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## DHARMA - THE LAW OF MANKIND

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### Introduction

Law as understood by the *Hindu* is a branch of *Dharma*. Its ancient framework is the law of the *smritis*. The *smritis* are institutes, which enounce rules of *Dharma*. In *Sanskrit* there is no term *strictissimi juris* for positive or municipal law, dissociated from the ethical and religious sense. In a system of law necessarily influenced by the theological tenets of the *Vedic Aryans*, and the philosophical theories which the genus of the race produced and founded on the social and sociological concept of a pastoral people, the admixture of religion and ethics with legal percepts was naturally congruent.<sup>1</sup> It was not possible, indeed, always to draw any hard line of logical demarcation between secular and religious matter, because certain questions, for instance, such as marriage and adoption, had the aspects of both. Any attempt, therefore, to isolate completely, any secular matter from its religious adjuncts, would fail to give a comprehensive idea or proper perspective of the true juridical concept of *Hindu* law. The components of *smirities*, therefore, comprehends not merely the concept of law, but also the synthesis of law, religion, justice, equity and good conscience as well. These components can be summarized as under:

### Meaning and Concept of *Dharma*

*Dharma* is a complex and multifaceted term in *Hindu* tradition. It can be translated as “religious law” “right conduct”, “duty”, and “social order.”<sup>2</sup> Its roots, *dhri*, means “to hold up”. The social concept of *Dharma* emerges from the *Vedic* notion of *rita* or “cosmic order.” In this world view, *Dharma* (the social order) is maintained by *Dharma* (right conduct and the fulfillment of duty and religious law). Social activity was traditionally very much circumscribed by tradition; following *Dharma* meant doing what was required.<sup>3</sup>

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<sup>1</sup> Sir Dinshfardunji Mulla, *Hindu Law* 4 (Revised by Satyajeet A. Desai: Lexis Nexis Butterworth Wadhwa, Nagpur, 21<sup>st</sup> ed. 3<sup>rd</sup> Reprint, 2012).

<sup>2</sup> Constance A. Jones and James D. Ryan, “Encyclopedia of Hinduism” in J. Gordon Melton (ed.), *Encyclopedia of World Religions* 130-131 (Facts of File, New York, 2007).

<sup>3</sup> *Ibid.*

The great author Rocher observes:<sup>4</sup>

There is no equivalent term for *Dharma* in western languages. The noun *Dharma* is derived from the verbal root *dhri*, which means “uphold, maintain, sustain and keep in balance.” Hence *Dharma* is the way, the right way to maintain order and balance in the universe generally. As long as every element in the cosmos- the sun, water (the monsoon), animal, plants and humans in particular-acts according to its *Dharma*, the overall balance is maintained. As soon as any element in the cosmos in some way deviates from its *Dharma*, i.e.; commits a *Dharma*, the overall balance is disturbed. At the human level, *Dharma* governs every aspect of and every activity in the life of *Hindu*. *Dharma* is not synonymous with “law” which has become an often used translation for *Dharma*-the *Dharmashastras* became known in the West as “Law Books”, nor with “religion” which is the meaning *Dharma* acquired in modern Indian languages. In addition to legal rules (legal procedure; substantive law) and religious rule (birth rituals, marriage rituals, rituals for the dead, etc.). There are in the *Dharmashastras* a number of injunctions which in western terms, would be labeled “dietary” (allowed and forbidden foods), “hygienic” (bathing, brushing the teeth), “moral” etc. These rules, which every *Hindu* is supposed to live by, are supplemented by other rules, which concern members of certain sections of *Hindu* only. An individual’s specific *Dharma* (his *Sva-Dharma*) is primarily determined by two criteria: his social class and his stage of life.

But the word *Dharma* was not used to describe a man’s faith or religion. Western jurists and political philosophers have misunderstood Indian Jurisprudence as wrapped in religion because they wrongly thought that the word *Dharma* meant religion.<sup>5</sup> Bhagavan Dass, in his authoritative commentary on Manu, discusses the concept of *Dharma* and Religion in the following words:<sup>6</sup>

Every piece of true knowledge and genuine science is part and parcel of the

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<sup>4</sup> Ludo Rocher, “The Dharmashastras”, in Gavin Flood (ed.), *The Blackwell Companion to Hinduism* 102-103 (Blackwell Publishing, 2003).

<sup>5</sup> S.S. Dhavan, “Secularism in Indian Jurisprudence”, in G.S. Sharma (ed.), *Secularism: Its Implication for Law and Life in India* 104 (N.M. Tripathi Private Ltd., 1966).

