Legal System of the Ancient Hindu Culture

Ali Aloqayli,

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**Introduction.**

Many people have different concepts of law and how they govern their conduct for the wellbeing of the others and the society. The Hindu culture is comprised of philosophical principle of law known as dharma. In many cases, dharma is comprised of a collection of legal theory, philosophical reflections and jurisprudence that comprises of codes of law which is now known as Hindu law by many scholars. (Davis, D. R. 2006).

Even though there are many definitions of dharma, in this case we shall consider it as a system of law. In Hinduism, the meaning of dharma is a moral law which is religious governing people’s conduct which is considered as one important segment of life. In this paper will study the Hindu Law system or dharma and how it applies or executes codes of law. “Dharma is primarily based on the Vedas and has many indices such as Sruti, Smriti and moral laws (sadachar) and governed the lives of people in the ancient time. “ (Neerja Gurnani, 2015).

It is apparent that the Indian Legal system has evolved from customs and ancient believes.

**History and Concept of Hindu Law**.

The history of Hindu Law started long time ago which was initially know as dharma. Dharma is a code of laws that would signify human behaviors which are considered to be based on “rta” which is an order on which makes the human life possible in the universe. The history of the Hindu Law existed even before the colonial rule of the British. It existed as dharma which has its early trace of the ancient manuscripts known as “Manusmṛt”. (Rocher, L. 1977).

According to Rocher, the manuscript was one of the dharma law translation into the British India Law which was done by Sir William Jones in the year 1794. It was used by the colonial government to come up with the official Hindu Law that is apparent in history since during the colonial rule in India.

It is good to note that the aim or approach of dharma was not to signify a strict legal law but to provide a theoretical reflection of morals and behavior. The concept was not well understood by the British and the thus considered it as law in India hence using it to come up with a colonial rule law known as Hindu Law. They failed to know that the Sanskrit manuscripts were only used as positive law statements.

They did not know that Dharma was only a jurisprudence commentary which refers to a reflection or comment to a practical law and was not a formal law of the India and South Asia. (Davis Jr, D. R. 2010). It should be noted that India was subjected to division based on religious forms of law. Some were subjected to Hindu Law and the Muslim Indians were subjected to ‘Sharia” law.

During the colonial rule, the country of India was divided into two divisions of how to execute law known as “legal pluralism” where people in the same India country were subjected to dual laws – the Muslim and Hindu laws. The concept used here was the assumption that religion is what communities are based on and they should have their own right way of executing law. (Rudolph, S. H., & Rudolph, L. I. 2000). It can be concluded through various scholars that the Hindu Law is the construction of British Colonial rule over the South Asia and it was apparently obtained from the dharma concepts and reflections.

**Meaning of Dharma**

Dharma is a concept of Indian philosophy which cannot be easily limited to one single definition because of its diversity of use by various communities and the dilution through perpetuation throughout the history. The ‘rta’ associated behaviors, which are in accord to makes possibility of life on the universe, are what Indians view as dharma. Indians view dharma as something that is comprised of laws of life, conduct, duties, and rights among other virtues. (Arti, D. 2002).

In the community of Buddhism, dharma is viewed as the cosmic order and law. Various scholars have tried to define the concept of dharma and one of the accepted even though it’s open to dispute or incompleteness, it refers to ‘path of righteousness’ or the ‘right way to live’. The definition is accordance to Monier Williams’s dictionary of Sanskrit texts. (Williams Monier, 2008). Dharma comes from “dhri” that is integrated as to ‘hold or to conform’. It comprises of all customs, rights, duty and characters which are morally upright and considered as correct for wellbeing.

Dharma applies to humans and objects in the universe. It is a law where for instance, the sun has to shine, the cow has to provide milk and a bee has to provide honey. All these laws bring harmony to the universe. In human beings, it applies when they are alone, when they interact with other human beings and objects in nature to bring interconnection in life. (Horsch, P. 2004).

Three important sources where dharma was derived were noted from the ancient texts. These sources are Good Custom, Tradition and Veda. These sources are differing in the importance level where Veda has the greatest importance, followed by tradition and then Good Custom respectively.

