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DHARMOPRUDENCE, NATURE OF LAW & MORALITY
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Contents

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NATURE OF LAW & MORALITY

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[Abstract: *Religion and Morality hold a similar node, which in the context of Dharma highlight its evolving nature, suggesting that while traditional social customs may change, the essence of Dharma as a guiding ethical framework remains significant. This dynamic understanding the Dharma emphasizes its role in shaping the moral behaviors and societal order across the different contexts and times. This paper delves into Dharma's multifaceted role in shaping moral actions and societal harmony as depicted in the texts like Mahabharata and Dharmasastras. Through these ancient narratives, the paper explores the complexities and nuances of ethical decision-making in the Indian context.*]

I

Introduction

The query of what principles constitute morality requires theorization. By recognizing this target, we can understand how various ethical theories aim to capture the same thing. Additionally, it makes it possible for psychologists, anthropologists, evolutionary biologists, and other empirically-minded theorists to plan their experiments or develop their hypotheses without unduly affecting the details of what a code, judgment, or norm must contain to be considered as moral.

Two notions of morality

In particular, the term 'morality' can be used either descriptively to refer to specific codes of conduct put forward by a society or a group (such as a religion), or accepted by an individual for her behavior, so there does not seem to be much reason to think that a single definition of morality will apply to all moral discussions. It may, amongst others, include the following:

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    i.   Descriptively to refer to specific moral standards proposed by a society or a group (such as a religion), or adopted by a person for her conduct, or

    ii.   Normatively refers to a standard of behavior that, under certain circumstances, would be proposed by all reasonable persons.

Which of these two notions of 'morality' a moral philosopher employs are vital, if occasionally underappreciated, in forming an ethical theory? One will almost certainly reject the idea that there is a universal morality that governs all people if they use the word 'morality' in its descriptive sense, which refers to norms of conduct that are genuinely advanced by various groups or communities. The morality here in terms of law refers to the establishment of a nation state that is governed by justice, equity, and fairness rather than the idea of personal morality.[1]

Any description of 'morality' must identify which rules a society or organization sets qualify as moral. There are instances when divisions between morality, etiquette, law, and religion are formed, even in small, homogeneous civilizations with no written language. And these distinctions are frequently clearly defined in more extensive and more complicated cultures.

In the normative meaning, 'morality' refers to actions that anyone who satisfies several intellectual and volitional requirements, which nearly invariably include being rational, would embrace. It is common to use the phrase 'counts as a moral agent' to indicate that a person satisfies these requirements. But merely demonstrating that any moral agent would uphold a specific code does not prove the code itself is moral. All moral beings may adhere to a code of prudence or reason, but this does not prove that prudence is a component of morality. Therefore, something more must be added, such as the possibility that the code may be interpreted to involve a particular form of impartiality or the possibility that it may be understood to enable communal living. We have just shown that not all rules proposed by societies or organizations are moral codes in the descriptive sense of the term, and not all codes that all moral beings would uphold are moral codes in the normative sense. Therefore, more criteria will be needed for any definition of morality—in any meaning. The first section of the essay introduces the themes of exploration. The second section discusses the sources of morality. Interpreting the Bond of Law and Religion is crucial to explore the principles of '*Dharmoprudence*'. The third section will explore the relationship between law and religion in the Indian context. Sections four to six will explore the various aspects of dharma and their relationship to law. The Seventh section discusses the nature of Hindu Law in context law and morality relationship. The eighth section concludes the essence of the essay.

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[1]   Vibhuti Jaswal & Aayush Raj, *Constitutional Morality in India: A Brief Analysis & Contextualising its (De)Limitations* IV SLR 115 (2021).

II

Sources of Morality

It is even more evident that there must be a metaphysics of morals. Because morality is concerned with practical issues, it does not focus on how things are but rather on how they should be. Experience can only inform us of how things are, so it can't by itself supply solutions to our practical queries. However, ethical rules are not analytical because if they were, we could resolve morally contentious issues by merely examining our notions. Since there must be a metaphysics of morals—a collection of synthetic a priori judgments about what we ought to do—if there are any moral requirements, this implies that there are any.[2]

The obstacle that Kant is referring to is that the individual we say that he acts 'from duty'[3] also has other motives that, if duty didn't exist, would cause him to refrain from taking action. When one of these people does their duties while having no desire to do so, we may be sure that the act was brought about solely by the thought of performing the obligation. We can better understand the motive of duty by looking at cases like these, where it drives behaviors on its

own and without the assistance of other factors. One widespread misunderstanding of the text and the following examples is that Kant holds that actions can only be morally significant if performed against one's will or without the help of inclination, but not the case in Kant's opinion.[4] He concentrates on instances where moral motivation functions solely to gain a clear understanding of it, not because he believes that the existence of other conceivable motives in any way prohibits an agent from acting on the moral motive.

