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JURY OF MANAV-DHARMSHAstra – **A BRIEF STUDY**

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1. About The Topic

Presented article regarding Dharmshastra and the ancient Council of Justice(jury).Which throws light on the heard and unheard aspects of the functioning and quality of the ancient Indian judicial system, jury and also draws inspiration for the present judicial system.In The Presented Article, the Ancient Indian judicial system has been briefly discussed on the basis of ancient Dharmshastra

1.1.Rise of Dharmashastra:

Dharmashastra emerged to give a definite well-organized system of conduct to the human society.Within it, a system was given for the behavior arising from every reaction of human nature.Under which there were not only law and justice but also rules related to social conduct and behavior, personal conduct and behavior, spiritual thoughts etc.

According to the ancient traditional Indian view, the Dharmashastriya legal system is the world's first known well-organized legal system.

According to Rigveda, Maharishi Manu is considered to be the originator of Dharmshastras(¹Rigveda -8/51/1,8/52/1,8/63/1, T²aittariya samhita- 2/10/2,T³andya Brahman - 23/16/217)

¹ Rigveda - Part 3, Acharya vedanta tirtha -Manoj Publication Delhi, Edition 4rth 2012 , Page no.354,356,374

² Taittiriya samhita-chaukhamba Sanskrit pratishthan Delhi 2013, Page 74

³ Tandy Brahman - Sayan bhashyam-pt.Anand Chandra Vedant vagish-chaukhamba Sanskrit pratishthan Delhi 2012, Page 358

The form of Dharmashastra or Smriti Texts that we are seeing today is a fragmented and destroyed form of Dharmashastra. The early and original ⁴Dharmashastra composed by Maharishi Manu is a large code with 100000 verses & 1008 chapters and 24 Prakarnas, Which he taught to his 10 main disciples and divided it into 10000 verses and gave it to each disciple.

1. Marichi, 2. Atri, 3. Angira, 4. Pulastya
5. Pulaha, 6. Kritu, 7. Pracheta, 8. Vashishtha, 9. Bhrigu, 10. Narada (⁵Manusmriti 1/35)

Who converted this huge code of Manu into 10 small Dharmashstras who are today known by the name of these sages.

The Manusmriti that we have today is actually Bhrigusmriti which is a code of 10000 verses given by Maharishi Manu to his disciple Bhrigu.

The sages of that time and those who followed Manu, composed Smritis in their own way to provide order & System to the human society on the basis of their Vedic knowledge and experience. At present there are ⁶56 Smriti texts available, out of which only ⁷12 Smriti texts were considered helpful in the formation of the present Hindu law.

It is true that over the course of thousands of years, many changes have taken place in the Smriti texts, many things have been added to them due to which they have also become fragmented, but their original form and principles have not been completely destroyed but are still present in the Dharmashastras.

In this way we can see that Manusmriti, which was once a code of 10,000 verses, today contains a total of two and a half thousand verses. Most of the scholars consider ⁸only 1200 of them as important. In this way, other Smriti texts have also remained very little from their main form.

Here we will learn about the systems obtained from the Smritis, Dharmashastras, which were used to appoint courts and judges and run the judicial process.

⁴Narada-smriti - Dr. Ramkumar Verma Shastri - Dynamic Publication Meerut U.P. ,2005 2nd edition Page No.11-12, Mahabharat -Shanti parva - Rajdharma parva -Geetapress Gorakhpur,Part 5, 2015 Page 843

Pt. gopal shastri nene-Manvarthamuktawali(Manusmriti)- Kulluka Bhatt - Chaukhamba sanskrit series Varanasi 2014 edition -8th ,pages -15,16,17

⁵ Manusmriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow1917 edition -1st,Page - 7

⁶ Manusmriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow1917 , edition -1st,Preface,Page - 26-28

⁷ Family law - Hindu law - Ad-hoc law series -Kamal Prakashan Agra 2013 Page no.13

⁸ Vishuddh Manusmriti- Dr. Surendra Kumar Arya-Ved Rishi Prakashan Delhi 2019 , Edition 2,Preface

1.2. Meaning and antiquity of Dharmshastras

"Shrutistu vedo vijyeyo dharmashastram tu va smriti sarvartheshvamimansye tabhyaam dharmao hi nirbabbhau." (Manusmriti 2/10)

It means Shrutis are called Vedas and Smritis are called Dharmashastras. These two are undisputed in all matters of duty, because Karma-Dharma has been revealed from them. Because Dharma is known accurately through these texts, that is why they are called Shastras (scriptures) of Dharma - Dharmashastra (Smritis).

