



## THE CORRELATIVE NOTION OF DHARMA AS DUTIES IN HINDU LAW

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### Abstract:

Hindus were the natives of a fertile valley of River Indus i.e. modern day Punjab. They were considered to be disciples of eternal energy which they termed as Rita in their religious texts. Later on, the Vedic concept of the Rita became Dharma in the Puranic age and the devotees of were called as Hindus. The very core of Dharma was a function of cosmic order. It was believed by the Hindus of that age that the cosmic structure is the reason behind the formation of societal structure and it is bound to contribute to the cosmos. Texts of Hindu society were the result of two fundamental senses of human being i.e. hearing of Shruti and remembering or Smriti. Shruti formed the basis of the four Vedas of ancient Hindu literature and perhaps the oldest text of human history. Smritis of multiple rishis or sages became a source of the eighteen Puranas, the Ramayana and the Mahabharata. The epic of Mahabharata and the Ramayana majorly reflects a picture of war and dharma as a duty, Arjuna and Rama followed their Dharma and set the emblem obedience. The very instinct of war or to fight was curbed through the teachings of Dharma and the same has been mentioned in the Vedas also, Dharma preaches defensive mechanism for warfare instead of offensive. The flow of Dharma is natural to the natives of India, they treat as their basic duty to be

obeyed and it is therefore can be seen in their day to day life as inner spirituality.

**Introduction:** The purpose of this article is to examine the concept of Dharma as duties keeping mind a picture of Hindu law and to examine its relevancy in the modern-day criminal justice system. This article will begin with an introduction to Dharma and Hinduism outlining Shruti and Smriti as the basics of Hindu texts. It will be followed by a concise analysis of Shruti and Smriti and the literature it gave rise to. Next, there will be the inclusion of tales of the Ramayana, the Mahabharata, king Ellalan from Anuradhapuram and civil disobedience movement of Mahatma Gandhi, it depicts how these religious and social leaders followed the path of Dharma in different at distinct times and parts of India. In doing so, it will explore the contributions of the Vedas and Puranas in Dharma and Hind law.

**Dharma:** The abysmal history of India is an intricate system of Dharma and religious scriptures. Dharma carves for a continual search for balance between day to day work and inner spirituality and it must be embedded with allegiance for enlightenment, various scholars have termed dharma as a duty. In the past, natives of prolific valleys along the banks of the River Indus, the modern day Punjab, were called Hindus, they are considered to be disciples of eternal energy called Rita as per their religious texts. The later Vedic concept of the Rita became Dharma in the Puranic age and the devotees of Dharma known as Hindus. Dharma as mentioned by Koller '*used in a legal sense ... refers to the laws and traditions governing society, informing every citizen of the rules*



*governing social life*'.<sup>1</sup> He explains that 'Dharma is usually classified according to the requirements of one's position in society and stage in life, for these represent the main factors of time, place and circumstance that determine one's own specific dharma'.<sup>2</sup>

The core of the concept of Dharma lies in the cosmic energy. The cosmos is believed to have a structure and order to generate an individual's identity, society is a mere extension of cosmic order its rules and regulation are desired to serve the cosmic order. Society is not a self-propagating phenomenon by an accidental conglomeration of tribal migration, rather it is the corresponding picture of cosmic changes having animal and angels on either side. Society being a child of cosmos is not free in itself to regulate its own set of guiding principles, but it is bound to obey its life in such a way that it can contribute to the cosmic order as well. It would be foul to acknowledge society as a slave of cosmic order or divine purpose, but it is a part of the larger framework and thus its behavior should not cause unnecessary disruption to living, nonliving or heavenly realms.<sup>3</sup>

**Shruti and Smriti and Hindu literature:** The Hindu scriptures were from nearly eight millennia ago, they paddled by way of 'Shruti' and 'Smriti' i.e. hearing and remembering became footing of religious scriptures respectively. Ample knowledge on almost every accepted area of study of

past can be easily found in the Hindu scriptures. As Barth said, "India has not only preserved for us in her Vedas the most ancient and complete documents for the study of the old religious beliefs founded on nature-worship, which in an extremely remote past, were common to all the branches of the Indo-European family; she is also the only country where these beliefs, in spite of many changes both in form and fortune, continue to subsist up to the present time".<sup>4</sup> Since time immemorial the Hindus has a philosophy to foster ideas harmony and fraternity, the same has been quoted by Bowes, there is a verse in the Atharva Veda (VII.52) which suggests that the Vedic scholars meant to include people other than themselves in their thoughts since, in their opinion, the divine spirit within the strangers and themselves was the same.<sup>5</sup>

The Vedas and Upanishads serve as a primary source of Shruti (lit. what is heard), the fundamentals of these texts are eternal (Nitya) and beyond human knowledge (Aparuseya) therefore these are considered to be unquestionable since time being.<sup>6</sup> These are considered as roots of Dharma, the Vedas or books of knowledge suggests an individual's social, religious, ethical and legal duties. The four Vedas, namely, the Rig Veda, the Sama Veda, the Yajurveda, and the Atharva Veda are the predominant sources of Hindu law system. But as per Shrimad- Bhagwatgita initially

<sup>1</sup> John M. Koller, the Indian Way- An Introduction to the Philosophies & Religions of India, Pg. 62, 2<sup>nd</sup> edition 1982.

