

## A PERSPECTIVE ON ANCIENT BRAHMANIC LAW

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In the following space I will endeavour to gain a perspective on law in ancient Brahmanic tradition, based mainly on the great work on dharma bearing the name of Manu. By a perspective, I decidedly mean "a mere" perspective. To profess to write on a text as great as Manusmṛti in any other way would be unpardonable audacity. The purpose of writing this is to share my understanding of the matter with the readers, subject indeed, to being taught better by those who know better.

It is a patent fact that of all the Brahmanic texts enunciating dharma - and many indeed are they - the Manava dharma-sūtra stands supreme. Ancient lore has attributed it to Manu Svayambhuva, the mythical progenitor of the human race. The name Manu itself is a coded word for the meaning of the entire human race (found in the Rgveda itself), especially signifying the human race's advent into the world. But the Manu of history, or proto-history, by whose name tradition has identified the text that it has known as Manusmṛti, was in all probability, a figure who lived sometime after the end of the age of the Vedas, and still close enough to them in time. J.D. Dowson, author of *Hindu Classical Dictionary*, echoes the general opinion of scholars that the Smṛti "is a collection or digest of current laws and creeds"<sup>2</sup>, i.e., current in Manu's time.

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<sup>2</sup> Cf. J.D. Dowson, *Hindu Classical Dictionary*, London: Kegan Paul et.al., 1913, p. 201.

In the Brahmanic classification of the earliest texts as *Sruti* (i.e., the *Vedas*) and *Smṛti* (composed by human authors), *Manusmṛti* belongs to the latter, which by definition is of derived, and hence of lower authority in front of the *Vedas*, which are a direct revelation by the Supreme Being. Nevertheless, the *Smṛti* that bears the name of *Manu* is placed by tradition at the head of all the works of that class, which are many in number and some very old indeed. *Manu* himself helped to bring about the two-fold classification, as he declares: “*Sruti* should be understood as meaning *Veda*, and *Smṛti* as meaning *dharma sastra* (*Dharmasastram tu vai smṛtiḥ*)<sup>3</sup>. This definition of *Smṛti* helped the text of *Manu*, in which it occurs, to become the paramount text on *dharma*, i.e., *Dharma sastra*, or “*Scripture of Dharma*”. This fact, however, does not preclude the recognition of the contributions of several *sutra* texts such the *Gautama*, *Baudhayana* and *Vasistha*. Tradition has accorded them all such recognition. Whether some of them are even older than *Manusmṛti*, from which it has itself possibly drawn, and even whether there was a *Dharma Stra* attached with the name *Manu* that served as the basis for the *Smṛti*, are matters on which interested scholars have debated. But such matters need not enter into our present purview. We need only to go by the patent fact that a text that definitively spelt out the nature and scope of *dharma* emerged, and *Manusmṛti* is that text. The Brahmanic tradition has celebrated it that way.

In following up the teachings on *dharma* as in the *Manusmṛti*, one essential question that would arise is “On what foundation do they rest?” That is answered by the text of the *Smṛti* itself: The absolute foundation is the *Veda* in its entirety (*Veda akhilo dharma-mulam*), then the tradition which knows it (*Smṛti-sile ca tadvidam*), followed by the customary observance of the wise (*acarascaiva sadhnam*) and then the satisfaction of the self (*atma-samtusti*)<sup>4</sup>.

*Manusmṛti* is a scriptural text. It consists of 2694 slokas (stanzas), arranged in twelve chapters, and is an account of *Manu*'s teachings on

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<sup>3</sup>*Manu Smṛti*, II, 10.

<sup>4</sup>*Manusmṛti*, II, 6.

dharma. The text begins with the mention of some sages approaching Manu, who wished to be instructed on the dharmas of all castes (*sarva-varnanam dharman*), because he is the only one who knows the truth about God's plan for this cosmos" (*asya sarvasya vidhanasya svayambhuvah karya-tattvartha*). The introductory request of the sages is eminently instructive inasmuch as the dharmas of the castes served as the entry point to the meaning of God's plan for the cosmos. Manu's response, narrated in the text, is exhaustive, and covers the entire body of sacred knowledge, i.e., all essential Brahmanic doctrines, and are set forth authoritatively.

