

MANU: LEGAL JURISPRUDENCE & SOCIAL LAWS

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Chapters of Manusmriti:

- Origin of the World (1.1-119) Sources of the Law (2.1-24)
- Dharma of the Four Social Classes (2.25-11.266)
- Rules Relating to Law (2.25-10.131)
- Rules of Action in Normal Times 92.26-9.336)
- Dharma of a Brahmin (2.26-6.97)
- Rules of Action for a King (7.1-9.325)
- Rules of Action for Vaisyas and Sudras (9.325-36)
- Rules of Action in Times of adversity (10.1-129)
- Rules Relating to Penance (11.1-265)
- Determination regarding Engagement in Action (12.3-116)
- Fruits of Action (12.3-81)
- Rules of Action for Supreme God (12.83-115)

FUNDAMENTAL PRINCIPLES OF JURISPRUDENCE

The Concept of both Law and the Courts of Justice in visible in Manusmriti (B.A. Saltore)

- The task before the government is the **regulation of relationships of the entire manifest world**. It must ensure that no one is able to dominate the others. The whole emphasis is on the idea that the community cannot be divorced from the cosmic relationship.
- A good state must be judged not only by the **services rendered by it**, but also by the **quality of people inhabiting it**. (V.R. Mehta) The main duty of the king is to protect good people and punish the bad ones. To protect weak, especially orphans, widows and the old is the supreme duty and the highest religion of the king.
- King was no more himself a court of justice and appellate jurisdiction. "A King desirous of investigating law cases must enter his court of justice, preserving a dignified demeanour, together with Brahmanas and **experienced councillors**. (Manu VIII.1)
 - ⇒ Kingly power is conceived as originating in the authority of God Vishnu, though for its day-to-day performance it is dependent on the approval of the elders including Brahmanas and seers in the state. Yet, they remain loyal to the king, as he has to maintain the varna system in society.
 - ⇒ Manu tries to reconcile the authority of the king with a social system in which the authority of Brahmanas is accepted as supreme and pure.
 - ⇒ Manu could not separate politics from socio-religious practices of the time.
 - ⇒ Manu also wants a good king to be assisted and advised by good and truthful ministers and civil servants.

- The king was told **to decide law in accordance with the rules of the shastras and usages of the country**. (VIII.3) Manu wanted the king and judges to inquire very diligently into cases and asserted for a very heavy fine (of thousand *Panas*) on those who improperly settle cases.
- “When he (the king) is tired with the inspection of the business of men, let him place on the seat (of justice), his chief minister, (who must be) acquainted with law, wise, self controlled), and descended from a noble family.” (VII.141) => **Minister for Law**

He envisaged courts of justice in which judges are appointed on the basis of their character and experience by the king.

- Theoretically, the king always presided over the court, whether he was present or not. The decree given under the seal of the court was called a document given by the king. (K.P. Jayaswal, Hindu Polity, 313)

THE LAW COURTS:

- **The law court as an adjunct of the state helped to maintain social order** as between individual and individual, and between individuals and owners of associations like corporations in a village or a district, or herdsmen. (VIII.219, 232)
 - The village councils were among the lowest of judicial assemblies, composed of the relatives of the litigants and some impartial members of the village presided over by an official (headman). Similarly, the king was to appoint a headman over ten villages (who received as his salary one *kula* of land and shall try all cases of offence occurring therein); a headman over twenty villages (enjoying five *Kulas* of land); a headman over hundred villages (enjoying a village); and a headman over a thousand villages (enjoying a town). (VII.115-119)
 - The cases which a headman of one village was not competent to decide shall refer to the headman of ten villages. In cases of doubt or incompetency, the headman of ten villages shall refer to the headman of twenty villages; and the latter, to the headman of hundred villages; and he too in similar circumstances, to the headman of thousand villages.
 - Manu also mentioned a superintendent in each city, who had jurisdiction over its affairs – in some sense comparable to the mayor of the present day (John Spellman 124) – and had wide judicial and punitive powers as well. (VII.121)
- **Appointment of judges:**
 - Manu was in favour of **appointment of a Brahman as the chief judge**. In exceptional circumstances, it is permissible to appoint a Kashatriya or a Vaishya, but never should a Shudra be appointed as a judge (VIII. 20-21), else Dharma would come to ruin as a cow sinks into the mud. Perhaps it was due denial of study of Vedas to the Shudras.
 - **Three assessors** were to be appointed as associates of the chief judge. Once again Brahmans were the rule, although the same exceptions were made as with the chief judge (John Spellman). Their opinion was sought on particularly difficult points of law, but they were not to interrupt the trial freely. (VIII.12-14)
- Manu required the king to make good from his own treasury the loss to the plaintiff in the event of the thief not being captured and even if he could not recover it from the

