Institute for Oriental Study, Thane

SEMINAR ON

LAW AND JUSTICE IN ANCIENT INDIA

ABSTRACTS OF PAPERS

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Dr. Bedekar's Hospital,
" Shiv-Shakti " Maharshi Karve Road,
Naupada, Thane 400 602

Phone : 542 1438 / 542 3260 / 542 4518.

Mrs. M. VISALAKSHI
Research Assistant,
Dept. of Sanskrit, University of
Madras.

" Law and Justice known from Sangam Literature"

Every civilisation is governed by perfect law and discipline. Only people who obey the law and justice can make a civilised society. It is reflected in their literature.

Tamil has the earliest and finest literature of all the Dravidian languages. There are two traditions known as Sangam period of literature and classical literature. The Sangam had three academic assemblies. The first two Sangams were devoured into the Indian ocean along with the landscape of the South India. In the remaining, or the third 'Sangam', we get references about the two earlier Sangams. The first sangam was patronised by 89 Pāṇḍya kings and the second by 59 Pāṇḍya kings. The last or the third Sangam was patronised by 49 kings and was located in the modern South Madurai and the Sangam lasted for nearly 1850 years. The last Sangam flourished between 300 B.C. and 300 A.D. We learn the conditions of the society, religion, manners , belief and superstitions of the people of that time from the literary works. While the three Sangams arose one after another Tamil had an unbroken line of literary tradition running over thousands of years. Rulers of the three kingdoms the Chera's the Cholas and the Pandyas had a good administration and they were generous, firm and impartial, perfectly honest and sincere. Law and order was kept strictly perfect and people lived a peaceful and secure life. In this paper I would like to highlight a few examples of justice from the Sangam Literature.

Dr. H. V. SHINTRE
Research Scholar, Pune.

Address :
11, Jaydeep,
848, Sadashiv Peth,
PUNE - 411 035.

Can Dharmashastra become obsolete ?

'Dharmashastra' is an educational suction drawing upwards primitive backward semi-civilized and often wild tribes into a society in which behaviour is organized and morality cultivated. Often the texts are authorities for the Hindu Law. The sacred scriptures are people's aspirations and intuitions refined after centuries of hard experience, committed to words crystaliesed in the form of propositions, none the less real for being phrased poetically. They may not stand up to rational examination but they are believed because such beliefs express the real attitudes, inherited leanings and group aspirations to which most individulas in their hearts are committed from the cradle to the pyre. The ideas to be found in the 'Shastra' are abandoned on the surface but the attitude of mind and the conception of life remain the same. The old tension between the desire to be righteous and the temptation to be unrighteous is resolved by the pull upwards to act without desire and to know and seek absorption in self remain, and the more India's miseries and frustrations become the stronger these will grow and the more pervasive will be their call.

Dr.(Mrs)VANAMALA PARTHASARATHY
Dy. Director, A. I. R. I., Bombay - 400 005.

'The Sceptre of Justice' - Instances from Ancient Tamil Literature.

In ancient India the king was the protector of Law (Dharma rakṣakaḥ) , and dispenser of Justice and punishment (Nyāyadhātā and Daṇḍayitā). He upheld the royal sceptre, which signified not just the

'royal authority' alone , but royal justice as well. This is clear from the statement made in the Caṅkam work Puṟanaṇūṟu (20, Line 17) which is translated as follows : ' It is the beautiful rod on which sleeps the justice for all'. Tirukkuṟaḷ, generaly assigned to the early centuries of the Christian era also remarks in a stanza translated as follows :

'From whose sceptre, laws and justice flow,
There falls rain and crops abundant grow'

(Ch 55, St.5)

Scholars have given accounts of crime and punishment prevalent in ancient India inclusive of Caṅkam and Cōḻa periods. However, in this paper it is proposed to examine elaborately the judgements and punishments meted out in three instances only. These references are drawn from texts such as Kuṟuntokai, Puṟanāṇūṟu belonging to Caṅkam Literature (500. B. C. - 200. A. D.) , and one of the twin epics Cilappatikāram (100. A. D. - 500. A. D.). Two of the above offences pertain to accusations of thefts and one to appropriation of treasure - trove. The punishments accorded in the above cases seem to indicate a faltering 'sceptre of justice'.