<sup>6</sup> Bhagwan Dass, *The Laws of Manu* 177 (Aparana Publications, Delhi, Vol. 1, 1985).

total knowledge (*Akhila-Veda*) which is the source and foundation of *Dharma*. So much so is this the case that there is no distinctive name for the *Hindu* religion, as there is for others. It is only the Ancient Law (*SanatanaDharma*), the law of knowledge or scientific religion (*Vaidika-Dharma*), the duty of man (*Manva Dharma*), The duty of the stages of life and the classes of men (*Varna-ashrama dharama*). There is no word in *Sanskrit* possessing exactly the same as the current connotation of the word ‘religion’- for the reason that the connotation embodies a half-truth, and half truths are generally errors. Others may try to mark themselves off from the followers of the law of knowledge. Its followers can include them all without even changing their name all can be, indeed all are, despite themselves, the followers of that law to a greater or a lesser extent; to the extent that they guide their lives by the Religion of Science (*Veda-shastra*), the law of wisdom (*parama-vidya*), the noble way (*Arya-Mata*) or the great broad, liberal, world-comprehending view (*Brahma-drishti*). This *Dharma* is so all-inclusive, of all religions that it does not need to proselytize.

Individually a *Hindu* may subscribe to any faith, but deep within he believes in and follows *SanatanaDharma*. *SanatanaDharma* is a way of life and not a religion as the world religion is usually understood. It is essentially the essence of man’s highest aspirations.<sup>7</sup> Jaimini, The propounder of *Purva Mimamsa* philosophy, defines (1.1.2) *Dharma* thus- ‘*codanalaksano o’rthoDharmah*’. *Dharma* is a beneficial act, indicated by *Vedic* injunctions.<sup>8</sup> According to the *Vaisesika – sutra* - “*Yatobhy – vidya – nihsreyasa-siddhihsa dharmah*”; that is *Dharma* which results in the attainment of prosperity and salvation.<sup>9</sup> The *Apastamba-Dharmasutra* declares practice or observance, which the *Aryas* praise is *Dharma*, *Arya* means respectable, noble or honorable.<sup>10</sup> According to Manu, *Dharma* is that which is observed by learned men and heartily approved by those who are honest and free from hate and attachment.<sup>11</sup>

<sup>7</sup> Yogi Raushan Nath, *Hinduism and its Dynamism* 66 (D.K. Publishers Distributors, New Delhi, 1983).

<sup>8</sup> Quoted from Sures Chandra Banerji, *A Companion to Dharmashastra*, 4 (D.K. Printworld (P) Ltd., New Delhi, 1998).

<sup>9</sup> *Ibid.*

<sup>10</sup> “*Yat tu aryah kriyamanam prasa msanti su dharamah*”; Quoted from *Ibid*; see also *Apastamba Sutra*, *Prasna* 1, *Patala* 7, *Khanda* 20; see *Ancient India Law*, vol. 111 available at <http://www.cicinnatitemple.com/downloads/articles-literature>; accessed on 12<sup>th</sup> September, 2015.

<sup>11</sup> Manu. II.I; Quoted from G. Buhlar, “*The Laws of Manu*”, in F. Max Muller (ed.), *The Sacred Books of the East* 29 (Oxford at the Clarendon Press, Vol. XXV, 1886).

*Mahabharata* contains, “that which supports, that which holds together the peoples (of the universe), that is *Dharma*.”<sup>12</sup> *Dharma* constitutes the foundation of all affairs in the world. People respect one who adheres to *Dharma*. *Dharma* insulates man against sinful thoughts and actions. Everything in this world is founded on *Dharma*. *Dharma*, therefore, is considered supreme.<sup>13</sup>

### Sources of *Dharma*

As regard the sources from which one can learn *Dharma*, Manu mentions the following:

*Veda*, *Smiriti*, *Sadacara* (the conduct of the wise) and *Svasya Priyam* (atma-tustihor, self-satisfaction).<sup>14</sup>

The sources of *Dharma* According to Yajnavalkya are:<sup>15</sup>

*Purana*, *Nyaya* (logic), *Mimansa* (philosophy), *Dharmasatra* (so called *smiriti*), *Anga* (six accessories of the *Veda*, viz; *Siksa*, *Kalpa*, *Vyakarna*, *Nirukta* or Etymology, *Chandas*(*Jyotisa*), the *Vedas* (four in number).

### Classes of *Dharma* based on them

In the *Vedic* religion there are two types of *Dharma*, the one being common to all and other to individuals *Varna*. The duties common to all the universal code of conduct have the name of ‘*SamanyaDharma*’. Non-violence, truthfulness, cleanliness, control of the senses, non-acquisitiveness, devotion to *Isvara*, trust in one’s parents, love for all creators-these form part of the *Samanya Dharma*. Then each *Varna* has its own special code of conduct or “*Vishesa Dharma*” determined by its hereditary vocation.<sup>16</sup> The *Vishesa Dharma* can be classified, on which there is a general agreement, as of five kinds, namely, *Varna-Dharma*, *Ashrama Dharma*, *Vanashrma Dharma*, *Guna Dharma* and *Naimittika Dharma*.<sup>17</sup>

<sup>12</sup> “*Dharnadvarmemitaau du Dharmah Dharyati Praja*”; Mahabhartat, Karna Parva, Ixix, 59; Quoted from M.B.D. Basu (ed.), “A Catechism of Hindu Dharma” in *The sacred Books of the Hindus* 1 (Sudeindra Nathu Vasu, Allahabad, vol. III, 1919).

