

T. M. Manickam

UCSB California

LAW AND MORALITY IN “HINDU DHARMA”

The word “Law” as used in jurisprudence in the English language might find its counterpart in Sanskrit legal literature in more than one expression such as *niyama*, *nyāya*, *nīti*, and *vidhi*, all meaning fundamentally the same but with various shades of meaning with reference to specific contexts of the administration of legal justice. Their special nuances, when used with other related terms of the dispensation of justice, may be made clear here by just mentioning a few instances of combinations such as *niyamāvali* (Statutes/Rules), *nyāyāsanam* (Seat of His Majesty, the Judge), *nītipītham* (Seat of Justice/Court of Justice) and *vidhivācakam* (Judicial Sentence). However, none of these expressions, singly or combined, conveys exactly what is meant by “Law” in the Hindu religio-moral tradition. Here it is the word “Dharma” that is used to speak about the sacred nature and function of the “Rules of life” of the people who lay claims to the Aryan religio-cultural heritage. These people seem to have made no clear-cut distinction between secular laws and sacred laws as applicable to two separate aspects of life. As life was conceived to be one, whole unit its pattern of living was expressed in a unified “Way of life.” This way of life, which should be a blend of the sacred and the secular they called the “Hindu Dharma”, follows the “Rules of Dharma.” So in this article I would prefer to call this heritage of living by their own favourite term “Hindu Dharma”, rather than “Hinduism” or “Hindu tradition.”

“Hindu Dharma” means a complex reality of living. It has Laws both secular and sacred, religious and moral, judicial and political. Just as historical upheavals change the course of history of any tradition, “Hindu Dharma” has had to undergo changes by reason of its encounter with adverse political movements and challenging secularization processes. Even so there is still very much alive a distinct unified way of life conditioned and regulated by the moral rules of the Laws of Dharma, as learned from the traditions of the ancient sages of the Vedic times. Stability and continuity, change and progress, vision and realization, are conspicuous features of “Hindu

Dharma" even today. This article focusses on some of these foundational values of "Hindu Dharma" in so far as they come under the description of "Law and Morality."

Experiment of Bifurcation of the Laws into "Secular" and "Sacred"

Reliable historical law records provide sufficient material to enable one to argue that in ancient times the "Hindu Dharma" had a harmonious blending of *dharmaśāstras* (ethics), *daṇḍanīti* (jurisprudence), *rājanīti* (civil administration), and *arthaśāstra* (property administration), all of which together defined the Hindu way of life. It did not separate the sphere of religion as "sacred" from the sphere of other concerns as "secular"; rather both complemented each other and influenced each other for mutual benefit. But during the Maurya period of the political history of India, Kautilya, the minister of Emperor Chandragupta Maurya (c. 300–275 B.C.) seems to have taken the first bold step to bifurcate the secular laws of polity from the sacred dharma of the Brahmanic religion. Kautilya codified from fragmentary teachings of some 18 treatises on *rājadharma* what he considered to be a systematic discourse on civil laws dealing with the acquisition of wealth and administration of justice, independently of the "sacred laws" of dharma taught by the priests of the Brahmanic religion of Vedic origin. This code of polity, known as the *Arthaśāstra* of Kautilya, gives for the first time in the history of Indian law literature a bold and clear expression to the effect that "secular" law could exist side by side with the "sacred" laws and function accordingly with an autonomy of its own.

Law historians may point out that this experiment of the separation of the secular from the sacred could not last long. The breach was very soon patched up by Ashoka (c. 273–232 B.C.), the grandson of Chandragupta and the third emperor of the Mauryan dynasty. He modified his administrative strategy by incorporating into his *rājadharma* most of the basic tenets of the Buddhist dharma, which preached strict morality and justice tempered with mercy and compassion to all living beings thus recognizing the inborn equality of all human beings as against the then prevailing discriminative caste structure of the Brahmanic social order. Thus "sacred" laws of morality found their way right in to the heart of the "secular" civil administration though the earlier secularization attempts as initiated by Kautilya had failed.