Three sections would constitute the paper. In the first, references taken from early Sanskrit sources such as Manu Smṛti enjoining punishments for crimes like thefts and King's claims to treasure-trove whould be given. The second section would describe in detail the three episodes connected with the specific instances taken for discussion. Out of these one relates to a petty cheif Naṉṉaṉ. He ordeded a girl to be put to death because she had eaten a mango which had fallen from a tree of the King's garden, and had come floating in the river. The other is concerned with the King Pāṇṭiyaṉ Neṭuñceḻiyaṉ of the Pāṇṭiya kingdom. He got Kōvalaṉ, the son of a rich merchant from the town of Pukār in the Coḻa country, executed on charges of theft of his Queen's anklet. Later the accusation was proved false. The third case refers to one Vārttikaṉ, a brahmin from Taṅkal. He was put behind bars by sentinels of the Pāṇṭiya King out of Jealousy, after framing charges on him for appropriating the treasure-trove, as by right it went to the Royal treasury. The last two incidents are from Cilappatikāram.

The concluding section of the paper would carry an analysis of the cases, dealt individually, accompanied by comments.

Dr.(Mrs.) RAJANI S. PATKI
Institute of Indology, Dnyana Prabodhini, Pune.

Address :
12, Madhuban B,
38/2, Karvenagar,
PUNE - 411 052.
Phone : (0212) 360175, 360815

Kauṭilya and his Predecessors on Law and Justice.

Summary of the Paper

Kauṭilya's Arthaśāstra is a unique book of its age. It has fifteen main chapters consisting of sub-chapters numbering from one to thirtysix. Kauṭilya refers to four vidyās viz, Ānvikṣiki, Trayi, Vārtā and Daṅḍanīti. Many of his predecessors assert that Daṅḍanīti is the only one which helps to control the beings; but Āchārya Kauṭilya is against them and he says that vigorous Daṅḍa : punishment is torturous to beings. The king who orders the punishment of death for a minor vice is dishonoured by the people, and the king who gives a punishment weighing equivalente to the crime is honoured by the people. To express his views pertaining to his predecessors' assertions on polity and Daṅḍanīti, he has written his magnum opus Arthaśāstra in which a full section i.e. ch. No.

3 named 'Dharmasthiyam' containing - nineteen sub-chapters is devoted to various aspects of Jurisprudence as well as substantive and procedural law.

During the survey of the section on Dharmasthiyam some special traits were noted by the present writer. For example, in chapter four he discusses two points : 1. The problems of women and 2. The difficulties they face during married life. Kauṭilya has stated the views of his predecessors, and while agreeing with them he adds his own reliefs by which it seems that he is more merciful towards women than his predecessors.

This paper will try to discuss the third section, already refereed above, concerning the problems of women, Dāyabhāga, Ṛnadāna, labour charges, punishment to accused persons etc., which will focus on the views of the predecessors of Kauṭilya as well as Kauṭlya's worthy contribution to law and justice in ancient India.

Dr. N. GANGADHARAN
Prof. of Sanskrit (retd.),
University of Madras.

Dispensation of justice in the Divine Court

There is an interesting legend in the Purāṇas describing the abduction and seduction of Tārā, the wife of Bṛhaspati, the preceptor of the celestials, by Candra and protection sought by the latter from Śukrācārya who censured Candra for his conduct and later purified him by means of the power of his penance transfering the sin of Candra to doers of different kinds of offences. Śukrācārya gave the verdict that a chaste woman ravished by a gallant does not get polluted and advised Tara to return to her husband.

After being informed by his pupils, Bṛhaspati lamented at first referring to the important role played by the wife in the house. Accompanied by Indra he later proceeded to Brahmā. Brahmā and the other gods examined the course of action and the expediency for recovering Tārā from Candra. Finally Brahmā succeeded in his attempt by means of mediation.

This paper describes the action taken by Brahmā, the enforcement of justice, the salient utterances made by the different gods as described in the Brahmavaivartapurāṇā, and makes an evaluation.

Prof. Dr. R. P. MEHTA
Maharshi Academy of Vedic Sciences,
P. G. Institute, Gujarat University.

Address :
778-1, 'Shivankali', Madhuram Flats,
Sector 21, Gandhinagar - 382021.
Phone (R.) : 20038.

A Courtromm Scene

The Mṛcchakaṭika of Śūdraka (3rd century A. D.) - a drama in ten acts- occupies a very high and distinguished position. Therein we see an exact reflection of the conditions and manners of contemporay society, including its laws in particular. The ninth act gives us special insight into the judicial administration. Some stray observations deduced from its courtroom scene :-

(i) The judge was assisted by two assessors.
(ii) Justice appears to have been both impartial and speedy.
(iii) The judge had to follow well-formulated rules.
(iv) He could give his decision only in the form of a recommendation.
(v) The passing of the final order lay with the sovereign.

(vi) The punished criminal could be set free some great event happened.

(vii) The executioners had some discretionary powers. They could release a prisoner.

Dr. E. R. RAMABAI
Reader in Sanskrit, University of Madras.
Madras. - 5.

