



EVOLUTION OF LAW-MORALITY NEXUS IN ANCIENT INDIAN JURISPRUDENCE

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Abstract

The separation of law and morals has always been a contentious topic in the field of jurisprudence which resulted into multiple academic debates between various schools of thought. There is hardly any legal system which cannot be covered in the discussion pertaining to morality's involvement in law, and with involvement of morality in the discussion it becomes all the more necessary to study the legal system of ancient India i.e. land of morals. The primary aim of this paper is to answer the question, whether morality was involved in law for ancient Indian societies? Furthermore, we will try to understand the change in law-morality nexus and its nature throughout the development of ancient Indian legal system. The author also seeks to understand the role of morality in developing the ancient Indian jurisprudence. The author has adopted a doctrinal approach in this study with help of primary and secondary texts of ancient Indian scriptures such as Vedas, Manu smriti, Yajnavalkya smriti, Narada smriti and Kautilya's Arthashastra along with their commentaries. Through a holistic analysis of the most significant legal texts which contributed to the development of Ancient Indian jurisprudence, the author has concluded that there existed a law-morality relationship since the conception of law in ancient India and was consistently present throughout the development of

the legal system, moreover the major finding of the study is that the change in morality has been a significant factor in law-morality nexus, without taking into consideration this factor one cannot truly advocate for morality's involvement in law.

Keywords: *Ancient Indian Jurisprudence, law-morality nexus, morality, Vedas*

Introduction

The ancient Indian society was by far the most sophisticated society on earth in its time, with advanced philosophy, astrology, numerology and societal framework it also possessed its own sacred law revolving around various Vedas and dharma shastras, these texts shaped the ancient Indian jurisprudence. In the field of jurisprudence, the question of morality and its separation from law has always been a topic of discussion which thrived as a bone of contention between the two most prominent schools of thought, i.e. the natural law school and the positivist law school. This conflict of idea in modern times manifested as the Hart-Fuller debate, Hart-Devlin debate and still surfaces the academic domain. However, it would be incorrect to state that the entangled relation between law and morality is of recent origin because this entanglement has been there since the formation of societies and morals altogether. Thus, in order to discuss the evolution of law, morality and its interconnection in the ancient Indian jurisprudence we firstly need to understand the meaning of law and morality for ancient Indian societies.

In the contemporary era, law is generally understood as command of the sovereign backed by sanctions (Austinian sense of law), Radha Binod Pal has analyzed that law in its earliest form were divinely dictated rules which could not be challenged, both these notions direct us towards an unchanging and uncontrollable will¹ somewhat similar description is even found in the Manu smriti². However, in ancient

¹ Shah, *Shodhganga@INFLIBNET: Theory and practice of law in early India with special reference to gender* 200 BC 650 AD, <http://hdl.handle.net/10603/154140>

² Manusmriti: The Laws of Manu. (1886). (G. Bühler, Trans.). Clarendon Press. (Original work published ca. 2nd century BCE–3rd century CE)



India law was not merely king's orders it was more than that and was closely connected to dharma, often dharma was considered synonymous to law but dharma in itself is one Sanskrit term which has multiple meanings attached to it such as nature, justice, law, virtue, morality, duty etc.³ thus dharma became the foundation of law but was more than law itself. The law also saw its evolution as the societies changed and began to become more and more complex, they were better codified in the smriti eras.

Morality (from the Latin term *moralitas* that means manner, character, proper behavior) is differentiation of intentions, decisions and actions between good and bad. Morality is shaped by various socio-religious underpinnings and changes with changing society. However, what is right and ought to be done is often not so easily distinguishable, in such cases moral dilemma⁴ arises which has a grey shade in a moralistic world of black and white. Arjuna in the battlefield of Kurukshetra is found in a similar state of dilemma, where on one hand he wants to leave the battlefield because he cannot kill his own family, and on the other he needs to stand with his brothers to fight because of all the partiality that they faced. In this moment of dilemma Lord Krsna delivers the *Bhagavad Gita*. According to Krsna it is Arjuna's kshatriya Dharma to fight in the battle, he asks him to walk down the path of Karma-yog⁵ and fulfill his duties. For a few sticking to one's societal responsibility is morality and for others pursuing individual freedom and liberty is morality. For the supporters of orthodox morality, ethical conduct is objective and for modern scholars' morality is subjective. Thus, various societies had different parameters and meanings of moral conduct which we will try to understand through the present work.

