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Spirituality and the Role of Judiciary under Criminal Justice System in India: A Special reference to the element of Dharma

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ABSTRACT

In this Research Article, the researcher shall put forward her stand on the interlinkage between the holistic ideals of Spirituality which should be incorporated to understand the true meaning of delivering justice by the Judges under the Criminal Justice System in India. The researcher shall focus on the role and importance of dharma in a society and how can it influence the working of the Judges during the adjudication. Moreover, the key challenges of the adversarial system of trial in India has been mentioned which limits the role of Judges in seeking the truth while balancing the rights of accused and victims during pre and post-trial stages. Moreover, special mention has been put forward on the inquisitorial elements under the Indian Criminal Justice System which takes inspiration from the concept of dharma and karma in the Ancient scriptures and makes the justice delivery system more spiritual and holistic.

Keywords: *dharma, karma, Criminal Justice System, Inquisitorial system, Judiciary.*

I. INTRODUCTION

Spirituality, as the word connotes is the search of inner self and self-truth. It is not a synonym of religion and should not be interlinked to the religious activities. Spirituality is the faith that one has and quest for the search of ultimate truth. Its strives for doing *karma* and teaches for performing the work with utmost integrity. Accordingly, the status and position of a Judge demands for the performance of his *dharma* and *karma* with a superior degree of integrity as compared with other branches of administration. It is believed that when a Judge adjudicates any matter, his decision should be based on the formula of , “Law + x=Justice, wherein ‘x’ is the input of the Judge.²

The role and responsibility of the Judiciary increases two fold if the matter before him involves public interest and has the potential to effect the lives of the individuals. Under the adversarial system of trial, the role of Judiciary is limited to deciding the matter based on the evidence

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² Bhavan Journal, p.123, Vol. XX, No. 1, 1973.

produced before the Court by the respective parties. However, the elements of Spirituality which seeks for the truth and also doing justice to one's *karma* cannot be achieved if the Judges are not allowed to take active participation in the trial in order to unfold the truth behind the committed offence and perform their *dharam*. Justice will be served to oneself and to others, only if the *karma* and *dharam* of the Judges go hand in hand. Any element of impartiality on the role of Judge will certainly undermine the certainty of Justice in his decision, thus moving away from the key goal of Spirituality.

II. THE ROLE AND IMPORTANCE OF DHARMA IN A SOCIETY

The Supreme Court in India is the highest and the final interpreter of law in India. Any legal issue whether criminal, civil or Constitutional gets to its finality after the decision by the Apex Body. The logo of the Hon'ble Supreme Court says "YATO DHARMA TATO JAYA" which had been adopted from Bhagwad Gita and it means "where there is *dharm*a, there is victory".³ The word "dharma" here connotes Justice which is delivered by the chair who is in the position to adjudicate. Moreover, the ancient scripture of Mundaka Upanishad mentions inscription of "Satyamev Jayate"⁴ wherein "satyam" connotes "truth" and *jayate* as *victory*. Therefore, when the preaching in the Upanishad and Bhagwat Gita is read together in a harmonious manner then one can articulate that the justice delivery system needs to move only the path of *dharm*a i.e to strive for the truth behind the disputes and it is the truth alone which triumphs.

The term "dharma" originates from a Sanskrit word "dhr" which means 'to sustain or hold'.⁵ The importance of this term can be assimilated from the principles it carries along with its usage. The natural law principles which dictate the human conduct in the primitive societies and also in the contemporary world wherein there is no black letter law, sees its resemblance from the practice of *dharm*a by the State agencies. Therefore, accordingly, the conduct of the Judges as the arbitrators/adjudicators of the disputes should be governed by their *dharm*a. The concept of Rule of Law developed by Dicey in 18th century⁶, if read with spiritual connotation of *dharm*a, then the reflection of righteous conduct of treating everyone equal before the law can be visualized for an orderly system of society.