Smriti texts have been called Dharmashastras since ancient times and literally the word Dharma means those systems which regulate the society and by which man achieves a well-ordered life and by which the duties and rights of every individual of the society are definitely determined.

Dharma can also be taken in this perspective, "That all those rules and principles which govern human nature provide an orderly and dignified way of life to human society and whose non-compliance causes harm to any individual or society and leads to violation and encroachment of his rights and for which penal system and judicial process have been arranged. These principles and rules are followed and propounded by the state and are natural.

Thus we can say that the word Dharma has nothing to do with worship, worship of God and spiritualism. It is directly related to society and human interests and to establish order. In common language, it can also be called legal law or code of conduct.

Some people also associate the word Dharma with responsibility or duty. Our duties and responsibilities towards the society all come under Dharma. While explaining the word Dharma in Dharmashastra, the Dharmashtrakaras (the writers of Dharmashstras) have given mainly 10 characteristics of it -

¹⁰Dhriti-Kshama-Damoasteyam-Shauchamindriyanigraha,

Dhirvidya-Satyamkrodho- Dashakam Dharma- Lakshanam 1/(Manusmriti 6/92)

1. *Dhriti* - Patience
2. *Kshama* - Pardon

⁹ Manusmriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow 1917 edition -1st Page 24

¹⁰ Manusmriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow 1917, edition -1st, Page 205

3. **Dama** - self-control and suppression of one's desires
4. **Astey** - not to infringe upon the rights of others, Do not take or steal someone else's things
5. **Shauch** - To be pure in body, mind and thoughts
6. **Indriya-Nigraha** - control oneself and one's senses
7. **Dhi** - stable and knowledgeable mind wise mind
8. **Vidya** - Knowledge
9. **Satya** - Truth
10. **Akrodh** - absence of anger

This is Dharma and anything different or outside from it is not Dharma. If seen from a microscopic point of view, actually the reason behind the law is the presence or absence of these 10 symptoms.

¹¹**Ahimsa-Satyamasteyam Shauchamindrianigraha: -Daanam -Damo Daya-Shanti:- Sarveshaan-Dharmasadhanam.** (Yajnavalkya Smriti 1/2/22) Thus, 10 characteristics of dharma have been mentioned in different Dharmshastras.

If we talk about the antiquity of Dharmashastra, then there are two opinions in this regard. The first opinion is the ¹²ancient traditional Indian belief, according to which Dharmashastra originated from Manu and is thousands of years old and the sage who wrote them is called **Rishi**. As ancient as it is, its written Smriti are equally ancient. According to this, the oldest dharmashastra is **Manusmriti** and the last Dharmshastras are considered to be **Parashar** and **Vyas Smriti**. Some scholars consider Kautilya's **Arthashastra** as the last **Dharmashastra**.

According to the second opinion based on various researches done by modern researchers, historians and scholars, the Dharmashastra¹³ was composed from 800 BC to 6th century AD and according to these Smriti texts, Indian social and family law has been governed till now. No matter how many inconsistencies, errors and interpolations there may be in the Smriti texts (Dharmshastras) today, they are still a mirror of our ancient judicial- legal system.

¹¹ Yajnavalkya smriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow 2015 ,edition -14 nth , page 28

¹² Manusmriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow 1917 ,edition -1st, preface Page 25

¹³ Dharm Shastra ka itihaas - P.V.Kane , volume -1, Hindi samiti suchna vibhag Lucknow 1962, edition 1st, Page- 7,

2. Judicial system in Dharmashastras

According to Dharmashastra, we will know the form of judicial system in ancient times in a sequential manner from the following points:

2.1. Judiciary

Judiciary means in general words, "A system of courts that interpret and apply the law in the state." Present time mainly Three main parts of judiciary - I.The court (jury) ,II.The Advocate, III.The Party (Plaintiff and defendant)

At present there are six types of courts(Types of judiciary) -

¹⁴I.The District Court & Subordinate Courts(Article -233-237,Part 6, chapter 5)

II.The High Court(Article -214-231,Part 6, chapter 5)

III.The supreme Court(Article 124-147, Part -5, Chapter -4)

Or

I.The Revenue Courts(Article -233-237,Part 6, chapter 5)

II.The Tribunal Courts(Article -136, 323A ,323B ,Part 14)

III.Fast track courts & Lok Adalats (Article -39A)

Apart from all this, the President of India is considered the supreme judge of India(Article 72or161)

Till now we have got a brief introduction of the present judiciary on the basis of which we can understand the present judicial process. Further we will see how the ancient judiciary was on the basis of Dharmashastra.

