound to protect his subjects and for this purpose, there were well-set rules relating to admission, denial, confession, avoidance and res judicata. The trial was conducted with the help of a witness and his veracity was tested by subjecting him to various ordeals. The object of ordeals was to ascertain truth at all costs. Apart from the ordeals, the behavior of witnesses was also watched. For the discovery of truth, the reliability of the witness was also very important. For establishing or disproving the truth, the evidence that was used was either human or divine. The human proofs were documents, witnesses and possession. The divine proofs were the ordeals. The ancient period can be divided chronologically as follows: i) The Vedic period ii) The *Dharma Sutra* Period, sub-divided into The *Sutra* period and The *Smriti* period iii) The post-*Smriti* period.

**i) The Vedic period:** this period dates roughly between 4000 B.C. to 1000 B.C. the scriptural writings of the Hindus are divided into *Sruti* and *Smriti*. *Veda* the earliest and the most sacred religious work of the Hindus belongs to the *Sruti* category. Among the four *Veda*, *Rig Veda* throws light on the society, social and political institutions existing in this age. The Vedic period sees a close connectivity between law, religion and justice. The national life and activities were expressed through popular assemblies and institutions. The three most important popular bodies were *Parishad*, *Samiti* and *Sabha*. *Parishad* was an advisory body on religious matters and it also discharged some judicial functions. *Samiti* was the body that discussed policy matters and discharged legislative and judicial functions also. *Sabha* was a body of select persons and was the national judicature and its resolutions were considered binding on all the persons.

**ii) The Dharma sutra Period:** The *Hindus* believe that the *Hindu* law has originated from the Divine. The primary source is the *Veda*, from which the *Smriti* and *Samhita* have developed. The *Sutra* and the *Smriti* periods are spoken of together as the *Dharmasastra* age. The *Dharmasastra* is not one single book, but consists of *Samhitas*

or institutes of holy sages. Of all the *Smritis*, *Manu Smriti* or *Manu Samhita* is regarded as next in sanctity to the *Veda*. It is the oldest of all laws and its authorship is attributed to *Manu*, the son of *Brahma*. He is considered as the most ancient and greatest of all Lawgivers. According to *Hindu* beliefs, the world is divided into four *Yugs* or cycles and each *Samhita* is considered appropriate for each cycle, as: *Satya-Yug: Manu Samhita; Trita-Yug: Gautama Samhita; Dwapara-Yug: Sankha and Likhita Samhita; &, Kali-Yug:*

*Parasara Samhita*. The *Dharma sutra* period is considered as the golden era of *Hindu* Law, mainly because the law propounded by the *Smriti* writers was more systematic and comprehensive in nature and the set principles were followed alike by the people and the king.

**iii) The Post-Smriti Period:** The *Arthashastra* of *Kautilya* or *Chanakya* was compiled somewhere between 300 B.C. to 100 A.D. In *Arthashastra*, king is the pivot around who revolves his rights, duties and responsibilities including the judicial administration. Apart from *Kautilya's Arthashastra*, *Nibandhas* and *Tikas* also played a significant role in the development of the *Hindu* law. The *Nibandhas* and *Tikas* are commentaries.. The *Nibandhakars* or commentators quoted exclusively from the original texts, i.e., the *Srutis* and *Smritis*. Among the commentators, the well-known are *Vijuanesvara* and *Jimutvahana*.

### **Ordeals**

Among the means of proof, ordeals appear to have been very well recognized by the *Dharmasastras*. Ordeals were permitted only when all other evidence failed. Limitations were imposed on the use of ordeals not only with respect to the nature of the dispute under question but also with respect to the accused concerned. Ordeals were not subjected to women, minors, aged, distressed persons, those performing austerities and persons observing vows. The ordinary rule was that ordeals were to be administered to the defendant. But *Yajnavalkyagives* an option that any one of the two litigants may by mutual agreement undergo an ordeal and the other should agree to pay on defeat a fine or undergo physical punishment. The ordeal was an appeal to the immediate judgment of God. The predominant belief behind this is that God helps the just and punishes the unjust. The belief in divine justice is deeply rooted in the minds of the *Hindus*. It is noteworthy that the numbers of ordeals mentioned in *Smritis* differ from one *Smriti* to the other. Some of the ordeals were by: fire, water, poison, *dharma*. Taking recourse to ordeals to determine the truth regarding disputes is a subject matter which finds mention and description in the *Smritis*. The basis on which the divine proof finds such a strong foothold in the *Smritis*, is that the ancient *India* regarded her law as *Dharma* and sacred in origin. The thing that is noteworthy is that the number of ordeals differs from one

