
THE ENDURING LEGACY: TRACING MODERN JURISPRUDENCE IN ANCIENT INDIAN LEGAL THOUGHT

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ABSTRACT

This research paper examines the historical depth and richness of ancient Indian legal system, challenging the prevalent notion that modern Indian jurisprudence is solely an inheritance of British colonial legal traditions. The paper analyses key texts such as the Dharmashastra, Arthashastra, and Nyaya Shastra. It demonstrates how these ancient scriptures contained advanced principles pertaining to substantive law, procedural administration, judicial ethics, and forensic science, many of which predate and parallel contemporary legal concepts. Through a detailed comparative analysis, the study highlights the indigenous intellectual contributions to legal thought, emphasizing the integrated nature of ancient Indian law with philosophy and ethics. While acknowledging the impracticality of wholesale adoption of ancient codes in modern egalitarian society, the paper argues that recognizing this rich heritage is vital for fostering a nuanced understanding of India's legal identity and for informing future scholarship and legal education.

* Post-Doctoral Research Scholar. The scholar is the awardee of ICSSR Post-Doctoral Fellowship. This paper is largely an outcome of the Post-Doctoral Fellowship sponsored by the Indian Council of Social Science Research (ICSSR). However, the responsibility for the facts stated, opinions expressed, and the conclusions drawn is entirely of the author.

I. Introduction: Re-evaluating the Foundations of Indian Jurisprudence

The landscape of modern Indian jurisprudence is often perceived as a direct descendant of the British common law system, a narrative that frequently overshadows the profound and refined legal traditions that flourished in ancient India. This paper embarks on a critical re-evaluation of this prevailing perspective, offering a compelling argument for the deep-seated roots of contemporary legal principles within traditional Indian thought. A significant objective of this exploration is to dismantle the pervasive belief that India's legal system owes its fundamental structure and advanced concepts exclusively to Western influence. The paper explicitly articulated the aim to 'bust this myth and shows that we had a far superior system of administration of justice suited to the times of those days'.¹ This assertion carries substantial implications, extending beyond mere historical accuracy to encompass dimensions of national identity and the psychological underpinnings of legal education in post-colonial states. If a nation's legal framework is viewed as an entirely borrowed construct, it can inadvertently diminish confidence in its own intellectual legacy and historical continuity. Conversely, demonstrating the existence of highly developed ancient legal system can cultivate a profound sense of legal heritage and foster intellectual self-reliance. The present analysis contributes not only to academic discourse on legal history and comparative law but also to broader conversations concerning legal decolonization and the inherent value of Indian knowledge system.

This paper posits that ancient Indian legal system, particularly as embodied in the Dharmashastra, Arthashastra, and Nyaya Shastra, contained sophisticated principles that not only predate but also exhibit striking parallels with modern jurisprudence. This challenges conventional narratives by showcasing a vibrant and dynamic native legal tradition that contributed significantly to the evolution of legal thought, long before colonial influences reshaped the subcontinent's legal landscape.

II. The Philosophical Bedrock: Dharma, Purushartha, and the Chaturdasa Vidya

The foundation of ancient Indian life and its legal philosophy was intricately woven into a holistic framework known as the *Purushartha*, or the four goals of human life: *Dharma*, *Artha*,

¹ V. Ramasubramanian, *Ancient Indian Philosophy of Jurisprudence, Nyay and Dharma* (Speech delivered at Satyawati College, University of Delhi, 15 October 2023).

Kama, and Moksha.² These were not merely abstract ideals, but prescriptive aims established by the *Shastras* for human beings to attain. *Dharma*, signifying righteous conduct and moral duty, was considered the paramount and foundational goal.³ It was understood that by leading a *dharmic* way of life, an individual could legitimately pursue *Artha* (wealth), enjoy *Kama* (pleasures of the world), and ultimately seek *Moksha* (liberation).⁴ This integrated perspective reveals that ancient Indian jurisprudence was not a standalone discipline but was deeply interconnected with philosophy, ethics, economics, and spirituality. Unlike modern positivist legal systems that often strive for a strict separation of law from morality, ancient Indian legal thought viewed law as an intrinsic means to achieve a balanced, ethical, and ultimately righteous life, emphasizing societal and individual well-being beyond mere order and punishment.