" Enforcement of law and discipline in business and commerce " according to Yājñavalkyasmrti

नृपस्य परमो धर्म: प्रजानां परिपालनम्
Sutra - I.14

Nṛipasya paramo dharmaḥ prajānām paripalanam.- Sutra - I.14

Protecting the subjects is considered to be the most important duty of the sovereign by all the law-givers and digest-writers. Kauṭilya prescribes that the king was to look into the disputes of citizens and country prople in the 2nd part of the day (which is divided into eight parts) : - Dvitiye paurajānapadānām kāryāni paśyet - I. 19). Mitākṣara, commentary on Yājñavalkyasmṛti (II.1) says that the protection of the subject cannot be fully achieved unless the wicked one is eradicated.

For the proper administration of the kingdom and enforcement of law and dicipline, civil and criminal laws had been formulated by the ancient law-givers. These are discussed in the section called Vyavahāra in the Smriti texts.

The word Vyavahāra is used in several senses in the sūtras and smrtis. One meaning is 'transaction or dealing ' (Apast. dharmasutra II. 7.16.17). It also means a dispute, a law suit (Yaj : II.i) A third sense is ' legal capacity to enter into transactions ' (Gautama X. 48). A fourth but a rare sense is the means of deciding a matter as in Gautama dharamasutra (XI. 19) ' tasya vyavahāro vedo dharmaśāstrānyaṅgāni'. In this paper Vyavahāra is taken in the sense of 'law-suit, or dispute in a court or legal procedure'. Vyavahārapada means the topics or subject matter of litigation or dispute'. This includes many topics, one of them, according to Kauṭilya, is Kaṃṭakaśodhana i.e. removal or punishment of harmful persons. The chief matters that fall within the purview of this topic are cheating, malpractice, adulteration, delay in supplying goods, return of goods (articles) purchased, exhorbitant increase in the prices of business commodities etc., and fine and punishment for the above. This section also deals with criminal law such as punishment for causing murder., etc.

This paper intends to give an account of the Civil Laws pertaining to business and commerce as given by Yājñavalkya under the title - sāhasaprakarana - to help smooth transaction among merchants both local and foreign.

Dr. N. S. RUGMINI, M.A., Ph.D
Research Assistant, Dept. of Sanskrit,
University of Madras.

" Rājanīti in Vālmīki Rāmāyaṇa" a brief analysis

Vālmīki Rāmāyaṇa, the ādikāvya sets an example for a remarkable Rājanīti. The various episodes interwoven with the thread of perfect harmony, reflect the satisfaction, the happiness and the wholesome life of the people in the Tretāyuga. A country in which the people follow their respective dharmas seldom require the leadership of a king. Still a peaceful country needs to be protected by a king from foreign invasion and also should be expanded by the conquering of neighbouring countries. In this way, the dharma of a king is known as Rājanīti.

Rājanīti involves the code of conduct, the rule, administration etc., by the king. The power of the king vests with the people. King is the 'ruler' of the people living in a village as well as in city. It is the foremost duty of a king to protect his subjects with utmost care. For that, there should be a huge fortress, well qualified ministers and a group of sages who will lead the king in taking decisions pertaining to righteousness. All these requisites necessary for a typical country were present during the time of Daśaratha and no doubt, during the reign of Śrī Rāma.

We get a good example of a dutybound Emperor, instances where people were given utmost importance while taking vital decisions, how their feelings were taken care of even at the cost of the king's personal loss, how spies were treated, how messengers were given adequate importance and how the king was magnanimous in leaving weaker supporters of the enemy and how a person violating the fundamental dharma was punished severely.

This paper attempts to bring out the most impressive instances of the above said events and thereby establishing the uniqueness of law and justice that prevailed in that ancient period cherishing which we must be proud to have had such a fine system of law and justice several thousands of years before.

Dr. C. L. PRABHAKAR.
Head of the Dept. of Sanskrit,
National College, Jayanagar,
Bangalore - 560 082.

" Law and Justice in Ramayana "

" Santaḥ chāritra hetavaḥ "

Epics of India, viz. Ramayana and Mahabharata are veritable sources to educate ourselves regarding Law and Justice. Dharmasastra granthas have been written before and after these epics, but the epics have illustrated in a story form, the rules and regulations to better human behaviour so that the society remains strong and long-lasting. When we turn our attention to Ramayana, we notice that this kavya contains a great deal of knowledge of Law and Justice, though not directly, which would be useful to the contemporary times and also the times that will. Ramayana speaks of Dharma in the sense of duty, obedience and righteousness. To explain dharma , the character of Rama is selected to be an example. Sri Rama is described to be the very manifestation of dharma and his behaviour, a model for dharma in practice. (" Ramo vigrahavān dharmaha ") Rama tells Sita, soon after his marriage with her, that she should regard him equal to sages who vote for dharma and dharma, only. ("Viddhimamrishibhistulyam kevalam dharmamasritam") Like Rama, every other character of Ramayana is committed to one's own order of dharma. However, dharma and adharma compete with each other and ultimately, it is shown that dharma excelss over adharma. Like men, rakshasas were also Law makers and expecting justice of their own order. But their dharma was against the normal order of law thus harming the social justice and welfare. Punishment is a form of justice for the violation of Law. The standard of Law and Justice during the times of Ramayana was high and therefore it could be reckoned as a source book for realising the values etc. of justice.