However, an attempt to reinstate the Hindu Dharma in place of the Buddha Dharma was made later by Pushyamitra Shunga, the Commander-in-Chief of the last Mauryan monarch. It is now almost

certain that it is from this new reintegration of the secular order with the sacred order of the orthodox Hindu Dharma that the redaction of the famous Hindu Dharmaśāstra appeared (under the title) the "Laws of Manu" (*Manusmṛti*), towards the end of the 2nd century B.C. The *Laws of Manu*, eponymously called by this name, is a masterpiece of an integration of the various legal aspects of the Hindu way of living. It has also incorporated the salient features of the *Arthaśāstra* of Kautilya, especially the eighteen titles of polity and penal justice, and thus it gives a comprehensive code of "Hindu Dharma" claiming and maintaining a close link with the Aryan religio-moral traditions of the Vedic experience.

Unfortunately what Ashoka wanted to suppress by introducing in it the Buddhist Dharma of an egalitarian social justice was reinstated in the *Law of Manu* as the author of the *Hindu Dharmaśāstra* wanted to perpetuate a "caste-discriminated" morality in the Hindu society. Only the values absorbed from foreign dominations could eliminate in later times most of the discriminative moral standards of the "Hindu Dharma." It is still engaged in this process of purification, and perhaps it will have to struggle very hard to achieve that character which it sometimes claims to possess, namely, the "universality" of the *Saṅgātana Dharma*, to be the "Law" for all times.

Among later experiments on the lines of Kautilya and Manu, mention must be made of Yājñavalkya who introduced again into the model of *Manusmṛti* some advanced expressions of civil laws as practised in some regions and changed situations and these were to be incorporated as the *yuga dharma* (laws changed by the passage of time). There are communities in Hindu society which prefer Yājñavalkya's interpretations of some aspects of laws concerning marriage regulations as being more in tune with the egalitarian secular values of partnership in family life than those prescribed by Manu. Further examples of a more secularized interpretation of civil laws governing the Hindu Dharma are provided by Kāmaṇḍaki and Śukra. The work of the former is called *Kāmaṇḍakiya Nītiśāra* (Essence of Laws according to the school of Kāmaṇḍaki) and that of the latter is known as *Śukra Nīti* (Laws of Śukra).

As a consequence of the various political movements leading to the democratization of the secular society, the experiment of bifurcating "Laws" into sacred and secular has gained strength especially after the independence of India from the British rule. They present Indian Constitutional laws are described as "Laws" of a "Secular," "Democratic" and "Socialistic" Republic, in which the "Hindu Dharma"

ex-professo has no privileged position to impose its own religio-moral laws on all. Nevertheless, the fact remains that cases of a mixed type, in which values of sacred and secular nature are involved, are judged by the particular laws of the various communities and ethnic groups. Thus there is still in force a large body of penal laws, which are applied and enforced on communities of orthodox "Hindu Dharma," as for example, laws governing property rights, family succession, marriage and divorce, adoption, etc. In such matters the *Hindu Dharmasāstras* have such a great influence on lawyers and interpreters that they manage to bring out the salient features of the Hindu way of life from the *Hindu Dharmasāstras*. Their main source books are three collections of the laws of Hindu Dharma:

- (i) *Dharmasūtras* (known as the "Laws of the Aryas" after their teachers or patrons like Gautama, Baudhayana and others; some 30 aphoristic works of Hindu Dharma are now available for study).
- (ii) *Dharmasāstras* (Codes of Sacred Institutes). The foremost among these codes is *Manusmṛti*, and it is followed by some 24 major or minor institutes of Dharma, known after their redactors Yājñavalkya, Nārada and others.
- (iii) *Dharma Nibandhas* (Law Digests and Commentaries). Medhatithi, Kulluka Bhatta, Govindaraja, Bharuci and a host of others produced works of scholarly interpretations of the Hindu Dharma based on the *Smṛtis* of their predecessors.