The profound significance of *Dharma* as the bedrock for a righteous existence meant that its comprehension was indispensable for navigating life's complexities. To facilitate this understanding, the ancient *Shastras* prescribed a comprehensive educational system known as the *Chaturdasa Vidya*, or fourteen branches of learning.⁵ This structured approach to knowledge acquisition demonstrates a societal commitment to ensuring that individuals, particularly those in positions of governance and justice, possessed a broad and interdisciplinary education. The fourteen branches comprised four *Vedas*, six *Angas*, and four *Upa Angas*.⁶ The *Angas* included *Siksha* (the science of proper pronunciation), *Vyakarana* (grammar), *Chandas* (prosody), *Nirukta* (etymological definition of words found in *vedas*), *Jyotisha* (astrology), and *Kalpa* (ritual ceremonies).⁷ The *Upa Angas* encompassed *Mimamsa* (interpretation of Vedic texts), *Nyaya* (logic), *Puranas* (mythology and history), and *Dharmashastra* (codes of conduct and law).⁸ The inclusion of such diverse fields, ranging from linguistics and astronomy to logic and ethics, highlights the belief that a truly *dharmic* legal practitioner or ruler required a holistic understanding of the world to apply law justly and effectively. This comprehensive educational prerequisite contrasts with more specialized modern legal education, prompting reflection on the ideal breadth of knowledge for

² धर्माधिकाममोक्षाश्च पुरुषार्था उदाहृताः, *Agnipurana*.

³ तस्माद् धर्मप्रधानेन भवितव्यं यथात्मना। तथा च सर्वभूतेषु वर्तितव्यं यथात्मनि॥ *Mahabharata, Shantiparva*, 167-9.

⁴ Pandurang Vaman Kane, II (1) *History of Dharmasastra* 9 (Bhandarkar Oriental Research Institute, 1941).

⁵ अङ्गानि वेदाश्चत्वारो मीमांसा न्यायविस्तरः। पुराणं धर्मशास्त्रं च विद्या होताश्चतुर्दश॥ *Vishnupurana*, III-6-28.

⁶ पुराणन्यायमीमांसाधर्मशास्त्रांगमिश्रिताः। वेदाः स्थानानि विद्यानां धर्मस्य च चतुर्दश॥ *Yajnavalkya Smriti, Aacharadhyaya*, I-3.

⁷ शिक्षा कल्पो व्याकरणं निरुक्त छन्दोविचितियतिषमिति चाङ्गानि। *Kautilya's Arthashastra*, I-3-3.

⁸ *Supra* note 5.

contemporary legal professionals.

At the apex of this knowledge hierarchy were the *Vedas*, recognized as the foundational source for all fourteen branches of learning. The word *Veda* derives from the root *Vid*, meaning ‘to know’, reinforcing its status as the ultimate repository of knowledge and the original wellspring of all laws.⁹ This hierarchical structure of legal and ethical authority, with the *Vedas* as the ultimate reference, influenced all subsequent codifications and interpretations, establishing a consistent philosophical underpinning for the entire legal system.

III. Dharmashastra (Smritis): Sources, Codification, and Procedural Innovations

The *Dharmashastra*, a cornerstone of ancient Indian legal thought, are also widely known by their alternative name, *Smriti*. This term, meaning ‘what is recited’ or ‘what is remembered by recitation’, stands in contrast to *Shruti*, which denotes ‘what is heard’ (referring primarily to the *Vedas*).¹⁰ This distinction underscores the importance of oral tradition and mnemonic techniques in the early transmission and preservation of these legal codes. The sources of law in ancient India were multifaceted, as articulated in the *Manusmriti*, one of the most prominent *Dharmashastra*. These sources included:¹¹

1. **Vedas:** Considered the primary and ‘original source of all laws’.¹²
2. **Dharmashastra (Smritis):** Serving as the second foundational source, embodying codified legal principles and societal norms.¹³
3. **Sadhu’s Conduct:** The ethical and moral conduct of ‘people who are very learned and people who are noble’ constituted the third source.¹⁴ This emphasis on the integrity and moral authority of exemplars highlights a system where legal adherence was reinforced

⁹ U.P.D. Kesari, *Hindu Law* 12 (Central Law Publication, 31st edn, 2013).

