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DHARMA AND LAW

AUTHORED BY – UTKARSHINI SINHA

Abstract

“The idea of Dharma can be categorized into two concepts, one being a normative concept and the other being how it regulates the day-to-day activities of individuals in their social and personal life, it defines the duties of individuals towards the society, towards their family, towards life and God. The authority for Dharma, such as everything else, was said to be the Vedas. Different sources were said to lay on this sole authority. It was perceived that notwithstanding the Vedas (sruti), there was a subsidiary specialist in the law codes (smrti), certain Dharmasastras coming to accept incredible significance. A third source was “sadacara”, great or devout traditions, or traditions of the great. These various sources formulated the centre of Dharma as a tradition that governs the administration of social and personal aspects of individuals. The inference that can be drawn is that Dharma is the core message for humanity and it is very important to recognize the role of Dharma in the formulation of the present day legislation that deals with personal laws such as marriage, adoption, inheritance etc. At a low level of reflection, Dharma and Law share enough highlights to compel us to comprehend law at some level when we experience Dharma in relatively every Hindu religious context. First, both Dharma and Law have a penchant to envelop and confine different classifications and organizations, in this manner conferring to them an alternate status. There is a distinction between an understanding and a lawful assertion, between a shower and dharmic bathing, amongst philanthropy and dharmic blessings. The paper intends to analyze the connection of present-day laws and Dharma and also tries to relate how the modern day laws are being framed by the legislation based on the principles of Dharma that are being followed through generations in the form of customary practices.”

INTRODUCTION

The concept of Dharma plays a significant role in Hinduism. It is notable that a standout amongst the most fundamental and extensive ideas in Indian thought is that of Dharma. It is an extremely intricate idea, grasping many contrasting, however, related, implications, and

reaching out to an extensive variety of antecedents. Its antecedents extend from the background that makes up Hinduism to the correct method for treating patients. It alludes to the powerful substance that stands as the essential feature in the Buddhist philosophy, and furthermore to the impacts of Vedic rituals. As a social concept, it alludes to an ethical code, natural and positive law, and furthermore to the divergent obligations of individuals. The concept of Dharma regulates the day-to-day activities of individuals and plays a key role in the social and cultural aspect of a Hindu's life; it defines the duties of individuals towards the society, towards their family, towards life and God. Thus the concept of Dharma is vast and overarching in nature; it is an ethical modulation concept and also an essential ingredient for regulating social life of a Hindu.

Annie Beasant in her address to the annual convention of the Theosophical Society in 1898, said and I quote "When the nations of the earth were sent forth one after another, a special word was given by God to each, the word which each was to say to the world, the peculiar word from the Eternal which each one was to speak. As we glance over the history of the nations, we can hear resounding from the collective mouth of the people of this world, spoken out in action, the contribution of that nation to the ideal and perfect humanity. To Egypt in old days the word was Religion; to Persia the word was Purity; to Chaldea, the word was Science, to Greece the word was Beauty; to Rome the word was Law; and to India, the eldest born of His children, He gave...the word Dharma. That is the word of India to the world"¹

The inference that can be drawn is that Dharma is the core message for humanity and the history depicts how the nation was at its highest glory when its people followed the path of Dharma and when they began to renounce its principles, India tumbled from her high rostrum, lost her emancipation to foreign intruders and stayed subject to the mastery of outsiders for centuries.²

That, Dharma is the word God provided for India, is borne out by the revelation of Lord Krishna in the fourth chapter of the Bhagwat-Gita. In the outstanding seventh and eighth refrains of this part, he guarantees us that at whatever point Dharma declines and a Dharma thrives, He

¹ Annie Beasant, Dharma (Madras : Theosophical Publishing House, 1964), 1.

² J.P. Suda, DHARMA : ITS NATURE AND ROLE IN ANCIENT INDIA, The Indian Journal of Political Science, Vol. 31, No. 4 (October—December 1970), pp. 356-366.

manifests himself and assumes the human shape for the insurance of the great and pulverization of the wicked. The whole hypothesis of Avatarhood lays on the view that it is the Divine Plan to anchor the triumph of Dharma or Righteousness over adharma or evil in the contention between the powers of light and dimness, that is continually occurring in the core of each person and on the grandiose plane.³

(A) Research Questions

The following are the questions dealt with in this paper:

1. What is the potential effect of outcome of Law from Dharma?
2. What are the Dharma laws which govern Personal Laws?

(B) Objectives of the Study

The current research involves a descriptive and prescriptive approach. Hence, the following are the objectives of the study:

1. To examine the status of law from Dharma in India.
2. To analyze the effects of Dharma and Law.

(C) Research Methodology

In order to scrutinize the topic at hand and provide a better understanding of the Dharma and Law, doctrinal research was conducted. The research conducted involved analysis of

qualitative data such as books, articles, judgments, websites, and law journals. These were collected from online database and sources such as JSTOR, Hein Online and SCC online. The reference to the same provided opinions of various researchers and social scientists and also helped conclude the research. The advantages of such a method of research includes better analysis of the topic at hand and helps in identifying certain loopholes and ambiguities in it. The books, articles and case laws used are not restricted to a particular time period. This research paper spans legislations in various countries where prostitution is legalized and regulated and compares the situation in India. The analysis and interpretation of previous or already existing data fall under the range of doctrinal research. This is why doctrinal research is best suited for analyzing the impact and advantages of the Dharma and Law.

³ S. Radhakrishnan, The Bhagavadgita (n. a.), 189-90. Here the reference is to shlokas VII & VIII of chapter IV.

BACKGROUND OF DHARMA

It might be noticed that the word Dharma is derived from the root word “dhr” which signifies "to support, sustain, and hold together." In its broadest sense, it alludes to what manages and holds together the universe itself. Despite the fact that the term Dharma occurs very frequently in the Vedas, it more often than not occurs in connection with Yajia ("sacrifice") instead of being utilized in an express social sense. This reality has driven numerous advanced understudies of Vedic idea who utilize selective disjunctive reasoning to the mixed up see that if Dharma is constantly connected with Yajnia it must have a place with the domain of religion and enchantment, and along these lines has no standardizing essentialness. The truth of the matter is, in any case, what exactly on the grounds that dharma alludes to Yajia or to the impacts of Yajia, it is a regularizing idea, for the Vedic perspective of Yajia is regulating. In the Vedic age, Yajia was viewed as keeping up the different procedures of the world. Indeed, there are numerous sections where the coming to be of the world is depicted as due to Yajna.

The world comes to be through Yajia, is kept up by Yajia, and man's prosperity on the planet is safeguarded by Yajna. Obviously, however, Yajia is generally deciphered as "forfeit," this is no standard feeling of forfeit. To state, as Surama Dasgupta does, that "the Vedic individuals appeared to have a straightforward code of ethics. The execution of penances was viewed as the chief ideals, which was compensated by the accomplishment of paradise,"⁴ is to neglect, to value the unpredictability and nuance of the Vedic origination of Yajna.

There are different employments of "Dharma" and something that they have in common is their normative feature. In spite of the fact that there are numerous sorts of Dharma, they all include the idea of direction, and are, in this way, essentially guidelines of actions. Thus, the normative ordering of anything is said to be its Dharma. For instance, the king's control of his kingdom is his Dharma (Rajadharmā), the direction of natural components or things is their Dharma (Padarthadharmā), and the control of societies is societal Dharma (Samajadharmā). The tenets of life for a specific class of people in the public eye constitute Varnadharmā, the standards of life for a specific period in one's life are known as Asramadharmā, and the direction of life as per fundamental standards that all people have in like manner notwithstanding contrasts in age

⁴ Development of Moral Philosophy in India (Bombay: Orient Longmans, 1961), p. 54

or social class are dharma Sadharanadharmā or Samanyadharmā.⁵ These diverse Dharma's are obviously standards which accommodate the requesting of human activities with the end goal that they will encourage the accomplishment of specific finishes or points throughout everyday life. Thusly, it is helpful to look at the points that the different Dharma's are planned to encourage.

Conventionally, all human aims (Purusartha) can be gathered under four headings. (1) Dharma is the point of living as per all the different guidelines that apply to a man in a specific class, organize throughout everyday life, and just as an individual. As a point throughout everyday life, instead of when in doubt of direct, Dharma alludes to "being established in Dharma." To end up set up in Dharma it is important to build up the propensity for watching the pertinent specific dharmas or good principles. This is practically equivalent to ethicalness, for on the off chance that one goes for righteousness, in the feeling of carrying on with a prudent life, at that point it is important to perform idealistic activities as an issue of character. (2) Artha is the point of anchoring the different kinds of stuff of life, for example, nourishment, protects, control, and so on that are essential for fully human life in the public arena. (3) Kama is the point of achieving the fulfillment of needs and desires. (4) Moksa is the point of being totally free from whatever is flawed and official. The point of Moksa is by and large perceived as an otherworldly point, and at times, when the initial three points are deciphered as material points in incongruence between the initial three points and the fourth point is asserted. Ideally, this article will demonstrate that there truly is no contradiction between these points.⁶