The "Conformity Principle" in Hindu Morality

One of the distinctive features of Hindu morality, which bases its authority on the *Śṛti* and the *Smṛti*, is the principle of "conformity" to the tradition of the elders. This has been formulated in a well-known *sūtra* (aphorism), *acārah paramodharma* (Manu I: 108), which means that the supreme *Dharma* is the tradition as set up by practice. By "practice" is meant the sound tradition set up by long-tried experience of the forefathers and sages and teachers of law. The *acārah* of the *acārya* (practice of the Teacher) has great experiential value, and this had been acknowledged from very ancient times in the "Hindu Dharma." Obviously, it was taken for granted that the ideal way of living the orthodox "Hindu way of life" is to follow unquestioningly the practice prescribed by the teachers of the Dharma. It is from this tradition that the practice of following a teacher of experience as *Guru* (preceptor) for one's personal realization has come into vogue.

The conformity principle was insisted on as the right moral attitude by Manu in his Code of Dharma as follows:

By the *Śruti* is meant the Veda, and by the *Smṛti* the Institutes of the sacred Law (*Dharma*); *these two must not be called into question in any matter, since from those two is shone forth the sacred Law (Dharma) (Manusmṛti II : 10).*

Critical study and "reasoning" is permitted only to those who know the sacred laws of the sages, and who approach them with that respect and honour which the Vedic lores deserve. So Manu says:

He alone, and no other man, knows the sacred Law (*Dharma*), who explores (the teachings of) the sages and the body of the laws by (right) *reasoning* which is not repugnant to the *Vedic lores* (M. XII: 106).

To the investigating, scientific minds of today this sort of blind acceptance of a "conformity principle" is no doubt repugnant and inhibiting. This attitude does not take into account the newness of the human experience that is accumulating today from the new encounters of mankind with the fresh challenges of contemporary times. The human heritage of experience is like a flowing stream which broadens as it flows into the open fields receiving into its mainstream water from any number of side-brooks and channels and it is not like a stagnant pool full of sediment which does not have any outlet to pour its accumulation of impurities. It would be dangerous for one's health to bathe in such a pool even if it is at the door-step of the "holy of holies." Perhaps the right substitute for the "conformity principle" is the "principle of continuity with creativity." Of course, one may immediately point out that this is what has been provided for in the *Dharmaśāstras* by the "*yuga-dharma*." Well this is very marginal and provisional and is not taken into account sufficiently in all aspects of "Hindu Dharma" in the changed times of our cross-cultural understanding of the basic equality of all human beings. Here the "Hindu Dharma" has to modify its age-old discriminative morality towards the so-called "untouchables." To maintain it as part of the Hindu Dharma is hypocritical, while to give it up is realistic to its claim to be a *Saṅgātana Dharma*.

Reality-Perception and Righteous Action

Let every noble-minded person concentrating his mind fully recognize in the Self (Atman) all things both real and unreal; *for he*

who recognizes the universe in the Self does not give his heart to unrighteousness (M. XII: 118).

This piece of advice by Manu to his disciples is indeed marvellous. It sets in motion the dynamism of the perception of the Real and the righteous action to correspond to the Reality-Perception in one and the same stream of consciousness and experience. This is another way of expressing the same intuition of the sages of old, that the Real alone is true and Truth alone is right, and only the Right should be desired for, and acted upon.