2.1.1.Functions and Organs of the court(According to Dharmashastras)

In ancient times the court was called "Dharmasthiya"¹⁵ (Arthashastra.1/9/6) and "Parishada"¹⁶ Or "Nyaya Parishada" (Manusmriti 12/110&ParasharSmriti.8/35) and the judges were called "Dharmastha"¹⁷(Arthashastra 3/1/1)or "Sabhasada"¹⁸(Narada3/5)

¹⁴ M.Laxmikant - Bharat ki Rajvyavastha -McGraw Hill Education (India) Private Limited Chennai, 6th Edition 2021,page no.26.1 - 28.5 ,34.1-35.11,63.1-63.4,17.6

¹⁵ Kautiliya Arthashastra - Dr.Ramkumar Verma Shastri -Dynamic Publication Meerut U.P. 2nd Edition 2010, Page 64

¹⁶ Ashadasha smriti sangraha - Parashar smriti - Khemraj Shrikrishnadas Publication Mumbai, 2018Edition 1, Page 310,Manusmriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow1917 ,edition -1st,preface Page459-460

¹⁷ Kautiliya Arthashastra - Dr.Ramkumar Verma Shastri -Dynamic Publication Meerut U.P. 2nd Edition 2010, Page 332

¹⁸ Narada-smriti - Dr. Ramkumar Verma Shastri - Dynamic Publication Meerut U.P. ,2005 2nd edition Page No.53

According to Dharmashastra, these ¹⁹eight parts of Judiciary are considered(Narada .1/15) -

Raja satpurush: sabhya: Shastram Ganak lekhakau Hiranyamagnirudakam Ashtanga: samudahrta://

1. The King (court accrediting body)
2. The Judges & Jury
3. Dharmashastras (Code of Law)
4. Ganakalekhaka(The writer or record holder accounting officer)
5. Prangvivaka (Advocates)
6. Hiranya (Court fees)
7. Evidences
8. Fire & water (To swear an oath so that a person will not lie)

These three main components are considered necessary in the judgement -

²⁰Dharm Shastram puraskriya Prangvivaka Mate Sthita / Samahita Mati Pashyed vyavhara nanukramad //(Narada .1/35)

- 1.Rules based on Dharmshastra or Nyaay Shastra
- 2.Opinions based on Dharmshastra of jurists, judges and lawyers
- 3.Keeping one's mind calm, the truth obtained on the basis of answers and evidence asked from the plaintiff and defendant.

2.1.2. Qualifications of Judges & Jurisdiction

According to Dharmashastra, judges should mainly have these qualifications -

- 1.According to²¹*Parashara* -

Chaturvedo - Vikalpi ch Angavidharma -Pathaka:

Trayashcha-Ashramino - Mukhya: Parshdeva Dashavara//

Ragyashchanumate sthitva Prayashchitam vinirdishet

Swayameva na Kartavyam Kartavya swalpa nishkriti://(8/35,36)

¹⁹ Narada-smriti - Dr. Ramkumar Verma Shastri - Dynamic Publication Meerut U.P. ,2005 2nd edition, Page 21

²⁰ Narada-smriti - Dr. Ramkumar Verma Shastri - Dynamic Publication Meerut U.P. ,2005 2nd edition, Page 27

²¹ Ashadasha smriti sangraha - Parashar smriti - Khemraj Shrikrishnadas Publication Mumbai, 2018Edition 1, Page 310

These main qualities of the Judicial Council are essential-

1. One who is knowledgeable about all the four Vedas including all their parts.
2. Know all the Dharmashastras along with their parts.
3. The person with Grihasth Ashram should be the main one among all the three Ashrams(Sanyasi Vanaprasthiti and Brahmachari have no right to give judgement)
4. One who embodies the 10 characteristics of Dharma.
5. He has been appointed for judicial work by the king and the administration and not as per his wish. which has been thoroughly tested by the king and the administration

Only a person with these traits is eligible to administer justice as a Parishada.