¹⁰ Sir Dinshah Fardunji Mulla, *Principles of Hindu Law* 9 (The Eastern Law House Ltd, 10th edn, 1946).

¹¹ वेदोऽखिलो धर्ममूलं स्मृतिशीले च तद्विदाम् । आचारश्चैव साधूनामात्मनस्तुष्टिरेव च॥ “Veda is the first source of Dharma. After that, the expression by the Smritikaras, handed down from generation to generation by memory, the virtuous conduct of those who were well versed in the *Vedas*, and lastly, what is agreeable to the good conscience, are the other sources” *Manusmriti*, II-6.

¹² श्रुतिस्मृतिपुराणानां विरोधो यत्र दृश्यते। तत्र श्रौतं प्रमाणन्तु तयोद्वेधे स्मृतिर्विवादा। “Whenever there is a conflict between *Shruti (Vedas)*, *Smritis* and *Puranas*, then what is stated in the *Shruti* should be taken as authority” *Maharishi Ved Vyas*.

¹³ श्रुतिः स्मृतिः सदाचारः स्वस्य च प्रियमात्मनः। सम्यक्सङ्कल्पजः कामो धर्ममूलमिदं स्मृतम्॥ “The *Vedas*, the *Smritis*, good conduct or approved usage, what is agreeable to conscience proceeding from good intention, are the sources of law” *Yajnavalkya Smriti, Aacharadhyaya*, I-7.

¹⁴ Ganga-Natha Jha (tr), I (1) *Manu-Smriti: The Laws of Manu with the Bhāṣya of Medhatithi* 205 (Calcutta University Press, Senate House, Calcutta).

by virtuous living, not merely by punitive measures.

4. **A Man's Own Conscience:** Perhaps the most distinctive and advanced concept, an individual's conscience was recognized as the fourth source of law.¹⁵ This profound idea suggests an understanding of internal moral compass and individual accountability that transcends external enforcement. It implies a profound philosophical basis where self-governance and ethical introspection were integral to legal compliance, potentially fostering a deeper sense of justice than purely external, punitive systems. The inclusion of personal conscience as a source of law represents a radical precedent for its time, contrasting with many legal traditions that rely solely on external authorities.

The evolution and adaptation of these legal codes are evident in the role played by *Rishis* (sages) who codified the *Dharmashastra* or *Smritis*.¹⁶ These codifications were undertaken 'according to the time at which they lived', indicating a dynamic legal tradition that evolved in response to changing societal needs and contexts. The practice of naming these *Smritis* after their respective codifiers—such as *Manusmriti* (by Manu), *Yajnavalkya Smriti* (by Yajnavalkya), and *Parasara Smriti* (by Parasara)—finds an intriguing parallel in modern legislative practices, such as 'private members bills'. This illustrates that the concept of individual authorship and attribution in legal codification was prevalent in India, indicating a structured and recognized process of legal development and legislative recognition even thousands of years ago. The fact that these laws were adapted over time underscores a recognition of societal change and the need for legal reform, even in ancient periods.

Ancient jurists also demonstrated remarkable foresight in anticipating 'conflict of opinion between one *Smriti* and another *Smriti*'. To address such legal pluralism and potential contradictions, they developed *Dharmashastra Nibandhas* (Commentaries and Digests)—a specialized set of rules created to resolve the conflict between two sets of *Dharmashastra*.¹⁷ This complex mechanism for resolving legal inconsistencies is strikingly analogous to modern principles of 'conflict of laws' or 'repugnancy' in the Constitutional jurisprudence¹⁸,

¹⁵ *Supra* note 1.