³ Kangle, R. P. (Ed. & Trans.). (1965). *The Kautilya Arthashastra* (Part I: Sanskrit Text with a Glossary; Part II: Translation with Critical and Explanatory Notes; Part III: A Study). University of Bombay

⁴ Chattopadhyay. (n.d.). *Shodhganga@INFLIBNET: Moral dilemma in the Indian scriptures a critical study*. <http://hdl.handle.net/10603/160633>

Objective of the Study

The relationship between law and morality, as well as their distinction, is a recurring topic in the field of jurisprudence. This study aims to analyze the historical development of ancient Indian jurisprudence, with a focus on the evolving nexus between law and morality within the context of ancient Indian legal system. Additionally, the author aims to discuss whether or not morality played any role in changing the legal system in ancient India, and to what extent were moral principles incorporated into it.

Literature Review

In order to understand the ancient Indian legal system, one needs to go through the Vedas and Dharma shastras compiled by various sages from time to time. The Vedas were compiled by the sage Ved Vyasa. After the compilation of the Vedas, smritis were written which are based on these Vedas and considered them as supreme authority.

In the *Rig Veda*⁶ deities play significant role in establishing law and morality, Varuna in particular is considered as overseer of morality by punishing the sinners through invisible cord and binding them to rta (cosmic order). The concept of law in the rig Veda is called rta, disruption of which is moral falling or sin that invites divine retribution. There are various hymns speaking of collective responsibility, prosperity and welfare depicting adherence to moral law or dharma.

⁵ Bhagavad Gita As It Is. (1983). (A. C. Bhaktivedanta Swami Prabhupada, Trans.). Bhaktivedanta Book Trust. (Original work published ca. 5th–2nd century BCE)

⁶ The Rigveda. (n.d.). In *The Sacred Books of the East* (Vol. 32, F. Max Müller, Ed. & Trans.). Clarendon Press. (Original work published ca. 1500–1200 BCE)



Dr. S. Radhakrishnan in his book *Indian philosophy*⁷, has covered the development of law from rig Vedic to the later Vedic period. According to him, there is no separation between law and morality in ancient Indian jurisprudence and aim of the legal system was to foster spiritual growth within society and individuals.

*Manu smriti: The Laws of Manu*⁸ translated by G. Bühler is the most significant dharma shastra of all, wherein Manu begins the code by describing the origin of the universe and varnas. He then goes on to codify various laws relating to property, succession, societal hierarchy, defamation, women, renunciation etc. it is through analyses of these very laws we can understand the role of morality in ancient Indian legal system.

The *Yajnavalkya smriti*⁹ is the next most prominent Dharma shastra after Manu smriti, the text is divided into three parts namely, Achara (moral code), Vyavahara (procedural law) and Prayaschitta (penal law). The text though covers topics similar to Manu smriti but its stance is more liberal than the former in terms of gambling, women etc. this text also discusses in detail the ethical conduct and morality of ancient Indian society.

The *Narad smriti*¹⁰ is another dharma shastra which favors primacy of dharma, understood as moral and ethical code on which laws are founded. The text stresses that judgements should not only be driven by legal codes but also on basis of fairness and equity. According to Narada judges should resort to moral

principles if strict compliance of legal codes will result into unjust outcomes because the need of law according to Narada is to establish and maintain dharma and not mere obligation of legal precepts.

*“Marriage and morals in Kautilya Arthashastra”*¹¹ this work goes on to unfold the law and morality which Kautilya professed for the well-being of state. This work gives us the view of life and morals which Kautilya had, in turn bringing us to the law-morality nexus in its era.

The post-doctoral thesis, *“The state, society and law in Ancient India”*¹², gives valuable insight into civil, criminal and procedural laws of ancient India. Also, discussing the sources of law and its interconnection with Dharma, this work gives a comprehensive idea of ancient Indian legal system. Furthermore, *Morality and moral developments: Traditional Hindu Concepts*¹³ gives valuable insight into morality of the ancient Indian societies.