According to Rishi Parashar, the Judicial Council is formed only when there are at least three and maximum five such scholars.²²(8/17-22)

Parashar certainly gives preference to Brahmins as a council in justice work, but he is strongly against a person being a Brahmin only on the basis of caste and being appointed for justice work, rather only a person with full qualification should be appointed for justice work. (8/23-28)

2. According to *Narada-*

Dharm shastrarth kushala kulina satyavadina:

Sama Shatru cha mitre cha nripate syu sabhasada:||(3 / 5)²³

1. One who is well versed in Dharmashastras and Vedas.
2. Be from a noble & elite family.
3. Truthful and of good character.
4. Be a person who treats both enemies and friends equally.
5. Thoroughly tested by the king and experts.
6. Be a person appointed by the king

Only a person with these qualities and traits is known as a Nyayik sabhasada. Rishi Narada gives preference to nobility and merit rather than any caste or varna for the qualification of a Nyayik sabhasada

²² Ashadasha smriti sangraha - Parashar smriti - Khemraj Shrikrishnadas Publication Mumbai, 2018 Edition 1, Page 308-309

²³ Narada-smriti - Dr. Ramkumar Verma Shastri - Dynamic Publication Meerut U.P. ,2005 2nd edition Page No.53
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According to *Kautiliya* ²⁴To become a Dharmastha (a judge) it is necessary to have 27 main qualities -

*Janpadobhijata: swavagraha: Kritashilpashchakshushman pragyo dharyishnurdaksho vagmi
pragalbh: Pratipattimanutsaha prabhavyukt: Kleshsaha: shuchirmaitro dridhbhakti:
sheelbalarogyasatvsanyukta: stambhchapalyavarjit: sampriyo
vairanamkartyetyamatyasampata at: Padardhagunahinau
madhyamavarau/(Arthashastra.1/8/1)*

1. He must be a citizen of the country.
2. He should be free from vices like gambling, drinking etc.
3. He should be expert in horse riding etc.
4. He should be well versed in arts and sciences.
5. He should be an in-depth study of dharmshastra (jurisprudence and political science).
6. must have a sharp memory
7. Must be clever who can recognize the mistake and cunningness of others.
8. He shouldBe eloquent - know the art of speaking.
9. Pragalbh means Must be able to exert pressure on others
10. Must be successful in debate, must be skilled
11. must be full of enthusiasm
12. he must be tolerant
13. That mind must be pure from words.
14. should be friendly.
15. he must be a patriot
16. Must be polite and good natured.
17. Healthy
18. he must be patient.
19. must be without pride & ego.
20. stable in nature.
21. Good & Attractive Personality.
22. There should be equal treatment for enemies and friends alike.
23. Must be proficient in the art of writing.

²⁴ Kautiliya Arthashastra - Dr.Ramkumar Verma Shastri -Dynamic Publication Meerut U.P. 2nd Edition 2010, Page -57,58,64

24. not be accused in any case.
25. Grihasth
26. man who cares about his own business.
27. believer in the justice system of the state.

These 27 qualities mentioned by Acharya Kautilya for a judge are basically the qualities mentioned by Maharishi Manu which a *Dharmastha* should have.

Tatra Dharmopadhashuddhan Dharmasthiya Kantaka shodhaneshu sthapayet (Arthashastra.1/9/6)

After examining the king, a person with these qualities should be appointed as a judge in civil and criminal courts.

According to *Manu* -

Maharishi Manu mentions a detailed qualification for a judge in Manusmriti. Detailed and specific mention of what qualifications the members sitting in the jury should have is found in ²⁵Manusmriti.

Maharishi Manu considers the need for a maximum of 10 and a minimum of three members in the Judicial Council. Which should mainly have these eight qualities (chapter 12 verses 105-117,7/141)

1. The judge should be from a pious and Elite family.
2. Must know Dharmshastra, Vedas and political science.
3. must be fearless.
4. Must be of good character, serious and performing Agnihotra.
5. Must be logical and stable with intelligence and sharp memory.
6. He should be very attentive and constantly studying.
7. Must possess 10 characteristics of Dharma.
8. He should be healthy in body and mind.

2.2. Role of Evidence in Dharmashastras

In a systematic judicial process, the court requires proper evidence to reach any judicial decision. There is a very scientific and detailed mention of Evidence law in ancient

²⁵ Manusmriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow 1917 ,edition -1st , Pages - 459-462

Dharmashastras .Today we see Evidence law, it was definitely given by the British, but most of the rules and its inspiration have been taken from Dharmashastras itself.Thousands of years ago, a systematic evidence law was prevalent in India, which was deeply studied by foreign scholars.²⁶Western scholar named **Max Muller** had highly praised this book Narada Smriti and said -

"If Narad Smriti had been specimen the first translation of Hindu literature in European languages it would have been accepted as a universal law book."