<sup>13</sup> *Taittiriyaopanisat – Jnanasa Dhana Nirupam-vide SasvaraVeda Mantras*, p. 128; Quoted from M. Rama Jois, *Legal and constitutional History of India* 4 (Universal Law Publishing co., New Delhi, 1<sup>st</sup> ed., reprint 2012).

<sup>14</sup> Yogi Raushan Nath, *Hinduism and its Dynamism* 5 (D. K. Publishers Distributors, New Delhi, 1983); The *Veda*, the sacred tradition, The customs of virtuous men and one’s own pleasure, they declare to be visibly the four fold means of defining the sacred law; see G. Buhler, : “The Laws of Manu”....*Supra* note 11 at 31.

<sup>15</sup> *Yaj.* 1.3. *Ibid.*

<sup>16</sup> Pujasri Chandrasekharendra Saraswati Swami, *Hindu Dharma-The Universal way of Life* 84-85 (Bhartiya Vidya Bhavan book University, New Delhi, 1995).

<sup>17</sup> K.V. Rangaswami Ayangar, *Aspects of the Social Political System of Manusmriti* 136 (Lucknow University Press, 1949).

## Varna Dharma

*Varna* (color) is the *Vedic* word for social class, in the class scheme found in *Rig Veda* X. 90.<sup>18</sup> There the divine being is said to have offered him in sacrifice to create reality. It is said that his mouth became the Brahmin, or priestly class; his arms become the *Rajanya* (*Kshatriya*), or warrior class; his thighs became the *Vish* (*Vaishya*), or merchants, farmers, and his feet became the *Shudras* or the servant class.<sup>19</sup> This division is according to the *Guna* and *Karma*. *Guna* (quality)<sup>20</sup> and *Karma* (kind of work) determine the *Varna* (caste) of a man. This is supported by Lord Krishna in the *Gita* also. He says: “the four castes were emanated by me, by the different distribution of qualities and actions. Know me to be the author of them, though the actionless and inexhaustible.”<sup>21</sup> Manu says, “Deign, divine one, to declare to us precisely and in due order the sacred laws of each of the (four chief) castes (*Varna*) and of the intermediate ones.”<sup>22</sup>

Commenting on *Varna* system, P.V. Kane quotes:<sup>23</sup>

The *Varna* means ‘color’ or ‘light’ in most passages of the *Rig Veda* (e.g. 1.73.7, II.3.5, IX. 97.15, IX. 104.4, IX. 105, X.124.7). But in some verses of the *Rig Veda* (11.12.4, 1.179.6) the word *Varna* is associated with groups of people having a skin of a dark or fair color. For example we read in *Rg*. II. 12.4 (who placed low the *dasa* color in a cave (or darkness)...The foregoing show that in the earliest period we find the word *Varna* associated only with *dasa* and *Arya*. In the whole of *Rig Veda* the word *Vaisya* and *Sudra* do not occur except in *Purushasukta*, though, both of them occur in the *Atharva Veda*.

*Hinduism* has a bewildering variety of racial types at all levels of development. In the period of *Rig Veda* we have the distribution between *Arya* and *dasa*, and there were no rigid

<sup>18</sup> Quoted from see Constance A. Jones and James D. Ryan, “Encyclopedia of Hinduism” in J. Gordon Melton (ed.), *Encyclopedia of World Religions* 184- 478 (Facts of File, New York, 2007)

<sup>19</sup> *Ibid.*

<sup>20</sup> There are three qualities or *Guna*. viz., *Sattva* (Purity), *Rajas* (Passion) and *Tamas* (Inertia). These three qualities are found in man in varying proportions. *Sattva* preponderates in some persons. They are *Brahmans*. They are wise persons or thinkers. In some *rajas* they are warriors or men of action. In some, *tamas* is predominant. They are *Vaisyas* or traders. *Sudras* are those who do not come under these three categories. They served the other three *Varnas*; Quoted from Sri Swami Sivananda see Sri Swami Sivananda, *All About Hinduism* 31 (The Divine Life Society, Shivandagar, UP, web ed., 1999)

<sup>21</sup> *Gita*. Ch. IV-14; *Ibid.*

<sup>22</sup> Manu. 1.2. See *Supra* note 11 at 1.