¹⁶ मन्वत्रिविष्णुहारीतयाशवलक्योशनोऽङ्गिराः। यमा पस्तम्बसंवर्ताः कात्यायनबृहस्पती॥ "Manu, Atri, Visnu, Harita, Yajnavalkya, Usanas, Angiras, Yama, Apastamba, Samvarta, Katyayana, Brihaspati" *Yajnavalkya Smriti, Acharadhyaya*, I-4. पराशरव्यास शङ्खलिखिता दक्षगौतमौ। शातातपो वसिष्ठश्च धर्मशास्त्रप्रयोजकाः॥ "Parasara, Vyasa, Sankh, Likhita, Daksa, Gautama, Satatapa and Vasistha are the promulgators of Dharma Shastras" *Yajnavalkya Smriti, Acharadhyaya*, I-5.

¹⁷ M. Rama Jois, *Legal and Constitutional History of India – Ancient Legal, Judicial and Constitutional System* 23 (Lexis Nexis, 1st edn, reprint 2022).

¹⁸ Inconsistency between laws made by Parliament and laws made by the Legislatures of States, *The Constitution*

showcasing an advanced understanding of legal interpretation and hierarchy.

Comparison of Sources of Law (Ancient vs. Modern):

Source Category	Modern Indian Jurisprudence	Ancient Indian Jurisprudence
Primary	Constitution	Vedas
Secondary	Parliamentary/State Acts	Smritis (Dharmashastra)
Tertiary	Executive Instructions/Rules	Sadhu's Conduct
Quaternary	Judicial Interpretations	One's Own Conscience

The *Dharmashastra* also provided detailed frameworks for judicial administration. They delineated the qualifications and a comprehensive code of ethics for judges, even segregating those appointed to handle criminal cases from those dealing with civil cases, suggesting an early form of judicial specialization.¹⁹ Furthermore, the texts discussed judges sitting in combinations of two or three, which implies the possibility of division benches, full benches, and even Constitutional benches to hear specific cases, mirroring the hierarchical structure of modern appellate courts.²⁰ The explicit delineation of judicial qualifications and ethical conduct highlights a well-regulated and principled judicial system.²¹

Despite their progressive aspects, the *Dharmashastra*, particularly *Manusmriti*, present complexities that warrant critical examination. The text contains portions that reflect the social order of its time, including statements that women were to be treated as property of the husband or dependent throughout their lives.²² This aspect is frequently cited by critics. However, balanced perspective of other smritis recognized the right of women to remarry under certain

of India, art. 254.

¹⁹ राज्ञाः ये विदिताः सम्यक् कुलश्रेणिगणादयः। साहसन्धायवर्जयानि कुर्युः कार्याणि ते नृणाम्॥ “Kula, Shreni, and Gana could decide all disputes except those falling under the title *sahasa*” *Brihaspatismriti*, *Vyavaharkanda*, 92.

²⁰ कुलानि श्रेणयश्चैव गणस्त्वधिकृतो नृपः। प्रतिष्ठा व्यवहाराणां गुर्वेभ्यस्तुत्तरोत्तरम्॥ *Katyayanasmriti*, IX-82.

²¹ अष्टादशपदाभिज्ञः पङ्कभेदाष्टसहस्रवित्। आन्विक्षिक्यादिकुशलः श्रुतिस्मृतिपरायणः॥

विवादसंश्रितं धर्मं पृच्छति प्रकृतं मतम् विवेचयति यस्तस्मात् प्राडिवाकस्तु संस्मृतः॥ *Dharmakosha*, *Vyavaharakanda*, p. 43.

²² अस्वतन्त्राः स्त्रियः कार्याः पुरुषैः स्वैर्दिवानिशम्। विषयेषु च सज्जन्यः संस्थाप्या आत्मनो वशे॥ *Manusmriti*, IX-2.

conditions.²³ This highlights that ancient texts are often multifaceted and contain diverse perspectives, cautioning against monolithic interpretations and encouraging a more nuanced, contextual analysis of gender roles and rights in ancient societies. The selective criticism of these texts often overlooks such provisions.

