

MANJULIKA GHOSH

DHARMAŚĀSTRA VERSUS ARTHAŚĀSTRA

The Hindus have several ways of classifying the thoughts which they regard as worth leaving and handing down; but there is no single heading under which to comprehend all their basic generalisations about reality, human nature and conduct. The first and foremost of their system of classification is that of *dharma* and *artha*. Both are *puruśārthas*, both are formative of human life and experience. Men have the aspiration for power, possession and domination. They also aspire to enter into social and moral interactions with others. But the two *arthas* are differently oriented to justify two separate sets of literature with different goals and aims. *Dharmaśāstras* (henceforth *ds*) deal with the laws and customs governing the development of the individual and the proper relations of the different social groups. The *Arthaśāstra* (henceforth *as*) is a treatise on politics and diplomacy. While both these *śāstras* deal with man in society, the former deals with social life from the standpoint of religion and morality, the latter does so from that of policy and utility.

In the context of this paper I propose to discuss and evaluate the relative importance of the *ds* and *as* in the life and culture of the Hindu society in the ancient and medieval India.

The word *dharma* as Kane observes is “one of those Sanskrit words that defy all attempts at an exact rendering in English or in any other tongue”.¹ The word is of ancient coinage and occurs in the *Ṛg*

1. *History of Dharmaśāstra: Ancient and Medieval Religious and Civil Law*

Veda, in the *Brāhmaṇas* and the *Upaniṣads*. Derived from the root *dhr*, to hold or sustain, it comprehends a variety of senses which are close to one another. It may be rendered as 'righteousness', 'moral merit', 'duty', 'acts which a person is under an obligation to perform, *itikartyabata*', 'conduct which is proper', 'rituals and sacrifices as part of proper conduct', 'actions which direct a man to attain good', and also as 'law, ordinance'. From the classification of *dharma* in *Medhātithi* on Manu and *Mitākṣarā* on Yājñavalkya, it appears that in the context of the *ds*, *dharma* denotes the privileges, duties and obligations of man as a member of the community, as belonging to one of the castes and to a particular station of life.² One may say that the codes of *dharma* are hypothetical imperatives relative to one's caste, station or state of life. But both Manu and Yājñavalkya speak of *sadharana dharma*, duties common to all men, or virtues, *satya*, *ahiṃsā*, *asteya* etc. to be cultivated by all.³ *Dharma* is not a subjective state but an objective category, and the codes which prescribe *dharma* derive their sanction from the scriptures. The oft-quoted texts of Manu or Yājñavalkya refer to *Vedas* and *Smṛtis*, among others, as the sources of *dharma*.⁴ This gives the *ds* its special character. The ethical ideal is pointing to the eternal divine and all actions – both economic and ritualistic – are charged with super sensible significance and enhance the reality of the *śāstric* norms in the minds of those subject to the *śāstras*. According to Derrett this forms the necessary presupposition of the *ds*. If this is not accepted, this system of thought cannot be sustained. It is the validity of these ideas to the Hindu mind that explains the universality, infallibility and change-resistant character of the *ds* despite numerous commentaries, sub-commentaries and digests.

If Manu is to be placed somewhere between the second and 4th Century B.C. and Yājñavalkya somewhere between the 2nd and 4th Century A.D, then it appears that the *ds* texts continued to be composed and commented upon for more than two thousand years.

(henceforth HDS), Poona, Bhandarkar Oriental Research Institute, 1941-75, I.1, P. 1.

2. Ibid, P. 3.

3. Manu, X, 63 (5), Yājñavalkya, I. 1, 22 (9). The sources of *dharma* are *śrūti*, *smṛti*, *sadacara* and *atmatusti*. These sources have been understood to be hierarchically arranged in decreasing importance.

4. Manu, II. 6; Yājñavalkya, I.7.

Following the list given by Kane⁵ we now know that approximately two thousand authors contributed to the literature, excluding those who remained in anonymity. *Śāstras* continued to be revised and supplemented in various forms till the 17th Century A.D. The topics committed to the *ds* are so vast in scope that there remains hardly any aspect of life, which is excluded. Every aspect of life from pre-natal existence to post-mortem rituals is circumscribed in the *śāstra*. In other words, *śāstra* encompasses the entire corpus of life-social, moral, intellectual, spiritual and also legal.

