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# ANCIENT INDIAN LEGAL TEXT & CONSTITUTIONAL MORALITY

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Aryan<sup>1</sup>

## I. ABSTRACT

*This paper tries to find an inter-relation between the ancient Indian legal text and the present-day constitutional morality. Nowadays, our country is governed by the Constitution, which is also known as the grundnorm of the country, but in earlier times, that is during ancient India, there were ancient legal texts which were used to govern society and to take important decisions relating to public and private matters. It is important to look back into such earlier text and also co-relate them with the present day, constitutional text, so as to understand the law of both the periods. However, a detailed look into the ancient Indian legal text can never be ended due to the rich culture of our country, but an attempt has been made through this work so as to put forward at least some sort of analysis.*

## II. KEYWORDS

Ancient India legal text, Constitution, Equality, Justice, Freedom.

## III. INTRODUCTION

Ancient India was comprised of the modern-day countries of Pakistan, Afghanistan, Nepal, Bhutan, Bangladesh, Sri Lanka and Myanmar and it was considered as 'Akhand Bharat', named as 'Aryavarta'. Thus, ancient India is the Indian sub-continent from pre-historic times to the start of Medieval India, which is typically dated to the end of the Gupta Empire. The term 'Aryavarta' is being derived from Baudhhayana Dharamsutra, which was compiled in the 6<sup>th</sup> to 8<sup>th</sup> centuries BCE, explained (1.1.2) "9. The country of the Aryas (Aryavarta) miles to the east of the region where (the river Sarawasti) disappears, to the west of the Black-forest (Kalakavana), top the north of thee Paripatra (mountains), to the south of the

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Himalaya.” Further, Manu mentions the term ‘Brahmavarat’ used for India, in his texts. Madhyadesa was another name to the ancient India.

There is the name ‘Jambudipasi’ for India in Sahasram Rock Edict of Ashoka, circa 250 BCE and was used in ancient scriptures as a name of India before ‘Bharata’ become the official name. The term ‘Bharata’ appears in the official Sanskrit name of the country, ‘Bharata Ganarajya’ and is derived from the ancient Hindu Puranas which refer to the land that comprises India as ‘Bharatavarsa’.

The administration of the societies in the ancient India was based on the texts written by the sages providing for the mechanism to run the state as well as rules as to guide the individual to live an ideal life. The basic principles which were considered as the foremost part of every legal text of ancient societies as the concept of ‘Dharma’ or ‘Vedic Dharma’. The oldest reference to the word ‘Dharma’ is found in the Vedas. It appears at least fifty-six times in the hymns of the Rig-Veda. The word ‘Dharma’ came from the root ‘Dhr’, of Sanskrit word which signifies “to uphold, to maintain, keep etc”. However, the ‘Dharma’ have different meanings, according to the interpretations given by different sages such as Manu defines ‘Dharma’ as “Self-possession, patience, self-control, integrity, purity, restraint, intelligence”, whereas Yajnavalkya defines it as “truthfulness, non-stealing, absence of anger, modesty, purity”. ‘Dharma’ has wide variety of meanings.

For Example, the word is used to mean justice, what is right in a given circumstance, moral values of life, obligation of an individual, courage and many more. However, the concept highlights various ideals which continue to be part of our Indian society from years of years and later on were enshrined into the Indian Constitution such as justice, liberty, equality and fraternity etc., which are going to be discussed.

### **A. Research Objectives**

This study aims to examine the relationship between ancient Indian legal texts and contemporary constitutional morality. It seeks to identify the core principles embedded in ancient jurisprudence, particularly the concept of Dharma, and analyse their reflection in the Indian Constitution. The paper also aims to evaluate the extent to which these traditional principles have evolved within a modern constitutional framework that emphasises justice, equality, liberty, and human dignity.

## **B. Research Questions**

The study is guided by the following questions:

1. What are the key legal and moral principles contained in ancient Indian legal texts?
2. How do these principles correspond with the concept of constitutional morality under the Indian Constitution?
3. To what extent can continuity or divergence be observed between ancient and modern legal frameworks?
4. How have constitutional values transformed or reinterpreted traditional notions such as Dharma, justice, and equality?

## **C. Research Methodology**

The research adopts a doctrinal and analytical methodology. It is primarily based on the analysis of secondary sources including ancient Indian legal texts such as the Vedas, Smritis, and Arthashastra, along with constitutional provisions and judicial decisions of the Supreme Court of India. A comparative approach has also been employed to examine the similarities and differences between ancient legal principles and modern constitutional values. The study relies on books, journal articles, and case laws to substantiate its arguments and provide a comprehensive understanding of the subject.