The concept of *dharm*a is omnipresent and has been liberally proscribed by the Supreme Court

³ Available at <https://www.infoqueenbee.com/2013/03/why-supreme-court-of-indias-logo-is.html> (Last accessed on 02nd August 2021)

⁴ *ibid*

⁵ Jois, M. Rama, Legal and Constitutional History of India (Vol. I), 2010, ISBN- 8175342064. Universal law Publishing Co.

⁶ Rule of law was developed by a British jurist Albert Venn Dicey in his book called "The Law of the Constitution" 1885. In this book, he develops this concept and he identifies 3 principles while establishing the rule of law- supremacy of law, equality before law and predominance of legal spirit.

as its guiding principles while delivering judgments of constitutional importance. The law of the Indian society is based on the concept of dharma, which is *sanatan*⁷ and should not be clubbed with one particular religious entity. The source of dharma, Dharamshashtra elaborates on the righteous conduct of a human in performing his duty towards the society and that the karma of a human will result into either punya(merit) or pap(demerit). It further promotes for the philosophy of “*Dharmo Rakshati Rakshitah*”⁸ which means that one who follows the law, the law shall protect him. The fundamental rights, directive principles of state policies, the Constitutional rights or the fundamental duties provided in the Indian Constitution take the inspiration from the guiding light of dharma. The concept of social welfare and justice-social, economic and political have their roots in the Dharma, which is interlinked with the law of the society.

III. DHARMA AND ITS INFLUENCE ON THE WORKING OF JUDICIARY

*The Supreme Court in its several landmark judgments had tried inculcating the ideals of Dharma which strives for only the supremacy of law, the equality before law, the procedure as just, fair and reasonable*⁹. Moreover, the non-discrimination amongst people on the basis of their religion in the society/Secularism has been held to be one of the integral part of our Indian society¹⁰ and that of the Constitution, which cannot be violated or destroyed. Similarly, the principles of natural justice¹¹ consisting of reasoned decisions, right to hearing and non-biased decisions have been some of the key elements acknowledged by the Supreme Court from time to time in its several landmark judgments.

*The Supreme Court in the case of Shri A.S. Narayana Deekshitulu vs State Of Andhra Pradesh & Ors*¹² discusses the question of difference between dharma and religion. It was held that dharma has a spiritual existence which should not be linked with any particular language. The dharma act as a guiding lights to understand the law and morality of the society. Moreover, in another case, the Apex Court established the relation between dharma and karma wherein dharma is the following of the Constitutional ethos and principles and karma is to adjudicate accordingly. Moreover, the Delhi High Court in the case of *Ambujam vs T.S. Ramaswamy*,¹³ had inter-alia expressed its view that Dharma in context of Rajya Dharma¹⁴, as coined by

⁷ Available at < All you need to know about Hinduism. Available at: <http://history-of-hinduism.blogspot.in/2010/11/sanatana-dharma.html>> (Last accessed on July 30th 2021)

⁸It means those who protect dharma shall be protected by dharma

⁹ Maneka Gandhi v. Union of India, AIR 1978 SC 597

¹⁰ **Bommai v Union of India (2004)**

¹¹ A. K. Kraipak & Ors. Etc vs Union Of India & Ors(1969)

¹² AIR 1765, JT 1996 (3) 482

¹³ AIR 1973 Delhi 46, 8 (1972) DLT 292

¹⁴ Satya Sundar Shetty, “Reinterpreting Gandhi’s notion of “Dharma”: An Entanglement of Duty, Religion and

Mahatma Gandhi should be considered only in the spirit of the secular law which works in spirit of the Constitution.

The intrinsic fabric of the Indian Society takes so many inspirations from the spiritual meaning of the term dharma whereby the rule of law prevails in the country instead of any human supremacy. The principle of national integrity and fraternity as elaborated in the Preamble of the Indian Constitution can see its source through the inscriptions of “Sarv Dharma Sambhav”¹⁵ which advocates the feeling of brotherhood and harmony in a plural society. Thus, what remains sovereign is the law of the land and not the law maker. Dharma, acting as a powerful and guiding instrument for law, promotes justice-which is right and benefits maximum number of people. This goal looks similar in its approach to the Bentham policy of Maximum Utilitarianism¹⁶ wherein the law must strive for maximum utility for the greatest good.