Rama punished Vali for two reasons, viz., he deprived Sugreeva his due share of land and secondly he took away the wife of his brother. When dharmamurthi i.e. Rama killed Vali it was justice. In fact, it was questioned by Vali how lawful and justifiable Rama was in according a punishment to him. Rama gave the answer suitably and that silenced Vali. So a King or any Authority at any time is answerable.

The Paper discusses the prominent details of Ramayana in order to point out the contribution it makes to the knowledge about

Law and Justice of Ancient India. During every period in the history, there have been law makers and law violators and justice was sought by both of them and therefore, the volume of literature on law and justice is enormous and hence, Ramayana forms a good chapter in the history of Law and Justice of ancient India. To talk of change in the set order, we mention a ready example in Mahabharata. When Draupadi was kidnapped by Jayadhratha, he was given a very minor punishment and was left free with life. That was the justice for Draupadi. In Ramayana however, Ravana was killed which was the desired justice which Sita insisted. So, the state of Law and Justice becomes ordinarily variable from time to time. So, dharmasastras grew up with their own texts making moderations and providing justice for the social welfare of the people at all times. In a nutshell, Law is supreme though it bears some exceptions, and justice is always thought of. Before the goddess of Law one should bow seeking appropriate justice.

Dr.(Mrs.) MEENAL PARANJAPE
Reaserch Scholar, Andheri, Mumbai.
Address :
17/A, Shilpa Apartments,
Dr. Charatsing Colony,
Andheri (W.), Mumbai 400 093.
Tel. No. 821 7150

The Laws regarding women in Kautiliya Arthashastra

Ancient Indian History is really like an ocean. Its depth many times one cannot fathom, and just like an ocean it is a very rich source of gems of thoughts and principles which have stood the test of time.

Many times it is said that till British rule came to India no thought was given to the plight of women in the Indian Society. Manu Smriti is heavily emphasised and often quoted to prove this point. But Manu Smriti is not the only work on ancient laws. In fact to get the correct picture of ancient Indian laws and justice administration, other works should be referred.

One such important work is Kautiliya Arthashastra. This work by Kautilya also known as Chanakya & Vishnugupta, is a major treatise on politics, governmental machinery and administration. The importance of Kautiliya Arthasahstra regarding laws and administration of justice is great, as the work is mainly concerned with politics, administration and statecraft.

Even though just like other works on laws, one cannot find any difference made between religious duties and laws, one finds more practical approach towards it as the work is concerned mainly with running of a state. Therefore Iwas are not just ideals described, but rules to be applied, used and implemented.

So it is logical that in Arthashastra one finds not only practical approach but also practical difficulties arrising while implementing the laws. More so in case of laws regarding women, kautilya Arthashastra throws light on women's rights, laws regarding marriage, divorce, remarriage, property as well as crimes committed against women.

An attempt has been made in this paper to show that a lot of consideration was given to laws regarding women, in Kautiliya Arthasastra. Also administration of Justice is considered as it will present a correct picture of implementation of these laws. Also comparison with other contemporary societies in the world regarding such laws is made and some questions raised. Here the date of Kautiliya Arthasastra is assumed as 327 B. C.

Dr. N. K. CHAKRABARTI M.A., LL.M., Ph.D.
Head of the Dept. of Law,
Govt. of West Bengal,
Hooghly Mohsin College,
P. O. Chinsurah, Dist. : Hooghly.
Pin : 712 101.

Concept of Exemptions from Criminal Liability in the Smrtis

Law and Justice was one of the inportant political institutions in the life of ancient Indians. The Smrtis hold that in the dim past there was a golden age when men lived a life of truth and right conduct. But when dharma declined among men, administration of law and justice came to be introduced and the king was declared to be the decider of disputes and the chastiser of the guilty.

