
THE CONCEPT OF DHARMA AS THE FOUNDATION OF HINDU JURISPRUDENCE

Krishna Sethi, B.COM. LL.B. (UILS), Chandigarh University

ABSTRACT

The core of Hindu Jurisprudence is the idea of dharma. The modern western law, which is often seen as an independent set of codified rules which are enacted by the concerned legislative bodies whereas Dharma is a much broader concept as it combines various principles of morality, duties, customs and very vast set of spiritual principles into a kind of framework which guided lives of Ancient India for many centuries¹. Dharma was a way of life that kept individuals, family and society in harmony with each other and with time dharma moved from early Vedic concept of ṛta (cosmic order) to detailed commentaries and digests of smritis and dharmashastras and not just simply enforceable law². The functioning of kings and the decisions of the courts were deeply influenced by Dharma only, which led to codification of Hindu Laws in Independent India³.

This Research Paper studies the concept of Dharma as the foundation of Hindu Jurisprudence, both in history and in present, its role as a source of law, codified statutes and its presence in the present day legislation. This paper uses doctrinal and analytical methods which deals with classical texts, commentaries and digests, judgments as well as interpretation by modern scholars. It shows that though Dharma cannot be applied today in its raw form but it continues to affect Indian law as a reminder that the justice should not be limited to technical rules but also reflect human dignity, morality and fairness.

Keywords: Dharma; Hindu Jurisprudence; Dharmashastra; Hindu Law; Codification.

¹ R.N. Dandekar, *The Concept of Dharma in the Vedas* 12 (University of Poona 1941).

² *Rig Veda*, X.85.1 (Griffith trans., 1896).

³ The Hindu Marriage Act, No. 25 of 1955, INDIA CODE (1955).

INTRODUCTION

Context

Law in each part of the world is built upon certain foundations that give it shape. Such as in the western world, theories such as natural law, positivism and realism have provided a strong base on which modern law is built. However, In Hindu Jurisprudence, the concept that sustains Hindu Law is Dharma and its base is quite different.

The meaning of word dharma is very rich , so it cannot be translated into a single word in English. sometimes it is described as “law” or sometimes as “religion” or as a “duty”. in reality, it is the combination of all these ideas. Dharma can be referred to as a way of life and not merely a set of enforceable law.

This makes Hindu Jurisprudence very unique from the modern western and dharma is always seen as something above the law. Historically, Dharma was first linked with the Vedic idea of ṛta (cosmic order) , which meant cosmic truth and order⁴. Over time, Dharma came to mean the duties and responsibilities of people according to their stage of life and their role in society. Smiritis and Dharamashastras such as Manumriti and Yajnavalkya Smriti regulated areas such as marriage, inheritance, contracts and served as a foundation of Hindu Personal Law⁵.

In the present time, India has codified laws with the Constitution as the Apex Law⁶. Hindu personal law itself has been codified through statutes like the Hindu Marriage Act, 1955 and the Hindu Succession Act, 1956⁷. In this environment, Dharma no longer operates as a direct source of enforceable law but its reforms are taken from the concept of dharma only. This shows that Dharma’s form have changed but is not completely vanished.

Research Problem

This research shows the paramount problem of how to balance the ancient concept of Dharma with the requirements of modern legal system. Dharma is the roots of tradition, religion and social duties whereas modern law is secular in nature as well as it is codified in a manner that

⁴ RigVeda, X.190.1–2 (Griffith trans., 1896).

⁵ Manusmriti, ch. IX; YājñavalkyaSmṛti, ch. II.

⁶ Constitution of India, art. 13, 1950.

it is rights- based. The problem is that can Dharma still function as the foundation of Hindu Jurisprudence today? And Is it now only a matter of historical and philosophical interest?

Another question is also that whether Dharma can be reinterpreted in a way that it is consistent with constitutional morality.

Objective of the Study

There are five main objectives of this paper:

- To study Dharma and its historical development from its Vedic roots to modern era.
- To study Dharma in a legal manner and study its spiritual concept that goes beyond the ambit of ordinary law.
- To examine how courts in India have interpreted and applied the concept of Dharma in their judgments.
- To evaluate the continuing relevance of Dharma in light of India's constitutional principles of justice, equality and dignity.
- To analyze the role of Dharma as a source of Hindu law before and after codification.