A look into the meaning of the word *artha* will give us an idea of what an *Arthaśāstra* is designed for. *Artha* is material possession. Literally it means “thing, object, substance” and comprises the whole range of tangible objects that can be possessed, enjoyed and lost and which we require in daily life for the upkeep of a household, raising of a family and discharge of religious duties, i.e. for the virtuous fulfilment of life’s obligations. Objects also contribute to sensuous enjoyment (*kāma*), gratification of feelings and satisfaction of the legitimate requirement of human nature: love, beautiful works of art, flowers, jewels, fine clothing, comfortable housing and pleasures of the table. The word *artha* thus connotes “the attainment of riches and worldly property, advantage, profit, wealth”, also “result”; in commercial life: “business-matter, business-affair, work, price” and in law: “plaint, actions, petition”. With reference to the external world, *artha* in its widest connotation signifies “that which can be perceived, an object of the senses”; with reference to the inner world of the psyche: “end and aim, purpose, object, wish, desire, motive, cause, reason, interest, use, want and concern”; and as the member of a compound, *-artha*: “for the sake of, on behalf of, intended for”. The term thus bundles together all the meanings, (1) the object of human pursuit, (2) the means of this pursuit, and (3) the desire suggesting this pursuit.

There exists in India a special literature on the subject wherein the field of enquiry is narrowed to the specific area of politics: the politics of the individual in everyday life, and the politics of the gaining, exercise and maintenance of power and wealth as King. This art is illustrated by the beast-fable – a most remarkable vehicle for the presenta-

5. *HDS*, I., Appendix 6.

tion of a realistic philosophy of life. Case histories from the animal kingdom develop and illuminate a ruthless science of survival, a completely unsentimental craft of prospering in the face of constant danger that must ever lurk in the clandestine and open struggle of being for life and supremacy. Like any Indian doctrine, this one is highly specialised and designed to impart skill. It is not confused or basically modified by moral inhibitions; the techniques are presented chemically pure. The textbooks are dry, witty, merciless and cynical, reflecting on the human plane the pitiless level of the animal conflict. Being devouring each other, thriving on each other, maintaining themselves against each other inspire the pattern of thought. The basic principles are those of the despot, hence the doctrine is *matsya-nyāya*, the principle of law (*nyāya*) of the fish (*matsya*) which is to say “the big ones eat the little ones. The teaching is called *Arthaśāstra*, the authoritative text (*śāstra*) of the science of wealth (*artha*), wherein are to be found all the timeless laws of politics, economics, diplomacy and war. The literature of the subject thus comprises, on the one hand, beast fables, and, on the other hand, systematic and aphoristic treatises. Of the former the two best known are the *Pañcatantra* and the *Hitopadeśa*. Of the systematic treatises the most important is the encyclopaedic work known as the *Kauṭilya Arthaśāstra*, named after the legendary chancellor of Chandragupta Maurya who flourished at the end of the 4th Century B.C. The handbook gives an extensive, detailed and vivid picture of the style and techniques of Hindu government, statecraft, warfare and public life. A much briefer treatise, the so called *Bṛhaspatya Arthaśāstra*, is a compact collection of aphorisms supposed to have been revealed by the divinity Bṛhaspati the mythical chancellor, house priest and chief adviser in the world politics of Indra, king of the gods. Still another summary is Kāmandaki’s *Nitiśāstra*. The verb *nī* means “to lead, convey, guide, govern, direct”, and the norm *niti*: “direction, guidance, management; behaviour, propriety, decorum, course of action, policy; prudence, political wisdom, statesmanship”. *Nitiśāstra*, therefore, is a synonym for *Arthaśāstra*. Valuable materials also appear in many of the didactic dialogues of the *Mahābhārata*, in stray bits and fragments from treatises now lost, coming down from the Indian feudal age of the 8th and 7th Centuries B.C. From such sources a vigorous, resourceful and absolutely realistic philosophy of

