

# Hindu Law in Greater India

## Ancient Roots of Indigenous Law

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### Abstract

*The idea that justice and good conscience must prevail over law reflects the notion of superiority of higher moral law over the limitations of man-made law. In India this is rooted in the fundamental Vedic principle that there is connection between the form and the formless, mundane and the divine, the means and the ends. As the Rig Veda says, amidst the undifferentiated source, great warmth of creation was born; and the sages who searched in the far reaches of their mind discovered the umbilical connection of manifest with the unmanifest.<sup>1</sup>*

*This holistic, creative and contextual view of Dharma and Dharmasastra is also evident in the countries which were influenced by the Indian Dharmasastra tradition. In Indonesia, Vietnam and Cambodia, the Dharmasastra tradition was accepted largely in its original form, although as the Kutara Manava Dharmasastra of Java shows, some modifications were made. In Tibet, Burma, Thailand, and Ceylon, the indigenous texts were an attempt to use the Indian tradition as a model in an environment entirely given over to the Buddhist faith.*

*They retained the textual classification of contentious matters into Vyavaharapada or eighteen types; but the content of the texts was very much a matter of local rules. Thus, the Dharmasastra were not transplanted in other countries by the force of arms; rather, these were accepted as a guide to form and sustain indigenous traditions of ethics and law.<sup>2</sup>*

*On the basis of the considerable evidence from epigraphical, and textual sources, it is possible to suggest that by the time Indian-inspired temples, statues and epigraphy appeared in Southeast Asia, sometime between the third and the fifth century CE, the relationship between Southeast Asian and Indian societies had probably already come a very long way through mutual interaction and awareness of the universal nature of India's knowledge tradition.*

*We need to go beyond the imagined vision of a sudden imposition of Indian culture, and Indianisation or Colonisation of South and Southeast Asia by warriors and sages.<sup>3</sup> In a way, this paper raises the question as to whether Greater India was culturally Indianised through dissemination of India's knowledge tradition before social and political 'Indianisation?'*

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<sup>1</sup> RV, 1.164. RV, 10.129.

<sup>2</sup> Hooker, p.217.

<sup>3</sup> Manguin, p. xx.

## Introduction

The *Dharmasastra* texts are the products of different and widely separated ages from around 500 B.C. to 500 A.D.<sup>4</sup> A few of them are very ancient and were composed more than two thousand five hundred years ago. Such are the *Dharmasutras* of Gautama, Apastamba, and Baudhayana, and the *Manusmṛiti*. These were followed by such *Dharmasastra* texts as the those of *Yajñavalkya*, Parasara, Narada. All these smṛtis are not equal in authority. If we are to judge of the authority of a text by the commentaries thereon, then the *Manusmṛiti* stands pre-eminent. Next to it is the *Yajñavalkyasmṛiti*.<sup>5</sup>

In this context, the relationship of *Dharmasastra* with the epics, *Arthasastra* and the *Nitisastra* needs to be understood. The *Mahabharata*, *Arthasastra* and *Nitisastra* which are also concerned with the rights and responsibilities of the ruler and the ruled may be seen as connected and supplementary texts of *Dharmasastra*. While works on *Arthasastra* and *Nitisastra* enter into great details about governance in all its aspects, *Dharmasastra* texts and *Mahabharata* generally deal, in part, with salient features of governance essential for protecting dharma.<sup>6</sup> Ramayana and

*Mahabharata* has been found to have hundreds of verses that refer to the principles of *Rajdharm* which is part of the *Dharmasastras*, *Nitisastras*, *Dandaniti* and other works.<sup>7</sup> Though *Arthasastra* and *Dharmasastra* are often considered separately on account of the difference of the two sastras in ideals and in the methods adopted to reach them, *Arthasastra* may be seen as a branch of *Dharmasastra* as the former deals primarily with the responsibilities of kings for whom rules are laid down in the *Dharmasastra*.<sup>8</sup>