*Vedas*

This refers to ultimate knowledge and the principles of dharma are based on Veda. Shantanu Rathore (2015), Veda is the source that dharma originated from. It thus shows the highest human life principle. These would involve the various man conduct, duties as well as the relationship towards religion. India is considered to have Vedas, from which Dharma originated, defining ethos or natural law to find the best human aim in society. However, with time, the dharma declined with the emergence of a positive law.

Dharma is accepted to originate from the Vedic concept of Rita which means ‘the straight line’. Rita in turns would allude to Nature Law which are moral laws based on righteousness. Something that is said to be Rita would mean that it is right and true. Dharma has evolved together with Rita but it finally replaced the Rita and the initial Rita concept wouldn’t be able to solve the emerging issues of risen social complexities.

An illustration on the concept of Dharma can be obtained from a phrase, “*punyo vai punyena Karmana bhavati, Papah Papeneti*”, which is contained in *Brihadaranyaka*. The phrase means, “Everyone becomes good by good deeds and bad by bad deeds”. (Shantanu Rathore, 2015). Justice M. Rama describes dharma as “that which sustains and ensures progress and welfare of all in this world and eternal bliss in the other world. The Dharma is promulgated in the form of command.” (Jois, 1984). In India, dharma took care of the state and its citizen, thus we can see that it was a form of legal system that governed law and order.

*Tradition*

This is also called ‘smriti’. In involves the various teachings which are perpetuated from the ancient history and contributes to what the Vedas doesn’t fully have. It is different from sruti because it is a knowledge which is transferred by the brain memory that one has but the sruti refers to the revealed knowledge itself. Smriti is a special literature that contains Vedangas, the Puranas and the epics.

The dharma percepts are contained in the smriti texts, but Vendangas is only necessary to explain dharma. These are treated as auxiliary texts which play a role of interpreting the Vedas. They are segmented into 6 main types; phonetics, linguistic analysis, grammar, meters, astronomy which is used as Vedic calendar, dictionary for Veda challenging vocabulary and sacrifices such as kalpa.

These are written or formulated as rules or sutras which express themselves in abstract and condensed sentences and are not handled carelessly – only when the teacher is explaining or commenting about it for the purpose of teaching the students. The kalpa-sutras stand out to be the most respected treatises because it is the fundamental dogma of the Vedic religion. The constituent of this treatise include; srauta-sutras, grhya-sutras, dharma-sutra that are well treasured by the community.

The Aryan society introduced the Brahmin caste after the Vedic era. Brahmins were considered as special society which had only the privilege of carrying out sacrifices which were believed to maintain cosmic order. These made up of royal courts’ judges and councilors. They formed an outline of their roles which were documented in dharma-sutras and were used to educate and perpetuate their duties to the generations that followed.

According to Max Muller, a well-known Indologist, the Brahmins established special schools that would be aimed at learning Vedas. They combined rituals which were done through kalpa-sutra that explained proper behavior principles of Aryan society members and conduct rules for kings as the justice administration rules. Latter treatises such as the Manu-srmrit (an ancient India law treatise) were also covered initially by the dharma-sutras. One of the ancient school declared that the each school related to Vedic teachings had unique work and interpretation in dharma.

These traditions, smriti, form the second theoretical source used to interpret dharma. In practice, the smritis comprised a great part of what was taught in the Vedic schools. The schools prepared Brahmins to exercise their role in society, to officiate at sacrificial rites, to serve as spiritual and temporal advisors expound to the lower castes.

One of the well-respected text is the Manu-smriti which means” The Laws of Manu” and it is considered a manuscript that would describe the ancient Hindu law. It is second to Vedas and is considered one that is due respect.

Manu was believed to be used even in the 1st century as a form of legal system and justice administration because it contained rules for kings, spouses and various castes. Even though some claim that the author was the first legislator of the special law, there exists proofs that Manu was just compiled by many teachers and commentators of the Aryas law.