# **IV. CONCEPTUAL FRAMEWORK**

## **A. SUPREMACY OF 'DHARMA'**

As stated earlier, the ancient legal text was primarily rooted in 'Dharma', a concept of combining law with morality, religion and spirituality. In earlier times, the law was not considered separate from religion and is considered as scary and divine sanction. The Manusmriti brought 'Dharma' under five heads which includes: -

1. Non- Violence (Ahimsa),
2. Truthfulness (Satya),
3. Not to acquire illegitimate wealth (Asteya),
4. Purity (Shousham),

## 5. Control of senses (Indriyanigraha).

These principles of 'Dharma' were common to be followed by all the varnas. They were applicable to all the varnas without any discrimination. Further the concept of 'Dharma' was given prime supremacy. According to the Brihadaranyakopnishad, 'Dharma' is a power superior to that of the king, was created to enable the king to protect people and gives definition of 'Dharma' as "Dharma is the king of kings. No one is superior to Dharma; Dharma aided by power of the king enables the weak to prevail over the strong." However, Dharma' was enforced by the king but it was considered superior to king. As per Rajadharma, the kings were obliged to perform their duties within the principles of 'Dharma' otherwise he would be cursed by the Devas.

Further the idea of 'Dhamma' gave broader interpretation to 'Dharma', beside the fact that the term 'Dhamma' is the Prakrit equivalent of the Sanskrit word 'Dharma', translated as religion in modern times. Two types of Dhamma are mentioned as: -

1. **Buddha 'Dhamma':** The Buddha 'Dhamma' is usually consist of three elements, i.e.:
  - **Morality (Sila):** The first constituent of 'Dhamma' is morality, i.e. righteousness, nearly all followers of various sects and doctrines prevailing during that time accepted the importance of morality.
  - **Concentration & Mind (Samadhi):** Further to maintain morality, it is necessary to attain control over mind for purifying one's actions of body and speech. When the mind is under control then only one can avoid committing misdeeds and tends to perform virtuous actions. For achieving concentration of mind observation no sila is a necessary condition.
  - **Wisdom (Panna):** After following the two earlier steps what one can come upon is knowledge. The wisdom which is the direct experimental knowledge that is further classified into Heard wisdom (Srutmayi Panna), intellectual wisdom (Cintanamayi Panna) and experimental wisdom (Bhavanamayi Panna).

2. **Ashoka Dhamma:** The Ashoka's 'Dhamma' explained the theory to unite all the sects having this is common, in order to eliminate the tension and thereby, knitting a strong and united empire. It was an ethical code to inculcate a social responsibility among the people; it was different from various religious popular at the time. The ultimate goal of 'Dhamma' was to create a harmonious environment where all people, irrespective of their caste and religion, lived in peace and harmony with each other so as to ensure the security and stability of the empire. For him, Dhamma' was a way of life and was based on a high degree of social ethics and civil responsibility.

## B. JUSTICE

The concept of justice (Nyaya) was also not new to Indian society, as in the earlier period justice was considered as a path to 'Dharma'. It was believed that when individuals conducted their lives in accordance with Dharmic principles, they would move towards the ultimate goal of Moksha. The concept of justice was therefore understood as serving 'Dharma'. This interrelationship is further reflected in Kautilya's Arthashastra, which provides a systematic account of administration of justice, emphasising the role of the राजा in ensuring fair adjudication, maintenance of order, and protection of subjects in accordance with legal and ethical norms. Thus, both 'Dharma' and justice are deeply intertwined in Indian philosophy and exhibit a structured legal and administrative dimension. Justice can be understood through the points as follows:

1. It ensures that the duties recognized by the 'Dharma' should be upheld in a fair and equitable manner as they are based upon the principles of fairness, equity and righteousness and is operated within the framework provided by the 'Dharma'.
2. It helps in securing the 'Dharma' but at the same time the king follows the Rajadharma in order to ensure that justice should not be compromised; they are both inter-connected and inter-dependent upon each other.

Justice differentiates between virtues and vices. It helps to maintain a balanced approach and is orientated towards righteousness. However, when it comes to the

day-to-day matter of society, justice could be understood as an approach to find out what is true and then work according to the truth. It was the duty of the king to do justice to the people who came to his Court to seek justice. However, the meaning of the term justice always remains under ambiguity because for every person, justice has different meanings. But overall, the concept of justice is deeply embedded in the ancient Indian legal texts with not only a legal dimension but with moral, social, ethical, political and spiritual dimensions and also presents a holistic view with 'Dharma' to uphold the societal harmony and ethical integrity.