IV. Arthashastra: Statecraft, Judicial Administration, and Forensic Acumen

Kautilya's *Arthashastra* stands as a monumental treatise on statecraft, economics, and the practical administration of justice in ancient India. While many historians place Kautilya between 350 BC and 150 AD, firmly establishing the text's antiquity at over 2000 years, its insights remain strikingly relevant. The *Arthashastra* is primarily concerned with the 'means of life' and the effective governance of a state, laying down detailed procedural laws for its time.²⁴

A remarkable feature of the *Arthashastra* is Kautilya's detailed code of conduct for judges, outlined in Book 4, Chapter 9, verses 35-38. This code emphasizes principles of fairness, impartiality, and due process that resonate strongly with contemporary judicial ethics:

1. A judge shall not threaten, intimidate, drive away or unjustly silence any litigant.²⁵
2. A judge shall not abuse any person coming before the court.²⁶
3. A judge shall not fail to put relevant and necessary questions or ask unnecessary and irrelevant ones.²⁷
4. A judge shall not leave out of consideration answers relevant to his own questions.²⁸

The striking parallel between Kautilya's directive on relevant questioning and the provision in the modern law of Evidence underscores the enduring nature of these principles of judicial integrity and procedural fairness. The codification of such tenets over two millennia ago

²³ नष्टे मृते प्रव्रजिते क्लीबे च पतिते पतौ। पञ्चस्वापत्सु नारीणां पतिरन्यो विधीयते॥ "When the husband is lost, or dead, or become a renunciate, or impotent, or an outcast—in the event of these five calamities another husband is permitted for women" *Parasharsmriti*, IV-30.

²⁴ Kautilya, *The Arthashastra* (L. N. Rangarajan tr, Penguin Books, 1992).

²⁵ धर्मस्थश्चेद्विवदमानं पुरुषं तर्जयति भर्त्सयत्यपसारयत्यभिग्रसते वा पूर्वमस्मै साहसदण्डं कुर्यात् वाक्पारुष्ये द्विगुणम्। Kautilya's *Arthashastra*, IV-9-35-36.

²⁶ पृच्छयं न पृच्छत्यपृच्छयं पृच्छति पृष्ट्वा वा विसृजति शिक्षयति स्मारयति पूर्वं ददाति वेति मध्यममस्मै साहसदण्डं कुर्यात्। Kautilya's *Arthashastra*, IV-9-37.

²⁷ देयं देशं न पृच्छत्यदेयं देशं पृच्छति कार्यं मदेशेनातिवा हयति छलेनातिहरति कालहरणेन श्रान्तमपत्राहयति मार्गाप वाक्यमुत्क्रमयति मतिसाहाय्यं साक्षिभ्यो ददाति तारितानुशिष्टं कार्यं पुनरपि गृह्णाति उत्तममस्मै साहसदण्डं कुर्यात्। Kautilya's *Arthashastra*, IV-9-38.

²⁸ *Ibid.*

indicates a deep understanding of the prerequisites for impartial justice and litigant rights, suggesting a highly developed legal consciousness. This highlights the long-standing emphasis on fairness in judicial proceedings within Indian legal thought.

Beyond judicial administration, Kautilya's *Arthashastra* also delves into surprisingly advanced concepts of forensic science, particularly in Book 4, Chapter 7, which discusses postmortem examinations. Kautilya advised magistrates to conduct postmortems in cases of sudden unnatural death, recommending that the body be smeared with oil to make bruises, swellings, and external injuries clearly visible.²⁹ He also stressed the importance of conducting examinations even in cases of suspected suicide, indicating a thorough investigative approach.