The *Hart-Fuller debate* which is cornerstone of law-morality nexus, plays a vital role in understanding the jurisprudential position of law and morality in contemporary times. This debate began with HLA Hart’s publication of paper titled *Positivism and separation of law and morals*¹⁴, in this piece of literature Hart attempts to expand the theory of positivism in order to establish that law and morals are separate, furthermore he tries to answer various criticisms of the positivist theory. In reply of this paper Fuller goes on to publish *Fidelity to law a reply*

⁷ Radhakrishnan, S. (2008). *Indian Philosophy* (2nd ed.). Oxford Indian Paperbacks.

⁸ Manusmriti: The Laws of Manu. (1886). (G. Bühler, Trans.). Clarendon Press. (Original work published ca. 2nd century BCE–3rd century CE)

⁹ Yajnavalkya Smriti. (1880). In H. T. Colebrooke (Trans.), *Digest of Hindu Law* (Vol. 1). W. H. Allen & Co. (Original work published ca. 1st–3rd century CE)

¹⁰ Narada Smriti. (1889). In J. Jolly (Trans.), *The Minor Law Books* (Vol. 33). Clarendon Press. Retrieved from https://sacred-texts.com/hin/sbe33/sbe3351.htm#fn_709

¹¹ Bhattacharjee, D. (n.d.). *Marriage and morals in Kautilya’s Arthashastra*. *International Journal of Humanities and Social Science Studies*

¹² Basham, A. L. (Ed.). (1982). *The State, Society, and Law in Ancient India*. Oxford University Press.

¹³ Sharma, A. (2004). Morality and moral development: Traditional Hindu concepts. *Journal of Hindu Studies*, 18(2), 45–67.

¹⁴ Hart, H. L. A. (1958). Positivism and the separation of law and morals. *Harvard Law Review*, 71(4), 593–629.



to *prof. Hart*¹⁵ wherein he attacks the work of Hart and gives the principle called “the internal morality of law” which even a morally bad law has to follow in order to be called a law at all. Fuller also explains the eight principles of internal morality in his work titled *Morality of law*¹⁶, wherein he holds that law derives its authority from a source external to law i.e. morality.

Methodology of the Research

The method used by the author in this research is purely doctrinal in nature. The study is based on the secondary data in form of literature available as books, articles, e-books and other e-resources. The researcher has made every possible attempt to go through all the available literature with the help of internet. No empirical observations have been made by the researcher in this work.

Law and Morality Through Grudge Informer Case

As soon as jurisprudence as a discipline witnessed the rise of legal positivism the seeds of the never-ending debate between naturalists and legal positivists were sown. The Hart-Fuller debate is indeed a mature form of the long ongoing tussle between the two schools of thought, the gist of this discourse could be understood through the *Grudge Informer case*¹⁷. This is a case of World War II, when Germany was ruled by Nazi regime and they were making laws for their citizens. In this case wife of a German had reported her husband to Gestapo for criticizing Hitler’s conduct of war (which was in accordance to the Nazi Statute of 1934), the husband was arrested and sent to fight on Russian front where he survived the war and, on his return, he filed a case against his wife in post Nazi

German courts. The courts held the wife to be liable for acting contrary to sound conscience and morality,¹⁸ it is this very notion which is opposed by Hart. He states that even though the laws framed by Hitler under Nazi statute 1934 were morally bad laws yet they fell under his rule of recognition¹⁹. Hart strongly criticizes the courts approach to bring in the concept of morality in order to determine the validity of law made by the Nazi regime. On the other hand, Fuller points out that even a morally bad law must conform to principles of internal morality. Accordingly, the same were not in conformity while the laws in Nazi regime were made i.e. the procedure of law making by the Nazi was not conforming to the principles of internal morality of law. Thus, Fuller stood with the court’s verdict on declaring the Nazi laws as not laws.

From Vedas to Dharma Shastras: Evolution of law-Morality Nexus

The major sources of ancient Indian legal system are the Vedas and dharma shastras, it is through these sources we can gather the understanding of ancient Indian jurisprudence and its development. The law-morality nexus similarly could be understood through analyses of these ancient scriptures.