" Dharmaikatanah purusah yadasan satyavadinah
..... naste dharma manusyanah vyavaharah provartane
drstacha vyavaharanam raja dandadharah smrtah ".
(Narada, 1-2)

Thus in the smriti concept of justice, the king had to Wield his rod to punish the wicked and mete out proper justice. Moreover to mete out proper justice to persons who deviated from the norms the king had to recognise some principles of exemption from criminal liability in the administration of criminal justice in the line of our present Penal Code. There are some slokas in the smriti shastras, such as in the Manu (slokas 104, 339, 341, 349 etc) and Yagnyavalkya (Ch-II, sl. 301-302 etc) where we get the principles of exemptions from criminal liability in the line of theory of exceptions in any penal code. We may note two of such slokas from the Manu in English hereunder (the Roman script & Devangari will be given in main paper) :

Manu : " 339. The taking of roots and of fruit from trees, of wood for a sacrificial fire, and of grass for feeding cows, Manu has declared to be no theft.

341 . A twice-born man, who is travelling and whose provisions are exhausted shall not be fined, if he takes two stalks of sugar cane or two (succulent) roots from the field of another man ".
(The sacred Books of the East, Vol. XXV, The Manu, Tr. by G. Buhler, 1988, P. 313).

In the background of India's crime structure as published by the Government of India an attempt has been made in this paper to analyse and suggest how we may revise our Penal Code by decriminalisation of some petty offences following the philosophy of our ancient Dharma shastras and Smrti shastras. The author believes that in this process the present problems of huge pending cases in the criminal courts can be avoided and the administration of criminal justice may to give more attention be able to more grave offences.

Dr. SHRINIVAS TILAK
Dept. of Religion,
Concordia University,
1455 Boulevard De Maisonneuve West,
Montreal, Quebec, Canada H3G 1M8.

Vedic Foundations of Human Rights

Rajni Kothari, a distinguished Indian social scientist, has astutely observed that human rights movement in India still remains in search of a theory. In practice, inability of the human rights movement to make much headway in modern India may be traced in part, to near absence of mechanisms to forge a link and continuity with the ethico-legal heritage preserved in the Vedic tradition which presents a positive correlation between just claims and rights, and prescribed duties.

The purpose of this paper is to suggest

guidelines for generating an indigenous theory of human rights by indentifying cognitive categories developed from within Vedic India's own tradition of law and justice. It would then be possible to reduce the present - day gap existing between precept and practice, by reformulating the norms of human rights to suit the unique context of India.

Toward that objective, the present work first isolates key Vedic concepts that approximate the modern categories of (1) human being and (2) rights : *puruṣa/mānava and adhikāra.* They are next juxtaposed to the notion of duty *(dharma)* and a cluster of ideas related to it -- *apūrva, kārya, niyoga*, and *niyojya* in order to illuminate and explain the close connection between duties and rights.

The hypothesis is first introduced by allusions to the *Jaiminisūtra* and Śabara's commentary on them. The argument is then developed with reference to the works of Prabhākara and his follower Śālikanātha Miśra. The paper is organized around the following questions :

I

What are human rights and how are they perceived in contemporary India ?

II

What would be the source and nature of humanism and of human rights according to Vedic anthropology ? How are they related to duties ?

III

Can the traditional continuum of duties--rights (kartavyādhikāra) be reinterpreted and understood in modern India with reference to the epistemological devices employed in the tradition of Mīmāṃsā ?

Shri S. G. DHOPATE
Dept. of Numismatics and Epigraphy,
Institute for Oriental Study, Thane.

" Law and Justice through Epigraphical Records"

If Ashokan edicts are considered extracst from the documents of Law and Order and Law and Justice, then we can safely conclude that right from that period the epigraphical evidence is in accordance with various literary s sources which are termed in the traditional terminology as " Dharamashstra."

Satavahana and western Kshatrap cave inscriptions, though they are a few, give us an idea about the rulers who were also not above Law. More precisely we can say, though they were supreme authorities within their territory they never used their rights for their selfish benefits.

Slowly with the passage of time of so many years, the traditions might have changed. The dynasties came and disappeared, even many of them were lost from the memories of masses and intellectuals as well , but a stray stone inscription remained unnoticed in the scattered ruinss, and when discovered it speaks of the age old binding force,

न राज्यं राजाऽसीत् न दण्ड्यो न च दाण्डिक : ।
धर्मेणैव प्रजाः सर्वाः रक्षन्ति स्म परस्परम् ॥

A utopian concept of Society.

As is well known, the Smrities are the compilations of Law texts. They denote the changes that took place in the societies from time to time. These same changes appear in the epigraphical records of caves, copper plates and stone inscriptions, whether of Ashoks, or those of Satavanas, Chalukyas, Rastrakutas or Yadavas.