Manu's teachings are narrated as authoritative. His utterances are marked by such stylistically appropriate phrases as *Manur-abrauid* (for instance, VII, 139) and *Manur-aha* (for instance, IX, 158), both these meaning "thus spoke Manu". His words are sometimes referred to as *Manor-anusasanam*, "Manu's anusasanam:" the meaning of this word falls somewhere between teaching and commandment. And however exalted Manu's position be, he cannot give actual commandments, although the stipulations of dharma have a force equal to commandments. So we get a sense of how Manu dharma-sastra has to be, and has been, taken by the tradition.

Appropriately, the text begins with Manu's own description of how and why God created the world, which is the main substance of the first chapter. Much of it is from the Veda, arranged and interpreted in detail, with some new elements added. Clearly, these new elements can be found in a shadowy way in the Vedic texts, and would have existed more vividly in other traditions such as some previous form of what has historically come down to us as Samkhya. Manu's presentation of these elements is very vivid and original.

The first chapter is a detailed description of creation. According to it, God brought forth the cosmos out of darkness in which it was immersed, and had been as if in a state of deep sleep. He created the great elements, and then the waters, in which he placed his seed. The seed became the Golden Egg, into which God himself entered, and he

resided in it. Then by his thought he divided it into two. Out of the two halves, he formed heaven and earth, the middle sphere, the light points of the horizon and the eternal abode of the waters. Then, out of himself he produced mind, ego and intelligence, and the organs of sense and the motor organs. Thereafter, by joining particles of these and by further infusing his own essence into the particles he created all beings. On and on the process progresses, with the creation of time, seasons, measurements, also heat (austerity), speech, pleasure, desire, passion, etc. "The whole creation God likewise produced, as he desired to call these beings into existence" (I. 25). Then God laid the foundation for discriminately judging actions (as for example, good or bad, right or wrong) by instituting the distinction between dharma and adharma (dharma-adharmau vyvacayat, I. 26a). Then he created pleasure and pain (and other pairs) to go with such a distinction. Now comes the crucial point, the dharma of castes, the issue on which the whole text seems to hinge. God created the four castes, i.e., Brahmana, Ksatriya, Vaisya and Sudra "so that the worlds may grow to wholeness" (lokanam tu vivrddhyartham, I. 31). The detailed account of creation continues.

In the last stanzas of Chapter I, the duties and privileges pertaining to the castes are described in a nutshell, the highest privileges having been assigned to the Brahmana. But the strictest injunction to follow his dharma scrupulously is also given to the Brahmana, or else he will forfeit the rewards promised to him in the Veda and instead incur sin (Cf. I, 109 etc.). From Chapter II, after the first 25 stanzas (which are crucial as a declaration of the sources of dharma, up to Chapter VII, most stanzas are about the definite dharma of castes and groups and stations in life (asramas), etc., and people's vocation, giving stipulations in the finest details. The dharma of the ruler is also clearly defined. The Sudras and women have many obligations and few rights, not the right to Vedic knowledge even. And further, what one may eat or drink or may not eat or drink are all set forth specifically and item by item. Some meats are allowed if they have been properly offered in sacrificial rites, or disregarding rules if one's life "is in danger" (Cf. V. 27). Every practice allowed or not allowed is put down by name. As a norm

vegetarian food is prescribed. The standard, great moral principles like non-hurt to beings (*ahimsa*) have been laid down as norm.

