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The *Manusmṛti* and Laws of Warfare in Ancient India

Manoj Kumar Sinha^{*}

2.1. Introduction

Respect for individual dignity and the quest for peace and harmony in society has been an abiding factor within Indian culture.¹ Indian culture has been the product of assimilation of diverse cultures and religions that came into contact over time with the enormous Indian sub-continent.² The spirit of unity and universality in this tradition extends to the whole world. It is said in the *Rig Veda*, the sacred collection of Vedic hymns: “There is one race; of human beings”. The validity of diverse traditions, religions and indeed of diverse paths to Truth has always been respected. The guiding principles have been *Vasudhaiva Kutumbakam* and *Sarva Dharma Sama Bhava*.³ The whole universe is one family; it is universal order, and as such its universality is ubiquitous.

An ancient text runs thus: “I seek no kingdom, nor heaven nor re-birth, but I wish that all living beings be spared of the manifold pains and distresses”.⁴ According to Nagendra Singh, “[t]he individual in ancient

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¹ Mahendra P. Singh, “Human Rights in the Indian Tradition: An Alternative Model”, in *NUJS Law Review*, 2009, vol. 2, no. 2, pp. 145–82.

² V.S. Mani, *Human Rights in India: An Overview*, Institute for World Congress on Human Rights, Occasional Paper no. 4, January 1997.

³ L.R. Penna, “Traditional Asian Approaches: An Indian View”, in *Australian Yearbook of International Law*, 1985, vol. 9, pp. 168–206.

⁴ Mani, 1997, p. 7, see *supra* note 2.

India existed as a citizen of the state and in that capacity he had both rights and obligations”.⁵ These rights and duties have largely been expressed in terms of duties (*dharma*) – duties to oneself, to one’s family, to other fellow humans, to society and the world at large.⁶ The Buddhist doctrine of non-violence in deed and thought, according to Nagendra Singh, “is a humanitarian doctrine *par excellence*, dating back to the third century B.C.”.⁷ Both Buddhism and Jainism emphasised the principles of equality, non-violence and denial of materialistic pleasures.

In ancient times the first and foremost duty of the king was to protect his people. Protection consisted of meeting both internal threats as well as external aggression to man’s liberty.⁸ Gautama Buddha prescribed that the special responsibility of the king was to protect all beings, to award just punishment and to protect the several *varna* (castes) and *āśrama* (stages of life) according to the *śāstra* (rules), and to bring them round to the path of their proper duties when they swerve from it. Vaśiṣṭha, one of the great patriarchs of Hinduism, also stated that the wise say that protection is a lifelong *sautra* in which the king has to give up fear and softness of heart.⁹

In ancient India there were elaborate provisions for social services such as education, public health, medical attendance, insurance against unemployment, old age, widowhood, becoming orphans and the elimination of poverty. It was believed that it was necessary for the king, representing the state and its resources, to encourage learning, to care for the blind, the decrepit, the old and the widowed and to give employment to those who were unemployed.¹⁰

An extremely high ideal was placed before the king by Kautilya (also called Chanukah), the Hindu statesman and philosopher, in *Arthaśāstra* (The Science of Material Gain). He proclaimed the magnificent

⁵ Nagendra Singh, *India and International Law*, vol. 1, part 1, S. Chand & Co., New Delhi, 1969, p. 46.

⁶ Mani, 1997, p. 8, see *supra* note 2.

⁷ Nagendra Singh, *Enforcement of Human Rights*, Eastern Law House, Calcutta, 1986, p. 7.

⁸ P.V. Kane, *History of Dharmaśāstra*, vol. 2, 2nd ed., Bhandarkar Oriental Research Institute, Poona, 1973, p. 56.

⁹ Manoj Kumar Sinha, *Implementation of Basic Human Rights*, Manak Publications, New Delhi, 1999, p. 3.