All of them give us the message that the dynastics flourished with their fortunes and met the fate during the disastrous times. The Ancient Indian Law and Justice predominently aimed at " दुष्ट निग्रस - शिष्ट प्रतिपालन ". This quotation form Mahabharat, JDM Derrett

emphasised in his book the " History of Hoysalas, a medieval royal family of South India.

Dr. S. G. MOGHE
Reader (retd.) in Sanskrit,
Govt. Arts and Science College,
Aurangabad.

Right and Justice in ancient India with special reference to dharma - Śastra and classical sanskrit literature.

In this paper, I have tried to show that the principles of right and Justice were more mentally accepted by the people in Ancient India rather than by resorting to the court matters particularly headed by king..

People belived more in the moral principles and also were afraid of heaven and hell. They tried to stick to the position suggested by the smṭikāras otherwise known as law-givers.

For the purpose of this paper, I have consulted the sources of Dharma-śāstra, ancient history, epigraphy, classical Sanskrit literature and Rāmāyaṇa and the Mahābhārata.

In addition to this, for getting the correct idea of the above principles, I have consulted the material from the Chapters of Oath, expiation, administration and ordeals in the vast range of Dharma-Śāstra.

Incidentally, it may be added that I have also consulted the volumes of History of Dharma-Śātra by P. V. Kane and even other works to bring the readers home to the point of discussion.

Dr. R. P. KULKARNI
Institute of Oriental Study, Thane.

Irrigation law from Inscriptions

India is predominently an agricultural country and irrigation has been practised from time immemorial.

The dependence of India's agriculture on the monsoons which are erratic in nature , has made artificial irrigation essential for successful cultivation in this country. Activity of irrigation is regulated by statutes from as early a period as fourth century B. C. the date of Kauṭilīya Arthasāstra.

It is not known whether there was any written law relating to irrigation in the ancient and the medieval periods in India. But the power of the king in respect of irrigation could be understood from different inscriptions. The king was empowered to construct works for the use of the surface waters, i.e., rivers, streams and lakes for irrigation; to regulate the supply of water from canals, or to delegate these powers to his officials or to any private individuals. The village irrigation committee and Government irrigation officers were delegated the powers to get constructed water courses and field channels for carrying water from outlets of canals to the fields, to levy water rates for the water supplied and to settle disputes regarding distribution of water among the co-sharers and to requisition labour for maintaining a dam, canals as well as water courses, particularly under emergency conditions or when the tank was constructed on co-operative basis. They were also authorised to punish farmers who had misused irrigation water or caused any damage to irrigation work.

Before any private irrigation works were to be constructed, sanction of the Government (i.e. King) was required to be obtained and the conditions the Government may impose had to be followed. The Government had the right of regulating the

supply and distribution of water from either natural or artificial sources for the purpose of irrigation. The Government was empowered to regulate the collection, retention and distribution of waters of rivers and streams flowing in natural channels or other works constructed for irrigation. It is to be noted that the Government's right did not include the power to curtail arbitrarily or interfere with the rights to irrigation or to the enjoyment of the water.

Irrigation cess had to be paid by every landholder under the irrigable command of an irrigation work for supplying water.

Dr. PRABHAKAR APTE

Franco-Hindu Jurisprudence

Franco-Hindu jurisprudence is a term chosen to describe the ethics and logic behind the administration of justice put in by the French rulers over a small Indian territory. In the first and second decades of the second half of the 20th Century, the chapters containing the history of jurisprudence exercised by the French rulers to administer justice to their Hindu subjects especially in the area of personal law came to a close. Thus from the administrative point of view Franco-Hindu jurisprudence became a closed chapter. However, simultaneously it has become an open chapter for researchers in comparative jurisprudence, Indo-Hindu jurisprudence as well as Anglo-Hindu jurisprudence. The British rule over millions of Hindus continused for over a century and hence the jurisprudence that evolved out of the case-law stretched upto privy-council. A parallel situation occured in Indian territory ruled by the French. However, the French law was a codified written document which had influencell Europe except England where the constitution was unwritten and the rule of common law prevailed.

The Franco-Hindu jurisprudence, however, went through several phases. The first reported case is that of Inheritance which was reported in the Diary of Ananda Ranga Pillai and it was related to the dispute of inheritance of Kanaka Raya Mudaliar, who was a Dubhash (Interpreter) of Duplex. In the years 1742-1748 . . . the case was decided by Duplex himself after consulting Hindu Dharmashastris as well as after applying the principles of legitim for balance of justice. The Frensh rulers continued to resort to Hindu Dharmashastra even for deciding criminal cases till the turn of 18th Century. Thereafter the French law operated for criminal cases and Dharmashastra prevailed over only the area of personal law. A consultative committee : !Comite' Consultatif' was appointed in 1828 and continued to work for over a century. A printed report was published in book form by H. S. Justice Leo sorg in 1895. This is a precious document for research. It contains references to several Dharmashastra texts. The special feature of the outlook of French rulers to their subjects as far as personal law was concerned, it was caste-based and not religion based. Thus each committee consisted of proportionate representation from communities such as Mudaliyar, Pillai, Nadar, Aiyer etc., The composition was regardless of whether individual member had embraced Christianity or not. Thus the equation Dharmantara = Rashtrantara never happened in French territory. Thus Christians originally belongingg to either Mudaliar or Nadar or Pillai communities continued to be governed by Dharmashatra for over a century.