According to the Dharmasāstric cosmology, which is essentially foundational to the understanding of law and morality, the universe is a relational and dynamic whole. Its centre is the supreme Spirit (*Atman*). He permeates every element and atom in the universe and everything in it is moved from the centre and spiralled up by the stimulation of Spirit. Nothing escapes His centrifugal and centripetal operations. His presence is indiscernible, and appears to our human cognition in an anomalous way as "both real and unreal." Nevertheless, He is the principle of stability as well as of continuity. His operation is like the wheel of a chariot: its fulcrum remains at the centre of the wheel while the wheel revolves and the chariot moves on. This is the basic law of motion, which sets everything else in motion while itself remaining stable as the principle of continuity. In this vision of the universe, Law is an inbuilt order which exhibits its rhythm all along the course of the movements of the universe. This cosmological vision of the Hindu Dharmasāstras may be characterized as "Pneumatocentrism" or Spirit centredness in contrast to the astronomical theories of Geocentrism or Heliocentrism. The pneumatocentric nature of this universe, according to the Dharmasāstras, should strike a balance between pure materialistic or pure spiritualistic theories of the world. Even the human mind, ego, and self-consciousness form part of this universe while being a part of the same Spirit. Man should have Reality-Perception and only then his heart is not led to unrighteousness, which is falsehood (cf. Manu I: 11-17; XII: 118-125).

Man has to regulate his actions according to the rhythm of the universe and not move contrary to its own natural dynamism. The dynamism of Nature is exhibited in a cyclic manner so far as our temporal phase is concerned; man has to work in tune with this cycle and this engenders moral harmony. This is in practice the relationship between "Reality-Perception" and "Righteous action." This inner relationship is believed to exist between the Cosmic order and the Psychic order of all actions, so much so that there is perceived an inter-

action between the physical harmony and the moral harmony of human actions; the latter affects the former and the result is in exact proportion to the righteousness of human actions. In other words, the environment of man is influenced, affected and conditioned by his moral involvement in his habitat. This is one of the most interesting insights provided by the Law Codes of "Hindu Dharma."

The Cosmic Order, centrally governed by the Spirit (*Atman*) is the *locus* of all ethical operations of man. Man's existential identity with this *locus* is such a necessary requirement for maintaining "peace" and "harmony" in his relation with the *locus* that any moral lapse on man's part affects the *locus* and turns against the offender. This is something like the environmental pollution caused by man's imprudent interferences with Nature. Once polluted, the atmosphere gets clouded with poisonous smog. This pollution is in exact proportion to the disorder man causes in the order designed by Nature. The Hindu Dharma has a moralistic theory to this effect. It is the theory of the deterioration of moral integrity (*Dharma*) and the shortening of the life-span of the human cycle. It says that when the righteousness of mankind is counted down by one-fourth in every stage of civilization from the original perfection of the creative period, mankind passes through various aeons of reduced duration in time. Such stages of moral deterioration are called, in the order of integrity, *kṛta yuga* (the aeon of perfect harmony of Dharma at the creative period), *treta yuga* (the aeon having three-fourths of the original perfection), *dvāpara yuga* (aeon of half the integrity of total Dharma), and the *kali yuga* (the aeon having only a quarter of the original perfection).

"Natural Law" as Model for Human Actions

Another relevant point that follows directly from what has been discussed above is the understanding of the so-called "Natural Law" as regulative of human actions. The notion of "Natural Law" is part of the accepted cosmology of *Dharmaśāstras*, and it is a corollary of the theory of the dynamic Cosmic Order. Manu designates Nature's regularity as "Natural Law" and its irregularities as Nature's Penalty for man's disturbance of its Rhythm. At the same time Nature's Rhythm is not a fatalistic and blind force. It is teleologically created and ordered by the supreme Spirit who sets everything in order at the time of its creation and He also guides its destiny:

To whatever course of action the Lord at first appointed each (kind of being), that alone it has spontaneously adopted in each succeeding generation (Manu I : 28).

As at the change of the seasons each season of its own accord assumes its distinctive marks, even so corporeal beings their course of action (M. I: 30).