The code of life to accomplish these four means to the best degree feasible for every individual speaks to the whole scope of Hindu Dharma, with the different refinements presented between these points, and between the different human exercises required for the accomplishment of these points, bringing about the sorts of Dharma perceived customarily in India, for example, Samanyadharmā, Varnadharmā, Asramadharmā, and so on.⁷ Since the ordering of life, which Dharma speaks to, is a normative matter, it is imperative to attempt to welcome the indigenous

⁵ John M. Koller, *Dharma: An Expression of Universal Order*, Philosophy East and West, Vol. 22, No. 2, On Dharma and Li (Apr., 1972), pp. 131-144.

⁶ Id

⁷ Austin B. Creel, *The Reexamination of "Dharma" in Hindu Ethics*, Philosophy East and West, Vol. 25, No. 2 (Apr., 1975), pp. 161-173;

comprehension of standardizing ordering that underlies the development of the idea of Dharma in India.

The comprehension of Dharma as a regularizing idea requires two contemplations. To start with, there is the subject of the substance of Dharma. What are the particular kinds that constitute every one of the specific sorts of Dharma? Second, there is the topic of the avocation for these principles. It is principally with this second inquiry that, for despite the fact that the reference of Dharma is tied up with the substance of the guidelines, the significance of the term can't be comprehended without considering the support of the different principles containing Dharma.

The expression "Dharma" has been interpreted as "morality," "obligation," "religion," "law," and so forth.⁸ Be that as it may since Dharma includes these distinctive terms in its different uses, no one term from the English vocabulary gives a satisfactory interpretation. A vital explanation behind this trouble in interpretation is that the idea and work on making up Indian culture in which this term has worked contrasts significantly from that of Greco-European culture. In the West, standards for human conduct have by and large been comprehended to be man-focused and discerning. The Protagorean announcement that "man is the proportion of all things," and the Aristotelian conviction that man is, to the exclusion of everything else, levelheaded, have had a tendency to energize considering standards of activity as far as their judicious plan to encourage human points. Indeed, even in the common law custom of the West, where human standards are viewed as the declaration of the Divine Law, the reasoning is man-focused and rationalistic, for the most noteworthy normal laws is the laws for man, and the list to these heavenly laws is human reason (which, fundamentally, Austin equates with utility).⁹

In Vedic and customary India, on the other hand, man is viewed as a manifestation and articulation of a more profound reality, which is the proportion of man, not the other way around. The most elevated law is the systematic coursing of the most astounding reality in its focal being. Good and social laws are simply halfway and modest articulations of this most

⁸ Supra note 2.

⁹ J. Gonda, "The Vedic Mitra and the Epic Dharma", *The Journal of the Royal Asiatic Society of Great Britain and Ireland*, No. 2 (1971), pp. 120-133.

astounding law. The universe isn't thought of as an accumulation of three sorts of being, awesome, human, and characteristic; the last two being made by the previous. Rather, all the truth is one in being and work. The complexness of reality speaks to only extraordinary articulations of a similar central reality which, in its most profound focus, is avoided customary experience and reason.

Inside this vision of the real world, since man does not go up against nature as it's supernaturally given knower and vanquisher, truth doesn't involve the correspondence of recommendations of dissuading a free reality. Rather, truth involves understanding the inward connectedness of things, to each different as well as to their source, which is the simple focus of the real world. In concurrence with this origination of the real world, the crucial standard of the truth isn't taken to be a type of suggestion to which the real elements of things relate yet is comprehended to be the real coursing (rta) of the central and extreme reality from which the manifest reality has issued. The coursing of the most elevated the truth is the basic standard and the standard or manages of function (dharma) for a singular creature is given by their extremely being to the degree that they partake in the central reality. It isn't something added later to coordinate existent creatures. The dharma of a being is given by its extremely being through its investment in the central and extreme reality of which it is an indication; it isn't something included to the being of the person being referred to altogether that specific points may be accomplished.¹⁰

It is this essential origination of reality as in se standardizing that must be comprehended to appreciate the connection between extraordinary Dharma (Moksadharmā) and common Dharma (Varnadharmā, Asramadharmā, and so on.). Inside this vision of reality just outlined it is a mistake to search for justification of Dharma, regarding the understanding of specific recommendations about the real world, with the sorts of points the principles of activity are planned to accomplish. Rather, one must look to the agreement of existence with its source.