The succeeding chapters deal with such things as civil and criminal law, *dharma* of husband and wife, the *dharma* of kings (in detail), property, inheritance, gifts, sacrifices, penances (and penalties), occupations of the castes, etc. Like *Sudras*, women come off badly. All aspects of the individual's and society's life are covered by minute clauses. Some of these matters are dealt with in the mode of recommendation or strong suggestion rather than as requirements. They include even names that are appropriate for each group, e.g., reflecting happiness in the case of a *Brahmana*, power to protect in the case of *Ksatriya*, prosperity in the case of a *Vaisya* and servitude in the case of a *Sudra* (II. 32). Women's names must be easy to pronounce and must end in long vowels, (II. 33). Matters of the above kind are minute, but are not, however, trivial, because they concern rules of propriety. Now, if we take a scale of gravity within *dharma*, as statutory prescript, positive laws of conduct, governed by injunctions and prohibitions, involving rewards and punishments in this life and in the hereafter, will be at the top end, while matters of mere propriety will be at the bottom end.

The hereafter is, transitionally, the realm of transmigration, and, finally, salvation (*moksa*) itself: these two topics come towards the end of the text, while at the very end comes the supreme topic of knowledge of the Self. As for the definition of the Self (*Atman*), some alternative ones prevalent in Brahmanic belief are given.

The picture of *dharma* that has emerged from the supreme *Dharma-sastra* definitely suggests "law", and "law", i.e. the concept thereof, expressed in a variety of languages. It does mean what is laid down in positive terminology as code of conduct or statutory prescript, despite differences in actual philological origins. Naturally, writing in English, one becomes conditioned to thinking of "law", with its origin from the Germanic root '*lag*', to put, to lay down, but completely filled out by the meaning of the Latin *lex* (from which comes the word 'legal') as norm.

Dharma is from the root 'dhr' to support, to uphold, hold up from falling; but amply evidenced by the Dharma-sastra, i.e., within its usage has the meaning of 'law' in a pronounced sense, while truly retaining the meaning from the root 'dhr' as the final measure even of statutes laid down, and that will be shown soon enough. This latter, ultimately, is the ground for laying down injunctions and prohibitions (vidhi and nisedha), technically developed in the system of Purva-Mimamsa which as a whole is a thorough explication of the supreme theme of dharma, but in a different way.

Now, we will return to the gamut of the law aspect of dharma, which conspicuously figures as the central theme of the Dharma-sastra. Those who look at these things so closely enunciated and stipulated from the dogmatic point of view would find no need to seek justification for them. But if we view them from a philosophical point of view, justification would be needed. If we turn to Plato's *Laws*, philosophical questions like the one about justification do appear, although one must not be carried away by visions of parallels between Plato's *Laws* and Manusmṛiti. In the *Laws* Plato did seek justification for the minutiae of the elaborate laws he is proposing. Through the mouth of the Athenian, Plato says:

In a way, to be sure, it is to our shame to be framing any such legislation, as we are now on the point of undertaking at all, in such a society as we contemplate, one which, we hope, will have all advantages and all the right conditions for the practice of virtue. Why, the very assumption that a man will be born in such a society who will be stained by the graver turpitude of other states [societies] that we consequently need to anticipate the appearance of such characters by minatory [minute] legislation and enact statutes for their warning and punishment in the expectation that they will be found

among us - the mere imagination - as I say, in a way, is our shame<sup>5</sup>.

The point about minutiae rightly reflects Dharma sastra as well (and other religious systems of law). But there is a difference. For, while Plato calls for legislation of all kinds in order to protect and foster the ideal state [society], Manusmṛti simply draws the dharma, no doubt spelt out in terms of specific legal provisions, from what was already there, as stated at the end of the presentation of the sources, Chapter II, 1-25. The primary source is the Veda itself, but the Veda taught by knowers of it.

Drawing from scripture and hallowed custom enables religious traditions to avoid embarrassment about the specificity and minutiae of law. But Plato was not able to avoid it. So he faced it and found a way to overcome it - well, perhaps.

The first words presenting the sources of dharma run as follows:

Learn that dharma served by the knowers of the Veda,  
and in their hearts accepted by the virtuous, who are free  
from hatred and passion<sup>6</sup>.