According to Kant, the distinction between naturally empathetic and obedient people lies in their maxims. The compassionate individual chooses to assist because he enjoys doing so. His guiding principle is to pursue his interests. Not that he only wants to please himself is the idea here. His goal is to assist others, but he takes this goal and makes it his maxim because he enjoys doing it. His desire to aid others is not the sole reason his action lacks moral value.[5] His movement lacks moral value because he decides to assist out of want. He enables his impulses to lead him in the right direction.

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[2] Immanuel Kant, GROUNDWORK OF THE METAPHYSICS OF MORAL 10 (1998).

[3] *Id.*

[4] *Id.*, at 13.

[5] *Id.*, at 77.

III

Dharmoprudence: Interpreting the Bond of Law and Religion

In traditional Hindu thinking, there is no separation between law and religion. Instead, dharma is a unified idea that includes both law and religion. The foundation of law is dharma, a system of natural laws that derives particular laws from an ideal, moral, and eternal order of the cosmos. The root of the laws' legitimacy and power is that they are based on this eternal order. The rights and obligations of an individual were decided by position in classical Hindu society. In the legal documents, women's place and role generally received little attention. Males wrote the texts, and they cover topics that are important to a larger mass. The factors that determine someone's position in addition to gender are caste *(varna or jati)*, stage of life *(ashrama)*, age, and other factors. General obligations (*varṇāśramadharma*) must be met in every caste, age group within that caste, and stage of life. It was the king's duty to ensure that the people followed their dharma, but it wasn't easy because the king's duty was also a part of his dharma.

'श्रेयान्स्वधर्मो ववगुण: परधर्मात्स्वनुवितात् ।
ॖवभाववनयतं कर्मा कुर्वान्सनाप्रोवत वकवबिषर्म्।'[6]

'It is preferable to follow one's dharma, even if it is faulty, than to follow the dharma of another, even if it is perfect. A person does not sin by carrying out their innate or mandatory duty'.

'धारणाद्धर्मावर्मत्सयाहॖॖ: धर्मो धारयवत प्रजाॖॖ: ।'[7]

'Dharma nurtures the subjects and, in turn, the society'.

Radhakrishnan says,[8] 'Dharma is the most important concept in Indian thought, second only to reality'. This extensive and complicated concept previously involved a set of beliefs regarding life (indeed, a worldview) and a set of accepted behavioural norms or laws. Dharma identified duties, referred to them, and provided a reason or justification for them by referring to patterns of order that were believed to be prevalent in society and the cosmos. Social regulation was based on an interpretation of existence's processes and structures, and this was an essential component of what was meant by dharma. Most legal issues and disputes that come before courts can be reduced to concerns about right and duty.[9] 'Claim' in this case refers to interests for the sake of our study. In fact, rights are frequently articulated in terms of obligations owed by others. Hohfeld[10] acknowledged that responsibility is the key to a claim. In this view, rights

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[6] Veda Vyasa, SRIMAD BHAGAVAD GITA, Adhyaya 18, Shlok 47.

[7] Veda Vyasa, *Karnaparva*, MAHABHARAT, Adhyaya 49, Shloka 50.

[8] Sarvepalli Radhakrishnan, INDIAN PHILOSOPHY 22 (1972).

[9] Chanchal Kr. Singh, *Jurisprudential Analysis of Rights: Claim and Duty Re-examined* II JOLT 95 (2012).

[10] Shyamkrishna Balganesh, Ted M. Sichelman, and Henry E. Smith *(eds.)*, PART I - PHILOSOPHY OF JURAL RELATIONS 188 (2022).

refer to what Bentham refers to as services, or other people's deeds and patience. The fundamental consequence of these prophecies for the definition or content of claim rights is that they are entitlements to benefits or advantages resulting from the responsibility or obligation of the other.[11]

IV

Dharma: Deontological[12] Way of Life

The essentialities of *Dharma* have been spoken a lot in the Hindu text. The most significant of them is the Bhagwat Gita, where the dialogues between Shri Krishna and Arjun were based on the principles of Dharma. If we decode, it simply means the duty based on the *Varna*.

There has been much criticism around the structure of society based on the caste system. Still, in reality, or the spiritual text, the cast was factually based on the characteristics of the behaviors of the man and woman.

Society was divided into four heads. The first one was the Brahmins, who were the beholders of knowledge and were duty-bound to spread that knowledge among all. The second varna were the Kshatriya, the warriors and protectors of the society. The third division was '*Vaishyas'*; they were practically the people who took charge of business and farming. And the last out of all four *varnas* were *Shudras*. These were the people who were devoted to the duty of providing *Seva* to society.

'चातुवार्ण्यं मया सृष्टं गुणकर्माविवभागशः ।
त्य कताारर्मवप मी ववद्‌००यकताारर्मव्ययर्म् ।।'[13]

('I came up with the four types of vocations based on the traits and pursuits of people. Although I am the system's creator, I am both the Non-doer and the Eternal'.)

The dialogue between Shri Krishna and Arjun was profound in understanding the linkage between Dharma and social life. Standing at the battleground, Arjuna was dazzled to see his relatives standing against him, to whom he had to fight. It was like dehumanizing the whole scenario. He was baffled that he would be killing his own near

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[11] *Id.*, at 97.