IV. THE ROLE OF DHARMA UNDER CRIMINAL LAW

The idea of punishment or *dand* for the offence committed has two fold analysis- retributive justice which calls for just punishment for the offence committed and utilitarian justice wherein the offender is deterred from committing such crime in future and the society can be assured for a safe place to exist.¹⁷ The virtue of dharma seeks to impose strict penal laws by the Sovereign on its subjects so that they may exercise self-control and in case they over-reach their self-control, the element of *jus desert* should be implemented as *dand* violating from the path of dharma.

V. THE CRIMINAL JUSTICE SYSTEM : ADVERSARIAL AND INQUISITORIAL

The substantive law of crime is implemented by the settled procedure of every legal system. this procedural law helps in guiding the effective implementation of the punishing law on the offender, if found guilty. Most of the democracies around the world follow two modes of trial to deliver justice to the concerned parties. The adversarial trial system, which had been known as a common law product to the justice mechanism under this trial system, the judge acts as an umpire and has to decide the case based on the submissions put forth by the concerned parties. The role of the judge is only to check if every procedure followed is as per the law and that no

Ethics” available at < <https://www.mkgandhi.org/articles/reinterpreting-gandhis-notion-of-dharma.html>>

¹⁵ *Sarva Dharma Sama Bhava* is a concept embodying the equality of the destination of the paths followed by all religions (Although the paths themselves may be different).

¹⁶ The greatest happiness principle is **the ultimate standard of morality set up by** classical utilitarianism (see Utilitarianism). That classical creed conceives of good as happiness and holds that right actions are those which maximize the total happiness of the members of the community.

¹⁷ Available at < <https://swarajyamag.com/commentary/dharmic-justice-system-a-few-thoughts>> (last accessed on 31st July 2021)

biasness or arbitrariness takes place against one party over the other. On the other hand, the inquisitorial system which is mainly known to be origin in Romano Germanic legal System (Civil System) wherein the most the most active participation is that of the Judge, wherein, the adjudicator along with the public prosecutor, the investigating officers, the defence counsel tries to establish the truth and deliver the judgment. Thus, the Court plays a very substantial role in delivery of justice. The procedural misconduct does not vitiate the trial system if the end of justice is met out. The Court plays an equally important part in finding the truth as done by the investigating agency, the public prosecutor and the defence counsel. The responsibility of getting the evidence in a criminal trial is not on the parties alone but on the Court as well. The Court is expected to deliver justice by looking into the testimony and material evidence through the parties and by its own efforts as well. Therefore, the Court has the supervisory power at every stage of Criminal Justice System.

VI. THE PRESENCE OF DHARMA UNDER INQUISITORIAL SYSTEM OF TRIAL

The role of the Court is more viable and patent when seen through the inquisitorial system of trial. The Court is expected, under this system, to have an equal participation with the other members of justice delivery to find the truth behind the crime committed. Historically, the ancient Indian judicial system practiced a much higher approach of finding the truth wherein the Courts has to ascertain what is the truth behind the crime committed. The testimony of false witnesses was considered to be a great offence. Many foreign travellers like Fahien and Huan Tsiang had written in their books regarding the importance of truthfulness being an essential feature of Indian which was given a very important place in their moral society. Brihaspati says¹⁸, "*Judges who are well-versed in the dharmashastra should address the witness in words praising truth and driving away falsehood (from his mind).*" More essentially, the testimony of the witnesses was undertaken by the Court itself and the witnesses were morally bound by their *dharma* to speak the truth. The concept of "Satmev Jayate" was a bible to the trial system which played an important role in deciding the matter and delivering justice.

Keeping in view the position held and role played by the Courts in the justice delivery system in India during the ancient period, one can connect the inquisitorial system largely been followed in India during the Ancient period. The presence of dharma seeking the duty of the Court to find the truth and deliver justice can be best examined with an active participation of the Court in the trial system.