<sup>23</sup> See Pandurang Vaman Kane, *History of Dharmasastra* 19- 104 (Bhadarkar Oriental Research Institute, Poona, vol. II, part 1, 2<sup>nd</sup> ed., 1941).

divisions among the *Aryans* themselves. In the time of the *Brahmanas*, the four classes became separated in rigid groups dependent on birth.<sup>24</sup> Radhakrishnan mentions:<sup>25</sup>

Caste divisions are based on individual temperament, which is not immutable.

In the beginning there was only one caste. We were all *Brahmins* or all *Sudras* (*BrhadarnyakaUP.*, 1.4. 11-5; *Manu*, 1.31. *Mahabharata*, XII.188). The *smiriti* text says that one is born a *Sudra*, and through purification he becomes a *Brahmin*. We are not *Brahmin* on account of birth or the performance of rites, not by study or family, but on account of our behavior. Even if we are born *Sudras*, by good conduct we can raise ourselves to the highest status.

The basis of the *Varna Dharma* (duty) is that every human being must try to fulfill the law of his development. We must discipline our life in conformity with the pattern of our being, instead of wasting our energies in following those which we lack.

### Laws of the Stages of Life – Ashrama Dharma

Just as *Aryan* society was divided into four classes similarly the life of the individual *Aryan* was divided into four *ashramas*—*brahmachari*, *grihasta*, *vanaprasta* and *sanyasin*. The oldest *Upanishads* speak of these *ashramas* only as three types or branches of life, but not as successive stages.<sup>26</sup> It is only in the late *Upanishads*, the *Dharmasatras*, and the *Mahabharata*, that the theory of successive stages of life is formulated.<sup>27</sup> In *Manusmriti*, the *ashramas* are made sequential in the order of their enumeration by it. It indicates for each one-quarter of the span of human life; the first is to be devoted to *brahmacharya*,<sup>28</sup> dwelling with the teacher (*visitvadyam gurav*), the second to *grihasthya* (family life), the third (which is to be accepted only when the hair begins to turn grey, wrinkles appear on the skin and sons have been born to sons,<sup>29</sup> to forest life (*aranyam samasrayet*),<sup>30</sup> and last to cutting away from society altogether by becoming a mendicant ascetic.<sup>31</sup> *Manu* is definitely of the view that one should progress to *sannyasa* stage by stage and in accordance to the rules of each stage.<sup>32</sup>

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<sup>24</sup> S. Radhakrishnan, *Religion and Society* 130 (George Allen & Unwin Ltd; London, 1947).

<sup>25</sup> *Id.* at 129-135.

<sup>26</sup> H.V. Sreenivasa Murthy, *History of India* 104-105 (Eastern Book Company, Lucknow, Part-1, 2011).

<sup>27</sup> *Ibid.*

<sup>28</sup> *Manu*. IV. 1; Quoted from see K.V. Rangaswami Ayangar, *Aspects of the Social Political System of Manusmriti* 1367- 138 (Lucknow University Press, 1949).

<sup>29</sup> *Manu* VI. 2, *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Manu*. VI. 33., *Ibid.*

<sup>32</sup> *Manu*. VI. 77; *Ibid.*

*Brahmacharya* is the first stage of life, which is lived in the observance of vow of perfect continence and celibacy under the guidance of a preceptor and dedicated especially to the study of the *Vedas* and other scriptures. It is the life of probation and strict discipline. The *Brahmacharin* is an adherent to the principle of non-violence (*Ahimsa*), truthfulness (*Satya*), self-restraint (*Brahmacharya*), non-covetousness (*Astya*), non acceptance of gifts, contentment (*Santosha*), austerity (*Tapas*), sacred study (*Svadhyaya*) and service of the preceptor (*Guru-seva*), these are the constituent factors of *Dharma* in the life of a *Brahmacharin*. While the stage of the *Brahmacharin* is particularly devoted to the accumulation of *Dharma*, the life of the householder is for preservation of *Dharma*, the earning of *Artha* (money) and the fulfillment of *Kama* (pleasure). Having thus fulfilled, in study and strict chastity, the student period, the youth was to present his teacher with a gift, according to his ability and return home to enter the household life.<sup>33</sup>

Then, and then only, he was to take a wife, and the responsibilities of man's estate. After marriage, great temperance in sexual relation was enjoined, marital connection being only permissible on any one of the ten nights in a month.<sup>34</sup> Women were to be honored and loved; else no welfare could attend the home. Manu says, "they must be honored and adorned by fathers, brothers, husbands and brothers-in-law, desiring, welfare...where women are honored, there verily the *Devas* rejoice; where they are not honored, there indeed all rites are fruitless."<sup>35</sup>

Marriage is theoretically optional for the man, but in practice it was probably not; for women it was obligatory. The woman who remains a spinster incurs both sin and loss of caste, according to the legend of *Dirghatamas* in *Mahabharata*.<sup>36</sup> Yajñawalkya described mainly about eight kinds of marriage namely, *Brahma* marriage (where a maiden, adorned according to one's own power, is given to a bridegroom on being invited (Yaj: 58), *Daiva* marriage (in which a maiden is given to a *ritwijah* (priest), engaged in sacrifice, *Arsha* (a marriage that is