Apart from this, after a deep study of Naradiya Dharmashastra, the learned man ²⁷**Julius Jolly**, who wrote the first foreign commentary on it, was surprised to see the well-organized methods of law given in it.Here we will give a brief overview of the Evidence law given in ancient Dharmashastras, mainly keeping Naradiya Dharmashastra at the center.

According to SmritiKaras, in his Smriti Shastra, the evidence has been classified and arranged under the evidence law -

Pramanam likhitam Bhuvina: sakshinashcheti Kirtitam I(yajnavalkya²⁸. Vyavharadhyay-2)

Tasya ch Bhava va shchitro Bhavanti likhitam Sakshina: Samyakriya ch I(Vishnu. 5/12)

²⁹Likhatam Sakshino Bhukti Pramanam Trividham Smritam.(Narada.4/69, vashishth.16/2)

According to the above quote, all Dharmashastras explains only three forms of evidence.

I. written, II.Oral ,III. Possession

Apart from the above 3 types, another type of evidence is also seen elsewhere in Narad Smriti which we can call divine evidence

I. Written evidence

Narada mainly describes four types of written evidence-

self written document.

any document written by another

Document attested by witness

Document without witness

Written evidence is any written thing or document which, when produced in a court of law, proves

²⁶ The sacred books of the East- Max Muller-xxxiii, page 122 -1879 - Oxford press-cultural institute of Delhi 1998

²⁷ The minor law books by Jolly Julius- Oxford the Cleveland and press 1885 , Preface Page 2

²⁸ Yajnavalkya smriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow2015 ,edition -14 nth Page 85

²⁹ Narada-smriti - Dr. Ramkumar Verma Shastri - Dynamic Publication Meerut U.P. ,2005 2nd edition Page 80,Ashadasha smriti sangraha - Vashishtha Smriti- Khemraj Shrikishnadas Publication Mumbai, 2018Edition 1,Page 578

a fact.(Narada.4/135)

Narada has said that a written document having these five qualities is admissible in the court of law as evidence(Narada.4/136) -

- A. written in plain language and whose language is clearly understood.
- B. not written using double meaning words.
- C. A document ,Set of facts in the order of their importance
- D. In which the necessary things like date, number, quantity, duration, conditions etc. are mentioned
- E. admissible under local law and a document acceptable under local law

The documentary or written evidence given by these people is not admissible in the court of law (Narada 4/137)-

1. Matta - Drunked ,alcoholic person
2. Abhiyukta - person convicted or accused by court
3. Stri - A women,(Due to lack of education and dependence)
4. Balaka - A child becauseA minor person does not have the right knowledge of right and wrong.
5. Vivhala - person without free consent,The person who is under the control of greed, fear and deceit

II. Oral Evidence

According to Narada a person is witness -

³⁰*Samakshadarshanatsakshi vijyeya shrotrachakshusho lShrotrasya yat paro bruto chakshushoredarshanam swayam lI(Narada.4/148)*

Means a person who sees an event with his own eyes Or the person who hears with the ears is called a witness (sakshi).The statement of such direct hearer and seer is accepted as evidence.One who has heard, who has seen and experienced and who was present at the time of the incident is fit to give oral evidence.

Therefore, only such persons are considered eligible to give oral evidence. These persons should also have some of the following characteristics -

1. He should be bold or fearless.

³⁰ Narada-smriti - Dr. Ramkumar Verma Shastri - Dynamic Publication Meerut U.P. ,2005 2nd edition Page 102

2. His mental condition should be healthy.
3. The statement given by him should be given freely and should not be induced by any pressure, fear, greed etc.
4. The witness making the statement should not be a relative of either of the parties mainly and should not have any kind of greed or fear relationship with both of them.
5. The witness should not be the accused before the law.
6. The testimony of that person will be accepted mainly to verify the character of the witness, two eminent people of the society should verify before the court that this person never tells a lie.

Manu also gives detailed provisions regarding the qualifications and disqualifications of witnesses.^(318/63-86)

Narada mentions about 11 categories of witnesses in his Dharma Shastra(4/149-152)

III. Possession

Not only Narada Smriti in the evidence related to any land dispute legally, but also in the present time the possession is considered a huge evidence. Even today we see an important role of possession evidence in revenue related disputes in tehsils. Under the³² Limitation Act, 1963, the limitation period on private property is 12 years, while on public land, the limitation period is 30 years.