<sup>2</sup> Ibid 1.

<sup>3</sup> Paul Younger, Introduction to Indian Religious Thought, Pg. 35-36, 1972.

<sup>4</sup> A. Barth, the Religions of India, translation by Rev. J. Wood, 1969.

<sup>5</sup> Pratima Bowes, The Hindu Religious Tradition: A Philosophical Approach, Pg. 39, 1977.

<sup>6</sup> Patrick Olivelle, MANU'S CODE OF LAW: A CRITICAL EDITION AND TRANSLATION OF THE MANAVADHARMAŚASTRA, 2005.



there was only one Veda.<sup>7</sup> These texts are based narrations of the God heard by the sages or rishis from heaven, and therefore belongs to Shruti genre.<sup>8</sup> The Shruti is considered to be the spirit of the law in Hinduism.<sup>9</sup> It is mostly concerned with rituals and sacrifices it perorates duties to be performed while the Smriti explain distinct means of knowledge.<sup>10</sup>

The epic of Ramayana and Mahabharata, Dharma Shastra and Artha Shastrabelong to the second category called Smriti (lit. what is remembered). Also, the narratives of Puran were manuscript by way of Smriti. The Smritis include sixteen Puranas, some of them are more comprehensive in respective areas, most of the Puritans dialects rights and wrongs of all living entities on the planet earth. Manu in about 880 BC made an analytical study of public and private Hindu laws under title Manusmriti or Code of Manu.<sup>11</sup> Since the remaining Smritis were manuscript at least two or three centuries prior to Manusmriti, they emulate the tradition and ritual of the respective era and it is to be noted that Smritis of later age can be seen reflection the same tradition and rituals. These Smritis were able to influence the concurrent statutes of India as well as Nepal, they served as a measure of interpersonal

relations. It was because of the efforts of Adi Shankaracharya and other such saints, who were destined to rejuvenate and blend the creed of Hinduism to the extent that they are more in balance with the change in time. Thus one must refer to the Smritis while conceiving rule of Hindu law on any particular subject.

**Dharma and life:** The Hindu scriptures preach Ahimsa or non-violence as the highest goal, yet the scriptures allowed the use of force under certain unavoidable circumstances, the shift from established principles has been possible in the Hindu scriptures. The Hindus acknowledged that it is necessary to have a system of codes and customs in human society, which are not ideal. It was necessary to make compromises for the sake of army, police, and prisons.<sup>12</sup> The concept of fair and just war as per the norms of laws of war was in order to attain Dharma and justice instead of rampant war to disperse another faith. The Vedic control of war as an instinct in man was brought under control by the Riti or as moral law, Dharma had a hermetic impact on the system of warfare. The Puritans had mentioned war as a solution to threats but solely as a defensive mechanism and not a voluntary one.

The epic poem Ramayana of ancient India depicts the clash of almighty prince Ram salvage of his wife Sita from the demon king Ravana of Lanka. It reflects a picture of war and duties where Rama had to decide the fate of Ravana, who had no

<sup>7</sup> Sloka 19 of Chapter 4 of Canto 1 of the Srimad-Bhagatam.

<sup>8</sup> F. Harold Smith, Outline of Hinduism, Pg. 9, 1934.

<sup>9</sup> Donald R. Jr. Davis, Law and Law Books in the Hindu Tradition, 9 German L.J. 309, Pg. 310-12, 2008.

<sup>10</sup> Albrecht Wezler, Dharmna in the Veda and the Dharmagastras, 32 JOURNAL OF INDIAN PHILOSOPHY, Pg. 629-54, 2004.

<sup>11</sup> Vol. 25, The Laws of Manu- Sacred Books of the East, translated by George Buhler, 1886.

<sup>12</sup> C. V Wigneswaran, HINDUISM AND INTERNATIONAL HUMANITARIAN LAW, Vol. 15 Sri Lanka Journal of International Law, Pg. 18-20, 2003.



weapon at hand. As per rules of war, Rama had the power to bow down his enemy. But Rama thought otherwise, he said, “war must be fair play, I should not fight my adversary if he is unevenly matched, it is my duty to not harm an unarmed man though powerful and dangerous enemy he may be”.