Kautilya identified three primary causes of death: stoppage of breath (including strangulation, hanging, asphyxiation, or drowning), physical injury (such as beating or throwing from a height), and poisoning.³⁰ His observations regarding forensic evidence are particularly noteworthy:

1. For **strangulation**, he noted the expulsion of urine and faeces, inflation of the abdominal skin with air, swollen hands and feet, open eyes, and visible marks on the throat.³¹ These observations are remarkably consistent with modern forensic signs of asphyxia.
2. In cases of death due to **narcotic drugs**, Kautilya described clothes strewn about, the body spread-eagled, and excessive vomiting and purging.³² This detailed description not only indicates a keen observational capacity but also suggests the availability of such substances in Kautilya's time.
3. For **poisoning**, he proposed a test where undigested parts of the meal should be fed to birds, with their subsequent death indicating poisoning.³³ Additionally, he noted that if these parts, when thrown into fire, produced a crackling sound and became multi-coloured, poisoning was proven.³⁴ Modern forensic science acknowledges that certain poisonous substances can indeed produce a crackling sound and alter fire colour when burned,

²⁹ तैलाभ्यक्तमाशुमृतकं परीक्षेत्। Kautilya's *Arthashastra*, IV-7-1.

³⁰ तमेव संकुचितबाहुसक्तिमुद्धतं विद्यात् शूनपाणिपादोदरमपगताक्षमुद्धतनाभिमवरोपितं विद्यात् निस्तब्धगुदाक्षं संदष्टजिह्वाध्मातोदरमुदकहतं विद्यात् शोणितानुसिक्तं भग्नभिन्नाग्रं काष्ठैश्मभिर्वा हतं विद्यात् संभग्नस्फुरितगात्रमवक्षितं विद्यात्। Kautilya's *Arthashastra*, IV-7-3, IV-7-4, IV-7-5, IV-7-6, IV-7-7.

³¹ निष्कीर्णं मूत्रपुरीषं वातपूर्णकोष्ठत्वकं शुनपादपाणिमुन्मीलिताक्षं सव्यञ्जनकण्ठं पीडननिरुद्धोवासहतं विद्यात्। Kautilya's *Arthashastra*, IV-7-2.

³² विक्षिप्तवस्त्रगात्रमतिवान्तविरिक्तं मदनयोगहतं विद्यात्। Kautilya's *Arthashastra*, IV-7-10.

³³ विषहतस्य भोजनेषु वयोभिः परीक्षेत्। Kautilya's *Arthashastra*, IV-7-12.

³⁴ हृदयादुद्धृत्याग्नौ क्षिप्तं चिटिचिटाद्यदि इन्द्रधनुर्वर्णं वा विषयुक्तं विद्यात्। Kautilya's *Arthashastra*, IV-7-13.

demonstrating the empirical foundation of Kautilya's methods.

These detailed forensic methods are not merely speculative but reveal a pragmatic, evidence-based approach to criminal justice that aligns surprisingly well with modern scientific inquiry. This suggests that rudimentary scientific observation was an integral part of legal administration in ancient India, challenging the notion that ancient legal system was solely based on religious dogma or abstract principles.

V. Nyaya Shastra: The Science of Logic and Conflict Resolution

While *Dharmashastra* provided the substantive legal framework and *Arthashastra* detailed administrative and procedural aspects, the *Nyaya Shastra* emerged as the critical intellectual tool for navigating the complexities of legal and ethical dilemmas. Defined as the 'science of logic and reasoning', *Nyaya Shastra* was also known by its older name, *Anvikshiki*.³⁵ Kautilya, in his *Arthashastra*, underscored its fundamental importance by stating that a king 'should compulsorily learn at a very young age'.³⁶ This emphasis signifies that logical reasoning was considered paramount not only for legal disputes but also for effective governance and the maintenance of societal order.

The crucial role of *Nyaya Shastra* stemmed from the recognition that 'there are situations in life where two *Dharmas* will be in conflict with each other'. This explicit acknowledgment of legal and moral dilemmas is a nuanced meta-legal insight, moving beyond the mere codification of rules to understanding the inherent tensions and ambiguities within a legal system. It implies a mature legal philosophy that recognized the limitations of absolute rules and the necessity of interpretative frameworks, which is a hallmark of advanced jurisprudence. This understanding laid the groundwork for the development of frameworks for legal hermeneutics and judicial discretion. Two illustrative case studies vividly demonstrate the practical application and necessity of *Nyaya Shastra*:

The Story of King Usinara:

The ancient narrative of King *Usinara*, ruler of the Shivi kingdom, exemplifies a profound ethical dilemma. Known for his righteousness, King *Usinara* granted refuge to a pigeon

³⁵ Satish Chandra Vidyabhusana, *A History of Indian Logic: Ancient, Medieval and Modern Schools* 7 (Motilal Banarsidass Publishers, Delhi, 1920).