thief after finding him, the same rule applied. Here, the king or indirectly his servants had failed in their duty of protection to the people. By compensating the aggrieved party, that failure was to some degree mitigated.

- The executive was not to interfere with the judiciary (VIII.43)
- An accused could plead duress (VIII.1810, self defence or minority in his defence (even though there was no consensus among jurists on age of minority to cease. A.S. Altekāt 256)

18 TITLES OF LAW (VIII.3-7)

- i. The non-discharge of debt;
- ii. Creation of a trust;
- iii. Sale of a property by one other than its lawful owner;
- iv. Co-partnership transactions (mercantile causes);
- v. Resumption of a gift;
- vi. Non-payment of his salary to a servant;
- vii. Non-performance of a promise or contract;
- viii. Non-delivery or non-claiming of a good bought or sold;
- ix. Dispute between a cowherd and an owner of cattle;
- x. Dispute in respect of a boundary;
- xi. Assault and use of abusive language;
- xii. Theft;
- xiii. Rash act (robbery);
- xiv. Adultery;
- xv. Duties of husbands and wives;
- xvi. The division of an ancestral estate;
- xvii. Gambling with dice; and
- xviii. Wagers in respect of animal-fights.

- Manu maintains the moral aspect of dharma and asks the righteous **king to consider carefully the rules of castes, local customs, bye-laws of guilds, and family traditions.**(A.S. Altekār 260) If they are not opposed to the Vedas and other sacred laws, they should be upheld by the king as binding. (VIII.41) (John W. Spellman)
 - ⇒ The decisions of the judges should be based not only on equity, but also take into account diverse customs and practices of different castes, regions and families.

THE LAW OF EVIDENCE

- The prominent feature of Manu's law code is its **class legislation**. It is to be found in the law of evidence and in the penalties prescribed for offences against person, property, reputation, etc. (R.S. Sharma, Aspects of Political Ideas and Institutions in Ancient India)
- In the number and nature of civil and criminal cases, in the **procedure related to both the types of, and in the qualifications and nature of witnesses** mentioned in Manusmṛiti, there is a considerable progress in the concept of law since the Vedic days. (B.A. Saltore)

- ⇒ The outcaste, one fallen from his varna duties, could not act as a witness, and members of one caste could not appear as witnesses for persons of the other castes. (VIII.18);
- ⇒ *Dasas* (slaves) or *bhritakas* (servants), recruited from the Shudra varna, must not be examined as witnesses (VIII.70);
- ⇒ while deposing members of different castes, were to be administered different kinds of oath and shown different kinds of treatment. (VIII.88-89)
- ⇒ Manu declares that the king should fine and banish men of the first three classes who give false evidence, but only banish a Brahman (VIII.123). However, no crime involving loss of caste is committed by lying to women, at marriages, for the sake of food, for a cow, or for fuel in order to show favour to a Brahman.
- ⇒ Manu further specified that whenever the death of any member of the four classes would be caused by telling the truth, a falsehood is preferable. (VIII.104)
- ⇒ K.P.Jayaswal feels that Trial by Jury could be realized in Manu's assertions, as the consequences of unjust decisions attached one-quarter of the guilt on the criminal, one-quarter on the false witness, another quarter on all the judges and the final quarter on the king.