At the end of this presentation three principles are re-stated:

Thus has the origin been succinctly declared to you, as  
also the origin of the cosmos. Be instructed (now) on  
caste-dharma<sup>7</sup>.

Obviously, the origin of the cosmos comes first, in spite of the order of the statement. And the way the cosmos originated, i.e., by the Divine act of creation, is the primary matter of the knowledge that the Veda is the source of, which is why, co-ordinately, the Veda is also the source of

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<sup>5</sup> *Plato, Laws*, Book IX, 853, b, quoted from Plato. *The Collected Works*, ed. by E. Hamilton and H. Cairns: Princeton University Press, 1961, p. 1414.

<sup>6</sup> *Manusmṛti*, II. 1.

<sup>7</sup> *Ibid.*, II. 25.



dharma. As for dharma, to know it is to live it; to live dharma requires the immediate world, with living beings and most of all human beings, which, looked at from the lower end, would seem to be controlled by the laws of birth, growth, death, repetitively occurring in a cycle as it were; and pain, pleasure, gain, loss, etc. in naturally opposed terms; and then desire, passion and things like that, both governed by and yet governing an internal law of nature as it were, acting as a stepping stone to the law of the heart or moral law. Now all these are re-cast in terms of ancient dharma, obviously from the end opposite to the immediate world where all the above things reside. So, the learning of dharma entails re-apprehension of all these in terms of *laws*--laws laid down in detail but held together in dharma. To learn these laws is to live dharma in this manner as life's great task, but according to the correct order of the Brahmanic "ends of life" (purusarthas) to be completed in Moksa.

Now, the objective of writing this piece here may be stated again: to gain a perspective on Dharmasastra, specially in respect of its "law" aspect. In pursuing that objective we have come this far. But we have to go a little further, especially in terms of the questions which would have emerged, and which are related to questions that have always been there in people's minds. But we have to frame these questions in the specific way in which the approach here-to-fore has been outlined. As guided by the text itself we have noticed that the creation of the cosmos, i.e., cosmology, as presented by the Veda, is the basis of dharma. And from what is depicted in clear terms in the text, we can only infer that the point of contact of dharma with the world of humans, or perhaps the particular society in question as visualized, is through caste dharma which is also the point of entry for humans to dharma in the true cosmic sense, betokened by the specific cosmology of the Veda. No doubt, such propositions would be a source of great intellectual difficulty, to say the least.

However, all we need to do for the sake of our objective of gaining a perspective, is to try and see how this path from cosmology and the obligation to support and uphold the cosmos to caste-dharma, as if it is the straight and logical one, has been chosen. However, the Smṛti says



(I. 87-106) that this path is the given path, that the true purpose of the caste-dharma and the scrupulous observance thereof are the way "to support and uphold the cosmos" (sarvasya asu tu sargasya guptyartham)<sup>8</sup>.

That the human social order has been arranged to the end of supporting and upholding the cosmos is indeed something arresting: and there is no denying the tremendous inequality within the order, with Sudras and women at the bottom, against which people have been up in arms, quite rightly. But otherwise, this immensely arresting phenomenon is tremendously significant in evaluating the place of human beings in the cosmic scheme of things, and it is directly inherited from the doctrine of Sacrifice in the Veda. In it there is a real transvaluation of the cosmic law as well, which is implicit in the apprehension of it as dharma, poised readily to be translated into human social terms, however befouled by palpably unequal justice the vision of human society therein be--and there is no excuse for such unequal justice. But a great battle has been joined against the deeper ontological-existential injustice of placing humans as utterly insignificant and irrelevant before the universe.

No one can hold a brief for the statutory and institutionalized inequality among the castes and between the sexes in the social arrangement. But all that can be said is that this is the weak point in a vision that otherwise holds a great truth, namely, that humanity as a whole ought to be placed at an ontologically and intrinsically important vantage point in relation to the cosmos, not as its ruler and lord, of course, which only God is, but neither as a mere fortuitous occurrence of chance, the way people like Bertrand Russel make it. Once again, we are speaking of humanity as a whole, not some part of it: let there be no mistake about it.