[12] Jeanine M. Greenberg, KANT'S DEONTOLOGICAL EUDAEMONISM 66 (2022); 'Happiness, according to Deontological Eudaemonism, can be achieved both rationally (as non-felt pleasure in the virtually unimpeded harmonious activity of one's will and choice) and empirically (as pleasurable fulfillment of one's desires) only through authentic commitment to and fulfillment of what is demanded of all rational beings: making persons one's end in all things'.

[13] *Supra* note 51, Adhyaya 4, Shloka 13.

and dear—the priming off the king's throne. Like a human being, he thought that this would essentially destroy humanity. Even if he comes out to be a warrior or winner, he would have nobody with him because he is going to kill whoever is his beloved to him.

The dialect between Shri Krishna and Arjuna is spread across eighteen chapters in the Bhagavad Gita. It concluded that human life is to attain *Moksha* (salvation) by doing his Dharma or duty based on behavioral characteristics. Doing that with pure intention and no expectation of any result will lead to fame or a higher position. Then the person will move to the way of salvation.

Now it has to be noted that in the religion of Hinduism, the main agenda of human life is attaining salvation. So, everything or every action was described or done in the process of going close to salvation. Even if you see the exchange of humans with nature as per the Hindu religion, it was practically ruled in a way that a person is not just utilizing nature but also devoting him or herself to that nature. We can conclude that the whole purpose of human life was to attain salvation, as per the Hindu religion.

In that way, the duty was formulated so that one should reach closer to the process of salvation. It was suggested to fulfil the demands of the duty with no expectation of any result or, in the legal sense, any rights when such an intention is formed; then, the person will reach closer to salvation or *moksha*.

'॒वे ॒वे कर्माण्यिवभरत: संवसवद्धं लभते नर: ।
॒वकर्मावनरत: वसवद्धं यथा ववन्सद्धत तच्छृ णु ।।'[14]

('Humans can become flawless by carrying out their responsibilities, which are born of their natural qualities. Listen to Me as I explain how performing one's assigned chores can help one become flawless'.)

Affirming the ethical subject's inward orientation is its most important contribution. One can see the affirmation of the self's creative engagement in forming the field of righteousness (*dharmaksetra*) in the concepts of *svabhava* and *svadharma*. Any sphere of action (*dharmaksetra*) is not always a field of ethical action. Concurrent with creating the moral self is the realm of ethical action. The ethical subject is not merely a passive observer (*ksetrajflä*) of the field (*kshetra*); instead, it actively influences the field's transformation, which has profound implications for ethical philosophy. The field is ethically neutral in and of itself, subject to the dharma's mechanical action.

All human goals (*purusarthas*) can typically be divided into four categories:[15]

    i.   Living by all the laws relevant to a person in a specific class, stage in life, or simply as a human being is the goal of *dharma*. Dharma means 'being established in dharma,' not as a code of behaviors or a purpose in life. To become entrenched in dharma, one must adhere to the pertinent specific dharma or moral laws. This is comparable to virtue because one must take

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[14] *Supra* note 27, Adhyaya 18, Shloka 45.

[15] Manu, Mᴀɴᴜsᴍʀɪᴛɪ, Chapter 2, Shloka 13.

morally suitable activities to pursue purity—defined as leading a morally upright life.

ii. *Artha* aims to secure the numerous necessities of life, including food, shelter, electricity, etc., necessary for an entire human life in society.

iii. *Kama* is pursuing one's wants and aspirations.

iv. *Moksha* aims to be free from everything defective and binding. The goal of *moksha* is typically seen to be a spiritual one. However, there are situations when the first three goals are perceived as having a material component.

With the distinctions between these goals and the various human activities necessary for achieving these aims, the ordering of life to achieve these four aims to the greatest extent possible for each individual represents the entire range of *Hindu dharma*. These distinctions have led to the types of *dharma* recognized traditionally in India, such as *samanyadharma*, *varnadharma*, *asramadharma*, etc. Since dharma reflects the ordering of life, which is a normative matter, it is crucial to attempt to comprehend the native idea of normative ordering that underpins the development of *dharma* in India.

Translations of '*dharma*' include 'morality, duty, religion, law,' etc. However, as *dharma* includes all of these elements in its numerous applications, no one term from the English language serves as a suitable translation. This difficulty in translation is mainly because the Indian society in which this phrase has functioned has entirely different thoughts and practices from the Greco-European community. The Western world has traditionally believed that man-cantered logics and principles for human behaviors apply. The Protagorean maxim, '*Man is the measure of all things*',[16] and the Aristotelian assumption that *man is above all else,*[17] rational have tended to encourage understanding about standards of action in terms of their sound design to support human goals. The thinking is man-cantered and rationalistic even in the Western tradition of natural law, where human norms are seen as the manifestation of divine law. This is because the highest natural laws apply to man and human reason (which, interestingly, Austin equates with utility) serves as the index to these divine laws.