Research Methodology

This study is done by using doctrinal and analytical research methodology which includes primary sources such as Vedas, Smritis, Dharamashastras along with Schools of Hindu Laws. So, these texts are studied to understand how Dharma was originally conceived and how it was being applied in real life.

And it also includes secondary sources such as works of modern scholars such as P.V. Kane, J.D.M. Derrett and Werner Menski who have written on Hindu law and Dharma. Legislation like HMA⁸ and HSA⁹ are considered to see how Dharma made them also judgments from courts are analyzed to see how judges have interpreted Dharma in modern contexts.

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⁸ The Hindu Marriage Act, No. 25 of 1955, INDIA CODE (1955).

⁹ The Hindu Succession Act, No. 30 of 1956, INDIA CODE (1956).

Scope of the Study

The scope of this study is completely focused on how Dharma is the foundation of Hindu Jurisprudence. The concept of Dharma is in other Indian Religions too but this paper limits itself to Hindu law only. this study covers Dharma's historical development, its psychology, its role as a source of law and its modern role. It does not go to every aspect of Dharma or religion but entirely concentrates on Dharma in relation to law.

LITERATURE REVIEW

Dharma in Ancient Scriptures

The idea of Dharma first appeared from the Vedas which was linked with the concept of ṛta¹⁰¹¹, whose meaning is that the universal order is to maintain the truth and balance. Then the Upanishads gave it a spiritual meaning which means associating Dharma with ethical living. The Smritis, especially Manusmṛiti and Yājñavalkya Smṛiti have made dharma into social and legal duties on one's caste (varṇa)¹¹. The Dharmashastras later classified it as vyavahārikadharmā (legal) and ācāradharma (moral), forming the base of Hindu jurisprudence.

Classical Commentaries and Schools of Law

Two schools developed through medieval commentaries:

- Mitakshara, by *viññeshwara*, focused on joint family and collective duty in property and inheritance.¹²
- Dayabhaga, by *Jimutavahana*, focused on fairness and spiritual benefit rather than ritual duty.¹³

Indian Modern Scholarship

Modern scholars interpreted dharma as P.V. Kane, in *History of Dharmashastra*, traced

¹⁰ R.N. Dandekar, Vedic Concept of Ṛta and Dharma 14 Annals of the Bhandarkar Oriental Institute 27 (1943).

¹¹ Manusmṛiti, ch. VII; Yājñavalkya Smṛiti, ch. I.

¹² Mitākṣarā, ch. I, v. 1 (Viññaneshwara trans., 1100 CE).

¹³ Dayabhaga, ch. I, v. 2 (Jimutavahana trans., 1100 CE).

Dharma's evolution and dynamic nature¹⁴. Whereas J.D.M. Derrett criticized misinterpretations in the time of colonization that reduced dharma to rigid law¹⁵. Lastly Werner Menski, in *Hindu Law; Beyond tradition and modernity*, described dharma as "living law"¹⁶ that is still shaping Indian Society.

Judicial Perspectives

Indian courts have occasionally used dharma as in *Shastri Yagnapurushdasji v. Muldas Bhundardas Vaishya*¹⁷ (1966) The supreme court described hinduism as a way of life which find its root in dharma. SC described that Hinduism is not a rigid set of rules but a way of life. By interpreting Hinduism in this manner. The SC affirmed that Dharma forms a foundation in the Hindu law which reflects justice.

Also, in *Vineeta Sharma v. Rakesh Sharma*¹⁸ (2020), Daughters were given equal coparcenary rights which showed dharma's evolving sense of justice and equality. This decision of SC reflected the evolution of dharma from traditional practices to modern principles of justice and equality. The SC interpreted dharma as a dynamic concept while also upholding the core values of righteousness.

However, no uniform method exist for applying Dharma in judicial reasoning.

Literature Gap

Despite vast sets of literature, dharma's balance with modern constitutional law remains unclear. Ancient texts emphasized more on duties over rights and colonial laws distorted its meaning and now modern scholarship struggles to connect dharma with secular law and equality. The challenge is connecting traditional moral order with constitutional morality.