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<sup>33</sup> See Swami Krisnnanda, *A Short History of Religious and Philosophical thought in India* 170 (The Divine Life Society, Shivanandanagar, 1994).

for more detail of the laws of first stage of a human life see Apastamba sutra, Prasna 1, Patala 1, Khanda 1 to Prasna 1, Patala 1, Khanda 32, Apastamba sutra, *Ancient Indian Law*, Vol. III; Dharmashastra of Vasishtha, *Ancient Indian Law* 180-181, Vol. III, The laws of Baudhayana. Prasna 1, Adhyaya 2, Kanda 3 to prasna 1, Adhyaya 3, Kanda 5; *Ancient Indian Law* 94-105, Vol. II; manu. II. 74 to II. 246; these sources available at <http://www.cinantitemble.com/downloads/articles-literature>; accessed on 12-09-15. See G. Buhler, *The Laws of Manu*. See *Supra* note 11 at 43-74; Yajñawalkya. 14-51; See Manmath Nath Dutt, *The Dharmashastra* 1-9 (Cosmos Publications, New Delhi, 1978).

<sup>34</sup> Manu, III 45-49.

<sup>35</sup> Manu, III, 55-57; *Ibid*.

<sup>36</sup> Mahabharata Adipurva (1, 113, 26-37).

celebrated after taking a pairs of cows) (Yaj; 59); *Kayah* (a marriage in which a maiden is given to a soliciting person after saying practice of religion with her), (Yaj; 60); *Asura* (Marriage is that in which money is taken in exchange for the bride), *Gandharva* (marriage is that in which the parties unite themselves by a vow of mutual love), *Rakshasa* (marriage is that in which the maiden is carried away by fighting), *Pisacha* (is that in which a maiden is taken away stealthily, while asleep or by stratagem) (Yaj. 61).<sup>37</sup> Out of these eight marriages first four are valid and later four are void marriage.

Hence the householder is the best of the orders: he has the duty of accumulating wealth-in this the *Vaisya* is the typical household-and of distributing it rightly. Hospitality is one of his chief duties, and in this he must never fail. "Grasses, earth, water, the kind word these four are never talking in the houses of the good."<sup>38</sup> The householder must duly offer the five great sacrifices and by *Brahmana* householders the duty of the monthly *shraddhas* should be observed. The *Brhamana* should maintain his studies, and not follow occupations which prevent study, but earn his living in some business that does not injure others. Careful rules are laid down for conduct, which will be dealt in *Vedas* and *Dharmashastra*, as they belong to the general conduct of life, the house holder being the typical human being. His special virtues are hospitality, industry, truth, honesty, liberality, charity, purity of food and life. He may enjoy wealth and luxury, provided he gives alms.<sup>39</sup>

The householder may quite the household life, and become a *Vanaprastha*, going to the forest, when he is growing old and has grand-children. His wife may go with him, or remain with her sons, and he goes forth, taking with him the sacred fire and sacrificial instruments. His duty to the world is now to help it by prayer and sacrifice, and he is accordingly to continue to offer the five daily sacrifices, together with the *agnihotra*, the new and full moon sacrifices and others. The rule of his life is to be sacrificed, study, austerity, and kindness to all. Manu says, "Let him ever be engaged in *Veda* study, controlled, friendly, collected; ever a giver not a receiver, compassionate to all beings."<sup>40</sup>

<sup>37</sup> Manmath Nath Dutt, *The Dharamshastra* 10-11 (Cosmos Publications, New Delhi, 1978); Eight form of marriage are also named by Manu, Manu III, 21-25.

<sup>38</sup> Manu III. 101. *Ibid*.

<sup>39</sup> For more detail see Apastamba. Prasna II, Patala 1, Khanda 1 Parsana II, Patala 6, Khanda 13; Gauatma. IV. 1- IV. 33, V. 1-45; Quoted in George Buhler, "The sacred Laws of Aryan", in F. Max Muller (ed.), *The Sacred Book of the East* Vol. 2. Part. 1 (Oxford - at the Clarendon Press, 1879), Vasishta see *Ancient Indian Law*, Vol. III 181-183; Yajñawalkya. 52-120; Manu. III. 1-III. 285; IV. 1-260; v.1-v.169; see G. Buhler, *The Laws of Manu*..*Supra* note 11 at 74-198.

<sup>40</sup> Manu. VI - 8. For more detail see Sir Dinshardunji Mulla, *Mulla Hindu Law* 199- 216 (Revised by Satyajeet A. Desai: Lexis Nexis Butterworth Wadhwa, Nagpur, 21<sup>st</sup> ed. '3<sup>rd</sup>. Reprint, 2012).