life is to be extracted as well as a theory of diplomacy and government that is certainly comparable to the statecraft of Machiavelli and Hobbes. If we compare the *ds* with the *as* it is the sheer bulk of literature in the former and the continuity of the norms *sastrakara* after *sas-trakara* that appear as amazing. One cannot but be curious about the rarity of *as* texts and the paucity of commentary on Kauṭilya's *Arthaśāstra*.⁶ The rediscovery of the text came to many as a surprise. The text itself was not available in English before 1915.⁷ This may be taken to indicate that the consolidation of society, its boundedness and locating the source of initiative within it were the important tasks facing the ancient mind. In understanding the *ds* we are trying to understand the possibility of society at the dawn of civilisation. The *śāstric* norms were not meant for social engineering but for the consolidation and maintenance of society as a whole and the relationships among the different elements of society, imposing on each class an ideal of duty. Society exists not for its own sake but rather that each individual can attain the highest as *paramaśreyas* in accordance with the observances laid down in the *śāstra*. It is the peculiarity of the Indian mind that a task which was to be effected by an autocratic, centralised royalty elsewhere in the world was brought about by men of higher spiritual experience and knowledge.

The relative importance of the *ds* may also be attributed to the fact that sovereign power was itself hedged in by the standing constitution of *dharma*. The *ds* in its comprehensiveness prescribes the duties and responsibilities of the king for whom rules are laid down in many treatises on *dharma*. According to Manu the coronation of the king is a sacrament prescribed by the *Veda*.⁸ The *śāstras* are set out to extol and teach the *dharma* of the *varṇas* and *āśramas*. So far the king is concerned the norms applicable to him are those of the *kṣatriya* and the householder. Kings are warned that unless they protect the *cat-urabarnas* along the *śāstric* norms they will suffer natural calamities

6. Kane has enumerated the commentaries to be only seven in number and that too fragmentary in character.

7. The English translation of the texts used here is by R. P. Kangle, *The Kauṭilya Arthaśāstra*, Bombay: University of Bombay, 1972 and Shyama Sastri, *Kauṭilya's Arthaśāstra*, Mysore: Mysore Printing and Publishing House, 1967.

8. Manu, VII. 2.

and the dreaded *matsyānyaya*.⁹ Manu even lays down that an unjust and oppressive king should be killed by his subjects like a mad dog. The stability of the kingdom is, on the one hand, a matter of accurate running of *dharma*, and on the other, conducive to the individual's welfare. The *sāstras* promise rulers joy in Indra's heaven if they perform as prescribed.¹⁰ The king's duty to provide justice lies within the concept of a '*dharmic deal*'. The king is only the guardian, executor and servant of *dharma*, not its master.¹¹ Although Mitaksara on Yajñavalkya¹² regards *as* as a part of *ds* the policies of government, the apparatus of choice and installation of the ruler formed eventually a minor part of the *sastra*. Even in a much later work like Lakṣmidhara's *Kṛtyakalpataru*,¹³ matters of political science are touched upon vaguely. The *as* maintained a precarious position within the *ds*. This pre-eminence of the *ds* is as it should be. In the eager and relentless pursuit of worldly possession and prosperity the king can adopt means which may come in conflict with the strictly ethical standpoint of the *ds*. In the ancient world there were no world organizations like the U.N.O. and the Human Rights Commission, no mass media like newspaper and television to keep vigil and build up public opinion. The *sastric* rules provided the necessary checks and balances. It is stated by Yajñavalkya that in case of conflict between the *ds* and the *as* the former shall prevail. The Mitākṣarā on Yājñavalkya makes this clear. Narada *Dharmaśāstra* also says the same thing.¹⁴ This can be illustrated from Manu. Manu while dealing with the *vyavahāra* portion,¹⁵ which is a subject predominantly belonging to *as* provides that in killing an *atayin* no fault attaches to the killer; while Manu in the

9. Bharuci's Commentary on the *Manusmṛti*, ed. Derrett, J.D.M., Weisbaden, Franz Steiner Verlag Gimbtt, 1972, VII. 130; *HDS*, III, P. 21, P. 30.