THE STRUCTURE OF PUNISHMENT

- Not only was the **evidence of witnesses** taken into consideration, but the past usage prevailing in the neighbourhood also taken into account. (VIII.259)
- Manu's ideas on social organization aimed at establishment of order in terms of a certain notion of **proportionate justice**.
- Manu mentions **three methods of punishment** (VIII.310)
 - **Imprisonment**
 - **Use of Fetters** (Enchainment)
 - **Corporal punishment**

Manu's on the Social Laws

A. CREATION & THE ORIGIN OF THE SACRED LAW

- The Manusmriti begins with the concept of *Nirguna Brahma*, the unmanifest, supreme cosmic reality; to be experienced with the aid of practices in breath regulation (*Pranayama*), prayer (*Japa*) and meditation on the fundamental syllable 'Aum' (*Dhyana*)
- The cosmos came into existence when *God* awakened from the primeval sleep.
- *Nirguna Brahman* becomes manifest in the endless cosmic cycles, the rest of it remains unmanifest.
- According to Manu *karma-yoga* is the most important yoga as it includes both *Pravritti* (regulation of desires) and *Nivritti* (total eradication of desires)

B. TEN CHARACTERISTICS OF DHARMA

- Patience

- Forgiveness
- Restraint
- Not steal
- Cleanliness
- Keep in mortify
- Wisdom
- Knowledge
- Truth and
- Do not be angry (be angry)

i. **Five Basic Rules of Dharma**

Vedah Smritih Sadacharah Swasya cha priyamatmanah

Atachchaturvidham parhuh Sakshaddharmasya lakshanam (II.12)

The Vedas, the Smriti, good conduct, and self-complacency of one's own conscience – these four are the positive proofs of virtue.

- Not to indulge in violence [mental or physical] against others;
- Truthfulness;
- Not to acquire illegitimate wealth [by methods such as theft, robbery, cheating, bribery, making undue profit in trade or business, exploiting the needs of others, unreasonable professional charges, commercialization of service-oriented professions, such as Lawyers, Doctors and Teachers etc. by resorting to professional exploitation];
- Cleanliness in thought, word and deed [Trikarana Shuddi]; and
- Control of senses .

⇒ Conflict between good and evil is a fact of nature. And good implies participation in the cosmic process in our effort to move Beyond.

⇒ Doctrine of repayment of debts to Gods, teachers, parents and society at large. To pay back this debt is human endeavour. The first stage in this endeavour is to serve one's immediate superior that is one's master and one's mother and father.

C. STRUCTURE OF FOUR VARNA

(and similar imagination of the division of Greek society)

Functional division of society (V.R. Mehta) men are equal not in their executive capacities, but in terms of their enjoyment of desires. Since the capacities vary, each person must perform the functions for which he is naturally fitted. People must be given different powers and stations in proportion to the qualities and talents they possess.

The king's power grows and he prospers in this world and the next when he prevents the confusion of castes (VIII.172)

- Brahmins (teacher and priests)
- Kshatriyas (administrators and army men)
- Vaishyas (traders, farmers and herdsmen) and
- Shudras (slaves).

i. **Migration within Varnas**

- Brahmin can become Shudra and Shudra can become Brahmin. Similarly Kshatriyas and Vaishyas can also change their Varnas.(v.10.65)
- If a Shudra (uneducated) serves the educated ones, is polite, devoid of ego and stays in respectful company of knowledgeable ones, he/ she is considered as having a noble birth and stature. (v.9.335)
- He who has not been initiated with teaching of the Vedas is a Sudra. (v. 2.172.)

- A Brahmin acquires brilliance through company of noble persons and avoiding bad company. On contrary, if he indulges in bad company, he becomes a Shudra.(v. 4.245.)
- Even if he is a Brahmin otherwise, a person who does not politely respond to a greeting is actually a Shudra (uneducated person). (v.2.126.)

D. ASHRAM DHARMA

- Brahmacharya
- Gr̥hastha
- Sanyāsa
- Vānaprastha

E. MANUSMRITI AND WOMEN

- **Respect for Woman:**
 - *Yatra Naryastu Pujiyante Ramante tatra devtah* (III.56): The intra-cosmic Gods smile on the family where females are honoured or held in respect.
 - Marriage was considered equivalent to initiation (Upnayana) ceremony.
- **Autonomy of Women**
 - Women be given complete charge of internal management of the household
 - Considered that both husband and wife to keep each other happy and satisfied.
 - Wife as soul of her husband
 - Women is neither an object of enjoyment nor a wage earner.
 - Complementarity of Vedic period shifted to relative dependence (V.R. Mehta)
- **Protection of Women**
 - Considering wife physically weak and vulnerable, she should be protected by father, husband and sons
- Marriage of Women
- Property Rights of Women
- Strict Punishment for harming Women
- Ladies First