### C. EQUALITY

The concept of equality can be traced through its incorporation in the Rig-Veda and the Atharva-Veda:

1. According to Mantra-5 of Sukta-60 of Mandala-5 of the Rig-Veda, "No one is superior or inferior. All are brothers. All should strive for the interest of all and should progress collectively". This notion of equality is further supplemented by the Dharmasutra and Dharmashastra literature, which, despite recognising social classifications, also imposed common ethical obligations and duties applicable across varnas, thereby reflecting an underlying normative framework of social responsibility and regulated conduct.
2. According to the Samjnana Sukta of the Atharva-Veda, "All have equal rights to articles of food and water. The yoke of the chariot of life is placed equally on the shoulders of all. All should live together in harmony, supporting one another like the spokes of a wheel connecting its rim and hub". This principle finds further reflection in Dharmasutra traditions, where duties relating to fairness, mutual obligation, and social cohesion were emphasised as essential components of Dharmic order.

### D. LIBERTY

The concept of liberty including the modern concept of liberty highlighted under the Indian Constitution i.e. Personal Liberty right to Personal Liberty, were not unheard

in the ancient period. The Vedas had established three important liberties, as follows:

1. Freedom of life,
2. Freedom of body,
3. Freedom of the place of living.

#### **E. SECULARISM**

'Dharma' was always misinterpreted as religion but there is a difference between religion and dharma. 'Dharma' was considered as "righteous code of conduct" whereas religion means mode of worship of God by believers. However, the concept of secularism may also be traced in ancient texts. According to Naradasmriti "The king should afford protection to believers of Veda (Naigamas) as also disbelievers in Veda (Pashandis) and others".

### **V. ANALYTICAL DISCUSSION**

Now, as the ancient texts and the ideal discussed above; their reflection in the Indian Constitution can be seen as follows:

#### **A. PREAMBLE**

The preamble of the Indian Constitution contains various fundamental principles which enshrines the spirit and the ideology behind the Constitution in a sufficient crystallized manner. The term 'DEMOCRATIC & REPUBLIC' is not new concept for the country as during ancient India, there were texts available which clearly mentions about the existence of republics during the ancient Indian states. The people of that period were believers of the republic system of statehood. The existence of democracy can be evidenced from the texts. Further the idea of 'SECULARISM' can be traced back to the ancient India, as mentioned earlier. Secularism is declared to be one of the basic features of the Constitution, which is beyond the amending power of the Parliament. The concept of secularism has been held to be "one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme of our Constitution."

This essence of secularism in India is the recognition and preservation of the different types of people, with diverse languages and different beliefs and placing them together so as to form a whole united India. The 9-Judge Bench of the Hon'ble SC in *S.R. Bommai V. Union of India* (1994) held that "the concept of secularism was very much embedded in our constitutional philosophy. What was implicit earlier had been made explicit by the Constitution 42<sup>nd</sup> Amendment in 1976". Further in *T.M.A. Pai Foundation V. State of Karnataka* (2003), the Court elaborated upon the scope of Article 30 and held that it guarantees the right of religious and linguistic minorities to establish and administer educational institutions of their choice, subject to reasonable regulation by the State. Also, further in *St. Xavier's College V. State of Gujarat* (1974) the Court held that "Secularism is neither anti-God, nor pro-God; it treats alike the devout, the agnostic and the atheist. It eliminates God from the matters of the State and ensures that no one shall be discriminated against on the ground of religion. Every person is free to mould or regulate his relations with his God in any manner. He is free to go God or to Heaven in his own ways. And, that worshipping God is left to be dictated by his own conscience". Further the other ideals are duly placed in the preamble such as:

1. JUSTICE, social, economic and political,
2. LIBERTY of thought, expression, belief, faith and worship,
3. EQUALITY of status and of opportunity; and to promote among them all',
4. FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation.

So, these concepts can be easily accessed in the earlier ancient period also. At present, these principles are again governing the country towards progressive society.

## **B. FUNDAMENTAL RIGHTS**

The fundamental rights enshrined in the Indian Constitution also reflects the principles of law in the ancient period, as follows:

1. The 'Right to Equality' under Articles 14 to 18 highlights and strengthens the concept of equality. Further Article 14 of the Constitution provides that

the 'equality before law' and 'equal protection of laws to the people. Further the recent development made in case title National Legal Services Authority V. Union of India (2014) that the word 'person' in Article 14 is not restricted to male and female but includes even Hijras/Transgender persons. Such persons, who are neither male nor female, are also held entitled to equal protection of laws and equality in all spheres. In ancient India also, the term 'Ardhnarishwar' was prevalent which comprised of partly male and partly female body. The 'Right to Freedom' under Article 19 to 22 highlights and provides the rights as to certain freedoms. Article 19 provides for the six fundamental freedoms including the right to speech and expression. Further Article 21 provides for the basic rights which are very important and those principles are now broadened into much wider meaning, those are 'right to life and personal liberty' which protect these rights and provides for the concept of 'procedure established by law. Further in Maneka Gandhi Case, the Hon'ble Supreme Court interprets Article 21 stating that the procedure established by law includes the 'due process of law'. It does not include the mere right to live but encompasses a right to live with human dignity. Such kind of principles can be traced in the ancient Indian legal text also, as earlier mentioned.