¹⁰ P.V. Kane, *History of Dharmaśāstra*, vol. 3, 2nd ed., Bhandarkar Oriental Research Institute, Poona, 1973, p. 60.

ideal that “in the happiness of the subjects lies the happiness of the king, in their welfare lies his welfare; the good of the king does not consist in what is pleasing to himself, but what is pleasing to the subjects constitutes his good”.¹¹ The king was also called upon to support helpless and aged people, the blind, the crippled, lunatics, widows, orphans, those suffering from diseases and calamities and pregnant women by giving them medicines, lodging, food and clothing according to their needs.¹² The contribution of ancient India in the development of both domestic and international law is very significant and widely recognised by several Indian scholars.¹³

2.2. The *Manusmṛti*

The *Manusmṛti* (or Laws of Manu), also known as the *Mānava-Dharmaśāstra*, occupies a very significant place among the *Dharmaśāstra* of India, mainly because of its wide coverage and detailed guidelines for various aspects of human living.¹⁴ It probably dates to the period between 200 BCE and 200 CE.¹⁵ Manu was the first Hindu theoretician to treat law in a systematic manner. Hindu philosophy features a bipolar division between *dharma* (right or order) and *adharma* (wrong or unnaturalness). The *Manusmṛti* is one of the 19 *Dharmaśāstra* that belong to the *smṛti* literature.¹⁶ According to Medhātithi, the foremost commentator on the *Manusmṛti*, *dharma* is five-fold: *varnadharma* (duties relating to the four

¹¹ C.H. Alexandrowicz, “Kautilyan Principles and the Law of Nations”, in *British Yearbook of International Law*, 1965–66, vol. 41, pp. 301–20.

¹² Kane, 1973, p. 59, see *supra* note 10. King Asoka of the Maurya dynasty had constructed hospitals for men and animals, almshouses, resthouses, watering places, shady trees on the highways and irrigation works, and visited and supported the aged.

¹³ C.J. Chacko, “India’s Contribution to the Field of International Law Concepts”, in *Recueil des cours*, 1958, vol. 93, pp. 117–221; Nagendra Singh, *India and International Law*, S. Chand, New Delhi, 1973.

¹⁴ For a modern annotated translation see Patrick Olivelle, *Manu’s Code of Law: A Critical Edition and Translation of the Mānava-Dharmaśāstra*, Oxford University Press, Oxford, 2005. *Dharmaśāstra* refers to the Sanskrit texts of the branch of learning pertaining to religious and legal duties.

¹⁵ See Burjor Avari, *India: The Ancient Past: A History of the Indian Sub-Continent from 7000 BC to AD 1200*, Routledge, London, 2007, p. 142.

¹⁶ The word *smṛti* which literally means “that which is remembered”, in a wider sense is applicable to all ancient, but un-Vedic works such as the *Kalpasūtras*, the *Mahābhārata*, the grammar of Pāṇini, and the works of Manu, Yāgyavalkya and others. However, the word *smṛti* in a narrower sense is concerned with the treatment of *dharma*.

castes, the Brahmin, the Kshatriya, the Vaishya and the Shudra); *āśrama-dharma* (duties relating to the four phases of life, *brahmacarya*, *gr̥hastha*, *vanaprastha* and *samnyāsa*); *varnashramadharma* (duties relating to the caste to which one belongs as well as the stage of life in which one is situated); *naimittikadharma* (unconditionally obligatory duties called for by special occasions (*nimitta*) such as *prāyaścitta* (penance or atonement)); and lastly, *gunadharma* (the duty of a king to protect, no matter whether he is a Kshatriya or not).¹⁷ Gautama, Āpastamba and Vasiṣṭha, among the authors of *Dharmaśāstra*, and Manu and Yāgyavalkya, among the authors of the *Manusmṛti*, all agree in proclaiming that the Vedas are one of the original sources of *dharma*. Manu also regarded the Vedas as a source of *dharma*, while at the same time accepting that *dharma* also owed its origins to the tradition and practice of those who know the Vedas, the usages of virtuous men and righteous individuals.¹⁸

The *Manusmṛti* is a *Dharmaśāstra* of Hindu *dharma* containing the foundational work of Hindu law and ancient Indian society. The *Manusmṛti* contains the laws (conduct in life) which need to be followed in various orders of life and by persons of various *varna*. The word *smṛti* means “that which have to be remembered”.¹⁹ Hindu mythology states that the *Manusmṛti* is the word of Brahma, shadowing authoritative incantations of *dharma*. Manu is presumed to have created this book, which has led the text to be coupled by Hindus with the first human being and the first king in the Indian tradition.²⁰ The *Manusmṛti* was the first text to adopt the term *vyavahārapadas* or substantive law. The original narrative was divided into 12 chapters and is written in simple verses. The table of contents includes sections on the “Creation of the world”, “Sources of *dharma*”, “The *dharma* of the four social classes” and “Law of *karma*, rebirth and final liberation”.²¹