Consequently, Dharmashatric Hindu law became a customary law for Pondichery Christians even after codified Hindu law prevailed over their Hindu brethren in Pondichery when the codified enactments were extended to Pondichery Hindus in 1963. Thus at present, there are as many as ten groups among Pondichery citizens which are governed by different norms of personal law.

Various aspects of the branches of personal law such as succession, marriage, adoption, maintenance, minority and guardianship etc. have evolved various points valuable for research scholars. Prevention of bigamy for example, came to be enforced on Pondichery Hindus about fifteen years later than their Indian Hindu brothers. From common-civil-code, point of view, a research paper written by Justice Dr. Annousamy and captioned as "common civil code a Pondichery experiment" is a valuable document for researchers. Another authority, Advocate Jaganou Diagou is a practicing advocate of four generation-standing belonging to the lineage of Kanakaraya Mudaliyar. In his family a marriage is solemnised in the church and celebrated as per Hindu custom at home thereafter. Thus it appears that religious frictions were toned down in Pondichery because of the liberal outlook of French rulers. It is said that an option was thrown open to Pondichery Christians by the end of 19th Cent. to choose French law in toto. Accordingly, the families who opted for French law came to be termed as renosants. Dr. David Annosamy's family belonges to the renosant category while advocate Jaganou Diagou's family continues to be governed by Dharmashatra. In the field of law relating to the religious endowment, the case law available for study is practically nil, since disputes might have been amicably settled. It is reported that the French governor himslef used to take lead in dragging the temple chariot during Rathayatra festival. A question was asked by me about the cases regarding Mitakshara joint family. To this the answer was that there was no reported case since perhaps the Hindus governed by Mitakshara joint family never took recourse to litigation. As for the recent extension of Indian succession put to Pondichery Christians, it is reported that there was a strong resentment from the Pondichery Christians who felt happy with Dharmashatra in deciding their cases. When I asked a specific question, to Dr. Devid Annousamy " What was the expediency to extend Indian succession Act to Pondichery Christians ?" he retorted, "ask this question to your President ! " His remarks spoke a lot for research scholars. These are some of my observations on Franco-Hindu jurisprudence, which are placed before you for kind perusal.

Dr. M. D. Paradkar
Principal(retd.),
Pendharkar College, Dombivli

The Idea of Justice in Dharmaśātra

Ancient thinkers of Dharma in India were too practical to believe in the Utopian dream of the intellectuals of establishing a society following the path of virtue without the fear of punishment by the ruler or king who is embodiment of Dharma. They thought that absence of fear is likely to result in what is called the मात्स्यन्याय which consists in the strong making short work of the weak. Dispensing justice was of course the sacred duty of the king and he was considered to be the recipient of sin of acting in an unrighteous way viz. not punishing the guilty adequately i.e. releasing the one who is guilty and punishing the one who is not guilty. (See Manual IX-249) Thus the king was called upon by Kautilya to attend to the disputes of Pauras as well as Jānapadas during the second part of the day which was divided into eight parts in all. (द्वितीये पौर जानपदानां कार्याणी पश्चत् F-19). The Sanskrit term used for disputes is Vyawahāra as is clear from Śāntiparva(69/28), Manu(VIII-1), Vasisdha (16/1), Yājñavalkya(II-1), Viṣṇudharmasūtra(3.72) etc. The term व्यवहार विधि connecting this sense also occurs in Delhi-Topra inscription of Aśoka (वियोहालसमता). व्यवहारपत्र evidently refers to the subject matter of the dispute although Kautilya (III-16) and Nārada use of the term विवादपद. These Vyawahārā padas were generally 18 in number. Manu is emphatic in declaring that neither the King nor any officer or servant of his should

either initiate any dispute bring any pressure on the plaintiff or the dependent in putting the mater before the court. According to manu, the king's primary interest should be removing of nonwelcome unsocial elements in कण्टशोधन. The variety of offences committed by these unwelcome and evil elements in the society have been discussed in detail not only by Kautilya but also by Yājavalky and Narada. It is true that all cases of dispute where the king or the ruler is in some way associated with are included by Nārada as well as Bṛhaspati in Pratirnakas; nevertheless they were aware of the principle of judicial administration. Of course Kautilya must be said to be the precursor in this matter.