¹⁰ Austin B. Creel, "Dharma as an Ethical Category Relating to Freedom and Responsibility", *Philosophy East and West*, Vol. 22, No. 2, On Dharma and Li (Apr., 1972), pp. 155- 168.

DHARMA AND PERSONAL LAWS

The original configuration of creation was recognized by the seers (rsis) of old, recorded in sacred writings, and communicated in the endorsed custom of Hindu convention, and this unique example of creation is said to be the wellspring of Dharma. In spite of the perspective of the regular premise of Dharma, one doesn't obtain Dharma by inspecting creatures and learning what is the law composed on their deepest parts; nor completes one take an esteem, for example, the welfare of the community, and use it as a standard of the sort that whatever serves community welfare would constitute Dharma. (It was stated, or anticipated, that Dharma, truth be told, serves to amass welfare, yet that is another issue.) Rather, it is affirmed that the pattern of behaviour appropriate is that which is specified in tradition, which was in turn believed to be scriptural.¹¹

The meaning of good custom, be that as it may, is what adjusts to the more prominent experts. How can one figure out what is consonant with scriptural authorities? This might be found in the manner in which a fourth source was in some cases progressed, "atmatusti", or self-satisfaction. Here it is significant to take note that the self-to-be-satisfied is not the man on the street or any moral agent contemplating his Dharma; rather the individuals who knew the Vedas and were faithful to the Vedas ("remembers") could bear witness to what constituted Dharma, if different sources were quiet or their importance vague.¹²

One's duty in the universe (his Dharma) is a statement of his nature (his Dharma). The term, „Svadharna“, contains decisively this duality, generally being interpreted as the self's obligations (or the obligations of the individual) yet in addition meaning the idea of the self which the obligations express. Dharma as social obligations rests upon and communicates a perspective of inborn nature or constitution to which one's part or capacity compares. The measurement of obligation or example is executed in the plan of "Varnaasrama-dharma", the obligations proper to one's gathering (Varna) and one's time of life (dsrama). In spite of the fact that mediators have now and again befuddled „Varna“ and „Jati“ in their endeavours to depict "position," there has been concession to the way that the gathering has been of prime

¹¹ Manu II:12 on the sources of dharma

¹² Anant Sadashiv Altekar, "Sources of Hindu Dharma in Its Socio-Religious Aspects" (Sholapur: Institute of Public Administration 1952), pp. 31-32.

significance in Hindu society, while the asrama plot was of substantially less significance.¹³ Certainly, the patterns of society were incomprehensibly unique in relation to the goals illuminated in Dharmasastras and different writings which were the legacy of Brahmanic leadership. In spite of this difference of writings and conventions, there was a viable social direction on a gathering premise. Society was seen as being progressively requested, communicating the manifest contrasts among men.¹⁴

The association of Dharma in Dharmasastras and law, a progression of shared highlights amongst Dharma and Law in the prevalent sense of a socially decided set of guidelines authorized by definitive approvals demonstrates the close affiliation, though certainly not complete overlap, of the two concepts. A relationship of association and semantic concomitance exists amongst Dharma and Law, and not simply a relationship of encompassment, in which Dharma squares with the law in addition to religion in addition to profound quality, each of the subcategories isolatable from the other. By method for similarity, in the event that we envision Dharma as a pie, the law is less similar to a bit of the pie, particular and detachable from alternate parts, and more like a layer of the pie, say the hull, shown in each piece, yet not completely illustrative of the entirety. Thusly, the law isn't simply an isolatable subset of dharma in Dharmasastras, yet rather an indispensable and fundamental piece of all dharma, notwithstanding when part of the purpose of conjuring dharma is to change it along new philosophical lines, as I will appear in the following area.¹⁵

We call the procedure of the law paying heed to beforehand unregulated acts or thoughts authorization. Despite the fact that the educational convention settled the fundamental points of Dharma at the season of the Dharma-sutra messages in the second and third hundreds of years BC, the historical backdrop of dharma in Dharmasastras has in any case created always nuanced talks of the standard subcategories of dharma that legitimize hones by consolidating them under old headings. Most fundamentally, the Laws of Manu co-picked nearly the whole domain of legitimate method under the heading "the dharma of rulers" from the Arthasastra

¹³ William Stephens Taylor, "Basic Personality in Orthodox Hindu Culture Patterns", *Journal of Abnormal and Social Psychology* 43 (Jan. 1948), pp. 2.