Narada clearly says regarding ownership of property by possession -

1. The person who has written and oral evidence in his favor but his property is in possession of someone else or someone else is using his property, the person who has the above evidence is not the owner even though he is the owner of the property(Narada.4/77-78)
2. The person who allows someone else to enjoy his property continuously for 10 years, and no one opposes, then that person loses his ownership over that property and the person who is enjoying or possessing it is considered the owner of that property. and its ownership ceases to be the ownership of the person consuming or possessing it(Narada.4/79).

³¹ Manusmriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow 1917 ,edition -1st, page 256-261

³² Limitation Act 1963 pdf,www.indiacode.nic.in 2022 Part-5, section 64-67

3. Ordinarily a person who is not the owner of the property but is enjoying and holding it is not considered to be the owner of that property unless that person has been in possession of that property for about 20 years(Narada.4/82)
4. If the person who is the owner of the property is of sound mind and is a full adult, yet someone else is enjoying his property and has been occupied by someone else and the original owner is not opposing it, then the person in possession is the real owner of that property. will be considered(4/80)Except property money and king's property.
5. If a person has been using and occupying a property for three generations, then that person becomes the original owner of that property.whether or not the owner of that property is another(Narada.4/89)
6. In these 6 situations, a person cannot be the owner of that property even after being in possession and consuming it-

A. Stridhan property, B. Mortgage, C. any property has been deposited in trust, D. property of a person of adult and unsound mind, F.property of a person imprisoned by the state, G.deposit & Government Property (Narada.4/81)

Thus we can say that possession as an evidence is an important evidence in respect of revenue disputes.

IV. Divine Evidence

Not only in India but also in the ancient civilizations of other parts of the world, it has been considered an important evidence by which people used to decide justice and injustice by ascertaining the truth and falsehood.We can see examples of this type of evidence in ancient history ,Like Sita ji's Agnipariksha in Ramayana,In general, even today, we consider taking an oath or saying something under oath as such divine evidence.For this reason Narad mentions fire and water in the main parts of the judicial system (1/15).Because the divine test of truth and falsehood can be done by the court of the plaintiff and the defendant only by fire and water.

In the current Indian judicial system, till some time ago, similar type of Daiviya Praman Pariksha has been held, in which the witness, the plaintiff and the defendant were made to testify by taking oath from their religious books.

According to Dev Rishi Narad, the statements of such persons are accepted as witnesses in the

court - ³³*Narhasambandhino napta na sahayaa na vairinah / Na Drishtdosha: Prahristavya: Sakshina: Pratidushita: / (Narada.4/177)*

"A person who is not a friend, not a business partner, and not an enemy, Should not be a close relative and also should not be a subordinate employee, One who is not known in the society for giving false testimony and telling lies, Any person with whom the plaintiff and the defendant have any relation of profit, greed, fear, jealousy, love or selfishness, that person cannot be a witness.'

2.3. location & Place of courts

At present, the court has a fixed place on which it is situated, but in ancient times, did the court have a fixed place? We will have a brief discussion about this here-

Generally the court of justice was located near temples or places of worship. Rishi *Parashar* confirmsthis- ³⁴*Dadya-ddevta-yaatanagrat: (8/38)*

A fundamental reason for this was that the person confessed to the crime due to spiritual fear like - Fear of sin, Hell or God.

Acharya Kautilya mentions a different and better system for this -

³⁵*Dharmastha strayastrayo amatya janpada sandhi sangrahana dronamukha sthaniyeshu vyavharikanarthan kuryu / (Arthashastra.3/1/1)*

1. There should be a small court on the border of 2 villages.
2. There should be an intermediate court in the middle of 10 villages (sangrahana nyaayaalaya).
3. A High Court in the center of 400 villages (Called Dronamukha).
4. A Supreme or Central Court should be formed among 800 villages (called Sthanika).

Three-Three Dharmasthas (judges) should stay together at these places and arrange for behavior and crime cases.

Manusmriti³⁶ (8/87) Manu also clearly mentions the initiation of judicial proceedings in front of gods and brahmins, from which we can know that generally the place of judicial proceedings or court was near the god temples.