The terms *Arthasastra* and *Nitisastra* are applied to the study of government from two different points of view. When wealth and prosperity of all kinds is the spring and motive, the science treating these is called *Arthasastra*. *Nitisastra* prescribe means whereby people are prevented from leaving the right path. The *Nitisastra* of Kamandaka acknowledges its debt to *Arthasastra*. The *Pancatantra* holds that *Arthasastra* and *Nitisastra* are synonymous. The *Mitaksara* commentary on *Yajñavalkyasmṛiti* remarks that the *Arthasastra* referred to by *Yajñavalkya* is *Rajanitisastra* that is part and parcel of *Dharmasastra*.<sup>9</sup>

There is little doubt that there seem to be diversity of doctrines between and within the *Dharmasastra*. These apparent contradictions result from a misunderstanding of different meanings of Dharma. The contextuality of Dharma makes it possible to state a series of different rules, for different places and times for the same person. For instance, false evidence given by a witness can lead him to darkness of hell.<sup>10</sup> Sometimes, false evidence becomes a divine assertion.<sup>11</sup> Similarly, he who commits violence is regarded as the worst offender,<sup>12</sup> but the one who strikes in the cause of

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<sup>4</sup> Kane, I, 304.

<sup>5</sup> Ibid., I, 306

<sup>6</sup> Jois, *ibid.*, 112-113.

<sup>7</sup> Banerji, 1972; Sircar 1973.

<sup>8</sup> Kane, I, 158

<sup>9</sup> Kane, III, 8.

<sup>10</sup> Manusmṛiti 8.94.

<sup>11</sup> Ibid., 8.103.

<sup>12</sup> Ibid. 8.345

right incurs no sin.<sup>13</sup> Also, one should forsake wealth and desires, if it violates *Dharma*, but even *Dharma* if it is inhumane or may cause suffering in future.<sup>14</sup> *Dharmasastra* is to be obeyed for the sake of human wellbeing not for its own sake.

In view of such contextual differences in the application of *Dharma*, rational interpretation of *Dharmasastra* is suggested. *Manusmriti* says that if a man explores, by reason, the Vedic teaching regarding *Dharma*, he alone, and no other, understands *Dharma*.<sup>15</sup> *Brihaspatismriti* categorically rules that if a decision is arrived at without reasoning and considering the circumstances of the case, there is violation of *dharma*.<sup>16</sup> *Naradasmriti* says that it becomes necessary to adopt a method founded on reasoning, because social context decides everything and overrides the sacred law.<sup>17</sup> *Arthasastra* also says that if *sastra* comes in conflict with any rational and equitable ruling then the latter shall be the deciding factor beyond the letter of the text.<sup>18</sup>

*Dharmasastra* is not a closed discourse that has no place for correction, adaptation, or innovation on contextual and rational basis. Rather, openness, creativity and an adaptive response to emergent social problems and circumstances is built into the very structure of not only *Dharmasastra* but also *Arthasastra* and *Nitisastra*. Multiplicity and contingent nature of views expressed in different *Dharmashastras* helped contextual application of plurality-conscious universalistic principles. The *Dharmasastras* are essentially "rules of interdependence" founded on diversity and unity corresponding to the nature of things and necessary for the maintenance of the cosmic and social order.<sup>19</sup>

## Burma

The *Dharmasastras* have exercised deep influence on the development of indigenous law in Burma, Thailand, Tibet, Ceylon, Indonesia, and Cambodia, which remained visible in their legislation till the modern times. In all these countries, the name of *Manu* has been associated, as in India, with the origin of the law.<sup>20</sup>

Burmese legal scholars have followed the *Dhammasattha* and attempted to trace the legal development of Burma beginning from the first *Manu Dammasattha* (*Dharmasastra*) written at the time when this world emerged according to Burmese mythical tales and stories. Among the Burmese *Dammasatthas*, the *Manu Dammasattha* is the first of around forty *Dammasatthas*. Throughout Burmese history, the *Dammasatthas* are the fundamental sources of laws. In the introduction of *Manu Dammasattha*, the foundation of the source of law in Burma is described:

*When this universe had reached the period of firmly established continuancy, the original inhabitants of this world conjointly entreated the great king Mahasamanta to become their ruler. King Mahasamanta governed the world with righteousness.*

*Now the king had a wise nobleman called Manu, who was well versed in the law. This nobleman called Manu, desiring the good of all human beings, and being also*

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<sup>13</sup> Ibid. 8.349.

<sup>14</sup> Ibid. 4.176

<sup>15</sup> Ibid., 12.106.