For Manuśmṛti, cosmology is the foundation of dharma, which has an explicit law aspect, but graded, and, as pointed out before, spread on a

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<sup>8</sup> Cf. *Ibid.*, II. 87.

scale of gravity from positive law or statutory prescript to rules of propriety. In between there are some provisions which read like prescriptions for the health of the soul, e.g., those pertaining to diet, vegetarian as a norm, but meat permitted under ritual rules.

All the laws, whether pertaining to state, community, family or the individual, no doubt, constitute a structured whole, the foundation upon which it stands being the Vedic cosmology of Creation. However, into this cosmology, have been poured elements of proto-Samkhya, without its dualism between Spirit (purusa) and Matter (prakrti). On the contrary, prakrti has been brought under purusa, called also by such names as Brahman and Svayambhu, simply put, meaning God. Many of the laws, especially those affecting caste division and diet, have been shaped by the Samkhyan (or proto-Samkhyan) doctrine of the three qualities (gunas) of prakrti, viz, sattva, rajas and tamas: it is well-known that Smkhya defines prakrti, as consisting of the three gunas (which put simply, mean buoyancy/light, energy/passion, and inertia/darkness, respectively). In Manusmṛti, I. 15, it is stated that "all are (of) the three gunas (sarvni trigunni eva): "all" standing for the Cosmos, often expressed in the singular, "sarvah". The traditional commentator Medhatiti actually uses the singular and says 'sarvah is (of) the triple guna (trigunam) (constitution)'. So does another commentator Kulluka who states "all are bound by the gunas", (sattva tama-guna-yuktani).

Beginning with cosmology itself ancient Brahmanic and later Indian thinkers tended to use the three guna theory for explaining, especially by the method of classification, all phenomena, including social variation and moral propensity of individuals and classes: nothing was excluded. It became ubiquitous in its use. The entire seventeenth chapter of the Bhagavadgita is the most succinct description of how the three gunas have determined the castes and how they affect every human being's individual make-up, and how they pervade even the different items of food eaten by us. Verse 40 states,

There is no creature on earth or among the heavenly hosts, which is free from the three gunas of prakrti.

And verse 41 states,

Of Brahmanas (priests/scholars), Ksatriyas (Warriors/ Rulers),  
Vaisyas (Traders/Farmers) and Sudras (Manual Labourers)  
their activities are distinguished by their character born of the  
gunas.

And there follows in subsequent verses detailed descriptions of the four castes. The food we eat reflect the gunas that determine our character "Even the foods which we all love are of three kinds" (XVII, 7a), it is stated. Detailed description of the guna-reflecting and character-determining properties of foods follows.

Now, there is a very important question that must be answered, that is in respect of the narration of the genesis of the four named castes from the Sacrifice of Purusa, a primeval deity in the Rgveda itself (in X.90). There is a misunderstanding on this. So this attempt to remove the notion that the entire system of caste as we know came from there. First of all, in the Rgveda account, the four castes emerged along with so many other things, including the Vedas themselves. Secondly, no guna-determined characteristics were attached to them. Thirdly, the message seems to be that of the organic unity of the whole of humanity, rather than differentiation. The differentiations came later through the gunas, and that is patent.

The cosmology of Manusmṛti is one of both organic unity as in the Veda and differentiation as in proto-Smṛhya. The dharma of this great text is based on both principles, and that dharma is translated into the form of law, but of the graded kind as mentioned before.

Then we have to take into account the "law" of karma (not laid down) which is the executive agent of dharma. That "law" is distinguished from the law that is the implicate order of dharma. It is karma as law in an extended but legitimate sense as in laws of physics such gravitation, thermo-dynamics, or whatever, or of history, and most of all like moral law, which is both inexorable and redemptive--and that is very much in Manusmṛti.