



Journal Homepage: - www.journalijar.com

INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR)

Article DOI: 10.21474/IJAR01/16338

DOI URL: <http://dx.doi.org/10.21474/IJAR01/16338>



RESEARCH ARTICLE

DHARMA AND LAW

Dr. Dinesh S.

Manuscript Info

Manuscript History

Received: 26 December 2022

Final Accepted: 30 January 2023

Published: February 2023

Abstract

Dharma have been derived and supersede from the vedic concept of Rita, which literally meant, 'the straight line'. Rita refers to the Law of Nature, it signifies moral laws, and based on righteousness. When something is Rita it simply meant that thing is true, right and nothing more. Dharma signifies natural law. Anything is right, just and moral is Dharma.

Copy Right, IJAR, 2023,. All rights reserved.

Introduction:-

Dharma was a duty based legal system that is every individual owed a duty towards other member of the society and duty is something explained by Duguit as right possessed by every man. If we observe "Puranas" people of that time was guided by their Karma. They believed their Karma is their Dharma. That is Why Yudhistir from Mahabhart was known as Dharma Raj. Madhavacharya says "It is most difficult to define Dharma. Dharma has been explained to be that which helps the upliftment of living beings. Therefore that which ensures welfare of living beings is surely Dharma. The learned Rishis have declared that which sustains is Dharma."¹

The renowned Indian-American Hindu activist Rajiv Malhotra in his article "Dharma is not the same as Religion"². The word "dharma" has multiple meanings depending on the context in which it is used. These include: conduct, duty, right, justice, virtue, morality, religion, religious merit, good work according to a right or rule, etc. Dharma provides the principles for the harmonious fulfilment of all aspects of life, namely, the acquisition of wealth and power (artha), fulfilment of desires (kama), and liberation (moksha). Religion, then, is only one subset of dharma's scope.

Justice

Justice is a broad notion that is based on a concept of moral rightness that incorporates varying perspectives on fairness, ethics, rationality, religion and law .It is one of the most important moral and political concepts. The word comes from the Latin jus, meaning right or law. The Oxford English Dictionary defines the "just" person as one who typically "does what is morally right" and is disposed to "giving everyone his or her due." The idol of Justice blindfolded with balance in hand gives the expression of balancing, weighing and impartial judging which applies to disputes and conflicts. For this purpose justice becomes the referee to give decision of victory or defeat to parties. It seems that Justice has more utility for a conflict situation. It balances principles like liberty, equality etc also. In other words Justice is to provide 'nyaya' whenever the dharma is abused. It is awarded in all fairness. That means

*Principal, S J M Law College, Chitradurga.

¹Shantanu Rathore, Symbiosis Law School, Noida, Dharma and Law, May 13, 2015,

²Rajiv Malhotra, Dharma Is Not the Same as Religion, http://www.huffingtonpost.in/entry/dharma-religion_b_875314

punishment is awarded to those who deviate from dharma and follow 'adharma'. Many jurist defined Dharma in their own way such as-

H.L.A Hart- Justice is moral rightness, just, rational, fair, equality, and varies from place to place, time to time, and person to person.

Plato- justice as a virtue which occurs within the state. He considered that justice as a political virtue.

Salmond- law is the body of principles recognized and applied by the states in the administration of justice.

Roscoe pound- Law is the body of principles recognized or enforced by public and regular court in the administration justice.

Dharma originated from Vedas which are Sruti (heard knowledge) and they are the supreme source of knowledge for humans, as the narration of what is heard from the ancient priests that is Sruti and they contains narration on everything possible ranging from military to politics to common people's life.³ Its other sources are Smriti, which are the interpretation of Vedas and four sages have propounded the dharmasastras and are called Smritikars.

Vedas which are shruti approximately accepted to be 4000-1000 B.C. There are four Vedas which are

1. Rig
2. Yajur
3. Sama
4. Atharva

Vedas depict the way of life of our ancestors, their way of thinking, customs, and thoughts but doesn't deals with rules of law in any systematic manner. At that time certain sets of rule existed which are adopted from Vedas

These rules dealt with rights and duties with rights and wrong. It emphasis was more on duties and obligations than on rights. It was dharma which was practiced, which signifies privilege duties and obligations of man.⁴

Yajnavalkya-

King is to be modest, even minded and righteous, to devote himself to the service of people and to look after administration of justice.

No one whether brother, son or preceptor can escape from the punishment of king if he deviates from performance of his own duty.

He also believes in power of Danda and king as Law enforcer like Manu but not want to cloth the king with any divine authority.

He holds liberal views on status of Sudrasand women, women's right to hold inherit property, criminal penalties unlike Manu.

Narada-

Naradasmriti deals with procedural law. His work is divided into two parts judicial procedure and judicial assembly and eighteen titles of law.

He formulates and declared new rules which came into existence on account of social, economic, political changes of his time.

The king has the law making power and. King has the power to punish the offenders however Narada does not sanctioned unlimited power to king.

³Dr.ParasDiwan,Modern Hindu Law,Page-28(22nd Edition,2013)

⁴Dr.ParasDiwan,Modern Hindu Law,Page-31,32,(22nd Edition,2013)

He confers rights on women to hold and inherit property he is not harsh to Sudras. He recognizes women can leave her Husbands and take other uncertain circumstances.