Vedic era

The concept of law evolved with the society, in the Rig Vedic era and even before it during the Indo-Iranian period (prehistoric)²⁰, *rta* was the only closest synonymous term for law²¹. The word *rta* is derived from the root word “*ri*” meaning to move. It is the Vedic concept which signifies the law of nature and cosmic order. According to Radhakrishnan, the

¹⁵ Fuller, L. L. (1958). Fidelity to law—a reply to Professor Hart. *Harvard Law Review*, 71(4), 630–672.

¹⁶ Fuller, L. L. (1964). *The morality of law*. Yale University Press.

¹⁷ Dyzenhaus, D. (2008). The Grudge Informer Case Revisited. *New York University Law Review*, 83(4), 1000–1043.

¹⁸ *International Journal of Law and Legal Jurisprudence Studies*. (2017). Volume 4, Issue 2. ISSN: 2348-8212

¹⁹ Hart (1961) introduced the rule of recognition as a fundamental concept in legal positivism, arguing that it serves as the ultimate rule that validates other legal norms within a legal system.

²⁰ Bloomfield, M. (1908). *The Religion of the Veda: The Ancient Religion of India (from Rig-Veda to Upanishads)*. G. P. Putnam's Sons, pg. 126

²¹ Indian conception of law *Rta* and *Dharma*, <https://ebooks.inflibnet.ac.in/lawp01/chapter/indian-conception-of-law-rta-and-dharma/> (last visited on 13 Jan 2025, 10:23 AM)



conception of the term developed with time, earlier it used to mean established route of the sun, moon, stars and the universe but gradually its conception changed, it became the path of morality to be followed by men and the law of righteousness observed by even the gods.²² Though there is a general consensus that *rta* means law/order/truth, but there is no English or European equivalent in which the whole significance of *rta* can be accommodated²³. Thus, there are multiple meanings associated to *rta*, such as, law/order/truth/dharma/cosmic order/natural law/moral law etc.

In the Rig Veda, the gods(*devas*), who are representations of natural forces, are upholders and promoters of *rta*. In *Rig Veda Mandal 1 Sukta 23 Shlok 5*, Mitra and Varuna have been called the encouragers of *rta* and are the lords of true shining light of *rta*. Varuna has been considered as upholder of *rta* and punisher of wrong doers who are violating the moral code.²⁴ It is said in the Atharva Veda that Varuna is omnipresent, so all schemes hatched are known to him, he even counts winking of men.²⁵ The brahmins and Upanishads considered preservation of social status quo to be the end purpose of law.²⁶ Thus, it would not be wrong to say that the early Vedic societies had not created a separation between law and morals rather their laws were compilations of moral codes for the sustenance of society at large.

Smriti era

This era saw emergence of number of *smriti* texts by various intellectual scholars of their time such as Manu, Yajnavalkya, Narada, Shukracharya, Parashara, Katyayana, Brihaspati, etc., they were

authors of books called *dharma shastras* dealing with law and justice. There are in total 18 *dharma shastras*, but here only three have been discussed namely, *Manu smriti*, *Yajnavalkya smriti* and *Narada smriti*, as these three are the most significant of all. Also, the author has examined Kautilya's *Artha shastra* and his view of morals to get an understanding of law-morality nexus in that era.

Manu smriti

As time progressed various *smritis* with *shruti* as their foundation were written. *Dharma shastras* were written and it was for the first time the power of maintaining of status quo of *Varnashrama* was handed over to the King(monarch). *Dharma shastras* gave the monarch the power and responsibility to uphold *Dharma*, which in the later Vedic period of *smritis* was considered synonymous to law. While explaining the sacred law²⁷ Manu states that it's based on Vedas, yet there is a remarkable difference between the two. The laws in Vedas are driven by divine elements(*devas*) with aim of enforcing morality, it would not be wrong to say that there was not even a proper codified format of law in the early Vedic society. The *Manu era* is somewhat different, here the societies became complex and laws are codified, though the sacred law preached is still possessing some divine element in it, but substantially the law has changed from enforcing morality to ensuring social stability at the cost of individual morality.