The *Manusmṛti* is written with a focus on *dharma*. It seems that the book was written in a manner that was aware of the dangers facing the

¹⁷ K.L. Bhatia, *Concept of Dharma: Corpus Juris of Law and Morality: A Comparative Study of Legal Cosmology*, Deep & Deep Publications, New Delhi, 2010.

¹⁸ Olivelle, 2005, p. 169, see *supra* note 14.

¹⁹ M. Rama Jois, *Ancient Indian Law: Eternal Values in Manu Smriti*, Universal Law Publishing, New Delhi, 2012.

²⁰ George Bühler, *The Sacred Books of the East*, Vol. 25, *The Laws of Manu*, Clarendon Press, Oxford, 1886.

²¹ Olivelle, 2005, pp. 8–9, see *supra* note 14.

Brahmin community during a time of social turmoil. The *Manusmṛti* containing the Laws of Manu is both a legal and a religious text that elaborates on the basic Hindu tenets while providing a window into the religion, culture and society of ancient India. It covers topics ranging from the role of women to the definition of sin to an explanation of the caste system and its utility in the maintenance of the universe.

2.3. The *Manusmṛti* and Warfare

Manu followed Kautilya's grand strategic thought by granting importance to coalition warfare.²² The *Manusmṛti*, following Kautilya's *Arthaśāstra*, an ancient treatise of statecraft, economic policy and military strategy, argues that diplomacy, rather than warfare, should take the pre-eminent role in the formulation of grand strategic policy.²³ Manu's emphasis on *dharmayuddha* was shaped by the epic and *purāṇa* (ancient) literature which came into existence between the fifth and first century BCE.²⁴ The laws of war, as enunciated in the epic and *purāṇa* literature, distinguish sharply between combatants and non-combatants. Under no circumstances were non-combatants to be harmed.²⁵ Further, unarmed soldiers were not to be attacked nor a fleeing enemy to be annihilated. Unlike Kautilya's recommendations of *kutayuddha* (unjust war), Manu suggests *dharmayuddha* (just war). *Dharmayuddha* is to be waged by the Kshatriya (warrior caste), because *dharma* is the *kshatra* (duty) of the Kshatriya. If battles become at all necessary, Manu writes that the king should fight with horses and chariots on level ground.²⁶ Manu, instead of advocating an aggressive war for complete destruction of the enemy by all means, preaches a sort of ceremonial war. Manu was also against the use of deadly weapons, despising horse archery introduced by foreigners. He was

²² M.G. Prasad, "Social Justice in Ancient India: In *Arthaśāstra*", in K.D. Irani and Morris Silver (eds.), *Social Justice in the Ancient World*, Greenwood Press, Westport, CT, 1995, p. 91.

²³ R.P. Kangle, *The Kautilya Arthaśāstra*, Part 2, 2nd ed., Motilal Banarsidass, Delhi, 1972.

²⁴ U.P. Thapliyal, "Military Organization in the Ancient Period", in S.N. Prasad (ed.), *Historical Perspectives of Warfare in India: Some Morale and Materiel Determinants*, New Delhi, Center for Studies in Civilisations, 2002, pp. 45–67.

²⁵ Nagendra Singh, *Enforcement of Human Rights in Peace and War and the Future of Humanity*, Martinus Nijhoff, Dordrecht, 1986, p. 105.