V

Sources of *Dharma*

The all-pervasive concept of dharma influences all facets of a Hindu's life. It is a moral and natural order, and its disruption seriously affects people and society. A righteous

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[16] STANFORD ENCYCLOPAEDIA OF PHILOSOPHY, *Protagoras available* at-https://plato.stanford.edu/entries/protagoras/ (last visited on Oct, 07, 2022).

[17] *Id., Aristotle available at -* https://plato.stanford.edu/entries/aristotle/ (last visited on Oct, 07, 2022).

individual would want to carry out every action in line with dharma since, in theory, this natural and moral order should carry out every act of a Hindu's life. The Veda (*shruti*, sometimes translated as 'revelation'), *smriti*, custom (i.e., *sadacara*; literally, 'the practice of the good'), and whatever feels right to one's conscience (*atmasantushti*) are the four sources of dharma listed in the legal literature.[18]

The Veda is the ultimate source, and all assertions about dharma can be theoretically traced back to it. According to the commentators, both *smriti* and custom depend on the *Veda* in that they follow the traditions of diverse groups and locales, which can all be theoretically linked back to the Veda. The final source of dharma, 'whatever seems right to one's conscience', is the most ambiguous and least explored, but it appears to have been added to address situations in which there is no clear norm. In the latter instance, it is assumed that the person in question has received dharma instruction and is familiar with the sacred tradition. In each of these four instances, the connection with the Veda is the validation of their teachings on dharma.

The vast body of Sanskrit literature known as *smriti* (literally, what has been remembered') made an effort to impart the guidelines for leading a moral life. How this literature conveyed dharma, or righteousness as it was demonstrated in one's conduct of one's life, varied considerably. The Puras are a subgenre of *smriti*, including narrative works that narrate legendary tales cantered on the gods' different incarnations. Another subset of *smriti* literature is the famous Indian epics, the Mahabharata and the Ramayana, filled with didactic instruction.[19] By using the characters in their stories as examples, these two genres aim to teach dharma.

Dialectics of morality in Mahabharat

Mahabharata provides many opportunities for moral conundrums. The epic's characters are flawed, just like lesser mortals similar to us. They struggle with the ethical decisions that must be made in daily life. There are several parallels between Mahabharata and legal theory (jurisprudence). Are arguments based on black-letter law sufficient? Or should the law care about subtle moral differences? When Yudhishthira loses Draupadi in a game of dice, she is hauled into the assembly hall and asks, 'Whom did you lose first, yourself or me?'[20] The legal query is not addressed. What remains of the monarchs' dharma (or 'righteousness'),[21] Draupadi asks morally? Even the wise old man Bhisma dodges the query by claiming that there is no definitive response because dharma is nuanced.

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[18] Sarvepalli Radhakrishnan, FREEDOM AND CULTURE 39 (1946).

[19] George Codes, THE INDIANIZED STATES OF SOUTHEAST ASIA (Walter F. Vella, *ed.,* Susan Brown Cowing, *trans. (*1968).

[20] Gurcharan Das, THE DIFFICULTY OF BEING GOOD: ON THE SUBTLE ART OF DHARMA 55 (2009).

[21] Bimal Krishna Matilal, MORAL DILEMMAS IN THE MAHABHARATA 81 (1989).

However, society continuously faces similar problems and cannot afford to adopt a Bhisma-like stance. Even if *dharma* is subtle, judicial decision-making and legal analysis are inevitable. The Supreme Court cannot simply wash its hands of the issue of whether sexual relations between two people of the same sex is an offense or not[22] because it may involve finer points of *dharma.*

What is right in *dharma* may only sometimes be legal and vice versa. When Natural Law theory maintains that there is a necessary relationship between law and 'morality,' *dharma* is comparable to 'morality' in this sense. The traditional Natural Law theory was connected to God for a long time. Hugo Grotius, the founder of international law, was the first to break the connection between Natural Law theory and God to broaden its application. He said, 'What we have been saying would have a degree of validity even if we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to him'.[23]

Interestingly, God is not given any agency over *dharma* in the Mahabharata. As mentioned before, Draupadi appeals to the kings' dharma out of desperation. No one in the audience prays to God to provide an answer to the dharma question. Although the most famous verse in the favorite Krishna-Arjuna conversation just before the battle is to 'be intent on the action, not on the fruits of action,' it is not the strongest argument. Arjuna is unconcerned. Arjuna now understands that he is only a tool for what has already been predetermined, thanks to Krishna's final speech about fate. Dependence on the doctrine of destiny could mean that God has entered the world secretly. However, Krishna' It is interesting that God has no agency over dharma in the Mahabharata. As mentioned before, Draupadi appeals to the kings' dharma out of desperation. No one in the audience prays to God to provide an answer to the dharma question.

Although the most famous verse in the Krishna-Arjuna conversation just before the battle is to 'be intent on the action, not on the fruits of action,'[24] it is not the strongest argument. Arjuna needs to be more unconcerned. Arjuna now understands that he is only a tool for what has already been predetermined, thanks to Krishna's final speech about fate. Dependence on the doctrine of destiny could mean that God has entered the world secretly. However, Krishna's last comments to Arjuna are instructive - appealing to the cruciality of human agency, he says: 'This knowledge I have taught is more arcane than any mystery - consider it completely, then act as you choose'.[25] Like Natural Law theory, Mahabharata philosophy is tremendously empowering. It gives people the power of agency. It disagrees with the formalist exclusive *legal Positivism* that the law

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[22] *Navtej Singh Johar* v. *Union of India Ministry of Law*, (2018) SC 4321 (India).