2. The 'Right to Freedom of Religion' under Article 25 to 28 highlights the concept of freedom of religious beliefs and the right to have own faith and personal beliefs. As in ancient India also the people were allowed to follow different beliefs and it is evident that different sects were present at that time such as 'Advaita', 'Dwait', 'Achintya-Bhed-Abhed', 'Viashnavism', 'Shaivism', 'Shaktivism' and many more.

Overall, the fundamental rights mentioned in the Indian Constitution highlights various essential principles which were also being traced in the ancient Indian legal text. Whether it's cultural and linguistic rights or rights to seek remedies for the enforcement of those rights. The difference is that only the form might be different or the practice may vary but the ideals are same.

### C. DIRECTIVE PRINCIPLES OF STATE POLICY

As has been discussed about the *Rajadharma* which provides the duties to be performed by the king, so as to secure the interest of these citizens. As similar form of practice is mentioned in the present day i.e. Directive Principles of State Policy also highlight some of the ideal presents in earlier periods also, such as:

1. The duty of the state is to promote the welfare of people and to secure social order in which JUSTICE - social, economic and political, shall be secured and protected. As has been earlier discussed about the *Rajadharma* which provided the duties to be performed by the King, so as to secure the interest of these citizens. Further to minimize the inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities.
2. The duty under Article 39 clause (c) ensuring “that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment”. Further clause (e) of the article states to ensure that the “citizens are not forced by economic necessity to enter avocations unsuited to their age or strength”.
3. The duty of the state is to strengthen the ancient practice of village panchayat system; the practice is still preserved in the country and is formalized by the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendment. In ancient times the institution of village system was quite strong, and dispute settlements were more oftenly done, in the panchayat.
4. The duty of the state is to secure just and humane conditions of work. Further endeavors to organize agriculture and animal husbandry and prohibit the slaughter of cows and calves and other mulch and draught cattle. As in the ancient period also, cow was being worshipped and committing ‘Gau-Hatya’ was considered one of the greatest sins and even the laws provide for death penalty in case of such act.
5. Article 48-A provides for the state to protect and improve the environment and to safeguard the forest and wildlife of the country. As in ancient

period the nature was always worshipped. Even at present, one can observe that in India, people worship trees, animals and rivers etc.

6. The fundamental duties can be easily co-related with the ancient periods such as the 'following of noble ideals, national service', 'promotion of harmony', 'spirit of common hood, protecting and improving the natural environment', humanism'.

## VI. CRITICAL EVALUATION

However, coming to the critical evaluation, despite the fact that the principles highlighted in the ancient Indian legal text are given place in the Indian Constitution still there are lot of differences between them. As nowadays, the law is interpreted in a more liberal manner, wherein the interests of society, welfare of the people, as well as the liberty of the individual must be ensured, whereas in the earlier period the laws were interpreted in a rigid manner with a strict understanding of the principles. The general will of society was given more weight and individual liberty was restrained subject to social sanctions. Even individuals were obliged to sacrifice them for the sake of society.

However, when it comes to the women and the out-caste people such as dalits, their conditions were full of struggle. As can be observed in Kautilya's Arthashastra, the penalties were considered with reference to the caste of the people. If the accused is Brahmin, the amount of fine will be less, whereas if the accused is *Shudra*, the amount of fine will be more. There were various texts available which were considered as controversial and which highlighted the dark reality of ancient society. Even Manusmriti was often targeted by the people for being having a biased attitude. Whereas the Indian Constitution provides and practices such principles in true sense and respects the individual freedom and dignity.

## VII. SUGGESTIONS AND RECOMMENDATIONS

In light of the analysis, it is suggested that greater academic engagement be encouraged in tracing the historical foundations of constitutional principles in India. Legal education should incorporate interdisciplinary approaches that connect ancient jurisprudence with contemporary constitutional law. Further, while drawing

inspiration from ancient texts, it is essential to critically assess and reject regressive elements such as caste-based discrimination and gender inequality. Policymakers and jurists should continue to interpret constitutional morality in a progressive manner that upholds individual dignity, social justice, and inclusivity. Strengthening constitutional awareness among citizens can also ensure that these values are effectively realised in practice.

## VIII. CONCLUSION

So, ultimately, both the texts i.e. ancient Indian legal text and Indian Constitution are being discussed and also co-related with each other. Overall, it ended with a critical evaluation, signifying the wider concepts of the Constitution. In the end, it can be held that the principles begin from the ancient society are still prevalent and ultimately moving the society towards progress and especially, when it comes to Indian society, the diverse nature of the country make it a unique institutional setup with a balance of ancient and modern principles of governance.

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