²⁶ Olivelle, 2005, p. 164, see *supra* note 14. See also Nikunja Vihari Banerjee, *Studies in the Dharmaśāstra of Manu*, Manshiram Manoharlal Publisher, New Delhi, 1980.

against the use of deception, treachery and surprise in battle.²⁷ Manu was also against attacking a retreating army. The *Manusmṛti* warns the king that, while waging war, his soldiers should not kill enemy troops with weapons that are concealed, barbed or smeared with poison or whose tips are ablaze with fire.²⁸ A righteous warrior should not kill anyone who folds his hands in supplication, asking for mercy or anyone who surrenders. Nor should the righteous king attack enemy soldiers who are without armour or without weapons, or whose weapons are broken. Further, any enemy soldier who is asleep or engaged in combat with someone else should not be attacked.²⁹

Manu offers a strong critique of Kautilya's *kutayuddha* on the tactical and strategic planes. The *Manusmṛti* notes that the king should always act without guile. It emphasises constant vigilance on the part of the ruler to guard against fraud by the enemy. The ruler must not let the enemy discover any weakness of his, but rather discover the weakness of the enemy.³⁰ Unlike Kautilya, who asserts that all alliances and treaties are pieces of paper that are to be torn up if necessary, Manu emphasises the importance of good faith towards one's allies. The *Manusmṛti* advocates fortress warfare. It notes that, when a king launches a military expedition against the realm of an enemy, he should advance towards the enemy's fort. In Manu's paradigm the *giri-durga* (mountain fortress) is the best defensive structure. The best way to defend a fortress is by stationary archers on the walls, and the fortress should be well stocked with weapons money, grain, artisans, fodder and water in order to withstand a long siege.³¹

2.4. The *Manusmṛti* and Punishment

The concept of *dharma* that ruled Indian civilisation from the Vedic period up to Muslim invasion in the twelfth century was that from king to his last servant everyone was bound by *dharma*. The word *dharma* is derived

²⁷ Olivelle, *ibid.*

²⁸ *Ibid.*, p. 159.

²⁹ See K.R.R. Sastry, "Hinduism and International Law", in *Recueil des cours*, 1966, vol. 117, pp. 507–614.

³⁰ Olivelle, 2005, p. 159–60, see *supra* note 14. See also Gregory M. Reichberg, Henrik Sye with Nicole M. Hartwell, *Religion, War, and Ethics: A Sourcebook of Textual Traditions*, Cambridge University Press, New York, 2014, p. 513.

³¹ Olivelle, 2005, p. 157–58, see *supra* note 14.

from *dhṛ* which means to uphold, sustain or nourish. The seers often used it in close association with *ṛta* (order, rule) and *satya* (truth). *Dharma* is neither a religion nor religious thought nor is it conservative. It encompasses a progressive movement of societies towards law and morality. It is a movement of righteousness, virtues and virtuous duty. *Dharma* has a broader connotation and ordains law, religion, rectitude and morality regulating life and conduct of human beings so as to fit into the wider context of nature and the cosmos – the world order. The *Manusmṛti* prescribes the *dharmavidhi*, ten essential ethical rules for the observance of *dharma*: patience or steadfastness (*dhṛiti*), forgiveness (*kshama*), piety or self-control (*dama*), honesty (*asteya*), sanctity or purity (*saucham*), control of senses (*indraiya-nigraha*), wisdom or reason (*dhi*), knowledge or learning (*vidya*), truthfulness (*satya*) and absence of anger (*krodha*). Manus further writes, “Nonviolence, truth, non-coveting, purity of body and mind, control of senses are the essence of *dharma*”.³² Therefore *dharmic* laws govern not only the individual but also everyone in society.

The *Manusmṛti* gives the state the supreme role in human affairs. Manus believed that the maintenance of law and order would not be possible without an effective force behind it. The *daṇḍa* (literally the sceptre) represents the power and coercive dimension of the state, with the king as the judicial administrator.³³ The word *daṇḍa* is very comprehensive in connotation. In a general sense, *daṇḍa* as punishment means coercion. Manus was of the opinion that the king must be knowledgeable about two things, namely *dharma* and *daṇḍa* or chastisement, as the proper maintenance of the rules of *dharma* and imposing punishment on those who violate its rules lay in his hands. Manus followed up his account of the obligations of the king to protect the lives and property of his people by applying the theory of *daṇḍa*. Manus assigns to it the same high divine origin as to the office of kingship. The lord created *daṇḍa* before he appointed a king in order to make the discharge of duties proper and efficient. *Daṇḍa* is considered as the protector of all creatures and of the law. According to Manus, *daṇḍa* rules all people and protects them, as through the fear of *daṇḍa*, criminal tendencies were prevented even when the public was

³² Bhabatosh Bhattacharya, *Studies in Dharmaśāstra: Ancient Period*, Indian Studies Past and Present, Calcutta, 1964.