Conclusion

From cosmic order in ancient scriptures to justice in the courts dharma have somehow been the foundation of Hindu Jurisprudence. Yet, its modern role is unclear. The task here is to

¹⁴ P.V. Kane, History of Dharmashastra, Vol. I (Bhandarkar Oriental Research Institute 1930).

¹⁵ J.D.M. Derrett, Religion, Law and State in India 25 (Faber & Faber 1968).

¹⁶ Werner Menski, Hindu Law: Beyond Tradition and Modernity 47 (Oxford Univ. Press 2003).

¹⁷ Shastri Yagnapurushdasji v. Muldas Bhundardas Vaishya, AIR 1966 SC 1119.

¹⁸ Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1.

reinterpret Dharma in light of constitutional values of justice, equality and dignity, ensuring its relevance in Hindu law.

MAIN BODY

EVOLUTION OF DHARMA IN HINDU JURISPRUDENCE

The concept of dharma have continuously evolved which reflects India's spiritual and social changes.

In the RigVeda, Dharma was identified as *ṛta*¹⁹ which is the cosmic order ensuring harmonies between humans, nature and the divine and every person's conduct was expected to align with this natural law.

During the era of Ramayan and Mahabharat²⁰, dharma acquired an ethical place in the society, it represented moral duties and righteousness. The Bhagavad Gita focused on *svadharma* which means one's duty as one's role in the life. And later on, *Manusmṛiti* and *Yājñavalkya Smṛiti* organized it all into social/legal norms covering the concepts of family, property and justice²¹.

Also texts like *Mitakshara* and *Dayabhaga* showed regional interpretations of the dharma²². *Mitakshara* favoured joint family property whereas *Dayabhaga* leaned towards individual ownership, which proves dharma's adaptation in different regions.

Later, British codifications reduced dharma to merely written rules by ignoring its flexible nature²³. But after independence, Hindu law was consistently reformed to uphold equity, justice and true sense of dharma. Its evolution is shown in the acts like Hindu Marriage Act of 1955, Hindu Succession Act of 1956, Hindu Minorities and Guardianship Act of 1956 and Hindu Adoption and Maintenance Act of 1956.

PHILOSOPHICAL FOUNDATIONS OF DHARMA

Dharma acts as a natural law and universal order²⁴ as it extends to create a balance between

¹⁹ RigVeda, X.190.1–3 (Griffith trans., 1896).

²⁰ TheMahabharata, BhagavadGita, ch. 2, v. 47 (Eknath Easwaran trans., 2007).

²¹ Manusmṛiti, ch. IX; YājñavalkyaSmṛiti, ch. II.

²² P.V. Kane, HistoryofDharmashastra, Vol. III, at 203 (BORI 1946)

²³ J.D.M. Derrett, IntroductiontoModernHinduLaw17 (Oxford Univ. Press 1963).

²⁴ P.V. Kane, HistoryofDharmashastra, Vol. II, at 203.

the society and the cosmic order. Also dharma is connected to justice in every sense as the goal of dharma is Nyaya²⁵ and dharma unites law and ethics and treats it as one which makes moral behavior an essential part of legality.

Also unlike western law system which are based on rights, dharma focuses on duties and responsibilities and every person's conduct must be in a way that it preserve social harmony.

Even kings were bound to follow dharma²⁶.

SOURCES AND APPLICATION

Hindu jurisprudence recognizes various sources of dharma:

- Shruti: It literally means that “which is heard”²⁷, shrutis are referred to Vedas and Upanishads.
- Smriti: It literally means that “which is remembered”²⁸, shrutis includes texts such as *Manusmriti* and *Yajnavalkya Smriti*.
- Customs (*Ācāra*)²⁹: These are community practices that are done with expressions of dharma. This source shows adaptability of Hindu law as it allows it to evolve with local traditions.
- Good conscience (*sadachara*)³⁰: When no rule in scriptures or no custom applies then individuals are guided by good conscience and reason.

DHARMA IN MODERN HINDU LAW

Hindu law was codified in independent India to reflect equality and justice. Dr. B.R. Ambedkar reinterpreted dharma by connecting it to constitutional morality³¹. For instance, HMA outlawed polygamy, HSA ensured women's inheritance³² and HAMA recognized women's

²⁵ Kautilya, *Arthashastra*, Bk. I, ch. 19 (R. Shamasastri trans., 1915).