**“Good Custom”**

Thirdly, a good custom is the other spring of dharma. It constitutes the practices of good people and the traditions of the people who stick to the dharma. The insights of the law assume that good people are those that obey the law of Veda. In other words, good people are law abiding people because they live by the perceptions of the law.

The term custom slightly changes meaning on this subject. Custom, as the general definition states, refers to traditions which have evolved gradually with time and are being followed by the community as the way of life. The old ways adopted and put into practice by the Aryan people since the beginning of time are “customs” as perceived by the Veda. These traditions brought to India time immemorial by the Arya people was adopted by the pious residents of Brahmavarta which is a revered place may still help understand dharma. On this, customs are not the evolutions of tradition but the original practices not altered by time or circumstance. Therefore, the period where such traditions are valid is the post creation time as stipulated in Hindu teaching.

Customs can also be created. If a good practice is assumed to be by Dharma, it can be decided to be a good custom. A group of well-learned men together with people who were fully conversant with the Vedas co-decided to be creating traditions. However, the assembly of these men was not just by default. The group occupants were being changed depending on the origin of the practice in question. The group was composed of three who were well conversant with the Veda, one logician, one conversant with the Mimamsa school of the Vedic school of interpretation, one etymology scholar, one Dharma-sutras expert and three men each standing for the three stages of people, all ten individuals.

However, it was not always compulsory for all the individuals mentioned above to be present for the customs to be made. The logic behind this is the emphasis on quality of the custom over the number of members

**Principles of Dharma**

Some scholars have tried to express some instances of the principles of dharma. Also, the people of India have also used the principles and try to manifest in their lives. For instance, Deepak Chopra tries to explain the components of dharma. He categorizes dharma in three components. The first component is that everyone on earth is present to identify the true self and the fact that we are spiritual beings.

He progresses to define the second component which argues that each one has a talent which we are to express. That happiness is achieved when we express our unique talents. The third component is that people should use their talents to server other people and human beings. In summary, the principle is based on purpose in life according to this scholar. “The seventh spiritual law of success, the Law of Dharma or Purpose in Life, says that we are spiritual beings who have taken physical form to fulfill a purpose. “ (Deepak Chopra, 2013).

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**Why Dharma was a form of Legal System**

Even though dharma was not specifically aimed at executing law, it indirectly signified the norms, rituals, morals and hence had an impact on executing law in the ancient Hindu culture. As the famous Chinese philosopher said that governing people be forceful government laws is not as effective as using people’s own rituals order and perception of what is accepted and not accepted by the society.

Dharma is a good example of a ritual which was not aimed at forcefully making people to obey the law but instanced into the minds and believes of the Hindu community on what is accepted as norm and moral. Thus, it indirectly brought legal system unto which laws were formulated.

Dharma mentioned the law governing everyone in time immemorial and everybody was under it even the King was being ruled by it and in any case he does not align with it, then the public was given right by *Dharmashastrakara* to protest against the King’s unjust acts. The Kautilya, Manu and others had treaties that would even comprise of duties and rights of the public as well as the King.

Mind you, it even recognizes the rights to individuals like right to personal wealth and private property and were bounded by the laws to benefit the society. Thus from this we can allude that dharma was having a form of legal law. The idea of dharma was used in several Indian courts even the Supreme Court when trying to make decision

 The different institutions and empires developed at different periods in India included structures like those explained in the Manu-Smriti. In every empire, there was an emperor or a kind of government that legislated the ancient customs.

Dharma, religious, moral and civil law are the cradle of the earliest Hindu laws. Caste, which is the positioning of a person in their social class by inheritance, is a concept which was also a characteristic of the society. Each Caste practice had a prescription outlined in the Dharma. Rulers and the governing institutions influenced the working of the law in the same way usage of custom in the society did. The paper is an insight of the Manu-Smriti and other structures of Hindu law that have been maintained since the early times.

A collection of the ancient religious practices by a sage known as Manu is what is known as the Manu-Smriti. The laws of Manu are an extensive coverage of things ranging from creation phenomenon to the human duties at different stages of life. Also covered are the tasks of the various laws in existence. The topic to be extensively referred to in this paper is the one relating to the law.

