

SOME REFLECTIONS ABOUT FALSE WITNESS
IN ANCIENT INDIAN LAW

The authors of *Dharmaśāstra* agree on condemning false testimony made during a trial¹. The result, in pragmatic terms, is the systematic praise of the truth, which is also seen in the light of obtaining the favourable opinion of society as a whole², although true testimony is considered, above all, one of the most important duties of man³.

¹ Cfr. for Āpastamba and Gautama, S.B.E., vol.II, *The Sacred Laws of the Aryas*, Part I, Transl. by G.Bühler, Patna-Varanasi, 1965; for Nārada and Bṛhaspati, S.B.E., vol. XXXIII, *The Minor Laws Books*, Part I, Transl. by J.Jolly, Repr.Ed., Delhi, 1965; for Vasiṣṭha and Baudhāyana, S.B.E., vol.XIV, *The Sacred Laws of the Aryas*, Part II, Transl. by G.Bühler, Repr. Ed., Delhi, Patna, Varanasi, 1965; for Manu, *The Laws of Manu*, S.B.E., vol. XXV, Oxford, Clarendon Press, 1886, Transl. with extracts from seven commentaries by G.Bühler; for Viṣṇu, *The Institutes of Vishnu*, S.B.E., vol. VII, Transl. by J.Jolly, Repr.Ed., Delhi, Patna, Varanasi, 1965; for Yājñavalkya, *Yājñavalkyasmṛti*, *The Dharam Shastra-Hindu Religious Codes*, Ed. and Transl. by M.N. Dutt, Cosmo Publications, Repr. Ed., vol. I, Delhi, 1978; for Kauṭilya, *The Kauṭilya Arthaśāstra*, Part II, An English transl. with critical and explanatory notes by R.P. Kangle, Repr., Delhi, 1986.

² Āpastamba, II,11,29,10; Baudhāyana, I,10,19,7 and 14; Manu, VIII,81.

³ Gautama, XIII,31.

The admonition given by the judge to witnesses is a peculiarity of the Hindu legal system. Therefore almost the most authoritative legislators agree that witnesses should be given a proper warning before being questioned, in order to test their dignity as witnesses in a trial. The warning has the obvious purpose of inducing the witnesses to tell the truth: on the one hand to make them aware of the importance of what they are about to say by exalting truth's moral values and on the other hand to infuse fear on them by depicting in detail the moral consequences of perjury⁴.

The judge explicitly instructs the witnesses to do their duty and to act responsibly after mature reflection on the misfortunes which fall upon those who testify falsely and the moral benefits of telling the truth. He also reminds them that their ancestors are anxious for them to tell the truth, since their position in the heaven or in hell depends upon it. Finally he calls upon them to recollect that false testimony also nullifies all the good done in their lifetime⁵.

The tone of the warning depends on the caste of the witnesses, varying from a simple advice in the case of a Brāhmana, to an invitation for a *kṣatriya*, an appeal to a *vaiśya* and a strong warning to a *śūdra*, who in the case of false testimony would have to expiate any serious crimes committed⁶.

The coercive nature of the admonition is reinforced by the way used to describe truth and truthfulness, which are psychologically uplifted, so much so that some authors⁷ report judges' warnings full of imagery and effect: the truth makes the moon shine, the wind blow, makes land fertile, makes water flow and fire burn...the gods are the personification of the truth, whereas man personifies falsehood...the truth is more worthy than the sacrifice of a thousand

⁴ Brhaspati, VII,19; Vasiṣṭha, XVI,32-34; Baudhāyana, I,10,19,9-12; Nārada, I,15,198-228; Viṣṇu, VIII,19 and 37; Manu, VIII,79-101; Yājñavalkya, II,75-77.

⁵ Nārada, I,11,200,220-222. According to Baudhāyana (I,10,19,10) the merit acquired during the life by a false witness will go to the king. Kauṭilya is of the same opinion in case of a *śūdra* adding that the king's sin will go to him and he will be also punished (3.11.37).

⁶ Viṣṇu, VIII,20-23. Kauṭilya, 3,11,34-37; Manu, VIII,88.