Brahaspati has spoken of द्विपदो व्यवहारः स्माद् धनहिंसासमुद्भवः and has righthy included वाक्यारुष्य, दण्डपारुष्य (beating etc.) etc. under the second. In fact this indicates the division of disputes into civil and criminal; neverthelessit appears that both these disputes came to the same court contrary to the division of disputes in the present day. It is significant to note that in ancient India, there were no fees charged by court in criminal disputes; in all such cases the fees were to be paid by the party which was proved to be guilty. This was termed as court fee by Yāgjavalkya and the like.

भाषापाद, (Plaint), उत्तरपाद (the answer given), क्रियापाद (bringing witness or evidence), and the साध्यसिद्धि or निर्णय were the four stages of the discussion of the dispute. Not only the qualifications of reliable witness are discussed by the ancient authors but a long list of persons to be excluded in this matter is given by Manu (VIII-64-67), Yājñavalkya (II-70.71) Narada (IV-177-78) etc. This speak volumes for the analytical quality as well as the just attitude adopted. Gautama fails not, to point out that in dispute of farmers, washermen, etc. persons belonging to their kith and kin should be called upon to work as mediator . These authors were also aware of the fact that circumstantial evidence in the courtneed not always lead to truth, and have advised to weigh the same carefully before announcing the judgement. In such cases the person was expected to undergo ordeals of Agni, Jala, Viṣa, Kosa, Tandula, Tapta-Marṣon Plala or Dharma (Pictures or idols connected with religion). Such ordeals, it must be admitted, are to be found in the legal history of all ancient countries.

Still more significant is the fact that these writers on Dharmaśastra did not allow themselves to be deluded by the dictum 'all are equal' They knew that a judge accepting a bribe has to be placed on par with a Brāhmaṇa proved to be a killer becasue the lapse on the part of these peoplewho are expected to provide a norm for the people to follow, has to be taken very seriously. To place him on par with a Śhudra accepting a bride will be a travesty of real justice. It is true that Dharmaśāstrakāras like Manu are not in favour of killing a Brāhmaṇa or giving him a corporeal punishment, but it must not be forgotten that this has a reference to a Brāhamaṇa who has committed a fault for the first time; surely this was not his attitude in case of those Brāhamaṇas who are habituatd to fall from the standard.

Punishment is primarily meant for improving the person who is the offender. This is why Manu (VIII-129) Yājñavalkya (I-367) and Bṛāhaspati speak of 4 ways of giving punishment namely (1) Sweet words of counsel, (2) Harsh words or admonishment, (3) corporeal punishment and (4) payment of money. The last two were left to the king while the first two were to be employed by the judges. King was also expected to go by the advice of his ministers as well as learned Brahmins. In fact the system of punishment in ancient India depended upon many factors such as the caste of the person concerned, the value of the dispute and the nature of the offence. In other words in dispensing justice, ancients had adopted a zholistic approach towards life.

Dr.(Mrs) K. SANKARNARAYAN
Director K.G.Somaiya Centre of Buddhist Study, Mumbai

Law and Justice Precribed by Buddhism

According to Buddhism, there is no creator, no being that is self-existent and eternal. All sentient beings are homogeneous. The difference between one being and another is only temporary, and results from the difference in their degree of merit. The power that controls the universe is " Karma", literally action - consisting of 'Kusala' (merit) and 'akusala' (demerit). " If the Karma be good, the circumstances are favourable, producing happiness, but if it be bad, they are unfavourable, producing misery."

According to Buddhism, every individual has the right to attain " nibbāna" (Enlightement). It is possible to attain this 'nibbāna' by attending, rather practising a prescribed course of discipline. Of the 'Tipiṭka', 'Vinaya Piṭka' prescribes the rules of discipline.

'Vinaya Piṭaka ' consists of (1) Sutta Vibhanga (2) Khandhakas (3) Parivāra and (4) Pātimokkha. The first is subdivided into Pārājika and Pācittita. The second comprises of Mahāvagga of Cullavagga.

The Cullavagga deals with the 12 (twelve) cases of proceeding (Kamma) which are against the law and 12 (twelve) cases of proceeding which are according to law. This paper will be a humble attempt to throw light on those Kammas according to Law, which elevates an individual to attain that " Eternal Bliss" - " Nibbāna", the final release from all sufferings. It is not by any kind of prayer, nor by any ceremonies, nor by any appeal to a deity or a God that a man will discover the Dhamma which will lead him to his goal. but in only one way - by developing his own character, through 'Kusala Kamma'.