Family

- As foundation of Hindu social organization and central to social existence
- Serves students, old people, the forefathers and Gods
- No domination of others; strive to attain happiness of others
- Wealth for fulfilment of needs and performance of one's duties towards parents, teachers and society.
- Mutual conjugal fidelity for both husband and wife
- Wife subjected to punishment for disobeying husband
- Daughter occupied secondary position concerning mental and physical abilities
- Women's inseparability with man in religious matters with inferior place to women
- *Upayana* a mere formality, without Vedic mantras
- Women could not perform sacrifices independently

i. The Duties of Women

- By a girl, by a young women, or even by an aged one, nothing must be done independently, even in her own house.

- In childhood a female must be subject to her father, in youth to her husband, when her lord is dead to her sons; a woman must never be independent.
- She must not seek to separate herself from her father, husband, or sons; by leaving them she would make both her own and her husband's families contemptible.
- Education no longer remained important for women
- Lowering of marriageable age of girls (pre-puberty marriages)
- Upanayana Samskara reduced to mere formality and then dropped out altogether.
- Female students disappeared in *Dharmashastras*.
- Women lost the status of Dvija (twice born) and reduced to the status of Shudras – unfit for reciting Vedic prayers.
- Widow was to lead a chaste life, not debarred from taking part in ceremonial festivities
- Did not recommend practice of Sati
- Levirate (Niyoga: unwilling widow was not forced) (Main Reason: Unwillingness to share proprietary) and
- Remarriage (Reference in *Atharvaveda* and recommended by Kautilya, however, Widow had to relinquish any claim on Proprietary including Stridhana; while Manu opposed it)

F. MARRIAGE LAWS

i. Types of Marriage (Eight)

1. The Brahma
2. The Divine
3. The Seer's
4. The Prajapatya
5. The Demoniac
6. The Gandharva
7. The Fiendish
8. The Ghoulish

ii Varna, Marriage and Women

- For the first marriage of twice-born men, wives of equal caste are recommended; but for who through desire proceed to marry again the following females, chosen according to the direct order of the castes, are most approved.
- It is declared that a Shudra woman alone can be the wife of a Shudra, she and one of his own caste the wives of a Vaisya, those two and one of his caste the wives of a Kshatriya, those three and one of his own caste the wives of a Brahmin.
- A Shudra woman is not mentioned even in any ancient story as the first wife of a Brahmin or of a Kshatriya, though they lived in the greatest distress.
- Twice-born men who, in their folly, wed wives of the low (Shudra) caste, soon degrade their families and their children to the state of Shudras.
- A Brahmin who takes a Shudra wife to his bed, will after death sink into hell; if he begets a child by her, he will lose the rank of a Brahmin.

iii Widow Marriage

- Manu is definitely opposed to the marriage of the Widows.
- He says, “nowhere is a second husband declared for virtuous women; (v. 5.162.)
- in the procedure of marriage there is no declaration about the remarriage of the widows;(v.9.65.)
- a maiden can be given only once.” (v.9.47.)
- Manu does not permit the widow to remarry on any account.

G. THE DIVISION OF THE INHERITANCE AND PROPERTY

- Property allotment among brothers
- Paternal estate
- Maternal estate
- Proprietary Rights of the Daughter
 - Brotherless daughter - to be appointed as *Putrika*; to get father’s inheritance; her mail child to offer funeral rites.
 - **Daughters with Brothers**
 - had no share in patrimony
 - Maintenance and well-being of unmarried daughter (1/4 share) (Manu)
- Proprietary Rights during Covertures
- Widow’s Rights in her Husband’s Property
 - **Immovable Property: only the right of maintenance**
 - **Movable Property** : Ornaments, jewellery, costly apparel etc. considered *Stridhana* – under wife’s control; to be used in case of calamity (Kautilya)
Divided amongst sons and daughters (Manu)
- Mother’s Rights

. Disqualification from Inheritance

- The impotent
- Outcastes
- Those born blind or deaf
- The insane
- The mentally retarded
- Mutes and Anyone lacking manly strength.