The *Manu smriti* slowly moves towards the idea that king is the representative of God, and also that "*king can do no wrong*" as the king is incarnation of deities who turn impurity into purity, he himself cannot be

²² Radhakrishnan, S. (2008). *Indian Philosophy* (2nd ed.). Oxford Indian Paperbacks. Pg. 78-81

²³ Griffith, R. T. H. (1973). *The Hymns of the Rigveda* (2 vols.). Motilal Banarsidass. (Original work published 1889)

²⁴ The Rig Veda. (n.d.). In *The Sacred Books of the East* (Vol. 32, F. Max Muller, Ed. & Trans.). Clarendon Press. (Original work published ca. 1500-1200 BCE), Mandal 1 Sukta 25 Shloka 6-12.

²⁵ Atharva Veda. (n.d.). In *The Sacred Books of the East* (Vol.42, F. Max Muller, Ed. & trans.). Clarendon Press. (Original work published ca. 1200-1000 century BCE), Mandal IV Shloka 16.

²⁶ Pal. R.B. (1958). *History of Hindu Law*. Eastern Book Company, pg. 177

²⁷ *Manusmriti: The Laws of Manu*. (1886). (G. Buhler, Trans.). Clarendon Press. (Original work published ca. 2nd century BCE-3rd century CE)



impure.²⁸ But it would not be apt to state that Manu accepts supremacy of monarch absolutely, because Manu also guides the king to not inflict harsh corporal punishment on the innocent man, otherwise the king will incur a sin as great as not punishing a guilty man.²⁹ Thus, even the king is not beyond Varuna and law for Manu.

Birth based Varna System

The varna system as mentioned in the Vedas³⁰ and as practised in the early Vedic eras is different from the system which is described by Manu. The former was based on quality and skill possessed by one individual giving opportunity of changing ones Varna, in the later Smriti era varnas became a water-tight compartment where skill and quality were not of any significance in determination of varna only birth was the final determiner. The earlier Varna system was reason for development of the civilization in arts, science and literature³¹, while the later was birth-based hierarchy with dominance of higher varnas over the lower.

Brahminical superiority and social inequality

According to Manu, a wife, a son and a slave are declared to have no property and any property with Shudra is property of his master.³² Manu considers women as an entity which needs to be protected and guarded, he does not recognize any sort of liberty or freedom of women because according to him women should be dependent upon her father first, then to her husband after marriage and then to her children in old age. Moreover, females should be employed by their husband in collection and expenditure of the wealth earned by him in religious rites, keeping everything clean and maintaining the household, all these activities keep the wife occupied.³³

The varna system in Manu smriti is birth-based watertight compartment because of which social

inequality is quite evident. The Shudra according to Manu should not be given any education and are unfit to read Vedas, a brahmin who is brahmin just by birth and has not read any Veda can become a judge if king orders, but a Shudra can never be such in any circumstance. Manu even goes on to inflict harsh punishments over shudras for speaking ill about *dwijas* (twice born), king in such circumstances should order hot oil to be poured into the mouth and ears of a shudra.

Now, prima facie it looks as if the social laws, property laws and penal laws in Manu smriti do not conform to the standards of morality and humanism of our time. The courts of our time will call these laws invalid because they are immoral, the early naturalist will consider them to be valid as they are will of the divine, the modern naturalist Fuller may not find any ground to declare it immoral either and the positivist will reject it because law is above the sovereign(king). Manu believes that such harsh punishments and strict social hierarchy ensures sustenance of society and ensures Dharma. The various social positions (*varnas*) assigned to various individuals makes sure that they perform their moral and ethical duty in the proper manner and not start performing duties assigned to other positions. A husband no matter how weak has duty to protect his wife, as he is reborn after conception with his wife. A king who does not punishes the culprit incurs sins of the culprit and loses his legitimacy to rule. A wife who is not faithful to her husband is a moral failing. A Shudra has moral duty to serve his master in full faith, non-compliance of this is a moral failing. A brahmin has a moral duty to spread knowledge and education if he commits crimes such as theft, adultery or slaying of cow then he is punished by the King, therefore a crime from a high twice born is also penalized and seen as a moral failing.

²⁸ Ibid., Chapter V verse 96-98

²⁹ See Manusmriti, *supra* note 27, at Chapter IX verse 245-249.

³⁰ See Rig Veda, *supra* note 6, at 10.90.12 (Purusha sukta)

³¹ Dubois. A, Hindu Law, Manner and Customs, pg. 14

³² See Manu smriti, *supra* note 27, at Chapter X verse 416-418.