<sup>16</sup> Brihaspatismrti, 2.12.

<sup>17</sup> Naradasmriti, 1.40.

<sup>18</sup> Arthasastra, 3. 1.45.

<sup>19</sup> Ibid. p.216.

<sup>20</sup> Lingat, Buddhist Manu, p. 284

*opportuned by King Mahasamanta, rose into the expanse of heaven, and having arrived at the boundary wall of the world, he there saw the natural law, Dammasattha, he committed them to memory and having returned, communicated the same to the King Mahasammata, stating eighteen branches of law.*<sup>21</sup>

Burmese law existed for long without much break and changes but steadily preserved the spirit of Dammasatthas. This view was supported by the Letters Patent of the appointment of judges in the last days of Burmese monarchs in 1885 as given below:

*In case of dispute they must, in accordance with all thirty-six Dammasatthas, enquire into the causes of the people and decide between them and for this purpose they are appointed to the Courts as judges. In a lawsuit or dispute any of our subjects apply to a Judge, the Judge shall decide the matter with the Manu Dammasattha in hand first. If the required rule is not to be found therein, follow all other Dammasatthas.*<sup>22</sup>

The development of Burmese law is rooted in all *Dammasatthas* written by different legal scholars appointed by different kings throughout several eras of Burmese kings. These *Dammasatthas* were restored one dynasty after another and observed by one king after another. By this observance, the kings gained people's support and respects throughout Burmese history.

This *Dhammasattham* literature is not known very accurately. As a matter of fact, we know-it only through Burmese versions or Burmese juridical literature of a much later period than the original Pali works. Fortunately, Burmese law is much better known due to the research undertaken by Sir John Jardine, British Commissioner for the Administration of Justice in Burma, and by E. Forchhammer, a German archaeologist appointed by the British Government in 1881 as head of the Archeological Service of Burma. Dr. Forchhammer recorded the result of his research work in a book published in Rangoon in 1885 under the title 'Sources and Development of Burmese Law'. It is still the only original work in English on this text. Forchhammer's conclusions have been generally appreciated by all those who have dealt with it.<sup>23</sup>

In his study of *Wagaru Dhammasattha*, Forchhammer observed, "That Burmese law is Indian law is an inference drawn from the discovery of analogies between the enactments and dicta of the modern Burmese law books and the Hindu law as contained in the *Dharmasastras* of the various Hindu schools setting forth Hindu law and usage. If the term "Hindu law" is defined as representing collectively the *sastras* of the six schools of Hindu law and recorded usages of Hindu communities, the term "Indian law" should in this essay be understood simply as law of Indian origin, leaving it for the present undecided whether it was introduced into Burma in ancient or modern times".<sup>24</sup>

*Wagaru Dhammsattha* shows its Indian origin right from beginning, by the mythical introduction about the first creator, Manu, who is here transformed into a sage advisor of King Mahasamanta, who rose to heaven and saw the law written in

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<sup>21</sup> Myint, p.20.

<sup>22</sup> Ibid.

<sup>23</sup> Lingat, p. 286

<sup>24</sup> Forchhammer, p.1.

characters of the size of a grown-up cow on the boundary wall of the universe. But these analogies in the *Dhammasattha* are not restricted to *Manusmriti* or any other particular *Dharmasastra*. They extend over *Dharmasastras* of the various times, from the *Dharmasutras* to the later Smritis, such as *Brhaspritismiti*., *Katyayanasmriti*, and also include *Mahabharata*.<sup>25</sup>

Forchhammer carefully compared the legal rules in the Wareru Code with those of Indian *Dharmasastras* of Manu, Yajnavalkya, Narada, Katyayana, and even *Dharmasutras*. He quotes many of them, which may be found substantially the same in the Indian codes.<sup>26</sup> There are indeed very few passages in the Wagaru which are not clearly and distinctly Hindu law as contained in Manu and other ancient Codes. It cannot be denied that the Wareru Code is related to the *Dharmamasastras*, especially to the two texts, the *Manusmriti* and the *Naradasmriti*. This kinship is plainly shown, not only by the same division of the judicial matter into eighteen branches, but also by the numerous similarities and corresponding points. On many respects, the Wareru Code looks as an epitome of Hindu Law.<sup>27</sup>

The *Dhammasattha*, of which the Code of Wagaru gives us an idea, in spite of the late date of the version which has come down to us, has managed to hazard the introduction or perhaps rather the conservation of the Indian system in environments practically cut off from India and entirely won for the Buddhist faith. That their authors were inspired by Indian *Dharmasastras* is beyond doubt, for it is evidenced by their classification of contentious matters into eighteen types, corresponding to the eighteen titles of litigation in the *Dharmasastras*.