¹⁴ Shyama Charan Dube, "Indian Village" (Ithaca, N.Y.: Cornell University Press, 1955), pp. 233-234

¹⁵ Donald R. Davis Jr., "Hinduism as a Legal Tradition", *Journal of the American Academy of Religion*, Vol. 75, No. 2 (Jun., 2007), pp. 241- 267.

convention.¹⁶

Dharma is an integral part of the law; various laws framed have a background of Dharma. The laws regulating the personal matters of individuals in the society such as marriage, inheritance, succession etc., draw their authority from the Dharma. For instance, The Hindu Succession Act, 1956¹⁷, provides for guidelines regarding the succession of family property, which was framed based on the rules and customs followed by the Hindu's since time immemorial. It also speaks about the Karta of a Hindu undivided family and his role, which is a customary practice followed by the Hindu's for centuries.

EVOLUTION OF LAWS FROM DHARMA

Dharma embraces every type of righteous conduct covering every aspect of life, essential for the sustenance and welfare of the individual and society. The Indian society since time immemorial has been governed by Dharma, and till date, Dharma has been playing a key role in the day-to-day activities of individuals. Based on the principles of dharma, various laws and legislations have been enacted under the rule of British India and also under Independent India. Under the British rule, confronted by the immense variety of Indian local custom they seized upon the famous Dharmasastras (such as the "Code" of Manu), which had developed a recognizably juridical style, and transformed them into statutes. Lacking a customary law which conformed to the unity of the common law they adopted the principal English alternative, statute.¹⁸ The principle of equity has been derived from the principle of fairness and righteousness, Hindu law started to be codified as per the requirements and understanding of people during that period of time. For instance, the British codified certain customary practices of Hindus which basically derive their source from Dharma, dealt with their personal laws, such as inheritance, succession and other property related matters.

The struggle for independence was the struggle for basic rights and civil liberties that one as a

¹⁶ Bernard S. Jackson, "From Dharma to Law", *The American Journal of Comparative Law*, Vol. 23, No. 3 (Summer, 1975), pp. 490- 512.

¹⁷ The Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956

¹⁸ Dhananjay Vasudeo Dwivedi, "THOUGHTS FOR HUMAN RIGHTS IN VEDIC TRADITION", *The Indian Journal of Political Science*, Vol. 70, No. 4 (OCT. - DEC., 2009), pp. 1021-1034

basic human being should enjoy and the same was kept in mind, while making The Constitution of India. Hindu law (Dharma) started been codified according to the changes in outlook and lifestyles, as it was realized that the ancient way should yield to the realistic approach of life. The principles of natural law (Dharma) found its way into the constitution in the way of fundamental rights. Dharma was codified Dharma as we all know was a duty based legal system but the current legal system became a right based one. Of course, these rights that come are not absolute and that they too have certain restrictions.

Right to equality, freedom of movement and most cherishable right to life are some of the fundamental rights provided. But, there are ample evidences from the history of the world as well from ours to show the misuse of power whether it been the Hitler's Nazi or the infamous Emergency imposed by Indira Gandhi and what followed is enough to question the very spirit on which our constitution was founded.¹⁹

In the case of „Rajadharma“ as well, the king could not just make any rules, he would make decisions keeping in mind the welfare of his people and his kingdom, similarly even though Art. 368 of the Indian Constitution confers power on the parliament to frame laws relating any matter, it does not constitute an arbitrary power as it can be questioned under the court of law. Although there are several changes in the procedure, the principle till date remains the same.

IJLRA V. CONCLUSION

It follows from the preceding analysis, that if Dharma is determined by the inner being of the individual, regulating his various activities so as to provide a harmony of outward empirical manifestations and the inner reality which is the source and deeper reality of these manifestations, then there is no conflict between the social Dharmas and the extra-social Dharma of Moksa. There would be a conflict only if there were two basically different kinds of beings, human being and spiritual being. But the world views underlying Dharma provides for only one reality, although it recognizes a variety of manifestations of that one reality. The higher is not a different reality; it is merely less manifest and differentiated than the lower

¹⁹ 9Supra note 16.

reality. The individual who has achieved Moksa is not a different being from the social individual doing his social Dharma. But he has realized the identity of his being with that of the higher unmanifest reality. The evolution of modern-day laws are from the principles of dharma, the four legislations dealing with various aspects of personal laws of Hindu's such as marriage, inheritance, adoption etc. are derived from the ancient sources of Hindu law (Dharma), the Shrutis, Smritis and customary practices.

Thus, it is important to understand the fact that the principles of Dharma play a key role in the administration of the present day laws and their role in the regulating the personal life of individuals such as marriage, inheritance, adoption etc. It is important to recognize this role of Dharma and try to better understand the aspects of Dharma in order to adopt those principles in the present day laws.