³³ Haripada Chakraborti, *Criminal Justice in Ancient India*, Vedams, New Delhi, 1996.

asleep.³⁴ Thus, it was the *daṇḍa* that kept all classes of the society or *varṇa* and the *āśrama* within the limits of discipline. Moreover, psychologically, the fear of *daṇḍa* was the grand motive for the fulfilment of individual obligations.³⁵ Manu applied the indiscriminate jurisdiction of the king's *daṇḍa* over his subjects. Thus Manu laid down the principle of the king's unlimited jurisdiction over offenders irrespective of their rank or status or relationship. He felt that the king's mode of application of *daṇḍa* was the key to the prosperity or destruction of the individual and the community. *Dharma* and *daṇḍa* are so integrated that if they are ignored then the law of jungle shall prevail. *Daṇḍa* must be wielded discreetly for the governance of the state as well as a means of its protection, with the sole object of the happiness of all. *Daṇḍa*, with its all-pervading force, keeps thieves and criminals away and hence *daṇḍa* is *dharma*.³⁶

It is important to note that Manu sometimes understands law in the sense of duty or obligation and sometimes even in the sense of virtue.³⁷ Manu emphasised that twice-born men should obey the tenfold law, which includes contentment, forgiveness, self-control, abstention from wrongfully appropriating anything, purification, coercion of the organs, wisdom, knowledge and abstention from anger. Most of these laws are actually virtues signifying duties corresponding to them. Manu mentions the 18 titles of law or grounds for litigation (*vyavahārapada*), namely 1) non-payment of debts, 2) deposits and pledge, 3) sale without ownership, 4) concerns among partners, 5) resumption of gifts, 6) non-payment of wages, 7) non-performance of agreements, 8) rescission of sale and purchase, 9) disputes between owners of cattle and their servants, 10) disputes regarding boundaries, 11) assault, 12) defamation, 13) theft, 14) robbery and violence, 15) adultery and sexual crimes against women, 16) duties of man and wife, 17) partition of inheritance and 18) gambling and betting.³⁸

These are the titles of legal issues in connection with which law-suits may arise, with the demand for a judicial procedure and with a view to their decision. According to Manu, the first step in judicial procedure is

³⁴ Wendy Dongier, *Laws of Manu, with an Introduction and Notes*, Penguin, New Delhi, 1991.

³⁵ Chakraborti, 1996, see *supra* note 33.

³⁶ Sastry, 1966, see *supra* note 29.

³⁷ Olivelle, 2005, p. 154, see *supra* note 14.

³⁸ *Ibid.*, p. 167; Dongier, see *supra* note 34.

the constitution of the court of justice. At the head of the judicial system stood the king's court.³⁹ This court was held at the capital, and was sometimes presided over by the king himself, but more often by a learned Brahmin appointed for the purpose; he was known as the *adhyaksha* or *sabhāpati*. The *adhyaksha* perhaps originally selected for each particular occasion in the course of time became a permanent officer of state, and held the position of the chief justice (*prādvivāka*) of the realm. The king, together with the *prādvivāka* and three or four other judges (*dhārmikah*), formed the highest Court of Justice.⁴⁰ The aim of the trial of legal cases was the vindication of the cause of justice. Manu insisted that the task of interpreting law should always be undertaken by a Brahmin, no matter whether or not he is qualified to undertake it, but never by a Shudra.⁴¹ Where three Brahmins well versed in the Vedas and a learned judge appointed by the king were present, that place could be called the court. It was found that a jury system existed in Manu's period, and Manu recommended the king to give the power of judicial administration to Brahmins in his absence. It is also surprising to note that the juries in the court of the Brahmin judge were also Brahmins. Manu described such a court where three Brahmins versed in the Vedas and the learned judge appointed by the king sat as the court of four-faced Brahman.⁴² The king was to be accompanied by the Brahmins and ministers who were experts in counselling. Since Manu held that the judge should be a person learned in all branches of learning, it was important to notice that scholarship in Vedas alone was not a sufficient qualification for a judge. Manu desired that the king himself had to attend courts.