This simple ascetic life leads him on the last stage that is of the *sannyasi*, the man who has renounced all. He no longer offers sacrifices, having given all his property away; he lives alone, with tree for shelter, his life given to meditation. Manusays, “Let him be without fire, without dwelling, let him go to a village for food, indifferent firm of purpose, a *muni* of collected mind.”<sup>41</sup> Manu further says, “Let him not wish for death, let him not wish for life and let him wait for the time, as a servant for his wages. Let him set feet purified by sight, let him drink water purified by cloth, let him speak words purified by truth, let him do acts purified (governed) by reasons. Rejoicing in the Supreme self, sitting indifferent, refraining from sensual delights, with himself for his only friend, let him wander here (on the earth), aiming at liberation.”<sup>42</sup>

## Raj Dharma

While explaining the origin of state (*Rajya*) and creation of Kingship, *Bhismacharya* states that in the holy past there was an ideal stateless society and that every-one acted according to *Dharma* and each was protecting the other. But as powerful individuals, overwhelmed by their desires began to encroach upon the life, liberty and property of other weaker individuals. The King was created with the right to collect the tax and duty protects the people and punished the wicked. In the opening verse of his *smriti*, Narda explains that there were no legal proceedings for enforcement of rights and punishment of wrongs was established and the King was appointed to decide law suits as he has the power to enforce the law and punish the wrongdoer.<sup>43</sup>

This is equivalent to the modern constitutional law; *Rajdharma* regulated the power and duties of King. The *Atrishamhita* declare that there were five fundamental duties of a King:<sup>44</sup> To punish the wicked, to honor (protest) the good, to enrich the treasury by just methods, to be impartial towards the litigants and to protect the Kingdom -these are the five *Yajnas* (selfless duties) to be performed by a King.

The *Mahabharata* has expressed the ideal with great clarity and precision: “The proper function of the King is to rule according to *Dharma* (the law) and not to enjoy the luxuries of life.”<sup>45</sup>

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<sup>41</sup> Manu IV. 43; *Ibid*.

<sup>42</sup> Manu IV. 45-49; *Ibid*.

<sup>43</sup> Narda.1-4.

<sup>44</sup> Quoted from M. Rama Jois, *Dharma-The Global Ethics* 26 (Bhartia Vidya Bhawan, Mumbai, ed. 1997).

<sup>45</sup> Maha. Shanty Parva verse 3(1), Chapter. 90; Quoted from *Ibid*.

It was also made obligatory for the King to give equal protection to all his subjects without discrimination. On this subject, *Manusmriti* on *Rajdharma* says:<sup>46</sup>

“A *Kshatriya*, who has received according to the rule of the sacrament prescribed by the *Veda*, must duly protect this whole world. Having fully considered the purpose, (his) power, and the place and the time, he assumes by turns many (different) shapes for the complete attainment of justice.”

In *Bhagavad-Gita*, the Lord *Krishna* lays down the proper code of conduct for becoming a good King, by saying that a person who observes such a code of conduct is dear to him. It reads, “the person who hates none, who is friendly and has compassion for all, who has no selfishness and ego, who maintains balance of mind in pain and pleasure, who has contentment, is steady in meditation, self controlled, and firm in his decision, who is dedicated to me, and who is my devotee is dear to me”.

#### Four Dimensions of Human Endeavour

Behind the institutions of *Dharmasatsra* lie another fundamental concept; the four fold aim of life, the *purusharthas* and religious rules for guidance of life. They are *Dharma*, *Kama*, *Artha* and *Moksha*. These stand roughly for morality, pleasure of desire, wealth and well being and liberation. In moving through the four stages of life, viz., *Brahmacharya*, *Grihastehy*, *Vanaprastha* and *Saanyasa*, a person seeks to fulfill the four essentials (*Purusharatha*) of *Dharma*. *Artha* (Worldly gain), *Kama* (sensual pleasures) and *Moksha* (liberation from reincarnation or rebirth). *Moksha*, although the ultimate goal, is emphasized more in the last two stages of life, while *Artha* and *Kama* are primary only *Grihasthashram*. *Dharma*, however, is essential in all four stages. According to P.V. Kane, “the word *Dharma* acquired a sense of the privileges, duties and obligations of a man, his standard of conduct as a member of the *Aryan* community, as a member of the caste and as a person in a particular state of life”.<sup>47</sup>

According to widespread *Hindu* tradition, *Dharma* is one of the *purusharthas*, or goals of man.<sup>48</sup> Here *Dharma* means not the set of rules classed *Dharma* but, rather, adherence to those rules: as aim in life, rather than as a rule of conduct, *Dharma* refers to being established

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<sup>46</sup> Manu VII. 2010; for more detail of the Duties of King (*Rajdharma*) see Manu. VII.1 – VII.