**The procedure recommended by the Manu-Smriti.**

Manu laws require the highest authority to take part in the legislation process actively. Specifically, the King should be present in court chambers together with his advisors to hear cases presented by members of the public.

The headings under which cases are presented are specifically outlined in the Manu-Smriti as below: due debts, deposit and pledge, illegal sale, spouse concern, recalling gifts, unpaid salaries, breach of contracts, trade recession, disputes among employer and servants, land disputes, physical assault, defamation, robbery, violence, adultery, conjugal rights, inheritance and gambling and lottery.

Manu laws outline the duties of witnesses to give actual testimonies and the obligation of the judiciary to serve justice. If the king is not available to hear cases, he is required that he delegate the duty to his most trusted Brahmin

**Positive law advent and diminishing of Dharma**

Dharma started diminishing in its roots and influence with the rise of the Muslim rule after the British rule in India. Even though numerous practices of Dharma were remaining unaffected, Koranic teachings took dharma place. The British came and fixed issues where they would include western laws as well as the natural law of justice, good conscience and equality on fields where the Muslim and Hindu laws and teachings did not offer. However, the Indians were denied civil rights as well as liberties and were ruthlessly suppressed by the British rule in certain areas of life like economic, social and political issues.

During the post-independence period, Dharma was highly taken as reference to coming up with the Constitution of India. Its concepts were reflected upon and respected as something that had the ancient meaningfulness of law and wellbeing of human beings based on moral laws and consciousness.

It was believed that since it was an ancient form, then it should lead to an accurate view of life and law. In this period, the constitution, which defined the fundamental rights, was based on the natural law which is referred to as Dharma. The British rule was viewed as oppressing and hence the revolts by the Indians was aimed at restoring the legal rights and liberties they naturally owned hence they returned to use the ancient legal systems i.e. based on Dharma concepts.

 **Forms of Legal System of the Ancient Hindu Culture**

 Legal system in Ancient India was of two kinds which were secular and religious. The ancient Indian society believed that crime and sin were to be distinguished as offenses against the state and religion respectively. There are several salient aspects of Ancient Indian law that are worth noting. The first aspect is known as Atmatutsi whose meaning is that one should follow their conscience as the final saying. It is a last resort measure that was used when all other avenues that were available did not work.

There is also the concept of practicing administrative law in Ancient India where kings were responsible for the implementation of law. These included punishments and rewards and were commonly practiced in management rather than in matters of state policy. There were dominant social groups that had set different protocols practiced throughout the state while some like the Brahmins took control of the spiritual and religious worlds.

There were also religious procedures that can be termed as systems of oaths and ordeals. Verdicts were passed by groups of core ministers who were guided by ancient readings that include the Dharma, yajnavalkya, manusmriti, Shastra and Smrtis. Oaths and ordeals were considered more sacred at the time and the concept of justice is something that was missing (Lubin, Davis and Krishnan, 2010).

 The ancient Hindu legal system also had a penal code known as the danda system. The punishment system would be based more on incapacitation as it had a deterrent effect on the culprit. Some of the punishments involved at the time included cutting a person’s hands, death, banishment and even mutilation. Lastly there is the reformative theory of punishment which has its foundation on Mahabharata. It involved the rehabilitation of wrong doers with the intent of leading them on the right path.

**Comparison of Dharma and the present Hindu Law**

 According to Rao, (1997) in the traditional Hindu tradition there is no much of division between secular and sacred. Therefore there was no area of life that was not influenced by spirituality. Dharma offered an integrated view of the world and gave coherence to the difference areas of life. The unification of the physical, mental and spiritual dimensions was only possible through Dharma.

Notions such as that of justice, ritual, law and order are all integrated in Dharma. The purpose of dharma is the maintenance and conservation of the social order so as to protect the general welfare of humankind. The violation of laws is considered destructive to human life and therefore Dharma restrains those who can’t restrain themselves. The rules, customs and traditions have a similar source which is the Vedas which is a guide of conduct.