[23] LIBERETEXTS HUMANITIES, *The Euthyphro Dilemma available at-*https://tinyurl.com/49ncjpum (last visited Oct., 07, 2022).

[24] *Id.*, at 51, Adhyaya 1, Shlok 11.

[25] *Id.*, Adhyaya 18, Shlok 32.

has authority and that there is a duty to observe it. It does not claim that if norm subjects had to choose the norm, it would lose its authority.[26] The Mahabharata does not represent a binary worldview. It considers the various grey levels. Indeed, grey is a standard color. The *dharma* issues are not meant to be entirely resolved by the Mahabharata. The Bhagavad Gita's first line, '*dharmakshetre kurushetre*', declares that this is a 'just war' with enormous moral implications rather than a simple conflict.

Krishna responds by choosing the lesser of two evils. This is comparable to H.L.A. Hart's assertion in the renowned Hart-Fuller argument that in some cases choosing the lesser of two evils may be preferable.[27] *Dharma's* consequences in the Mahabharata are intricate. Simply because human beings have the agency of interpretation does not necessarily ensure proper comprehension of fundamental morality. When the Mahabharata made the somewhat hubristic claim that 'what is here is found elsewhere; what is not here is nowhere', it is possible that dharma was in mind. However, it is evident from both the Natural Law theory and the Mahabharata that human reason can examine the reality known as *dharma*. It is possible that in the past, *sati* and slavery were considered to be morally acceptable. But it is debatable whether they have ever represented strict morality or *dharma.*

The *Dharmasastra*, or the 'science of *dharma*',[28] is a subclass of *smriti* that is far more technically and legally 'legal' in nature. Hindus believe that each of these *Dharmasastra* texts teaches the unchanging, everlasting dharma found in the *Vedas*. This literature assumed that the reader was knowledgeable about the ritual texts and experienced in performing Vedic rituals. Dharma literature was written to bring the Hindu community together. This was accomplished by allowing society's participants to harmonize their existence with the overall order. The vast array of subjects covered by this literature includes laws governing the conduct of daily life, such as diet, cleanliness, sleeping and waking hours, the choice of mates, criminal laws, laws governing social interaction, caste relations, sexual norms, laws of commerce, and laws governing agricultural activity. The norms of process and evidence are also covered in great depth.

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[26] Andrei Marmor, *Exclusive Legal Positivism*, In the OXFORD HANDBOOK OF JURISPRUDENCE 104-124 (2012).

[27] Dealing with the case of a German woman who sought to get her husband indicted under a Nazi law during the Second World War, Professor H.L.A. Hart said, 'There were, of course, two other choices. One was to let the woman go unpunished; one can sympathize with and endorse the view that this might have been a bad thing to do. The other was to face the fact that if the woman were to be punished, it must be under the introduction of a frankly retrospective law and with full consciousness of what was sacrificed in securing her punishment in this way'; H.L.A. Hart, *Positivism and the Separation of Law and Morals* 71 HARV. L. REV. 593 - 619 (1958).

[28] N. K. Tawakley, UNDERSTANDING SANATAN DHARMA 55 (2018).

The latter contains testimony, evidence, and a comprehensive analysis of the usage of ordeals as a dispute-resolution method.[29] This literature was seen to have inviolable laws and regulations simply because it dealt with dharma; as dharma is the very nature of the universe, rules about it are valid. In an ideal sense, the dharma literature outlined the characteristics of a good Vedic devotee. There are four categories of *Dharmasastra* literature:[30]

(i) The earliest aphoristic texts, the *Dharmasūtras*, each of which are attributed pseudonymously to a famous sage of antiquity.

(ii) Later metrical texts, also pseudonymous, often referred to by the term 'metrical *smṛitis*' and (somewhat confusingly) when in opposition to the *Dharmasūtras* by the term *dharmaśāstra*; commentaries (*bhāṣyas)* on both of the preceding; and legal 'digests' called *nibandhas*.

VI

Shifting the Paradigms of *Dharma*

Conventional dharma's theoretical and practical components have become dislocated in the current era. Although there are several accounts of dharma's historic and ongoing significance in Hindu life and thinking, numerous contemporary innovations pose a severe difficulty of continuity in its meaning. Ancient social customs, referred to as dharma, have been abandoned or changed, and a wide range of Hindu philosophers have endorsed this overall trend. We can quote Radhakrishnan once more, who has made similar claims supported by numerous others: 'If Manu were read for practical guidance today, it would have been better for us if Manu had not been born'.[31]

The source or locus of the content of dharma today, that is, of new dharma that is expressive of Hindu ideals, is a crucial issue that arises when an essential aspect of the meaning of dharma, its expression in the order of society that was said to be eternal (and eternally binding), is altered. The significance of another statement made by Radhakrishnan is as follows: 'We are currently experiencing a Hindu Renaissance, waiting for a new *smriti* that will stress the fundamentals of the Hindu spirit and alter its forms to make them more appropriate for India's changing circumstances'.[32]

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[29] *Id.,* at 81

[30] *Id.,* at 111.