A very high standard was fixed for rule of law in ancient India. In the *Mahābhārata*, it was laid down that "[a] King who after having sworn that he shall protect his subjects fails to protect them should be executed like a mad dog". And further: "The people should execute a king who does not protect them, but deprives them of their property and assets and who takes no advice or guidance from any one. Such a king is not a king

³⁹ Olivelle, 2005, p. 167, see *supra* note 14; Jois, 2012, p. 77, 82, see *supra* note 19.

⁴⁰ M.K. Sharan, *Court Procedure in Ancient India*, Abhinav Publications, New Delhi, 1978, p. 19; Raj Kumar, *Essays on Legal Systems in India*, Discovery Publishing House, New Delhi, 2003, p. 12.

⁴¹ Olivelle, 2005, p. 168, see *supra* note 14.

⁴² S.G. Moghe, *History of Dharma-śāstra in Essence*, Bhandarkar Oriental Research Institute, Poona, 2000.

but misfortune”.⁴³ The core concept of rule of law can be traced to the *Upaniṣad*. It provides that the “law is the king of kings”.⁴⁴ It is more powerful and rigid than the kings. There is nothing higher than the law. By its powers the weak shall prevail over the strong and justice shall triumph. Thus, in a monarchy the concept of law developed to control the exercise of arbitrary powers of the monarchs who claimed divine powers to rule. In a democracy, the concept has assumed a different dimension and means that the holders of public powers must be able to justify publicly that the exercise of power is legally valid and socially just.

2.5. The Judiciary and Administration of Justice

Sacred law (*dharma*), evidence and legal procedure (*vyavahāra*), history (*charitra*), and edicts of kings (*rajasasana*) are considered to be the pillars of law; and of these four the last is superior to the others and overrides them. *Dharma* is eternal truth holding sway over the world; *vyavahāra* is evidence offered by witnesses; *charitra* is to be found in the tradition (*saṅgraha*) of the people; and the order of kings is what is called *sāsana* (legislation). These principles were administered by the courts in territorial divisions such as the *Sthāna* (which included about 800 villages), *Droṇamukha* (about 400 villages), *Kharvatika* (200 villages) and *Sangrahana* (10 villages), and at places where districts met three members acquainted with sacred law (*dharmastha*) and three ministers of the king (*amātya*) carried on the administration of justice.⁴⁵ This arrangement of judiciary suggests that there were sufficient number of courts at different levels of administration, and for district itself (*janapada-sandhishu*) there were circuit courts.⁴⁶

In villages, the local councils (*kulani*), similar to the modern *pan-cāyat*, consisted of a board of five or more members to dispense justice to villagers. It was concerned with all matters relating to endowments, irrigation, cultivable land, the punishment of crime and so on. Village councils dealt with simple civil and criminal cases. At a higher level, in towns

⁴³ Manoj Kumar Sinha, “Hinduism and International Humanitarian Law”, in *International Review of the Red Cross*, 2005, vol. 87, no. 858, pp. 285–94.

⁴⁴ M. Rama Jois, *Legal and Constitutional History of India: Ancient Legal, Judicial and Constitutional System*, Universal Law Publishing Co., New Delhi, 1984, p. 10.

⁴⁵ A.S. Altekar, *State and Government in Ancient India*, Motilal Banarsidass, Varanasi, 1949, p. 250.

⁴⁶ Kumar, 2003, p. 11, see *supra* note 40.

and districts, the courts were presided over by a government officer under the authority of the king to administer justice. The link between the village assembly in the local and official administration was the headman of the village. In each village, a local headman held hereditary office and was required to maintain order and administer justice. He was also a member of the village council and acted both as the leader of the village and mediator with the government.⁴⁷

In order to deal with disputes among traders or artisans (*sreni*), various corporations trade guilds were authorised to exercise effective jurisdiction over their members. These tribunals, consisting of a president and three or five assistants, were allowed to decide their civil cases regularly just like other courts. It was possible to appeal from the tribunal of the guild to the local court, then to royal judges and finally to the king, though such situations rarely arose.