⁷ Viṣṇu, VIII,27-36; Manu, VIII,81-86; Nārada, I,15,210-216, 226.

horses...a witness who tells the truth, after death, reaches unheard of realms of beatitude, and his fame spreads the world over... giving true evidence purifies the witness and his merits grow. Hence, whatever caste, a witness has the duty to tell the truth⁸.

The moral punishments for witnesses who give false evidence, as described in judges' warnings, vary in intensity and range, according to the different authors. The axiomatic principle is that giving true evidence is rewarded with an afterlife in the heaven, so the corollary is that perjury leads to hell⁹. In addition to hell, there are places of torture such as those assigned to people who have committed serious crimes, such as killing a Brāhmana, a woman or a child¹⁰, or, especially significant, moral responsibility for an act metaphorically equivalent to killing a close relative¹¹.

The descriptions of the punishments for rendering false testimony include the particularly humiliating one of standing naked, hair shorn, tormented by hunger and thirst and with a bowl in the hand, begging at the door of own worst enemy¹². Or the burning torment of a wife who has been superseded, the frustrating humiliation of a man who lost at the game of dice or is weighed by a heavy burden¹³.

Authoritative legislators such as Manu and Nārada point out acutely that if a man is so ignoble as to render false testimony about a third person, then he is all the more liable to lie about himself: a man who has no respect for the truth is capable of stealing and committing any crime¹⁴; whoever is dishonest in word is dishonest in every deed¹⁵.

⁸ Cfr. A.THAKUR, *Hindu Law of Evidence or A Comparative Study of the Law of Evidence according to the Smṛtis*, Published by the University of Calcutta, 1933, p.137 following.

⁹ Gautama, XVIII,7; Āpastamba, II,11,29,9-10; Nārada, I,15,216-221.

¹⁰ Viṣṇu, VIII, 25-26; Nārada, I,15,225.

¹¹ Vasiṣṭha, XVI,34; Baudhāyana, I,10,19,11-12; Manu, VIII,98-99; Nārada, I,15,207-209.

¹² Vasiṣṭha, XVI,33; Manu, VIII,93.

¹³ Viṣṇu, XVII, 18; Yājñavalkya, II, 143; Nārada, I, 15,203.

¹⁴ Nārada, I,15,227-228.

¹⁵ Manu, IV,256.

Manu is precise on this point: before the Court Law a witness has to speak and to speak the Truth¹⁶. Even worse than false testimony and severally punished is the act of concealing facts acquainted and previously referred to others, but withheld in the court¹⁷. Some legislators agree that a witness who, questioned, refuses to answer to the judge is as guilty as a witness who gives false evidence and should be punished in the same way¹⁸.

Essentially, the relationship of cause and effect, and the strict relation between the seriousness of the crime and its concrete result, irrespective of how these actually match, is further evidence of the importance attributed by the legislator to the truth for the objective evaluation of facts and circumstances.

Legislators are of the same opinion on the fact that evidence susceptible to *legittima suspicio*¹⁹ should be excluded a priori. Cases include the testimony of a child – due to possible ignorance – or of a woman, who wish to be believed, the testimony of an impostor, due to natural depravity, and the testimony of a relative, due to affection, or that of an enemy, due to the wish for revenge²⁰.

Manu²¹ considers as false the testimony given out of greed, or in a state of confusion or terror, or motivated by friendship, avidity, anger, or by an ignorant or immature person. Evidently he considers testimony which is not voluntary but is influenced by external factors or given too lightly or by a person without the necessary firmness of mind, lacking in the two essential qualities of accuracy and thoroughness, and hence, in practical terms, as false²².

Legislators believe that one way of discovering the falsehood of testimony is to observe the behaviour of the witnesses. They may betray themselves by their facial expressions, a change of skin colour, by excessive sweating from the brow, the dryness of the lips,

¹⁶ Manu, VIII, 13; Nārada, III, 10.

¹⁷ Nārada, I, 14, 1979.

¹⁸ Gautama, XIII, 6; Viṣṇu, VIII, 37; Yājñavalkya, II, 79.