[31] *Supra* note 53, Sarvepalli Radhakrishnan, at 104.

[32] Nath Prabhu Pardhar, HINDU SOCIAL ORGANIZATION: A STUDY IN SOCIO-PSYCHOLOGICAL AND IDEOLOGICAL FOUNDATIONS 5 (1963).

Dharma and state: From consonance to dissonance

The interaction of State and Dharma has been debated in both Indian and Western thought. State and Dharma had a tight relationship during the Middle Ages, and *dharma* also influenced State. The connection between State and *dharma*[33] has undergone numerous modifications since the Renaissance and Reformation, and these changes have impacted society worldwide. Machiavelli emphasized the difference between State and *dharma*. In Indian tradition, the connection between the State, *dharma*, and State power changed over time. In terms of the relationship between the State and *dharma*, ancient Indian philosophy is extensive. In the book 'Dharma and Society,' G. S. Mees[34] provides a general list of *dharma's* various definitions and components. He asserts that Dharma has been employed in many contexts across the following definitions:

    i.   Any word similar to the ancient word 'Rita'
    ii.   Appropriate from a moral point of view, spiritual duty, good virtue
    iii. Good action
    iv. Religious duty, religious virtue
    v.   Ideal
    vi. Equivalent to God in the form of ultimate truth
    vii. Perfect justice
    viii. Agreement between factual and ideal state & General law.
    ix. Samhita of customs and traditions & International or Inter-caste law.

The divine theory of the origin of the state has been eloquently argued in *Manusmriti*.[35] Manu asserts that the purpose of the king's creation was to guard against chaos and influential individuals who could exploit the populace. Manu claimed that God bestowed on the monarch all of the divine virtues. God imbued the monarch with the essence of Inder, Vayu, Surya, Agni, Varun, Chandrama, and Kuber when he created him. The *Manusmriti's* portrayal of the king reflects the ruler's unrestricted power. It demonstrates his power and how he impacts all other living things. Amazingly, God is the foundation of the king's supreme rule over all living things.[36]

However, in *Manusmriti*, the king is expected to rule by *Dharma* and *Nyaya* (Justice). However, *Manusmriti's* proposed link between State and Dharma unquestionably differs from the connection described in the *Arthashastra* or the Mahabharata. The king is called '*Dharma-Raat*' or the 'source of *Dharma*' in *Manusmriti*. It is further explained that the heavenly attributes bestowed on the monarch are what give rise to his remarkable nature.

Dharma has been acknowledged as a global, all-encompassing standard of conduct in worldly matters in the *Arthshastra* of Kautilya and the *Mahabharata*. *Dharma* has been

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[33] *Supra* note 53, Sarvepalli Radhakrishnan, at 38.
[34] Gualtherus H. Mees, Dharma and Society 3-8 (1935).
[35] *Supra* note 5, Adhyaya 1, Shloka 34.
[36] *Supra* note 51, Adhyaya 7, Shloka 54-76.

dissociated from the monarchical description in this way. Dharma has been viewed as both a form of power and something more significant and vital than the monarchical power in both *Granthas*. One feature of *dharma's* universality is that personal preferences cannot alter it.

The speed of social change is the issue with reformulating *dharma*. According to Radhakrishnan, the Industrial Revolution, the Political Revolutions, the Renaissance, the Reformation, and other developments in other nations over centuries, all occurred in India more or less simultaneously, compressed into a few years. Norms for guiding become even more vital due to this transformation, but they are also incredibly challenging. Insofar as *dharma* in the past assumed a static society and operated in a highly stable one, *dharma* could only continue to be relevant if a new system were created that could be firmly upheld. Dharma was unquestionably associated with a static, unlikely-to-alter technology in the tradition.

VII

Morality: Genesis of Traditional Sense of Hindu Law

Morality has been stated widely in the Vedas, Upanishads, and Bhagavad Gita, the foundation of Indian civilization.[37] These writings strongly emphasize character, empathy, and ethical behaviors, giving readers a moral compass to direct them toward living virtuously. Respected sages and spiritual authorities like Mahatma Gandhi and Swami Vivekananda's teachings have also influenced the moral foundation of Indian civilization.

The institution of the family has considerable value in Indian society. Family ties and relationships are of the utmost significance, and the moral foundation of society is intricately woven with these principles. High esteem is accorded to filial piety, respect for elders, and the need to look after one's parents in their later years. Family is crucial in teaching moral principles to the next generation and cultivating virtues like honesty, integrity, and empathy. In Indian society, religion is vital, and different faiths coexist together. Their religious convictions and behaviors influence the moral perspective of individuals.[38]Hinduism, Buddhism, Jainism, Islam, Christianity, and Sikhism are some religions that have influenced the nation's moral climate. Religious rituals, writings, and moral precepts offer a framework for moral behaviors and direct people toward the way of righteousness.[39]

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[37] *Supra* note 53, Sarvepalli Radhakrishnan, at 202.