It is clear that the Manu of *Dhammasattha* has no more than the name in common with the Manu of the *Dharmasastra* even though some *Dhammasatthas* make out of him a son of Brahma, reincarnated in the person of a hermit. But it is also evident that the name was not chosen at random. For the Buddhists, the law of Manu is really the law of the phenomenal world, that which governs laymen. It is independent of the law which the Buddhists teach to the world.

*Dharmasastras* reveal to men the conditions of social interdependence and welfare, while the law of the Buddha reveals to them the conditions of salvation. Despite this dichotomy, which has remained one of the characteristic traits of Buddhist society, the law of the *Dhammasatthas*, like the law of the *Dharmasastras*, is above the world which it rules. *Dhammasattha* is also bound to the cosmic order and is therefore free from the will of men, who will live in peace only so long as they obey its precepts. A king like Mahāsammata himself could introduce no changes into it, and his role is confined to insuring that it is respected.

*Dhammasatthas* were popularised through prolific production, written most frequently in the vernacular, in which local traditions held a greater and greater place, and where borrowings from the Buddhist scriptures became more and more numerous. In this new guise the *Dhammasatthas* lost their original nature. All repeat and embellish the story of the marvellous discovery of the text of the law, and base their precepts on the revelation of the sage Manu. This literature is abundant and, unlike India, the circulation in public has proliferated.

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<sup>25</sup> Jolly, op.cit.

<sup>26</sup> Lingat, p. 287

<sup>27</sup> Ibid., p. 289

There is a list enumerating a hundred *Dhammasatthas* composed in Burma, and forty of them still exist.<sup>28</sup> Like the *Dharmasastras*, their chronological succession is uncertain: they copy each other, and also complete and differ from each other. It is from the totality of them that the rule of law must be extracted. However, in contrast to the Indian position, the commentaries of the *Dhammasatthas* are mixed with the texts and do not appear as independent works until the modern period, when the form of doctrinal treatises emerges.

A "digest" has however been compiled at the request of the British. But up to our own time the *Dhammasatthas* have remained the only written law on all questions relating to the personal law of Burmese Buddhists, even though a project of codification has recently been mooted.

The Burman kings, like the British authorities, took care not to legislate in the sphere of the law of Manu and confined themselves to their role as judges. As in the Hindu system, the precepts of the *Dhammasatthas*, while certainly being authoritative, are not imperative in the manner of the rules of *Dharmasastra*.

## Indonesia

Among the bodies of traditional knowledge and learning that came to the Indonesian archipelago from India in the early centuries of the common era is a complex of textual traditions that can be broadly described as 'legal' literature. In ancient Java (until the end of the fifteenth century) and precolonial Bali (until the twentieth century), concepts of law not only encompassed the codification and administration of civil and criminal justice but also concepts of morality and right conduct (*dharma*) that mirrored the broad definition of dharma known in ancient.<sup>29</sup>

The ancient Indonesian legal judicial system was undoubtedly influenced by the *Dharmasastra* texts as available in Bali. As in India, the core contents were a specialized body of written knowledge, and a set of procedures by which crimes could be tried and the guilty punished. These two aspects of judicial practice were embodied in the ancient Javanese legal texts in use throughout Bali till the nineteenth century. The heritage of textual knowledge, and the human exercise of justice by the ruler, both essential aspects of the *Dharmasastra*, led to the evolution of law in Indonesia.

It is possible that a number of legal traditions and authorities were known from digests and compendia and may have spread to Java and Bali in that form rather than as discrete texts. Although the earlier stages are undocumented and thus remain obscure, by the twelfth century, legal authority in Java and Bali was firmly vested in traditions drawn principally from the Sanskrit *Manava dharma sastra*.<sup>30</sup>

That the reception of Indian law in Java must have been accomplished already in the tenth century A.D., is proved by a copper-plate discovered there which contains a

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<sup>28</sup> Lingat, 1940, p.14.