H. CRIME AND PUNISHMENTS

Manu held that the ultimate sanction behind the state is force. If it is not used, the alternative is the law of the jungle (*Matsyanyaya*). It is *Danda* (physical force or physical punishment) which rules over all the subjects, it is *Danda* which protects them, when all sleeping, *Danda* keeps awake; law is nothing but *Danda* itself. (VII, 18) *Danda*, however, must be wielded with discretion. If it is used too harshly, the subjects are distressed; If it is used too lightly, the king will not be held in awe; If it is used in the proper manner, the subjects are happy and the realm progresses. (A.S. Altekar)

The only way that a man might be kept pure and righteous was by fear of *danda* (punishment) (VII.22-24) It is through fear of punishment that the gods, Danavas, Gandharvas, Rakshasas, birds, and reptiles bring about the enjoyment for men.

Sudras towards twice-born

- With , limb a man of low caste does hurt to (a man of the three highest (castes), even that limb shall be cut off; [VIII.279.]
- He who raises his hand or a stick, shall have his hand cut off; he who in anger kinks with his foot cut off.[VIII.280.]
- A low-caste man who tries to place himself on the same seat with a man of a high caste, shall be branded on his hip and be banished, or (the king) shall cause his buttock to be gashed.[VIII.281.]
- If out of arrogance he spits (on a superior), the king shall cause both his lips to be cut off; [VIII.282.]
- If he lays hold of the hair (of a superior), let the (king) unhesitatingly cut off his hands, likewise (if he takes him) by the feet, the beard, the neck, or the scrotum. (VIII.283.)

Defamation of Brahmins

- A Kshatriya, having defamed a Brahmana, shall be fined one hundred (panas); a Vaisya one hundred and fifty or two hundred; a Sudra shall suffer corporal punishment.[VIII.267.]

Defamation of Kshatriya's

- A Brahman shall be fined fifty (panas) for defaming a Kshatriya; in (the case of) a Vaisya the fine shall be twenty-five (panas); in the case of a Sudra twelve. [VIII.268.]

By Sudra(17.12.3.2)

- A once-born man (a Sudra), who insults a twice-born man with gross invective, shall have his tongue cut out; for he is of low origin. [VIII.270.]
- If he mentions the names and castes of the (twice-born) with contumely, an iron nail, ten fingers long, shall be thrust red-hot into his mouth.[VIII.270]
- If he arrogantly teaches Brahmins their duty, the king shall cause hot oil to be poured into his mouth and into his ears. [VIII.272.]

If the Brahman suffered less corporal punishment than the other classes, Manu held that his superior position imposed a greater responsibility upon him to keep the laws.

- Where another common man would be fined one karshapana, the king shall be fined one thousand; that is the settled rule. [VIII.336]
- In (case of a) theft the guilt of a Sudra shall be eightfold, that of a Vaisya sixteen fold, that of a Kshatriya thirty-two fold, and a Brahman's guilt was one hundred and twenty-eight fold. [VIII.337-338]
- If a Vaisya or a Kshatriya has connection with an unguarded Brahmana women, let him fine the Vaisya five hundred (panas) and the Kshatriya one thousand. [VIII.376.]

But crimes other than theft often resulted in the Shudras getting the worse punishments.

- But even these two, if they offend with a Brahmani (not only) guarded (but the wife of an eminent man), shall be punished like a Sudra or be burnt in a fire of dry grass. [VIII.377.]

- A Brahmana who carnally knows a guarded Brahmani against her will, shall be fined one thousand (panas); but he shall be made to pay five hundred, if he had connection with a willing one. [VIII.378.]
- Tonsure (of the head) is ordained for a Brahmana (instead of) capital punishment; but (men of) other castes shall suffer capital punishment. (VIII.379.)
- Let him never slay a Brahmana, though he have committed all possible crimes; let him banish such an (offender), leaving all his property (to him) and (his body) unhurt. (VIII.380.)
- A Kshatriya, having defamed a Brahmana, shall be fined one hundred panas; a Vaisya one hundred and fifty or two hundred; a Sudra shall suffer corporal punishment. (VIII. 267.)

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