³⁶ वृत्तोपनयनसूत्रीमान्वीक्षिकीं च शिष्टेभ्यो वातामिध्यक्षेभ्यो दण्डनीतिं वक्तुं प्रयोक्तव्यः। Kautilya's *Arthashastra*, I-5-8.

pursued by a vulture. The vulture, however, presented a compelling counter-argument: as a non-vegetarian predator, its *Dharma* was to prey on other animals for sustenance.³⁷ By protecting the pigeon, *Usinara* was upholding the *Dharma* of compassion but simultaneously depriving the vulture of its rightful food, effectively starving it to death and thus violating its *Dharma*.³⁸ This presented a classic conflict between two competing righteous duties. King *Usinara*'s resolution, offering his own flesh as a substitute for the pigeon, showcased an extreme yet logical application of *Nyaya* principles.³⁹ It represented a nuanced decision to uphold both the *Dharma* of compassion and the *Dharma* of sustenance, achieved through a reasoned analysis of the competing claims and a willingness to make a supreme sacrifice. This story underscores the need for a framework of logic and reasoning to navigate complex ethical quandaries that cannot be resolved by simple rule application.

Draupadi's Disrobing:

Another poignant example arises from the epic Mahabharata during the disrobing of *Draupadi* in *Duryodhana's Sabha*. *Draupadi* posed a critical legal question: Did *Dharmaputra* (*Yudhishtira*) lose himself in the dice game before betting on her, or did he bet on her before losing himself?⁴⁰ The significance of this question lay in the legal implication that if he had lost himself first, he would have forfeited his right to property, including his wife, thereby invalidating his subsequent bet on her. Even *Bhishma*, a figure renowned for his profound knowledge of the *Shastras*, admitted his inability to provide a definitive answer, stating that *Dharma* was of such 'nuance'.⁴¹ This episode powerfully illustrates the profound complexity of legal interpretation and the inherent ambiguities that can arise even within a well-established legal framework. It highlights the necessity of *Nyaya Shastra* as a tool for logical analysis and reasoned deliberation in situations where the application of *Dharma* is not straightforward.

Kautilya's emphasis on *Anvikshiki* (*Nyaya Shastra*) as one of the four essential types of knowledge⁴² for a king, placing it even before the *Vedas*, *Varta* (economics), and *Dandaniti* (statecraft/punishment), further reinforces its paramount importance.⁴³ This signifies that the

³⁷ श्येनः कपोतानतीति स्थितिरेषा सनातनी। मा राजन् सारमज्ञात्वा कदलीस्कन्धमाश्रया॥ *Mahabharata, Vanaparva*, 131-20.

³⁸ धर्मो यो बाधते धर्मो न स धर्मः कुधर्मं तत्। अविरोधात् तु यो धर्मः स धर्मः सत्यविक्रमः॥ *Mahabharata, Vanaparva*, 131-11.

³⁹ अनुग्रहमिमं मन्ये श्येन यन्माभियाचसे। तस्मात् तेऽद्य प्रदास्यामि स्वमासं तुलया धृतम्॥ *Mahabharata, Vanaparva*, 131-25.

⁴⁰ गच्छ त्वं कितवं गत्वा सभायां पृच्छ सूतजा किं नु पूर्वं पराजेषीरात्मानमथवा नु माम्॥ *Mahabharata, Sabhaparva*, 67-7.

⁴¹ न धर्मसौक्ष्म्यात् सुभगे विवेक्तुं शक्नोमि ते प्रश्नमिमं यथावत्। अस्वाम्यशक्तः पणितुं परस्वं स्त्रियाश्च भर्तुर्वशतां समीक्ष्य॥ *Mahabharata, Sabhaparva*, 67-47.