[38] *Supra* note 53, Sarvepalli Radhakrishnan, at 122.

[39] *Supra* note 53, Sarvepalli Radhakrishnan, at 66.

Numerous social traditions and rituals are the foundation of Indian society. These traditions frequently represent moral ideals and act as norms for social conduct. The community's moral ideals are strengthened by customs, including respecting elders, welcoming visitors, and uniting in joyful festival celebrations. These behaviors encourage a sense of community and strengthen one's moral character. The social order's legal system and morality are intertwined. Laws are frequently passed to defend ethical principles and guarantee fairness. Laws in India that prohibit violence, bigotry, corruption, and other immoral behaviors are intended to uphold social order and safeguard the weak. A robust legal system protects societal moral standards and serves as a deterrent to moral violations.

While Lingat[40] has observed that there was no jurisprudence in the *Dharmasastra; it can* only be traced in *Mimansa* and literature that came afterward, present-day scholars like Fali S. Raman and M. P. Singh has also argued that the Indian legal system in the ancient time was not developed as the legal system elsewhere.[41] But this cannot be taken as it is because if we go back to the work of K.C. Bhattacharya in *Swaraj and Ideas,*[42] he has very beautifully said:

> 'There is cultural subjection when one's traditional cast of ideas and sentiments is suppressed without comparison or competition by a new cast representing an alien culture which possesses one like a ghost. This subjection is slavery of the spirit: when a person can shake himself free from it, he feels as though the scales fell from his eyes. He experiences a rebirth and that is what I call Swaraj in Ideas'.

The deployment of traditional Indian law became very fast with the arrival of the Mughal Empire. Marc Galanter has very finely traced the displacement in the displacement of traditional law in modern India, as he remarked:

> 'What, then, is the role of Hindu law in the Indian legal system today? The dharmasastra component is almost completely obliterated. While it is the source of various rules on matters of personal law, the sastra itself is no longer a living source of law; these rules are intermixed with rules from other sources and are administered in the common-law style, isolated from *Sastric* techniques of interpretation and procedure'.[43]

The foundation of all contemporary legal systems is individualism which is the central organizing principle of modernism. India's current legal framework is no exception to this growth. On the fundamental premise that villages are dens of ignorance or the traumatizing space for parochialism, modern law was uncritically accepted at the dawn

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[40] Robert Lingat, THE CLASSICAL LAW OF INDIA 229 (J. Duncan M. Derrett *trans*., 1973).

[41] M. P. Singh & Niraj Kumar, INDIAN LEGAL SYSTEM: AN INQUIRY (2019). *See* Fali S. Nariman, INDIA'S LEGAL SYSTEM: CAN IT BE SAVED? (2006).

[42] Krishna Chandra Bhattacharya, *Swaraj in Ideas*, FOUR INDIAN CRITICAL ESSAYS 13 (Krishna Chandra Bhattacharya & Sisirkumar Ghose *eds.*, 1977).

[43] Marc Galanter, *The Displacement of Traditional Law in Modern India*, LAW AND SOCIETY IN MODERN INDIA 31 (Rajeev Dhavan *ed.*, 1992).

of the Indian republican dreams, especially in light of the various social ills that are highlighted by progressive scholarship to the extent that India had nothing great for self-pride in their entire historical journey as a civilization. It is easily imaginable that the majority of contemporary social issues are, in essence, a result of modernism. Additionally, any attempt to look for solutions inside the latter's paradigm is sure to be counterproductive.

J.S. Mill received harsh criticism and was a champion of individualism and rights. He advocated for autocracy for the non-Western races. Some detractors accuse him of being ethnocentric and attempting to impose the liberal individualist principles of his own England on the rest of the world. Known for promoting the blending of cultures.[44] Bikhu Parekh believes that J. S. Mill was willing to impose a 'monistic vision of the good life' through violent and intolerable means of coercion.[45] According to Parekh, Mill sought to prevent the rise of a subordinate group by banning any diversity that stresses 'ethnically grounded'[46] or 'traditional and customary ways of life, as well as those centred on the community'. This is because Mill believed that some cultures are superior to others. Mill is a 'missionary' for liberal diversity, according to Parekh, who is intolerant of non-liberal ways of thinking.[47]

To those who understand imperialism as the forcible interference in the affairs of others or the imposing of one's beliefs on other people, the idea of tolerant imperialism may be confusing. When expressing the concept, one must be careful not to offend anyone. 'Each citizen is to be permitted to believe only what his reason tells him, be that reason enlightened or misguided, provided he threatens no disturbance to public order', argues Voltaire.[48] According to Voltaire, tolerance necessitates caution while interacting with other countries. He argues that it is illogical to believe God values us because we are all ants in a big cosmos.[49] Voltaire, a fervent supporter of toleration, was not opposed to exposing those with a 'mental disease to the influence of reason'. Even though a policy of toleration appears to include allowing 'peace- loving people to live unmolested', Voltaire was not a fan of doing so. He points out that reason is kind, compassionate, tolerant and eliminates the need for force.[50] Can one rationally justify both imperialism and tolerance? Curing foreigners' mental illnesses seems suspiciously imperialist and hardly tolerant. If we acknowledge the malleability of the term

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[44] Bhikhu Parekh, *Decolonizing Liberalism*, IN THE END OF 'ISMS'? REFLECTIONS ON THE FATE OF IDEOLOGICAL POLITICS AFTER COMMUNISM'S COLLAPSE 85-103 (Alexander Shtromas, *ed.*, 1994).