10. Manu, VIII, 386 – 87; Narada, Introduction, P. 10, P. 74., Kane, *HDS*, 995 – 98.

11. Derrett, J.D.M.: *Dharmaśāstra and Juridical Literature: A History of Indian Literature*, Vol V (henceforth *HIL*), Wiesbaden, Otto Harrasowitz, 1975, p. 22. Also Sri Aurobindo, *The Foundation of Indian Culture*, P. 330.

12. Yajñavalkya, II. 21; Kane, *HDS*, I. 1, n. 152, P. 158.

13. Derrett, J.D.M., *HIL*, P. 9; Derrett places this work somewhere in the 11th – 12th Centuris AD.

14. Yajñavalkya, II. 21; Kane, *HDS*, I. 1, P. 152; Narada, 1. 39; Kane, *HDS*, I. 1, P. 153.

15. Manu, VIII. 35; Kane, *HDS*, III, P. 10.

chapter on *prayaścitta*,¹⁶ which is predominantly a topic of *ds*, states that there is no penance to remove the guilt of the killer, if the *atatayni* happens to be a *brahmana*. Visvarupa in his commentary on Yājñavalkya says that the latter rule prevails.¹⁷

A few more instances of the primacy of the *ds* may be cited here. The whole Chapter 14 of the *Śāntiparva*, *Mahābhārata* is full of the grand line of Machiavellian policy to be followed by kings.¹⁸ Duryodhana should not be held guilty to pursue the devious modes of action, for he was only trying to make his position *niskantaka*. And yet the battle of *Mahābhārata* is declared to be *dharmayuddha*. When her son came for her blessings, Gandhārī, the queen mother of Duryodhana said, “wherever there is righteousness, victory shall be there.”¹⁹ Again, Draupadī implored the wise men of the court to come to her redress in the name of the violation of her individual privacy. The wise Bhīṣma replied that the ways of *dharma* were inscrutable and hence no off the cuff moral judgement would be passed on the behaviour of the mighty Duryodhana. The inscrutability of *dharma* made Bhīṣma and other members of the royalty powerless.

The *Rāmāyaṇa* society was characterised by the fact that the king was the defender of faith, i.e., the accepted norms of the society. No individual was excepted from transgressing the norms. Śambuka overstepped the caste norms and practised the brahmanical mode of self fulfilment or *tapasya*. He was beheaded by the king.²⁰ Sītā was asked to prove herself non-guilty by entering the fire. In both the cases the *ds* coerced the king to suspend his own judgement. And this is despite the *as* provision that of *dharma*, *vyavahāra*, *carita* and *rājasaśāna*, the last is the best. To cite a last case I shall refer to a poem by our poet Rabindranath Tagore. The poem²¹ is based on one of the *Ballads of the Marathas* by Acqworth. The episode belongs to a time when the statecraft has started to harden. The king avoids the trial and punishment for

16. Manu XI. 89; Kane, *HDS*, III, P. 10.

17. *Ibid.*

18. Verses 13, 17 – 18, 50, 58; Kane, *HDS*, III, P. 11.

19. *Śāntiparva*, verse 76.

20. *Uttarakanda*, canto 76.

21. ‘Vicaraka’, *Katha O Kahini*, Rabindra Racanavali, I, Education Secretary, Government of West Bengal, 1961, P. 781.

killing his nephew and thereby transgresses the legal principle that no accused should go without trial however highly placed he might be. The brahmin judge challenges the king's bypassing the legal i.e., dharmic principle. He relinquishes the seat of judgement in protest against the king's wayward behaviour. If the king makes a mockery of the law, it does not mean that law is a handmaiden of regal power. The law abides even if executive power of the state bypasses it.