<sup>47</sup> *Ibid.*

<sup>48</sup> Y. Krishan, “The meaning of the *Purusharthas* in the *Mahabharata*” in B. Motilal (ed.), *Moral Dilemmas in the Mahabharata* 53 (Indian Institute of Advance Study, Shimla, 2003).

in *Dharma*.<sup>49</sup> Thus, according to this tradition, *dharmic* behavior is one of life's goals. This tradition appears in the *Mahabharata*. Moreover *Mahabharata* repeatedly says that *Dharma* is more valuable than *Kama* and *Artha*. Thus, at least within the epic, *dharmic* behavior seems to be the most valuable of earthly goals.<sup>50</sup>

Desire is at the back of all activity. The inclusion of *Kama* among the recognized ends of life is an admission of it. *Kama* alone is common to all living being. It is a primary instinct. According to Manu, the object of the pursuit-half of life, self expression in and through a material body, is threefold: duty, profit, and pleasure: "some says that the performance of duty and the gathering of riches are 'the good'; some say wealth and sense-enjoyments; some duty only; some riches only. But the well established truth is that the three together make the end of life of pursuit."<sup>51</sup>

It might indeed be said that sense-pleasure alone, *Kama*, is the *summum bonum* for the life of descent. *Kama* motivates and accompanies the ever-deeper merging of the spirit in the sheaths of matter, its ever-nearer identification with the clothes of flesh. Manu says "The man without *Kama*-desire is the man without action. Whatever a man does is the doing of *Kama*. The *Vedas* are studied because of *Kama*; their injunctions are followed because of *Kama*".<sup>52</sup>

*Artha* signifies the "means of life", activities and resources that enables one to be in a state one wants to be in.<sup>53</sup> *Artha* incorporates wealth, career, activity to make a living, financial security and economic prosperity. The proper pursuit of *Artha* is considered an important aim of human life in *Hinduism*.<sup>54</sup> *Dharmashastra* recognizes the right of property while stressing the moral obligations of wealth and of the affluent it prescribes no special schemes for taxing excessive wealth, guarantees the transmission of property by inheritance, and in every way provides for a stable and prosperous economic order. But the profiteer, the sweater of labor, the exploiter of husbandry and the user are not held up to scorn. *Dharma* is alive to the possibilities for abuse in mere pursuit of wealth and well-being.

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<sup>49</sup> John Koller, "Dharma: An Expression of Universal order." 22 (2), *Philosophy East and West* 131 (1972).

<sup>50</sup> Joseph Dowd, "Maximizing Dharma: Krsna's Consequentialism in the Mahabharata" Vol. 3 No. 1, Spring 40 (2011).

<sup>51</sup> Manu II, 224.

<sup>52</sup> Manu II, 2-4; See Sir William Jones, *Institutes of Hindu Law or The Ordinances of Manu, According to the Gloss of Culluca - comprising the Indian System of Duties, Religious and Civil* 17 (C.J. Sewell, Cornhill, and J. Deerett, Piccadilly, London Calcutta, 1796).

<sup>53</sup> John Koller, "Purusartha as Human Aims", Vol. 18, No. 4, *Philosophy East and West* 315-316 (Oct. 1968).

<sup>54</sup> James Lochtefeld, *The Illustrated Encyclopedia of Hinduism*, 55-56 (Rosen Publishing, New York, Vol. 1, 2002).

The last aim of life, liberation (*Moksha*) stands by itself, in view of its supreme importance and its forming, like *Dharma*, the common denominator or criterion of values of the others.<sup>55</sup> *Moksha* is a concept associated with *Samsara* (birth-rebirth cycle). This bondage to repeated rebirth and life, each life subject to injury, disease and again, was seen as a cycle of suffering. By release from this cycle, the suffering involved in this cycle also ended. This release was called *moksha*, *nirvana*, *kaivalya*, *mukti* and other terms in various Indian religious traditions.<sup>56</sup>

Reference can be taken from the holy *Gita*, *Gita*'s unequivocal response is *Moksha* does not apply to the material lower self (*Deha*, body) but to immaterial, Higher self (*dehi*, soul), despite the fact that the latter is unchanging.<sup>57</sup> It is *dehi*'s relations with the *deha* that cause the binding over multiple lives;<sup>58</sup> and it is undermine of the relation by the *deha* by setting aside its interests that sets the *dehi* free from any connection to the empirical world.<sup>59</sup> It turns out; therefore, that the detached action is directly concerned with the *moksha* of the agent's *dehas* on one hand and indirectly with everyone else's on the other, since it promotes world welfare.<sup>60</sup>

Ancient Indian literature emphasizes that *Dharma* is foremost. If *Dharma* is ignored, *Artha* and *Kama*-profit and pleasure respectively-lead to social chaos.<sup>61</sup> The *Gautama Dharmashastra*,<sup>62</sup> *Apastamba Dharmasutra*<sup>63</sup> and *Yajnavalkyasmriti*,<sup>64</sup> as examples, all suggested that *Dharma* comes first and is more important than *Artha* and *Kama*.