¹⁹ Nārada, I, 11, 177-190.

²⁰ Nārada, I, 11, 191.

²¹ VIII, 118-119.

²² Cfr. A. THAKUR, *op.cit.*, p. 148.

a fixed stare, or the evasiveness of answers²³. Guilt also makes the witnesses unstable on their feet, unsure of themselves and incapable of controlling their hands²⁴.

According to Yājñavalkya, contradiction between the statements of a same witness is proof of his falsehood, whereas contradiction between the account of different witnesses of the same party is less serious since it affects only the credibility of the less trustworthy of the two²⁵. Commentators have paid particular attention to the verse by Yājñavalkya which states that if an evidence rendered by some witnesses is contradicted by witnesses more trustworthy or double in number, the first witnesses should be considered as false²⁶.

In the logical and consequential nature which – *lato sensu* – defines injunctions and legal prohibitions in relation to asserted truth, some exceptions leading to freedom from guilt of perjury, appear quite abnormal. False testimony is permitted, for example, in cases in which telling the truth might lead to the death of someone, of whatever caste²⁷. The guilt, however, must be expiated by punishment of a different nature and intensity according to the caste of the person standing accused²⁸. It is strange indeed that false evidence is admitted by the authors in five cases without incurring in decaying from the caste: during wedding preparations, during dalliances, when one's life is in danger, when there is the risk of losing one's property, or when the safety of a Brāhmana must be safeguarded²⁹.

²³ Viṣṇu, VIII, 18; Manu, VIII, 25-26; Yājñavalkya, II, 13-15; Nārada, I, 14, 193-196.

²⁴ Nārada, I, 14, 193-194.

²⁵ II, 82.

²⁶ II, 80.

²⁷ Manu, VIII, 103-104; Viṣṇu, VIII, 15.

²⁸ Viṣṇu, V, 16-17; Manu, VIII, 106; Baudhāyana, I, 10, 19, 16; Yājñavalkya, II, 85.

²⁹ Vasiṣṭha, XVI, 35; Gautama, XIII, 24: he however deems this rule not valid for saving the life of a wicked man; Bṛhaspati, VII, 34; Manu, VIII, 102-104 and 112.

False evidence when proved, forces the judge to reverse the sentence and to declare null and void any decisions relating to it³⁰. The authors have fixed for perjury fines and sanctions of which Manu provides a detailed list. Whilst Gautama goes no further than stating that false witnesses must be blamed and punished³¹, Manu specifies that the fine must be in proportion to the reasons leading to the false testimony³². From the list of offences and fines, in descending order, which places sexual offences at the top and offences committed out of immaturity at the bottom, it is clear that Manu considers deliberate falsehood extremely serious. Yājñavalkya establishes the sum of the fine as double the amount payable by the losing party, or, in the case of a Brāhmana, the exile³³, whilst Bṛhaspati says that a Brāhmana must be protected if he has lied once out of error, to protect his own life or due to oppression by rogues or other enemies³⁴.

According to Viṣṇu the fine should be the same as the punishment for a corrupt judge, that is the confiscation of his wealth³⁵.

As for a repeated false testimony, Manu distinguishes between a Brāhmana and members of other castes, recommending the banishment for the former, and for the latter, the fines described above and exile or serious physical mutilations such as cutting off of the lips or tongue, or even death³⁶.

A great responsibility lies with the judges who have to restore justice as, if they fail or they act against the law, they will be metaphorically “destroyed”³⁷. In fact the guilt of an unjust sentence shall be equally subdivided among the judge itself, the false witness, the perpetrator of the crime and even the king³⁸.

³⁰ Manu, VIII, 117; Viṣṇu, VIII, 40.

³¹ XIII, 23.

³² VIII, 120-121.

³³ II, 83.

³⁴ VII, 34.

³⁵ V, 179-180.

³⁶ VIII, 123-125.

³⁷ Manu, VIII, 12 and 14-15; Nārada, III, 8.

³⁸ Manu, VIII, 18; . Nārada, III, 12.

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