<sup>29</sup> Creese, p. 243

<sup>30</sup> Ibid.

verdict of the court (*jayapattra*) composed quite in agreement with the rules laid down by later Indian *Dharmasastra* texts such as *Brhaspatismriti*.<sup>31</sup>

Javanese lawbooks demonstrate that, as with other Southeast Asian law texts, the basic concern of the text is connections between religion, law, and Man's view of himself in relation to the natural world. Indian influence in the text was both direct and immediate, in that many sections were either copies of or adaptations of Indian material—usually, though not always, from Manu. The Lawbooks was made known "for the well-being of humanity." More important, the spirit and tone of the text owe much to Indian legal thought; the philosophical basis of order, and its connection with religious philosophy, is unmistakably Indian. At the same time, the text demonstrates a number of adaptations to local conditions, such as the emphasis upon compensation and the avoidance of varna rules.<sup>32</sup>

The legal system of Java was mainly of Hindu origin, though modified by local conditions. There were written law-codes in Java and Bali, and these resembled the Indian Law-books—*Dharmasastras* or *Smrtis*—to a large extent, both in form and substance. The variations of rules and principles noticed in different law books must be attributed, as in the case of India, to varying indigenous customs in different localities and in different ages. To this we may perhaps add the influence of the different Indian Law-books introduced, perhaps at different times, in Java.

Manu's authority is cited as the basis of juridical decision-making and moral guidance in Javanese and Balinese epigraphical and textual sources dating back to at least the twelfth and, in the case of the latter, possibly even as early as the ninth century. Other prominent Sanskrit legal authorities linked to the *Arthasastra* traditions associated with the science of politics, kingly strategy and judicial procedures on which Manu also drew are specifically referenced in the corpus of indigenous sources, including the compendia attributed to *Chanakya*, adviser to the founder of the Mauryan dynasty Chandragupta as well as works by Manu's successors, such as *Brhaspati* and *Kāmandaki*, author of a core *Nitisastra* text, the *Nitisara*.<sup>33</sup>

The earliest reliably dated epigraphical references to Manu's code in the Indonesia come not from Java but from Bali, where the *Manawasastra* is noted as the basis of legal judgements in three inscriptions issued by the twelfth-century Balinese ruler Jayapangus. According to the preamble in each of these inscriptions, King Jayapangus drew his prudent and wise conduct from 'the essence of Manu's teachings' and also from the *Kamandaka Nitisara*. Literary references to the *Kamandaka* appear predominantly in later texts, including some Balinese works dating from after the end of the Majapahit period, pointing to the presence of a long-standing and resilient '*Kāmandaka*' tradition in Bali that may have come directly from India.<sup>34</sup>

The major ancient Javanese legal texts still in use in Bali in the nineteenth century and recognised in both the textual record and the reports of Dutch and British colonial officials include the *Pūrwādhigama*, *Kuṭāramānawa*,

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<sup>31</sup> Jolly, p.94.

<sup>32</sup> Hooker, p.215

<sup>33</sup> Ibid. 244

<sup>34</sup> Ibid. P.245

*Sārasamuccaya*, *Swarajambu*, *Adhigama*, *Dewāgama* and *Dewadanda*. All these law codes comprise a collection of definitions of various criminal and civil offences and their penalties relating to matters such as theft boundary disputes, debt bondage and contracts, verbal and physical assault, abduction, divorce, and adultery. Included among the regulations are definitions of righteous conduct to be followed in all social relationships.<sup>35</sup>

Among the texts mentioned above, the *Kutaramanava*, which is held authentic in Bali, has been of primary significance in the study of the Javanese law. The book was regarded as an authoritative document in the period of the Majapahit empire during which the evolution of Javanese law was most prominent as it became necessary to codify law to meet the needs of administration of far flung territories. The legacy of the Majapahit Kingdom includes statues, literary books, inscriptions, temples, and the *Kutara manawa Dharmasastra*.

