



International Journal of Sanskrit Research

अनन्ता

ISSN: 2394-7519

IJSR 2022; 8(2): 149-151

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www.anantaajournal.com

Received: 19-01-2022

Accepted: 21-02-2022

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A survey of the Indian judiciary in the light of Manu Smriti & Brihaspati Smriti

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Abstract:

The provisions of Smriti are variable, yet why the importance of Smriti Shastra written three thousand years ago from today? To understand this, we need to discuss a little bit of Western philosophy. The philosopher Plato said, "Wonder is the father of philosophy." The period of Plato is approximately 428 BC to 348 BC. So, when Plato was a philosopher, the thought of Western philosophy was very underdeveloped, and this underdeveloped doctrine echoed that thought as a representative of that society. Because people did not know what Substance was then, they did not know anything about Theory of Causality, they did not have a clear idea of Realism & Idealism. But today we know that it is inappropriate to call something special as the father of philosophy because it is a defect in the field of knowledge and theory. In the same way, without the provisions of smriti, all the provisions would not have been made in the future and the society would not be able to come to the present situation, if the society could not be stabilized at that time.

Keyword: Indian judiciary, Manu Smriti, Brihaspati Smriti

Introduction

Manu-smriti, also called Manava-dharma-shastra. The Manu smriti prescribes to Hindus their dharma—i.e., that set of obligations incumbent on each as a member of one of the four social classes (varnas) and engaged in one of the four stages of life (ashramas). It contains 12 chapters of stanzas, which total 2,694. It deals with cosmogony; the definition of the dharma; the sacraments (samskaras); initiation (upanayana) and the study of the Vedas (the sacred texts of Hinduism); marriage, hospitality, funeral rites, dietary restrictions, pollution, and means of purification; the conduct of women and wives; and the law of kings. The last leads to a consideration of matters of juridical interest, divided under 18 headings, after which the text returns to religious topics such as charity, rites of reparation, the doctrine of karma, the soul, and hell. It's making no categorical distinction between religious law and practices and secular law. Its influence on all aspects of Hindu thought, particularly the justification of the caste system, has been profound.

On the other hand, Brihaspati smriti is one of the legal literatures of ancient India. The old legal literatures are Manu smriti, Yajnavalkya, Narada and Brihaspati. They represent the last stage of legal development. Indeed, they are the last of the original law givers of the ancient India. Brihaspati is closer to Manu. Brihaspati assigns premier place to the code of Manu, yet it explains amplifies and does not hesitate to modify rules on various topics wherever found necessary. Brihaspati speaks of four courts The four Courts are stationary or fixed which sat in village or town also court has grades. If a cause had not been duly investigated by kula it could be decided by sreni (श्रेणी), if it had not been examined by sreni (श्रेणी) it could be decided by gana (गण) and finally by the royal judges. Brihaspati speaks of twelve kinds of witness. Brihaspati permits peasants, artisans, hired labourers, herdsmen, hunters, gleaners, diggers of roots as also fishermen, to act as witness in respect of boundary disputes concerning the house and fields. Brihaspati equates a false witness to a slayer of a Brahmana and considers him a great sinner than the killer of an embryo or a destroyer of wealth. Brihaspati makes an important land mark in the history of Hindu law by classifying Manu's eighteen title of law under two broad heads, Civil and Criminal law. Under Civil law were listed such titles as money lending, deposits, concerns of partnership, non-payment wages, land dispute, sale without ownership, sale and purchase, breach of contract, relation between husband and wife,

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theft and inheritance gambling which spring out wealth.” The two kinds of insult, violence and criminal connection with another's wife which spring out injury to others came under Criminal law. Some principle of Brihaspati is embodied.

Manusmriti & Brihaspatismriti: Indian Judiciary

There must be an ideological difference between the current law and the legal system discussed in Smriti Shastra. Laws or rules are always made in the society by the expert people of the society, laws or rules are always made by judging the social situation of that time. The Manusamhita and the Brihaspatismhita that I am referring to are a code of at least three thousand years ago. The problems of India at that time, the thinking of the people, the guilt mentality is very different from the present society. So, judging from today's situation, it is never possible to understand the basic philosophy of these two memoirs. If we look at the Constitution of India, we will see that our Constitution was enacted on 26th November, 1969, then in the last seventy-two years this Constitution has been changed and amended many times. So, if the problems and perspectives of seventy-two years ago have changed many times since then, how reasonable would it be to judge the problems and perspectives of about three thousand years from today's situation and perspectives?

Also, by studying the Smriti Shastras, one can understand how realistic and humanistic the provisions of Smriti are and how relevant they are even today. In the context of the judiciary, Acharya Manu has explicitly discussed his code. On the other hand, the use of the Brihaspati has been discussed about the then judiciary.