³³ Narada-smriti - Dr. Ramkumar Verma Shastri - Dynamic Publication Meerut U.P. ,2005 2nd edition Page 110

³⁴ Ashadasha smriti sangraha - Parashar smriti - Khemraj Shrikrishnadas Publication Mumbai, 2018 Edition 1, Page 311

³⁵ Kautiliya Arthashastra - Dr. Ramkumar Verma Shastri - Dynamic Publication Meerut U.P. 2nd Edition 2010, Page 332

³⁶ Manusmriti - Pandit Girija Prasad Dwivedi - Nawal Kishore press Lucknow 1917 ,edition -1st, page 261-262

2.4.Procedure of Judgement

Causes and disputes on which judicial proceedings were conducted-

According to ancient Dharmshastrakararas(Jurists), these are the 19 reasons on which any judicial proceeding is conducted⁽³⁷⁾Narada Smriti 1/16-20 , M³⁸anusmriti 8/1-8)

1. **Rinadanam** -Disputes related to loan transactions.
2. **Upanidhi**- Disputes related to mortgage and its irregularities
3. **Sambhuyasamutthan** -Disputes related to joint labor and its rewards
4. **Dattapradanikam**-Dispute regarding return of an item
5. **Ashushrushabhyupetyam**- Dispute related to non-performance of service after promising to serve
6. **Vetanasayapkarma** -Disputes regarding not serving after taking salary and not paying salary after getting service done
7. **Aswamivikraya**- Dispute related to selling something without being the owner
8. **Vikriyasampradanam** -purchasing disputes
9. **Kritanushaya** - purchasing disputes
10. **Samasyanpakarma** -Hypocrisy controversy or hypocrisy denial controversy
11. **Seemabandha** -land disputes
12. **Stripunsayoga** - man-woman dispute or family dispute
13. **Dayabhaga** -Disputes regarding share and inheritance
14. **Sahasam** - high crime case - Rape ,Murder,Robbery,etc.
15. **Steyam**- Disputes related to theft, dishonesty and adulteration
16. **Vakparushyam** -Dispute related to abusing and insulting someone through speech
17. **Dandaparushyam** -Fight, fight and kidnapping related dispute.
18. **Dhyutasamaruhyam**- related to gambling, betting etc.
19. **Prakirnaka** -Whatever disputes arise other than all the above disputes fall in this category.

According to **Narada**³⁹ (1/12,13,14)There are four stages to every lawsuit process -

1. **Udghatana** -The Parties (plaintiff and defendant) initiate a lawsuit by going to court.
1. **Pratishthapana** -Witnesses and evidence provide stability to the case.
2. **Nimalana** -Court members examine the case

³⁷ Narada-smriti - Dr. Ramkumar Verma Shastri - Dynamic Publication Meerut U.P. ,2005 2nd edition Page 22-23

³⁸ Manusmriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow1917 ,edition -1st, page 246 - 248

³⁹ Narada-smriti - Dr. Ramkumar Verma Shastri - Dynamic Publication Meerut U.P. ,2005 2nd edition Page 20-21

3. *Nirnaya Prakashanam* - After listening to the arguments of both sides and examining the witnesses and evidence, the judge reaches a decision as per his discretion.
According to Naradiya Dharmashastra, judicial proceedings were conducted in writing and its records were also kept.

According to ⁴⁰*Manu* (8/79-100)

Manu mainly considers the judicial process to be completed in these stages -

1. The judge gets purified in the morning and sits on the bench in front of the gods and Brahmins (8/87).
2. Make both the parties & witnesses take oath of allegiance to truth and Dharma and listen to the arguments of both (8/81-84)
3. Ask the witnesses to tell the truth while showing them the fear of punishment for giving false testimony and fear of their plight in the next world (8/88-94).
4. Examine the arguments given by both sides and the evidence and statements given by witnesses impartially (8/44-46)
5. The judge, being completely satisfied and careful, as per his discretion and as per the capacity of the criminal, should give a decision and prescribe the punishment for him (8/125-126)

According to Acharya Kautilya, (⁴¹Arthashastra.3/2/27-28) the rules to be considered before deciding the case are called facts for decision, their number is 6 and they are helpful in achieving the truth -

1. Having witnessed the crime with one's own eyes.
2. criminal confession
3. simplicity in debate
4. finding out the reasons for the crime
5. to make the truth come out under oath

If even with all this the exact truth is not reached, then the court itself should get the investigation done by detectives and should re-study the evidence of the witnesses and the arguments of both the sides.