*Smriti* to the other. *Manu* mentions only two, *Sankha-Likhita* give the names of four, *Visnu* and *Yajnavalkya* name five ordeals, *Narada* gives a list of seven ordeals, and finally, *Brhaspati* and *Pitamaha* makes the number of ordeals nine. Divergent views occur regarding the inferences that can be drawn from the above fact. Some scholars believe that the greater the number of ordeals mentioned in a *Smriti*, the later its date. Some object in taking a larger number of ordeals to be a sign of late date on the ground that a better acquaintance with primitive and archaic elements of law should not be taken as a sign of advancement. This controversy will not arise if things are seen from a correct evolutionary perspective. At the time of the codification of the *Smritis*, distaste for older ordeals was gaining momentum because of the brutality involved in them, while at the same time, the forces of atavism were active against the complete overthrow of ordeals. The pressure of these two contending forces resulted in humanization of early brutal ordeals and also the invention of new milder ordeals to replace the old ones. It was the growth of this tendency that led to the growing literature on ordeals in successive *Smritis*. By the time the *Smriti* codification began, the growth of ordeals was into its final phase.

#### **Successive Stage in The Growth of Ordeals**

**FIRE ORDEALS:** Fire is one of the earliest and most primitive forms of ordeal. The original ordeal was to actually enter into the fire. Later on, entering into the fire was modified into holding fire in hands and passing through a fixed number of circles. The belief behind the original primitive form of the ordeal was that the fire gives the judgment by burning to ashes the guilty and sparing the innocent. The primitive ordeal was conclusive, while in the latter form it was merely a proof and not to the penalty. A further simplification of the fire ordeal was that instead of the entire hand, only the thumb and two fingers are exposed to danger.

**POISON ORDEAL:** The original form of the ordeal of poison consisted in administering to the some kind of poison, usually extracted from plants. Later on, in place of actual poisons, pseudo poisons were used. Holy water was a pseudo poison. It was prepared by dipping an image of some god into the water and then for a fixed number of days the suspect was kept under observation and if no calamity befell him, he was declared innocent. Another example of pseudo poison was the administration of the rice grains which the suspect had to chew and spit out, and if blood was found mixed in the grains, he was declared guilty.

**HARMLESS ORDEALS:** The humanization of the ordeals is illustrated by the invention of new ordeals based on an appeal to chance or on lot. The ordeal of *Dharma* is an example of this. Another example is that of balance. The harmless ordeals were free from any kind of torture, which formed an essential part of the earlier ordeals.

*LIMITATIONS ON ORDEALS*: Atavism prevented the overthrowing of the custom of ordeals. The constant struggle between the humanizing forces and the forces of atavism brought to the fore mild forms of ordeals and also a general repugnance towards the employment of ordeals. The natural outcome of this conflicting attitude towards the ordeals was the imposition of the different kinds of limitations on their use, thus making their use infrequent. The examples of limitations as given in various *Smritis* are:

1. The use of ordeals could be restored to only when no human means of proof were available;
2. Divine means of proof could be used only in cases like theft, questions of chastity, denial of deposits, monetary liabilities and transactions in lonely places;
3. Persons observing vows, those performing austerities, distressed persons, women, minors and aged could not be subjected to ordeals;
4. The ordeals were given after due consideration of the *varna* or caste of the accused -*Brahmans* have prescribed the ordeal of balance, *Kshatriyas* were subjected to the ordeal of fire, water ordeal was given to *Vaisyas* and the ordeal of poison was meant for *Sudras*. The more risky and dangerous ordeals, like that of fire and poison, were not appropriate for administration to the brahmanas, only the easier ones, like, the ordeal of balance was offered to them;
5. Then use of water ordeal was prohibited in the winter season, that of fire in summer and the ordeal of poison in the rainy season. Conversely, water ordeal was to be used in the summer season, fire ordeal in the rainy season and the poison ordeal when the season was cool.