³³ See Manu smriti, *supra* note 27, at Chapter IX



Thus, we can affirm the notion that laws in Manu smriti sacrifices the individual morality and freedom in favour of ensuring societal sustenance, because the concept of morality for Manu is not that of individual morality but to fulfil duties according to their social positions i.e., societal morality.

Yajnavalkya smriti

As of now we had seen that in all previously discussed literatures law, morals and religion were intermixed, Yajnavalkya became the first writer to systematically arrange law without mingling it with morals and religious rules³⁴. Yajnavalkya smriti has three adhyayas, namely:

1. Achara adhyaya (moral conduct),
2. Vyavahara adhyaya (procedural code)
3. Prayishitta adhyaya (penal code).

The Achara adhyaya is further divided into 13 chapters dealing with sources of law³⁵, marriage customs, Brahmachari customs³⁶, Varna system³⁷, prescribed duties of a king³⁸, religious rites etc. this chapter in detail discuss the necessary conduct of an individual to be followed from life to death.

The Vyavahara adhyaya for the first time in the history of development of Hindu law lays down a detailed procedure to be followed by a legal system in determining a case before it. Though Manu smriti had also formulated certain rules regarding administration of justice but those formulated by Yajnavalkya are more detailed. Yajnavalkya goes on to divide a lawsuit in four stages,³⁹ namely:

1. *bhāṣāpāda* (petition by the complainant)
2. *uttarapāda* (reply by the defendant)
3. *kriyāpāda* (presentation of evidence)

³⁴ Kalita, N. (2014). The vyavaharadhyaya of the Yajnavalkya Smriti: A comprehensive Study. DVS Publishers.

³⁵ See Yajvalakya smriti, *supra note 9*, at Achara adhyaya Chapter I

³⁶ See Yajvalakya smriti, *supra note 9*, at Achara adhyaya Chapter III

³⁷ See Yajvalakya smriti, *supra note 9*, at Achara adhyaya Chapter IV

4. *sādhyasiddhipāda* (final decision)

Yajnavalkya further states that in cases contentions of a party are not denied evidence for the same are not required. It is upon the four feet of judicial procedure laid down by Yajnavalkya many other scholars such as Narada, Brihaspati, Visvarupa, Apararka etc. developed on this concept and incorporated it in their own work. The Yajnavalkya's rule of procedure wants the plaint to be equipped with details of the plaintiff, the cause of action, allegations, timing, place, date, subject matter etc. which is similar to the requirements of the Order VI Rule 1-8 of The Civil Procedure Code 1908.⁴⁰

The more we study Yajnavalkya the more we tend to realize that Yajnavalkya has separated law from morals and has formulated a code which is strictly legal without any moral bindings. Indeed, it could be argued that the laws for which procedure is being laid down is also moral obligation of an individual in a society, which to a larger extent is true, but if we are considering Yajnavalkya in the light of previous literatures we surely find striking differences. Primarily, the role of divine entities has been significantly reduced secondly, the substantial laws are more relaxed in both contexts of social hierarchy as well as punishment lastly, in depth procedure has been laid down keeping law away from clutches of morality and religious rules.

Narad smriti

The third most significant dharma shastra of the smriti era is written by Narada, though Narada has been mentioned quite early in the Aitareya Brahman⁴¹, but this Narada is not to be confused from the author of

³⁸ See Yajvalakya smriti, *supra note 9*, at Achara adhyaya Chapter XIII

³⁹ See Yajvalakya smriti, *supra note 9*, at Vyavahara adhyaya pg 6-8

⁴⁰ Takwani, C. K. (1987). Civil Procedure Code. Eastern Book Company, pg 218

⁴¹ Aitareya brahmana. (n.d.). In The Sacred Books of the East (Vol.25, F. Max Muller, Ed. & trans.). Clarendon Press. (Original work published ca. 9th-7th century BCE).



Narad smriti. It was Manu who had started the trend of classification of offences, Yajnavalkya followed it and classified 20 offences in his work, Narad also does the same but goes on to state that these can be further classified into thousands and it is responsibility of the judges to be well versed with all these sub-classifications⁴², he majorly focuses his work on Vyavahara portion of dharma shastra.