¹⁸Justice S.S Dhavan, "The Indian Judicial System-A Historical Survey" Available at <http://www.allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.html>

VII. THE INQUISITORIAL POWER OF THE JUDGES IN INDIAN CRIMINAL JUSTICE SYSTEM

In the present Indian Criminal Justice System, the wholesome approach is adversarial with the parties establishing the truth through their proved evidences and testimonies of the witnesses. However there are certain provisions under the present Criminal law which seeks the active participation of the Judge to perform his duty in finding the truth. The dharma and karma of the Judge in the trial is based on his role in the trial and the judgment delivered thereafter.

Section 165 Indian Evidence Act, 1872¹⁹ – the underlying policy behind this provision is to ensure decision should be based on the formula of ,”Law + x=Justice, wherein ‘x’ is the input of the Judge. In order to do the complete justice, the Judges herein rises above its mandate and take an active participation in the trial. This section provides that the judge, in order to discover the truth can ask any question , in any form , at any time during the trial, to any of the concerned parties or the witnesses and can also seek the production of any document. The questions asked could be relevant or irrelevant and neither the party or their witnesses could object such questions at any point of time. However, this power of the Judge is not absolute and comes with a rider wherein it states that the judgment of the Court will only be based on the facts which are relevant and duly proved by the concerned parties. Moreover, the production of documents is permissible under the powers of the Courts which do not come under the Privileged ones and questions asked should not violate the provisions of Section 148 and 149 of IEA.

The Supreme Court in the case of **Nepal Chandra Roy v. Netai Chandra Das & State of Rajasthan²⁰** underlined the purpose behind the enactment of Section 165 of Indian Evidence Act, 1872 wherein it was held that this section is important to produce the “evidence of evidence” for the Courts to make the evidences produced by the parties more comprehensive and cogent. The Court is expected not to sit mere as a spectator but to take active participation in the trial by using such powers which could throw a clear light on the case for the Court.

¹⁹ Judge’s power to put questions or order production.—The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question: Provided that the Judgment must be based upon facts declared by this Act to be relevant, and duly proved: Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

²⁰ 1971 Civil Appeal No. 1248 of 1970

However, it was also held that in the event of doing so, the Court is also expected not to be over-zealous and obstruct the trial procedure by summoning its own witnesses before the testimony of the witnesses of the parties concerned. The Apex Court in the case of **State of Rajasthan v. Ani@ Hanif and Ors.**²¹ had further discussed the wide powers of the Court under Section 165 IEA wherein it was held:

“ Section 165 of the Evidence Act, 1872 confers vast and unrestricted powers on the trial Court to put “any question he pleases, in any form, at any time, of any witness, or of parties, about any fact relevant or irrelevant” in order to discover the relevant facts. The said section was framed by lavishly studding it with the word “any” which could only have been inspired by the legislative intent to confer unbridled power on the trial court to use the power whenever he deems it necessary to elicit truth...”

Section 311 Criminal Procedure Code, 1973²²- this Section enumerates the power of the Court to summon any person, as a witness or examine/recall or re-examine any person at either stage of inquiry or trial. Moreover, this Section also states that the power of the Court to examine any person becomes essential if it is required to deliver a just decision. Therefore, under this Section the Court on its own will or on the request of the parties, may summon any witness for the examination. This examination can be either done by the Court itself or the concerned parties. Moreover, if the Court finds out that there is a witness whose testimony is crucial to arrive at a decision in a case and had not be examines by the parties till then, the Court may summon such witness as Court witness.

The Supreme Court in the case of **Zahira Habibullah Sheikh V. State of Gujarat**²³ had articulated the inter-linkage between Section 165 IEA and Section 311 CrPC wherein it was held that the power of Section 165 IEA would be futile if there was no such power of the Court which stipulates for the summoning of the witnesses. Thus Section 311 CrPC is a complimentary provision to Section 165 IEA whereby the power to summon the witnesses is established under Section 311 CrPC and the power of the Court to seek answers from the summoned witnesses comes from the provision of Section 165 IEA.

Section 313 Criminal Procedure Code, 1973²⁴- this Section discusses the power of the Court

²¹ 1997(1)SCR 199

²² Section-311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

²³ (AIR 2004 SC 3114)

²⁴ 313. Power to examine the accused.