In order to implement the will of the state, the government has to perform three basic tasks. Namely- law making, administration and administration of justice. There are three departments of government to do these three things smoothly. E.g.

1. Law Department.
2. Administration Department.
3. Judiciary.

The job of the law department is to make and amend laws and to control the governance department. The function of the Governing Body is to conduct governance and to represent the state at the national and international levels. The job of the judiciary is to enforce the law in special cases, to protect the rights of citizens and to punish the perpetrators according to the nature and depth of the crime. Acharya Manu in his Samhita speaks of the eighteenth place of contention. (अष्टादश विवादस्थान) In Brihaspati Smriti the Four place of contention. (चतुष्पाद- व्यवहार). There is considerable similarity between the legal system prevailing in the present age and the above topics discussed in Manusmriti and Brihaspati Smriti. Criminal notions such as eloquence, impunity, stigma, adultery, defamation etc. Besides, the rest is our civil right. In Manusamhita is said that at least three or more Vedic Brahmins will conduct the trial. On the other hand, Acharya Brihaspati speaks of conducting justice by three, five or seven people.

According to the Indian Constitution, Parliament can legislate to determine the number of judges of the Supreme Court of India. Article 124 (35) of the Constitution of India (Establishment and constitution of the Supreme Court) states that the number of such judges shall be one of the Chief Justices of the Supreme Court of India and shall be accompanied by a maximum of seven judges. Which is quite

similar to the number of members mentioned in the memoirs. The number of judges was increased to twenty-six in April 1986, again in 2019 it was increased to thirty-three. At present the International Court of Justice is governed by fifteen judges for a period of nine years. The Supreme Court is currently the final appellate court of India. Article 132-134 of the Indian Constitution states that four types of cases can be referred to the Supreme Court. They are -

1. Appeal regarding interpretation of constitution.
2. Civil appeal.
3. Criminal 45 Appeals.
4. Appeal with special permission.

These four types of use do not differ in principle from the criminal law discussed in the Brhispati Code with respect to the use of civil cases and criminal matters.

On the basis of certain matters to be decided in a case-

1. Evidence.
2. Inference.
3. Law.

The order of a king

Of these four types, the first type i.e. Evidence has been given the highest importance. In today's context, it can be said that various official policies (Official Gazette), notifications, ordinances are the orders of the king in the present age. Therefore, the rules of Smriti Shastra and the rules prevailing in the modern justice system are quite similar even in the case of giving judgment. The Brihaspati smriti said that both the plaintiff and the defendant will be given time to argue in their favour during the judgment of use, which has been rename as an attachment before judgment in the present judicial system.

Conclusion

Some special differences may be observed between the ancient system of justice and the modern system of justice. In the present age, cases have to be filed with court fees, the one who is complaining has to pay first, the money has to be paid to the government. This arrangement is a serious obstacle in the way of redressal of wrongdoing. Harassed by fear of cost, the aggrieved person is reluctant to seek recourse to the courts. In ancient times the plaintiff did not have to pay any court fees. Whoever was found guilty as a result of the trial, whether he was a plaintiff or a defendant, the state would punish him. The main feature of ancient penal policy was fines.

Another characteristic of the ancient penal system was simplicity. At that time there was no mediation of lawyers, the parties used to make their own statements and present evidence. It would have cost less. In the present system, from time to time, the one who has the money, wins, sells justice to the highest bidder. In antiquity he had little chance.

Methodology

Various processes of research can be observed, such as descriptive research, applied research, correlation research, activity research, evaluation research, explanatory research, etc. Analytical studies belong to descriptive studies. There are three types of descriptive research.

1. Post-incident investigation.
2. Historical research.
3. Analytical research.

I have applied descriptive methodology and my work is mainly based on secondary source of information such as published documents, books, journals etc.

Acknowledgement

I Would like to express my deepest gratitude to my Teachers Prof. Dr. Ajit Kumar Mondal (Sidho-Kanho-Birsha University, Purulia, West Bengal) and Dr. Kuntal Ganguly (D.A.G college, Harirampur, West Bengal) for contributing their valuable time and efforts in helping me out with this project. Their suggestions and feedback have helped me a lot in improving the quality of the project. I have achieved a good amount of knowledge through the research and the help that I got from my research guides.

I would also like to thank all my teachers from department of Sanskrit of Sidho-Kanho-Birsha University and University of Gour Banga for their constant encouragement and support throughout the project.

Lastly, I would thank my friends and family who supported me emotionally as well as academically to complete this project without any obstacles.

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