[45] Parekh, *Liberalism and Colonialism* in LIBERALISM AND COLONIALISM: A CRITIQUE OF LOCKE AND MILL 96 (Jan Pieterse and Bhikhu Parekh *eds.*, 1995).

[46] Bhikhu Parekh, *Id.*

[47] Bhikhu Parekh, *Id.*

[48] Francois Voltaire, TREATISE ON TOLERANCE AND OTHER WRITINGS 49 (Simon Harvey, *ed.*, 2000).

[49] *Supra* note 56, Bhikhu Parekh, at 88.

[50] *Supra* note 56, Bhikhu Parekh, at 97.

'imperialism,' the challenge becomes easier. Although 'imperialism' is sometimes referred to as a concept that is 'morally bankrupt,'[51]or nearly meaningless, it does have a common definition: it entails interfering in the affairs of others, placing an imposition.

Imposition of law

The contemporary Indian legal system was a duty-bound society that compelled every conscientious citizen to question the fundamentals of access to justice.[52] India has its own indigenous system of law and justice in the pre-British era where justice was not confined to materials like money or gold. But now the system has been changed completely, and the change can be traced in the hegemonic histrionic view, whereas the narrative became one-sided, subaltern view was excluded. In a way an alien legal system was imposed. It was a 'cultural project' led by Britishers to distort the indigenous sense of law.[53]

The efforts to rediscover 'genuine' customary law untarnished by the colonial past and to celebrate it as a symbol of the indigenous cultural and legal identity have dominated postcolonial debates. However, the need for a contemporary and uniform legal system in formerly colonized nations highlights the effectiveness—or lack thereof—of colonial judicial management.

The European imperial powers were obligated to employ local sources and forums in order to make colonial rule work with a small number of colonial administrators. Even while both Europeans and natives were subject to the same procedural laws, there was a distinct distinction made between the substantive laws that applied to each group. The European system of legal pluralism was characterized by the application of divided laws that were overseen by distinct tribunals.

The core of segregation in European colonies was the population's legal designation. Recent research on French colonialism has revealed that, beginning in the middle of the nineteenth century, the concepts of nationality and citizenship began to be separated, and that the extra- legal concept of race started to take hold as a fundamental framework, replacing the pre- existing citizen/native dichotomy. The failure of the assimilation policy came to be attributed primarily to race. Explicit racialization, which prevented native subjects from enjoying certain privileges enjoyed by Europeans, has been considered as illustrative of the hollowness of liberalism's colonial claim.

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[51] Robert Johnson, BRITISH IMPERIALISM vii (2003).

[52] Mritunjay Kumar, *Access, Justice, and Dharmoprudence: Deconstructing the Meta-Narratives of Oriental Despotism* in Anupama Goel & Seema Singh (*eds.*), REFLECTIONS ON ANCIENT INDIAN JURISPRUDENCE IN THE CURRENT SOCIAL & JUDICIAL SET-UP 195 (2021).

[53] *Id.*, at 198.

VIII

Conclusion

Dharma in traditional Hindu thought, covers a complex and significant conjunction of religion, law and morality, promoting a unified ethical framework, guiding individual and societal conduct. It has a foundational influence on moral behaviors, societal norms, individual duties across various contexts. The philosophical basis of Dharma suggests a metaphysical dimension, emphasizing that morality concerns-how things should be, resonating with Kant's idea of duty driven actions. The Mahabharata, with its rich narratives of moral dilemmas, elucidates the complexities of Dharma.

Socially speaking, Dharma categorizes duties through the varna system, promoting harmony by aligning responsibilities with one's characteristics and societal roles. Accordingly, the sources of Dharma-Vedas, smriti, customs, and conscience provides a comprehensive framework for ethical living, ensuring its relevance across different periods and cultures. Despite modern re-interpretations and societal shifts, the root principles of Dharma continue to hold their footing in the midst of contemporary discussions on ethics in India. The relationship of Dharma with state governance also tends to change over time because of historical and philosophical changes, advocating the very dynamic interplay between ethics and power.

Dharma thus remains a cardinal pivot in the traditional Hindu world view, intricately linking- law, religion, and morality. The enduring significance of Dharma as a moral compass, shaping ethical behaviors and maintaining social order in both traditional and contemporary contexts glare its relevance. The integration of which into all facets of life illustrates its pervasive influence, ensuring that it remains a cornerstone of moral and ethical thought in the Indian Society.