This poem is significant for in his political thought²² Tagore has made an acute observation. In India it was never the statecraft but the society which held sway. The Tagore thesis is that politics and positive laws were not integral parts of the *ds* despite the fact that the positive law that we find in the 8th and 9th chapters of Manu or in the second book of Yājñavalkya is fundamentally the same as in a section of Kautilya. It is later in history that *ds* made law and politics its own and as ceased to be studied. The wilful confusion of *ds* with *rājasaśāna*, statecraft occurred, according to Tagore, only in the days of the imperial Guptas.

Scholars have expressed their dismay about the absence of 'explicit evidence that *dharmasāstras* were ever used in ancient India as "codes" in the modern legal sense of the term.'²³ This is taken as a ground to show the irrelevance of the *ds*. It is debatable if *dharmasāstra* codes are codes in "the modern legal sense", i.e., as statute law or court law. According to J.D.M. Derrett, "The *sāstra* contains no rules of law which must be followed by judges on pain of illegality, but only precepts". "...the British", he continues, "...made this mistake".²⁴ If what Derrett says is unexceptionable, then there is hardly any reason to be unhappy about the *sāstra* not being precepts in the modern sense.

About actual trial proceedings Professor Lariviere has spotted only one court scene in the 9th *anka* of Śūdraka's *Mṛcchakaṭīkam*.²⁵

22. Vide his *Creative Unity, A Vision of India's History and Swadeshi Samaj*, Visva Bharati Granthan Vibhag, Calcutta.

23. Lariviere, R.W., 'Dharmaśāstra: Its Present Value and Relevance', *The Perennial Tree*, P. 179. Cf. Derrett, '... law, with a miniscule was the legal rule which happened to run from time to time in the court'. *HIL*, P. 22.

24. Derrett, J. D. M., *HIL*, P. 3 – 4.

25. Lariviere, R.W., 'Dharmaśāstra: Its Present Value and Relevance', *The Perennial Tree*, ICCR, New Delhi.

Following Kane, however, we may mention Kalhaṇa's *Rājatarāṅgiṇī* which refers to several court decisions in criminal and civil cases. It mentions a case²⁶ in the reign of king Candrapida of Kashmir in which a *brahmaṇa* guilty of the murder of another *brahmaṇa* was exempted from death sentence because of the *smṛti* rule that a king should never punish a *brahmaṇa* with death. It also, mentions king Yasaṣkara's branding a *brahmaṇa*'s forehead with the mark of a dog's feet.²⁷ It states a civil case²⁸ in which the king settled the fraud relating to *upanidhi* created with a merchant. It is not unlikely that there were many such cases of settlement of disputes according to *sastric* principles in the ancient and medieval India. If they have not been preserved, it is, I think, due to the remarkable indifference of Hindus towards time and history. This ahistoricism has something to do with the timelessness of thought and the eternity of the ethical ideal.

I shall conclude this essay with making one more observation. Of the *ds* texts listed by Kane, one hundred and twenty are exclusively on *suddhi* and *prayaścitta*, this apart from the fact that these topics form part of the usual subject matter of *ds*. This needs mentioning to highlight the fact that offenders are required to perform penance over and above the penalty suffered in the form of fine or punishment. Purificatory rituals were imperative since by transgressing the law one defiles one's own self. Hence just as the person of the transgressor suffers penalties, so does his soul requires to be purged of the defilement. The whole practice of *prayaścitta* or spiritual penalty points to a *dr̥ṣṭa-ādr̥ṣṭa* dichotomy. The king may be in charge of the *dr̥ṣṭārtha dharmas* the effects of which are worldly and seen. But actions having super sensible significance must remain beyond the king's capacity. As the life-fabric in ancient and medieval India was wrought by sacraments, *samskāras*, with necessary prayers and observances, acquisition of merit by charities and austerities, *suddhis* and *prayaścittas*, one may say with some degree of confidence that the *ds* was much more important than the *as*.

26. *Rājatarāṅgiṇī*, IV, Pp. 96-106; Kane, *HDS*, III, P. 397.

27. *Rājatarāṅgiṇī*, VI, Pp.108-112; Kane, *HDS*, III, P. 403.

28. *Rājatarāṅgiṇī*, VIII, Pp. 124-157; Kane, *HDS*, III, P. 403.