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

to ask questions from the accused at any stage of inquiry and trial without previously warning the accused. The Court, if it deems fit, may ask certain question to know what the accused has to express after the examination of the prosecution witnesses and before their cross examination. This provision serves the purpose to give an opportunity to the accused to hear him out in the event he wants to express and explain any circumstances to the Court. This examination of the accused by the Court shall not be done on oath keeping in view Article 20(3) of the Indian Constitution. therefore, any answer or words uttered by him during this examination cannot be used against him or make him liable for any punishment to the offence. The Supreme Court in the case of **Trimuk Maroti Kirkan V. State of Maharashtra**²⁵ had held that the benefit of using Section 313 CrPC is to fill the gap in the evidences produced by both the parties. These Statements of the accused could be used to act as a link to establish the case of the prosecution. This Section holds its importance in the fact that accused gets the right to hearing after the examination of the prosecution witnesses and he can put forth his defence statement with respect to evidences produced against it. Moreover, this power of the Court to directly address the accused makes the direct communication between the accused and the Court which provides reasonable understanding to the Court regarding the case.

Section 136 Indian Evidence Act,1872²⁶- herein, the power is bestowed upon the Court to decide upon the admissibility of the witnesses testimony and the evidence produced. Also, it is the duty upon the Judge to see if the evidence produced before it are legally relevant and thereby admissible. The Court may also seek the evidence from the parties in any order.

The Malimath Committee, 2003 offered several suggestions for reforming the Criminal Justice

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case: Provided that in a summons- case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub- section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

²⁵ (2006) 10 SCC 681

²⁶ 136. Judge to decide as to admissibility of evidence.—When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise. If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking. If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

System in India²⁷. A few of such recommendation included the power of the Judges during the trial wherein it was states that the Judges should be assigned pro-active roles in cases where in the Court asks such question which could be self-incriminating. The Constitution provides for Article 20(3) whereby the accused cannot be punished on his right to remain silent. However, the Committee suggested that this silence could be inferred adverse by the Court and could be used against him while deciding the case. Moreover, it was also suggested that the Judicial Magistrate should be given power to supervise or monitor the Investigation by the executive agencies as done under Inquisitorial System. the Committee focussed on the duty of the Court to search for the truth in the event of gaining such powers during the inquiry and trail stage. It was further stated.... “ *Here emphasis was paid more on ascertaining the truth rather than ascertaining the guilt of the accused. Empowering judges further with the duty of “leading evidence with the object of seeking the truth and focusing on justice to victims and not just determining whether the Accused is guilty of the offence or not...”*”

Moreover, it was indicated that the Court should be granted powers to allow the victims to become a part of the trial and have their own legal representation. The concept of Victim Compensation Fund was also advised to be created by every State keeping in view the rights of the victims. However, the amount of this Compensation should be left in the hand s of the Judiciary from case to case basis.

VIII. CONCLUSION

The ideology behind the Dharma and the established law cannot be seen in isolation. Law is a part of dharma which strives for harmony and fraternity. Dharma acts as a guiding source for the rights, duties and morals of the society. It also lends its vision of searching truth on the Judiciary wherein it is expected from the Court to deliver judgment on the parties by doing complete justice. The duty of the Judge should be to seek for the truth behind the case present before him and this is possible if he sticks to his dharma of performing judgeship. The Judge is expected to act unbiased and adhere to the established principles of adjudication. The dharma of the Judge will guide him to perform his karma i.e the truth searching process in every case before him. Thus, this ‘x’ variable with the law is that dharma of the Judge to perfume his duty thereby giving justice to the aggrieved parties before him.

²⁷ Malimath Committee was headed by Justice V.S. Malimath, **former Chief Justice of the Karnataka and Kerala High Courts**. This Committee began its work in 2000 when it was constituted by the Home Ministry. The Report related to the criminal justice system in India was submitted to Deputy Prime Minister L.K. Advani, who was also in charge of the Home portfolio, in 2003.