²⁶ Mahabharata, *Shanti Parva*, ch. 59, v. 25

²⁷ Chandogya Upanishad, VI.2.1 (Swami Nikhilananda trans., 1949)

²⁸ Manusmriti, ch. II, v. 6.

²⁹ Werner Menski, *Hindu Law: Beyond Tradition and Modernity* 115 (Oxford Univ. Press 2003).

³⁰ Yājñavalkya Smṛti, ch. II, v. 21.

³¹ Constituent Assembly Debates, Vol. VII, 9 Nov. 1948, Speech of Dr. B.R. Ambedkar.

³² The Hindu Marriage Act, No. 25 of 1955; The Hindu Succession Act, No. 30 of 1956, INDIA CODE (1955–

independent rights.

Thus, principles of dharma like justice, duty and fairness found its new meaning in the modern Hindu law.

JUDICIAL INTERPRETATION OF DHARMA

➤ **Shastri Yagnapurushdasji v. Muldas Bhundardas Vaishya³³ (1966):**

The supreme court described Hinduism as a way of life which find its root in dharma. SC described that Hinduism is not a rigid set of rules but a way of life. By interpreting Hinduism in this manner. The SC affirmed that Dharma forms a foundation in the Hindu law which reflects justice.

➤ **Vineeta Sharma v. Rakesh Sharma³⁴ (2020):**

Daughters were given equal co-parcenary rights which showed dharma's evolving sense of justice and equality. This decision of SC reflected the evolution of dharma from traditional practices to modern principles of justice and equality. The SC interpreted dharma as a dynamic concept while also upholding the core values of righteousness.

➤ **Subramanian Swamy v. State of Tamil Nadu³⁵ (2014):**

The Court, while balancing faith with public morality in the relation with the management of temple, highlighted that dharma continues to influence judicial precedents. The judgment showed that dharma in contemporary India is not confined to religious duties but extends to promoting peace between individual rights, faith, and constitutional morality.

CONTEMPORARY RELEVANCE AND CRITIQUES

Traditionally, dharma have faced criticism for supporting caste and gender inequality. So, reformers like Ambedkar urged its reinterpretation through constitutional values³⁶. That's why dharma nowadays is viewed as a moral principle which promotes justice and social balance.

³³ AIR 1966 SC 1119.

³⁴ (2020) 9 SCC 1.

³⁵ (2014) 5 SCC 75.

³⁶ Constituent Assembly Debates, Vol. VII, 9 Nov. 1948.

Dharma's influence extends beyond courtrooms. Judgments recognizing rivers are legal entities³⁷ shows dharma's outlook. So, in conclusion dharma remains a living law that changes with the society.

CONCLUSION AND SUGGESTIONS

CONCLUSION

The journey of evolution of dharma in Hindu jurisprudence shows a evolution from the Vedic concept of ṛta to foundation of legal, social and moral system. After centuries, dharma have not merely been a religious belief but as a guiding law.

However, dharma has also been criticized for backing the caste system and gender inequality. During, British rule, it was codified in a manner that it was not flexible. Dr. B.R. Ambedkar challenged those distortions.³⁸

Post-independence reforms, especially Modern Hindu law have revived dharma's true sense by aligning it with constitutional morality. Judgments such as Vineeta Sharmav.Rakesh Sharma³⁹(2020)showed this evolution in hindu law.

Dharma remains relevant when interpreted with justice, equality and dignity. It should not be seen as oppressive but as a principle capable of harmonizing dharma with its constitutional vision.

SUGGESTIONS

Reinterpret Dharma for Equality: To view discriminatory customs as adharma and uphold Dharma's essence of fairness.

- Link Dharma with Constitutional Morality: To treat both as complementary paths to justice and social harmony.
- Apply Dharma in Environmental Law: To use its principle of balance to promote

³⁷ Mohd. Salim v. State of Uttarakhand, 2017 SCC Online Utt 367.

³⁸ Constituent Assembly Debates, Vol. VII, 9 Nov. 1948.

³⁹ (2020) 9 SCC 1.

ecological protection.

- Incorporate Dharma in ADR: To encourage fair, community-based resolutions inspired by values of dharma.
- Promote Dharma in Legal Education: To teach it as a living jurisprudence relevant to modern law and ethics.