The concept of a creator of the order is certainly a step forward from the Vedic concept of an autonomous *Rta*. In the Vedic times *Rta* was not understood as an order created and directed by one supreme Lord or God, but was believed to be a structural dimension of the Cosmos, one of the many forces of the universe merely guarded by the custodian Varuna from being interfered with other forces, natural or human. Man does not seem to give any special emphasis to this notion of *Rta* as a blind autonomous force beyond the control of *Atman*, the supreme intelligent Spirit. His emphasis is on the controlled force of Nature called *Rtuh* (Rhythm of the Cyclic Seasons), which is governed by the reason of the indwelling Spirit. It is a Cosmic Rhythm which was set in motion by Prajāpati (M. XI: 243)—the personal name of Atman in *Manusmṛti*—as "Nature's Law." The same is frequently called by Manu as *Dharma* itself. This law indicates the order of things and actions in Nature, to be imitated and followed by all living beings. "Natural Law" corresponds to the nature of things and their functions.

Human Responsibility and Practical Morality

Man is not simply a blind follower of the forces of Nature. He acts rationally upon it and co-operates with it for productivity; but he can also interfere with it, sometimes to the extent of his own destruction, or degradation. Here is Manu's observation about this:

Action which springs from the *mind*, from *speech* and from the *body*, produces either *good* or *evil results*; by (human) action are caused the various conditions of men, the highest, the middling and the lowest (M. XII: 3).

Know that the *mind is the instigator* here below, even to that action which is connected with the *body*; and which is of three kinds, has three locations, and falls under ten heads (M. XII: 4).

By "mind" is understood "Freedom", or the power of decision making. According to almost all teachers of *Dharmaśāstra*, mind or willing power of man consists in his *samkalpa*. This is the inner power of man by means of which he takes his decisions. The mind may be motivated to do some good by forces from outside, but the decision of *samkalpa* is the free act of man. Only by the action of the mind, man can do

good or bad, for which he is responsible. Hence according to "Hindu Dharma" practical morality consists in the free choice of man. *It is the responsible choice of the samkalpa of man that makes his action morally good or bad.* Of course, the emotional factors caused by the psychic adjuncts called the *gunas*—*satva, rajas, tamas*—have great influence on man's free decision. But this is an area which really belongs to the realm of discipline or education. Man has to be morally educated for exercising his *samkalpa* for the good of his total integration. Here comes the role of a good teacher and the function of a true system of education for imparting good morals. "Culture" (*samskāram*) is the product derived from educating the *samkalpa* in the true morality (*Dharma*). This is another piece of wisdom gained from the Hindu Dharma incidentally.

From the above theoretical considerations regarding the basic principles of morality, let us now come to some of the details of the practical aspects of morality. According to the list of Manu, there are three sets of morally evil actions. They are the following:

(i) *Sinful mental actions*—three:

Coveting the property of others, thinking in one's heart of what is undesirable, and adherence to false doctrines (M. XII: 5).

(ii) *Sinful verbal actions*—four:

Abusing others, speaking untruth, detracting from the merits of other people, and talking idly (M. XII: 6).

(iii) *Sinful bodily actions*—three:

Taking what has not been given, injuring creatures without the sanction of the Law (*Dharma*) and having criminal intercourse with another's wife (M. XII: 7).

Though Manu mentions here only ten cardinal vices which are above all caste discriminations, the details and specifications under each of the major moral violations are numerous and diversified, according to the specific conditions of the culprit. Besides these universal vices of man's irresponsible actions, there are also specific sins committed by people violating particular caste regulations. They are all enumerated in the context of the discussion of the duties of the people belonging to different castes and positions (*varṃśramas*).

Since spiritual emancipation, *moksha*, has been conceived to be the final goal of moral life in the "Hindu Dharma," the system of the laws and morality of the *Dharmaśāstras* may be designated as a sort of

"Spiritual Eudemonism." This is so congenial to the "Hindu Dharma" that the most fundamental ethical imperative to be insisted on always in the practical life of people is the universal maxim:

"Think good, Speak good and Do good,"

and this gives, in a nutshell, the positive virtues to replace the ten cardinal vices which arise from the mind, speech and the body, or from thinking, speaking and doing.*

* For a detailed discussion on many of the issues raised here in this article please consult the author's book : *Dharma According to Manu and Moses* (Bangalore: Dharmaram Publications, 1977).