The struggle for independence was the struggle for basic rights and civil liberties that one as a basic human being should enjoy and the same was kept in mind, while making The Constitution of India. The principles of natural law (Dharma) found its way into the constitution in the way of fundamental rights. Dharma was codified

Dharma as we all know was a duty based legal system but the current legal system became a right based one. In many Supreme Court verdicts Dharm is explained in Indian scenario. In *NarayanaDeekshitulu vs. State Of Andhra Pradesh &Ors*⁵, there is a comparison between the constitutional laws and Raja Dharma, the definition of dharma is tried to be clarified by using different verses from everywhere, 'Dharma in context of Rajya only means law' and Dharma is secular or maybe the most secular. The same view is held until now, by all the courts and is not disputed that Dharma is an eternal bliss, which has seen many par and parcels of human life, mortals, but remained immortal.

DharmaandConstitution

After Islamic and British rules India became a country of several religions. Though the basic concept of Dharma reflected in our constitution but the religious diversity changed the perception of people towards Dharma.

Unlike many countries of the world, in India there is a freedom of religion which is defined under Article 25(1) of its constitution. The most important feature of this is that it provides the freedom not only to the individual but also to the groups. Moreover, the Supreme Court also held in *RatilalPanchand vs. State of Bombay*⁸ that the freedom of religion extends to all persons including aliens of other countries also.

Article 15(1) of the constitution of India prevents to state from discriminating anybody on the ground of religion. It was also ordered by the Hon'ble Supreme Court in *Nain sukh Das vs. State of U.P*⁹ held that the constitutional mandate to the state not to discriminate on the ground of religion extends to political as well as other rights.

Under the "Right to Freedom of Religion" from Article 25 to 28, various provisions can be seen which again reinforce the ideal of secularism.

Article 25 gives all persons in the country freedom of conscience and free profession, practice and propagation of religion.

Article 26 provides freedom to all religious denominations to establish and maintain institutions for religious purposes, manage its own religious affairs, acquire and administer movable or immovable property.

Under Article 27, no person can be compelled by the government to pay taxes for promotion of any particular religion.

In *KesavanadaBharati V. State of Kerala*⁶ and in *Indira Neharu Gandhi V. Rajnarain*⁷ the Supreme Court has observed that by secularism it is meant that the State shall not discriminate against any citizen on the ground of religion only and that the State shall have no religion of its own and all persons shall be equally entitled to the freedom of conscience and the right freely to profess, practice and propagate religion.

To spell out the above ideas which in fact existed prior to 1976, the preamble to the Constitution was amended in 1976

Under Article 28, religious instruction is banned from being given in educational institutions maintained wholly out of state funds.

Last but not the least, under Part 15 relating to conduct of elections, Article 325 provides that no person can be ineligible for inclusion in an electoral roll or can claim inclusion in a special roll on the grounds of religion. and the

⁵1996 AIR 1765, JT 1996 (3) 482, <https://indiankanoon.org/doc/28343/>

⁶(1973) 4 SCC 225), <https://indiankanoon.org/doc/257876/>

⁷11(1975 AIR 865, 1975 SCR (3) 333), <https://indiankanoon.org/doc/1240174/>

integrity of the Nation. In short, the object of the Government, in making this amendment was to make explicit what was already provided in the Constitution.

Dharma and Personal Law

Personal laws were first framed during the British Raj, mainly for Hindu and Muslim citizens. As Dharma was interpreted in different way and with different ideologies in various religions, the customs, social practices, life style of people were changed.

Hindu law started to be codified according to the changes in outlook and lifestyles, as it was realized that ancient way should yield to realistic approach of life. And For Islam believers Muslim law started to be codified.

The Codifications were based on the customs and practices of people and the justice.

Marriage, Guardianship, Adaptation, Succession, Maintenance were the main grounds emphasized.

Dharma and Uniform Civil Code

It was decided to add the implementation of a uniform civil code in Article 44 of the Directive principles of the Constitution specifying, "The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India."

Uniform civil code is the proposal to replace the personal laws based on the scriptures and customs of each major religious community in India with a common set governing every citizen. These laws are distinguished from public law and cover marriage, divorce, inheritance, adoption and maintenance.

Goa has a common family law, thus being the only Indian state to have a uniform civil code. The Special Marriage Act, 1954 permits any citizen to have a civil marriage outside the realm of any specific religious personal law.

It became one of the most controversial topics in contemporary politics during the Mohd. Ahmed Khan vs. Shah Bano Begum and Orsthen focused on the Muslim Personal Law, which is partially based on the Sharia law and remains unreformed since 1937, permitting unilateral divorce and polygamy in the country

Conclusion:-

Dharma and law as seen above may seem to be in contrast, but the ideology behind them is same. At large, law is a part of Dharma without disharmony and they constitute single integrated whole. Dharma on one hand is taken to be religious in recent society but in reality, Dharma is duty and moral conscience. The Hon'ble Supreme Court in many cases defined Dharma and its relation with morality and Indian Secularism. Dharma has been and is guiding our conduct, moralities and laws in varying degree. When Dharma loses its identity or become diversified, justice serves Nyaya to protect the Dharma. 'Dharma' is one of the many sources of modern law and is shaping society. Hence it can be said that Dharma and law are closely related and interwoven.