⁴² आन्वीक्षिकी त्रयी वार्ता दण्डनीतिश्चेति विद्याः। *Kautilya's Arthashastra*, I-2-1.

⁴³ प्रदीपः सर्वविद्यानामुपायः सर्वकर्मणाम्। आश्रयः सर्वधर्माणां शश्वदान्वीक्षिकी मता॥ *Kautilya's Arthashastra*, I-2-12.

ability to analyse, differentiate, and resolve complex issues through reason was considered fundamental to effective rule and the maintenance of justice, establishing a deep connection between rationality and righteous governance in ancient Indian thought.

VI. Conclusion: Continuity, Discontinuity, and Contemporary Relevance

The preceding analysis provides compelling evidence that many principles foundational to modern jurisprudence have discernible and well-developed roots in ancient Indian legal thought. The parallels observed in procedural law, as codified by Manu, the astonishing foresight in forensic science articulated by Kautilya, and the advanced framework for conflict resolution inherent in Nyaya Shastra, collectively challenge the notion of a purely Anglo-Saxon origin for India's legal system. This historical continuity suggests a rich autochthonous intellectual tradition that contributed significantly to the evolution of legal concepts.

However, it is equally important to acknowledge the complexities and impracticalities of a wholesale replacement of modern laws with ancient codes. While ancient principles are valuable, their specific applications were often deeply intertwined with the societal structures of their time. There are inherent difficulties in directly replacing modern laws with ancient ones. A prime example is the presumption of death: while *Narada Smriti* indeed discuss this concept, their application was tied to the *Varna* (social class) system, prescribing different waiting periods based on an individual's social standing, such as if a Brahmin was not heard of for eight years, a Kshatriya for six years, or a vaishya for four years.⁴⁴ This contrasts sharply with the uniform 7-year presumption of death under Section 111 of the modern Bharatiya Sakshya Adhiniyam, 2023.⁴⁵ This comparison illustrates that while the underlying legal principle of presumption of death existed in ancient India, its specific application was deeply embedded in a social order that is incompatible with contemporary egalitarian values. The *Varna* based rules, while logical within their original societal framework, are fundamentally incompatible with modern principles. This highlights a complex interplay where core concepts persist, but their specific applications must adapt or become obsolete due to societal evolution. Understanding this dialectic is crucial for avoiding historical anachronism and promoting a

⁴⁴ अष्टो वर्षाण्युदीक्षेत ब्राह्मणी प्रोषितं पतिम्। अप्रसूता तु चत्वारि परतोऽन्यं समाश्रयेत्॥ *Naradasmriti*, 12-98.

क्षत्रिया षट् समास्तित्थेदप्रसूता समाश्रयेत्। वैश्या प्रसूता चत्वारि द्वे वर्षेत्त्वितरा वसेत्॥ *Naradasmriti*, 12-99.

⁴⁵ “When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.”

balanced view of legal reform.

Recognizing and appreciating these ancient roots is not merely an academic exercise; it holds profound value for contemporary Indian jurisprudence and national identity. It is crucial for fostering a robust sense of legal heritage and national pride, moving beyond 'reticence thinking that but for the Englishmen we would never have had a good jurisprudence'.⁴⁶ By demonstrating the existence of well-developed ancient legal traditions, this historical understanding empowers a sense of self-worth and actively challenges the lingering legacies of colonial intellectual dominance. This suggests that the study of ancient Indian jurisprudence serves a strategic socio-political function, contributing significantly to a nation's self-perception and its standing in the global legal community. Furthermore, this historical awareness can profoundly inform contemporary legal scholarship, policy-making, and legal education, encouraging a more nuanced, culturally rooted, and self-aware approach to India's unique legal identity.

⁴⁶ Markandey Katju, *Ancient Indian Jurisprudence* (Speech delivered at Banaras Hindu University, Varanasi, 27 November 2010).