The epic of Mahabharata is in itself literature, it denotes a way of life, teachings of social and moral relations, and envisions the fundamental problems of humans in societal structure. But primarily its acceptance is cloaked in the wordings of Bhagwatgita (lit the Song of the Lord).<sup>13</sup> It is in Gita that Lord Krishna asserts merits of war and asks his devotee, Arjun, to be a part of the war. Arjun intends not to put harm to any of his kin, Krishna reminds him- a Kshatriya should engage in war for religious principles,<sup>14</sup> death because of religious principles cannot be termed as violence. A Kshatriya's duty is to protect the innocent from any possible threat and while doing he has reasons to use force or cause violence at times. Further, Krishna says that Arjun would not be harming the eternal soul of the deceased because it is immortal. Therefore he should defeat the army of hostile kings and let the religious principles should rule the world.<sup>15</sup>

In another chronicle from Sri Lanka, king Ellalan from Anuradhapuram who reigned entire country for around 44 years. There was a battle called from the side of

the Vassal king of south India. The king knew he was old and that he could not stand against the young prince of the Vassal as well an army of his enemy could easily defeat him. He thought it is his cardinal duty to protect his nation and the innocent folks, let the war should not affect his nation. The king agreed for a face to face fight in order to prevent mass damage and misery that the war may cause, by fate he lost his life in the battlefield. Fascinated by his greatness king Dutugemunu, his adversary built the Ellalan Sohona or a tomb for Ellalan.<sup>16</sup>

In 1922, under the rule of the British crown, Mahatma Gandhi, dissatisfied by the actions of governance called for nation wide civil disobedience against the British rule in India, the protest was indeed peaceful to British police open fired on marchers. Agitated by this action of police a few marchers turned hostile to the peaceful intentions of Mahatma Gandhi and set a fire in the enactment also killed some station officers. Gandhi immediately dissipated the march. He said that it was his duty to induce a peaceful march- “those who seek equity must go with clean hands”.<sup>17</sup> Breach into the police station was against the moral principles of Mahatma Gandhi who was an ardent follower of Dharma, this action of protestors seemed to be violative of Dharma and therefore Mahatma Gandhi had to quit the movement.

**Conclusion:** In the current scenario it becomes essential to acutely appraise these episodes, one can capture the fundamental picture of Hindu scriptures or more precisely Dharma. The Dharma can be

<sup>13</sup> K.M. Munshi in his 'Foreword' to Kamala Subramaniam's Mahabharata, 1977.

<sup>14</sup> A.C. Bhaktivedanta Swami Prabhupada, The Gita, Pg. 115-116, English translation of the Gita, 1986.

<sup>15</sup> Sloka 19 of Chapter 4 of Canto 1 of the Srimad-Bhagatam.

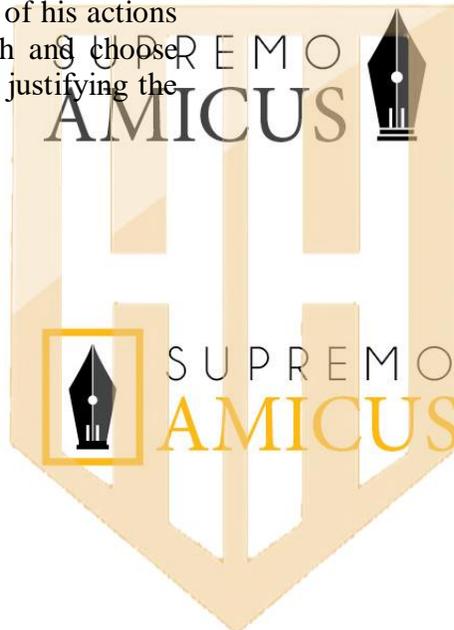
<sup>16</sup> Ibid 12.

<sup>17</sup> Ibid 12.



correlated with duty. An individual is born with some obligations or duties to be performed through his life – the very essence of life. In the epic Mahabharata, Yudhishtira said that a true king must perform his duty for the fate of his disciples. Artha Shastra of Kautilya and Dharma Shastra of Manu equally repeat the notion of duties to be performed by the mighty. Therefore Rama performed his duty by retreating Ravana, Arjun being a Kshatriya had a duty to take part in war whenever religious principles are at stake, and Ellalan followed Dharma by disavowing war and misery. Gandhi was conscious of his actions by abandoning peaceful march and chose not to accede philosophy “end justifying the means”.<sup>18</sup>

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<sup>18</sup>Ibid 12.