## Conclusion

Though seemingly wide apart, 'law and religion' take their roots from the same source.

<sup>55</sup> *Ibid.*

<sup>56</sup> R.C. Mishra, "Moksha and the Hindu world view", Vol. 25, Issue 1, *Psychology & Developing Societies* 23-27 (March, 2013).

<sup>57</sup> B.G. 5, 14-16, 13. 29-33, 14.23; Quoted from Roopan Majthia, "The Bhagavad Gita's Ethical Syncretism", Vol. 6 No.1, *Comparative Philosophy* 70 (2015).

<sup>58</sup> B.G. 5.15, 2.20-25; *Ibid.*

<sup>59</sup> B.G. 14.19-20; 8.16; *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> Gavin Flood, "The meaning and context of the Purusartha" in Julius Lipner (ed.), *The Fruit of Our Designing* 16-21 (1966).

<sup>62</sup> "He should not spend the morning, midday or afternoon fruitlessly, but pursue righteousness, wealth, and pleasure to the best of his ability, but among them he should attend chiefly to righteousness." Gautama. 9.1., Quoted from Patrick Olivele, *Dharmasutras-The Law codes of Apastamba, Gautama, Baudhayana and Vasistha* 92-92 (Oxford University, Press, New York, 1999).

<sup>63</sup> "He should a man who applies himself to acquiring wealth in righteous (*Dharma* ways, distributes it to worthy people, gives not to in worthy people if they pose no threat to him, conciliates people, and enjoy pleasures that are not forbidden by law. In this manner he wins both world; Apastamab. 2.20.18-23; Quoted from *Ibid.*

<sup>64</sup> *Ibid*

‘Religion’ binds us together; ‘law’ regulates our mutual relations. Both aim at regulating human conduct in relation to the self, to the creation and to the creator.<sup>65</sup> According to *Hindu* religion, the conduct of an individual in relation to the self, to the society, to the state and to the Supreme should be in accordance with *Dharma*, popularly called *HinduDharma*. This *Dharma* is called *SanatanaDharma*.<sup>66</sup> Swami Nikhilananda quotes<sup>67</sup> that:

The *HinduDharma* cannot strictly be called a historical religion. It was not founded by any historical person or persons. It is based upon the teachings of the *Vedas*, which, according to *Hindu* tradition, consist among other things of certain spiritual laws describing the nature of ultimate reality, the individual soul and the relationship between man and his creator and his fellow beings. These laws, eternal in nature, were revealed to those, spiritually developed persons known as *rishis*, who lived, at a very early period of history on the banks of the Indus and the Ganges. Great prophets of older times like *Rama* and *Krishna* were upholders and demonstrators of these spiritual laws during critical period of India’s history.

The religion based on the *Vedas* the *SanatanaDharma*, or *VedikaDharma*, is the oldest of living religions, and stands unrivalled in the depth and splendor of its philosophy, while it yields to none in the purity of its ethical teachings, and in the flexibility and varied adaptation of its rites and ceremonies.<sup>68</sup> One of the most remarkable things in the *Sanatana* religion is the way in which it has laid down a complete scheme of knowledge.<sup>69</sup> The *Vedas* give little indications of any legal rules. While it was an obligation for ritual specialists to be extremely punctilious, it could only be claimed that obedience to the *Vedas* was a legal duty in the sense that there was a human obligation to assist in maintaining cosmic order.<sup>70</sup> *Hindu* law is considered to be divine origin. It is revealed by the Almighty God to our great sages,

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<sup>65</sup> V. Kameshwara Rao, *Law and Religion*, available at <http://www.yavaluri.org/TRIVENICDWEB/lawandreligionapr64.htm>; accessed on 2<sup>nd</sup> April, 2012.

<sup>66</sup> *Ibid.*

<sup>67</sup> “*Hinduism*” in Vergilius Fren (ed.) *Religion in the Twentieth Century* 3-4 (The Philosophical Library, Inc., New York, 1948.)

<sup>68</sup> *Sanatana Dharma – An Advanced Text Book of Hindu Religion and Ethics* 1 (Published by The Board of Trustees, Central Hindu College, Banaras, 2<sup>nd</sup> ed. 1904).

<sup>69</sup> *Id.* at 3.

<sup>70</sup> Werner Menski, *Comparative Law in a Global Context* 206-207 (Cambridge University Press, 2<sup>nd</sup> ed., 2006).

philosophers and jurists who had attained spiritual heights...*Hindu* Law, according to our *Dharmshastra*, is sacrosanct, inviolable and immutable.<sup>71</sup>

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<sup>71</sup> *Ibid.*