Narada smriti is a pioneering legal text of ancient India dealing with civil law and judicial procedure rooted in dharma. Narada unlike Manu is more pragmatic in solving disputes rather than suggesting religious practices after commission of an offence. He starts off his work by laying down the need of it, he states that when mortals were truthful and duty-oriented lawsuits never existed, neither was there any selfishness nor hatred. When dharma is lost and not realized by mortals' lawsuits come into existence. It is for these lawsuits he goes on to formulate detailed laws, so that those who seek justice in courts may get it and dharma can be established. This text in particular is considered to be more progressive than the earlier discussed smriti's, women here are given full control over their stridhan, widows are even given the right to remarry which is denied in the earlier smriti's. Also, there is a relaxed approach adopted by Narada towards inter-varna marriages⁴³ and recognition of children as products of such marriages.

When we go through the Narada smriti, we find out that the complexities and interactions in the society is increasing, hence a more liberal approach is needed to take care of social order. Furthermore, now the society is becoming more and more mature so divine sanctions will not be meaningful, thus a procedural approach is adopted keeping aside the nexus of religion with law. Though, we can say with confidence that Narada smriti was one significant step towards an era of laws which were to be free from

religious divine sanctions, but we cannot apply the same analogy in law-morality nexus.

From one stand point it seems as if there is a separation of law and morals and from the other situation seems to be different. This code talks more about Vyavahara and less about achara, it lays rules for administration of justice and incorporates the conditions and requirements of witnesses keeping morality out of the equation. He aims to establish dharma and morality but the tool which he uses is not morality rather a set of rules which are neither moral codes nor religious. He gives legitimacy to inter-varna marriages and its offsprings, which in that society is not considered ideal form of marriage. Here he rises above societal morality and recognizes individual liberty signifying separation of law and morals.

The other stand point of the analyses is that there exists a content of morality in the aim of laying down the procedure for judicial administration. The king while dispensing justice shall comply to the principles of fairness and should not be bias, the punishments to be given to offenders shall be proportionate, etc. all these principles underlying the procedure and determining it, are also laws which are nothing but manifestations of moral principles. Thus, we cannot outrightly reject the notion that morality is involved in law for Narada smriti.

Kautilya's Artha shastra

The Artha shastra is an ancient Indian treatise on statecraft, diplomacy, law, economy and military strategy.⁴⁴ This literature brings out a different perspective of morality, many a scholar have criticized Kautilya's Artha shastra for downplaying morality and considering it a mere tool at hands of the king with the will to mold it for his own self-aggrandizement. In his work Kautilya even advices the king to use religion and faith as a means to destroy a powerful enemy, he states that when a king walks

⁴² Narada quoted in Smritikandrika & https://sacred-texts.com/hin/sbe33/sbe3351.htm#fn_709, *The Minor Law Books (SBE33)*, by Julius Jolly, [1889]

⁴³ See Narada, *supra note* 10, at Chapter XII, verse 87-92

⁴⁴ McClish, M. (2019). *The history of Arthashastra: Sovereignty and Sacred Law in Ancient India*. Cambridge University Press



into a religious place of which he is a habitual visitor, the former king should conspire to kill the king then and there while his guards are down. Because of these very ideologies of Kautilya Dr. Winternitz criticizes Artha shastra by stating, that it is improper for an author to hold himself to be a follower of Dharma and at the same time adopt unfair methods.⁴⁵ B.K Ghose even went on to state that Kautilya is teaching the art of violating law and justice.

Kautilya under his work provides various legal methods to ensure protection and welfare of state such as: creation of an institution of spies, wherein he includes not only educated and cunning individuals but also poisoners (*rasada*) and firebrands (*tikshna*), giving them money and resources to perform their duties no matter how cruel the act is. The institution of gambling and betting are not objected rather legalized and centralized under superintendent of gambling, it is seen as a source of revenue for the state.⁴⁶ Such legal percepts if analyzed through a lens of orthodox morality will certainly be called immoral because for them morality is objective but if these percepts are analyzed through the lens of modern relative morality standards, they fall within the Machiavellian principle of ends justifying the means.