The above discourse makes it amply clear that the brutality of the ancient ordeals was gradually reduced and became more human in nature, thus generating kindness towards mankind. The hidden aspect behind ordeals is that most of them can be said to be akin to torture, forcing truth and also the fear of the divine, and the belief that the supreme power can rain severe calamities on a wrongdoer. It can be said that the method of ordeals emanated from the superstitious belief of the people in ancient times. The modern mind, of the computer age and advancing scientific technologies, finds the very concept of ordeals irrational and fanciful. But then, the brutality of yesteryears still exists today, what else can be said when the fear of torture makes a man confess? Whether confession is made truly or falsely is another story. It must be remembered that the period of ordeals was that time when the basis of law was morality and religion. The concept of law was that the deity dictates the entire code of law. The Hindu law, or as is known as the laws of *Manu*, is considered a *Brahmin* compilation thus a bias is hinted at. Also, the entire Hindu code existed, and still exists in *Sanskrit*, which is not a common

man's language and thus liable to be interpreted mischievously. The other face of the coin is that since the Hindu law is a written law, it can be saved from being mischievously interpreted, as happens to the unwritten laws. Since *Vedas*, *Dharmasutras* and *Smritis* were considered as the law, their interpretation of *Mimamsa* was an inevitable task. *Mimamsa* brings out the essence of the provisions of the texts considered as authoritative. *Mimamsa* is the important branch of Jurisprudence because of the simple reason that problems occur when two opposing parties place two different interpretations of the same provision. Then it becomes essential that, to mete out justice, the real meaning of law is ascertained and accordingly applied.

The *Dharma*, as eulogized in the *Vedas*, *Dharmasastras* and *Smritis*, covered each aspect of activity in ancient Indian society. But the difficult language of these texts came in the way of their implementation. To remove the possibilities of divergent interpretations and resolve the difficulty forever *Mimamsa* or the rules of interpretation came to be written by eminent Vedic scholars, who were well versed in *bhasha* and *vyakarana*, i.e., language and grammar. Apart from *Smritis* and *Dharmasastras*, other equally important sources of the ancient legal system are *Arthashastra* of *Kautilya*, the two epics and *Sukranitisara*, among others. Though *Arthashastra* does not fall in the category of *Dharmasastra*, it occupies an important place in the annals of the legal history of India. The author of this great work is *Chanakya* or *Vishnugupta* who was the Prime Minister of the *Magadha* Empire during the reign of *Chandragupta Maurya*. *Chanakya* lived and wrote this famous work sometime between 322 and 300 B.C.. *Kautilya* insisted on finding out the truth to mete out Justice. He said that in litigation both the parties insist that their own version is the truth, in such a case, to arrive at the truth, the following things may happen: i) a witness may come forward, who has seen the occurrence of the crime. ii) a person may confess, thus accepting his crime iii) a simple argument by both the contending parties may resolve the issue of the truthfulness of a fact iv) the reason for committing crime may be told v) the person may be told to speak on oath. If still, the Judge could not arrive at a decision, then truth was to be found out by means of witnesses and secret police, and accordingly, a sentence was passed against the wrongdoer. *Kautilya* has emphasized the importance of truth, he says that a witness ought to speak the truth at all costs: a *Brahman* witness was simply told to speak the truth, a *Kshatriya* and a *Vaisya* were told that if you don't speak the truth then your wishes and ambitions will not be fulfilled and you will go begging to your enemies with a skull in your hand as a begging bowl, a *Sudra* was told that all your religious merits will go to your King and your King's sins will come to you. *Sukranitisara* is a compilation of the rules of *Rajadharma* or the constitutional law, and allied topics. *Sukraniti* deals with the rules governing the constitution and organization of the state, duties and responsibilities of the King; the

administration of various departments of the state; administration of justice including judicial procedure. *Sukraniti* mentions ordeals, it says that to arrive at a decision by the ordeals of fire, poison, water, should be used.

### **Conclusion**

With the compilation of various *smritis* by eminent jurists starting from *Manu*, the Hindu jurisprudence saw the era of codification of law, both substantive and procedural. The *smritis* naturally covered almost all the branches of law which the society then needed. The next stage of development of law consisted of interpretation of the laws so laid down with necessary illustrations so as to ensure their proper application. As the *smritis* themselves laid down, questions of law could not be decided by merely looking at the letter of the law but there should be a reasoned application of the law has taken into account the understanding of the said provisions as indicated by usage and custom and as approved by the conscience of virtuous people. The usages and customs ultimately got assimilated into the legal system and modified the earlier laws. This gave scope for the development of law. This shows that the Hindu law was never static. The growth of the Hindu law came to a standstill for some time because of the foreign invasions, foreign rules and frequent wars. This setback because of historical reasons was short-lived. With the advent of the British rule, the growth of the Hindu law started again, partly by judicial interpretation and partly by the legislative process.

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