 Laws however are not the same for all ages and times and they change according to the needs and conditions of society. Modifications are particularly important as they enable the laws to fit the enlightened conscience of the time. The current laws in India do not seek to achieve the goal of fulfillment of the person like dharma. The sources of modern law have changed and include legislations, case laws and Hindu code bills.

Justice is also delivered through the court system and Hindu laws may be applied on a case by case basis (Marshall, 2013). There is need for flexibility in law just as can be seen in today’s world. The law in India now guarantees equality of status and opportunity to all despite their gender, social and even economic position unlike the dhrama.

In 1950, major reforms were taken off the Hindu family law as many aspects were misunderstood. These changes took away the aspect of Hindu law leaning too much into religion and made it more secular. Hindu law became more accommodating to gender equality than the Muslim family law.

Furthermore, these reforms ensured that more aspects of Hindu law were governed by statutes than Muslim law. However, some areas involving divorce were significantly affected by the changes. For example, widows are deprived rights to inherit their husband's property if they get remarried.

 According to Rathore, (2015) looking back at the past is probably the only way to deal with the future which is constantly evolving. Although Hindu laws have changed with time there are still issues of concern in relation to the treatment of minorities.

 Rules and laws that pertain to matters of succession, marriage and divorce are just but examples of issues that need to be addressed. While the succession laws were based on the traditional belief and value systems they have remained stagnant as the world changes. The idea that there are predetermined successors and they have fixed shares continues to limit the laws.

For example the succession laws state that the mother, wife and children are all equal beneficiaries when a man dies. However it is not the desired succession plan for many people. The succession Act has continually ensured that property remains with the male line of decent. Sons will get shares that are equal to those of their fathers while daughters only get a small portion. Girl children cannot reside in their fathers house unless they are divorced or single which further adds to the list of concerns.

Hindu women cannot have claim to their matrimonial home unless they sufficiently prove that such a home was bought using their own earnings. Personal laws govern marriages, divorce and even matters of inheritance and they at times subvert the constitutionally guaranteed rights of women. Bigamy which is prohibited under the marriage act of 1955 still continues to date (Davis, 2007). Women who seek to divorce their husbands under bigamy should prove that the husband has indeed had a second marriage.

However it is quite difficult since marriages under the Hindu law are not automatically registered. Most of these laws that bring about inequality affect women are vastly affected by inequality. Women are forced to be dependent on relatives especially when marital issues occur which shouldn’t be the case. For society to progress is important that such sections of the law are addressed. It is only then that we can claim that we have taken a step towards equality in the country.

**Conclusion**

 The Hindu law has existed for a long time and there are always changes that come about in order for it to fit in the current society. Dharma which deals with the concepts of religion and duty is the Indian version of natural law. The basis or sources of Dharma vary but include the following Sruti, sadachar and smirti which governed the lives of people in ancient times. Hindu laws have a divine origin and are based on custom and acts of people that were considered secular in nature.

The acts have however been modified in a way that they fit the preferences of the religious class the Brahmin. The desire of Dharma is to promote special objects of religion and has been molded to fit into the culture of the people. As noted Hindu laws have evolved throughout the years.

However there are still areas of concern that need to be addressed. Although a comparison to Islam laws is in favor of Hinduism it doesn’t mean that there are no problems. Areas such as succession, marriage, inheritance and divorce still remain to be areas of dispute despite changes having been made. The minority is yet to achieve equality in Hinduism and it will probably take some time for that to happen.

From my study, I concluded that the ancient India had a form of legislation which was mainly derived from the Dharma. Dharma is a universal order that would define the rules on behavior which would support life here. Some rules in dharma are matching with administration justice and hence they are morally right. I have also describe some features of dharma concepts which are expressed in the current form of legislation. Mind you, I have shown how the concepts of dharma were used to come up with the India constitution after the end of the British rule.

From this, it can be concluded that every region of the world had its own history of legal law system and India being one of them. The current legal systems are derived in some sections, from the cultural believes of morals and the indigenous laws of the particular society. As we have seen, India had believed in dharma principles and it was the basis of which it was used to come up with the modern legal system.

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