In the administration of justice, the duties and manners of the king were very clearly laid down in the sacred texts. Manu's code says a king, desirous of investigating law cases, must enter his court of justice, preserving a dignified demeanour, together with Brahmins and with experienced councillors.⁴⁸ There, either seated or standing, raising his right arm, without ostentation in his dress and ornaments, he should examine the business of the suitors. Manu cautions the King by saying, in a famous phrase: "Justice, being violated, destroys; justice, being preserved, preserves: therefore justice must not be violated, lest violated justice destroys us". Further he opines: "The only friend of men even after death is justice; for everything else is lost at the same time when the body (perishes)". If the judicial system fails to dispense justice, Manu says that one quarter of the guilt of an unjust decision falls on he who committed the crime, one quarter on the false witness, one quarter on all the judges and one quarter on the king.⁴⁹

Manu felt that judicial administration should not rest in the hands of a feeble-minded king. If judicial administration were given to such a king, he would destroy the whole country. Punishment cannot be inflicted justly by one who has no assistant, by a fool, by a covetous man, by one whose mind is unimproved or by one addicted to sensual pleasures. The legisla-

⁴⁷ *Ibid.*, p. 12.

⁴⁸ R. Lingat, *The Classical Law of India*, University of California Press, Berkeley, 1973.

⁴⁹ Bühler, 1886, p. 255, see *supra* note 20.

tive powers of any king were extremely limited. He could not oppress people by means of harsh and unjust laws. This was because he was enjoined to govern the people and to administer justice strictly in accordance with the civil and criminal laws laid down in the *smṛti*.

2.6. Conclusion

The *Manusmṛti* is one of the great achievements of early Indian civilisation. There are in total 2,684 verses divided into 12 chapters and it is considered to be an exemplary treatise on *dharma*, with nine extant commentaries written about it. The *Manusmṛti* was considered such an important source of Hindu law and custom throughout the sub-continent that it was one of the earliest texts earmarked for translation into English to be used in British courts in India. The *Manusmṛti* shows the obvious influence of early *dharmaśāstra* texts and the *Arthaśāstra*.

It is sometimes said that all Hindu law originated from the Vedas (also called the *śruti* or that which is heard). However, this is a fiction. In fact Hindu law really emanated from books called the *smṛti*, such as the *Manusmṛti*, *Yājñavalkya Smṛti* and the *smṛti* of Viṣṇu, Nārada, Parāśara, Apastamba, Vaśiṣṭha, Gautam and so on. These *smṛti* were not laws made by parliament or a legislature. They were books written by Sanskrit scholars in ancient times who specialised in the law. Later, commentaries or digests (called *nibandha* or *tika*) were written on these *smṛti*, such as the commentary of Vijñāneśvara (who wrote a commentary called the *Mitākṣarā* on the *Yājñavalkya Smṛti*), the commentary of Jīmūtavāhana who wrote a law treatise called the *Dāyabhāga* (which is not a commentary on any particular *smṛti* but a digest of several *smṛti*). According to J. Duncan M. Derrett, *dharmaśāstra* literature and specially Manu's code constitutes India's greatest achievement in the field of jurisprudence. Even in the field of comparative law serious researchers, both Eastern and Western, have regarded Manu's work as one of the world's premier compositions in ancient law, more valuable in every sense than Hammurabi and able to hold its own in comparison to the covenant and priestly codes of Moses.⁵⁰

Scholars had also found many contradictions in Manu's statements but instead of dismissing them outright as proofs of inconsistency, they have held that this was inevitable in order to avoid a crude determinism. It

⁵⁰ J. Duncan M. Derrett, *Religion, Law and State in India*, Faber and Faber, London, 1968.

was necessary to accommodate diverse practices prevalent in different sections of the society. Option was a better policy than elimination. Thus, it could be seen that though it is not very straightforward to accept the views of Manu or Kautilya nowadays, their work could be considered as important examples of key philosophical and legal texts, composed at a time when science and technology were not developed and when ideas of caste and creed superiority (*varnasrama vyavastha*) were at their maximum. They were sincere to their commitments and worked with a view to improving the socio-economic condition of the people of the age. In this sense, their works are unique.

Thus, it is clear from the above discussion that the development of principles of international criminal law had roots in the ancient India and *Manusmṛti* integrated many principles of international criminal law. The contribution of *Manusmṛti* in this field is very significant and widely recognised by scholars.

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