⁴⁰ Manusmriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow 1917 ,edition -1st, Page 256- 263

⁴¹ Kautiliya Arthashastra - Dr.Ramkumar Verma Shastri -Dynamic Publication Meerut U.P. 2nd Edition 2010, Page 337

In Dharmashastra,⁽⁴²⁾Narada.1/8) the case (lawsuit) has been said to have four means(chatursadhana), four legs(chaturpada)four places(chatusthana)and four interests(chaturhita) influencing four(chaturvyapi)

1. **Chatursadhana** - Sama, Dama, Danda, Bheda
2. **Chaturpada** - Dharma(Law), vyavhara(Behaviour), Chartra(Character), Rajshasana(Order of the sovereign)
3. **chatusthana-** Sabhya sakshi(Civilised witnesses or Evidence),NyayaPustaka,(Code of Law)Danda(Punishment),Rajagya(order of court)
4. **Chaturhita-**Brahmana,Kshatriya,Vaishya,Shudra beneficial to all four
5. **Chaturvyapi** -Witness, Parties,The judge, Citizens, influencing all four

Briefly, these are the main forms of judicial process as stated in Dharmashastra.

Conclusion

Thus, we can say that the sole aim of the concept of judicial bench under the Dharmashastra is the establishment of Dharma and the judicial process has been arranged under it by keeping Dharma at the center.

Manu clearly says in this regard-

Dharm aiva Hato-hanti Dharmo Rakshati Rakshita: |

Yatra Dharmo Adharmena Satyam Yatranritena ch |

Hanyate Prekshmananam Hatatatra Sabhasada | (Narada .3/ 8 , Manu. 8/14,15)

Dharma is a broad concept which includes human rights, justice, social duty, personal responsibility etc.

According to the above verse, to protect Dharma is to protect oneself, human society and human rights and encroachment on Dharma is encroachment on all these. Dharma is a subtle detailed form of justice.In a court where justice and Dharma are not protected, all the judicial members soon self-destruct.This is the basic principle of the ancient Indian judicial process and on this basis the ancient Indian courts functioned.

It is true that the Dharmashastras or Smrititexts that we have today are interpolated and half-completed.A major reason for this is the changes that have been taking place in Indian civilization for thousands of years, the arrival of different cultures, the rise and fall of different

⁴² Narada-smriti - Dr. Ramkumar Verma Shastri - Dynamic Publication Meerut U.P. ,2005 2nd edition 1 Page 17

empires. During which lack of proper maintenance of these huge texts is also a big reason. But this does not mean at all that ancient Indian Dharmashastras has been completely lost and destroyed. Rather, their original form has survived to a great extent even today, which can guide us in the present and future. In the language of example, it is like an old warrior who cannot fight himself but can make the present young warriors and future warriors victorious by guiding them. Similarly, Dharmashastra is also not in practice and prevalent today but even today the courts take a lot of inspiration from it regarding Hindu law. Where concepts like untouchability and casteism and many rules related to them are seen, due to which there is a lot of opposition to the Dharmashastras, but it is just an example of the harsh social system of ancient times which was not only in Indian civilization but also in Egypt, Rome, Greece even America, Britain. This does not mean that we should completely ignore the Dharmashastras, they are living examples of our ancient legal system of which we should be proud. Some things may be wrong in these, but the systems given in them were more advanced and developed thousands of years ago than other world civilizations of that time, which are inspirational even today.

In Manava Dharmashastras, we find a clear and systematic mention of the judicial process, which is very advanced and modern. There is no mention of keeping records of written documents in the judicial process as ancient as in the Dharmashastras, anywhere else in the world. We can say this much in brief about the judicial process and the concept of the court as stated in the Dharma Shastra-

1. It was very well organized, clear and fair.
2. This was the world's first known authentic judicial process in which written records were kept.
3. The judicial bench of Dharmashastra was systematically divided, with specific officers for each process.
4. The judicial process was interfered with by religious practices and morality. The only reason for which was that the person should not commit crimes due to supernatural punishment and should become pure by accepting the crimes committed and suffering the punishment.

The Judiciary and the Judicial Council as described in Manava Dharmashastras were a systematic mixture of divine and cosmic justice and human justice.

History always teaches us to move forward with new Ideas -

DharmarthKamaMokshanam Upadesha Samanvitam Purva vrittam Katha yuktam Itihasam Prachakshate //(⁴³*Vishnudharmettara Sanhita- 3/15/1*)

The meaning of this verse is that those ancient details and stories from which we get inspiration, preaching and education to achieve Dharma, Artha, Kama and Moksha which are the 4 great goals of human life are called history. Knowledgeable history is not just a collection of stories. Rather, it also teaches us to make our present and future society advanced and prosperous. Those containing old and useful stories which show us the way to fulfill the goal of our life while improving our society are called history.

Similarly, we should keep taking inspiration from our Dharmashastras so that we can achieve our future judicial goal.



⁴³ Vishnu Dharma Samhita - Gita press Gorakhpur ,1993, page 238