Thus, the notion of morality for Kautilya is relative,⁴⁷ he does not claim acts to be intrinsically good or bad, rather for him politics rules over ethics. This relativity of morals is not a new concept for ancient India but Kautilya seems to have laid more emphasis on it in comparison to his predecessors. The modern writers state that Morals are not absolute but relative: relative to the time place and even to an individual also according to Bhisma in Mahabharata dharma becomes adharma and vice versa with varying place and time. It is this very relativity which Artha shastra preaches through its laws.

Now even if the end goal for Kautilya is to establish welfare state still the King is not above. Kautilya says “*Nasti rajanah adandyo dharmapathat cha vicalitam*”, reinforcing the idea that even the king is not above law (dharma), if he deviates from path of dharma (dharmapatha) he will be punished. Rule of law is supreme for Kautilya as he says, “*Rakshartham hi dharma pravartate*”, i.e. law exists to protect people and the king thus must act as custodian of these principles. Even though King is the protector and upholder of dharma still he is not above dharma thus supremacy of law for Kautilya is foremost essential of a welfare state.

Conclusion

Morality and law shared a close relationship throughout the development of ancient Indian legal system. It is an undeniable fact that dharma and its establishment had been the central figure in development of law. In the early Vedic era law and morality were synonymous and closely connected to religion as well. The concept of law for this era was primarily related to the cosmic order, through time it evolved into a tool to regulate people. The sanctions imposed on violation of moral codes were divine and concept of monarch as law enforcer was absent, which we see in the dharma shastras. Notwithstanding this, there is one aspect of law which has been consistent throughout the development of law in ancient India i.e., supremacy of law. Even the divine entities were bound by law of righteousness. The cause for law-morality similarity is largely due to the structure of the society, in this era the society was simple, less populated and highly religious. Thus, it became all the more reasonable for people to follow religious path which was consistent with morality.

As time progressed the societies became complex, thus legal codes were needed with aim of enforcing morality but through practical sanctions i.e.,

⁴⁵ Winternitz, M. (1924). Review of Kautilya Arthashastra. Calcutta Review, April 1924.

⁴⁶ Rangarajan, L. N. (Ed. & Trans.). (1992). Kautilya: The Arthashastra. Penguin Books India.

⁴⁷ Kangle, R. P. (Ed. & Trans.). (1965). The kautilya Arthashastra (Part I: Sanskrit Text with Glossary: Part II: Translation with Critical and Explanatory Notes: Part III: A Study). University of Bombay.



punishment by a judicial authority (in case of ancient Indian legal system it was done by the King). Manu smriti widely regarded as the most significant dharma shastra and also the most controversial of all, codified laws (substantial and procedural) to govern the societies. Laws now were not mere moral precepts rather they were systematically arranged rules with sanctions which were practical. Yajnavalkya and Narada emphasize more on the procedural aspect of law and administration of justice, meanwhile liberalizing law from clutches of divine sanctions. If these laws are judged on the parameters of internal morality laid down by Fuller, we will find that they are in conformity to it. In this development we witness that substantial laws are favoring societal morality over individual liberty; it is sustenance of society and establishment of dharma which is the primary aim of law. From Manu to Narada, the societies were becoming more liberal thus the laws were also becoming liberal with respect to inheritance, women rights, punishments, etc. signifying the involvement of morality in law and its role in shaping law.

Thus, the author firmly believes that there was involvement of morality in law since the conception of law and this involvement was consistent throughout the development of ancient Indian jurisprudence. Even though we acknowledge the involvement of morality in law we cannot shy away from the fact that the nature of law-morality entanglement was changing throughout the development of ancient Indian legal system. The law morality relationship in Vedic era is not similar to that in the Mauryan era (as perceived through Artha shastra), the reason for which was changing parameters of morality. In the Vedic era morality was objective in nature, in the later periods it became subjective and relative to circumstances. Laws of the later smriti era would not conform to moral standards of the early Vedic era, because morality for the society changed. Where gambling was considered an unholy and unethical conduct, it became a source of revenue for the Mauryan administration. Where individuals in Vedic era were given the opportunity and liberty to change their varna through procurement of skills, in the smriti era the

same concept of varna became a water-tight compartment conforming to the moral standards of the society. Hence, one needs to adjust to the changing morality factor in order to understand the law-morality nexus because ignoring this essence may result into an absurd outcome.