The *Kutara manawa Dharmasastra* is a book of legislation used by the Majapahit Kingdom which regulates various aspects of social life.<sup>36</sup> The statutory code of the Majapahit Kingdom, written in the ancient Javanese language and known as the *Kutara manawa Dharmasastra*, is a legal document that regulates criminal law and civil law. In order to provide an overview of the matters regulated in the law, it was reorganised into various chapters.<sup>37</sup> This is evidenced by the Bendasari inscription dating from the middle of the fourteenth century A.D. It is a record of a judgment in a civil dispute over the possession of land and describes the way in which the judges came to a decision.<sup>38</sup>

In this case after hearing the statements of both the parties, and in accordance with established practice, the judges interrogated some impartial local people witnesses about the dispute. Then they took into consideration the law, as enunciated in legal texts, the local usages and customs, the precedents, and the opinions of religious teachers and old men, and ultimately decided according to the principles enunciated in *Kutara-manawa*. That the *Kutara-manawa* was regarded as an authoritative document also follows from another inscription, dated 1358 A.D. in which the judges, seven in number, are described as '*Kutara-Manavadi-Sastra-vivechana-tatpara*', i.e., persons skilled in the knowledge of '*Kutara-manawa* and other lawbooks.<sup>39</sup>

An analysis of the contents of the Javanese Lawbook *Kutara-manawa* shows that *ManawaDharmasastra* formed its main source. Not only numerous isolated verses, but sometimes a whole series of them, are reproduced, with slight variations and modifications in many cases. These variations were in some cases undoubtedly due to an effort to bring the law into line with Javanese indigenous customs and laws.

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<sup>35</sup> Creese, p.246

<sup>36</sup> Utami, p.1502.

<sup>37</sup> The following is the result of that rearrangement effort: Chapter I: General provisions on fines Chapter; II: Eight kinds of murder, called *astadusta*; Chapter III: Treatment of servants, called *kawula* Chapter; IV: Eight kinds of theft, called *astacorah*; Chapter V: Compulsion or *sahasa* Chapter VI: Buying and selling or *adol-tuku*; Chapter VII: Pawn or *sanda*; Chapter VIII: Debt or *ahutang- apihutang*; Chapter IX: Entrustment; Chapter X: Dowry or *tukon*; Chapter XI: Marriage or *kawarangan*; Chapter XII: Mesum or *paradara*; Chapter XIII: Inheritance or *drewe kaliliran*; Chapter XIV: Cursing or *wakparusya*; Chapter XV: Hurting or *dandaparusya*; Chapter XVI: Negligence or *kagelehan*; Chapter XVII: Fight or *atukaran*; Chapter XVIII: Land or *bhumi*; Chapter XIX: Slander or *dwilatek*. Ibid.

<sup>38</sup> Majumdar, 1936, p.447.

<sup>39</sup> Ibid.



But the connection is unmistakable.<sup>40</sup> This quite inevitable and understandable, particularly in view of the fact that the Indian *Dharmasastra* also recognise the importance of local customs and rules. Variations from the texts, based on reason and fairness, are essential for providing complete justice.

Javanese legal textual traditions, with their roots in the *Dharmasastra* influenced evolution of law and jurisprudence Indonesian, and it remained the backbone of judicial processes in Bali until the transition to colonial administrative practices at the end of the nineteenth century. This indigenous legal tradition was influenced by the *Dharmasastras*, particularly the Manusmriti, which were interpreted and redefined through centuries of local adaptation and development.<sup>41</sup>

## Sri Lanka

Historically, Sri Lanka has been a multi-ethnic society. The Veddas, who transmigrated to Sri Lanka from the Indian subcontinent prior to the 6th century BC, were the island's aboriginal inhabitants. Ethnically, they are allied to the peoples of southern India and to early populations in South Asia. They adopted Sinhala and now no longer speak their own language. The Sinhalese succeeded in establishing the first kingdom between the fifth and third centuries B.C., which continued, with changes in dynasties, until it finally was colonised by the British in 1818. In the course of their history, they developed their own legal system, which is called *Kandyan* law after the name of their last dynasty, and it still remains indigenous law of the Sinhalese.<sup>42</sup>

The similarities between the *Kandyan* law and the ancient Indian legal tradition are too obvious to be ignored. The *Kandyan* Law relating to slavery is similar to the Hindu law, so far as the latter may be ascertained from the *Dharmasastras*, records of customs and inscriptions. The nature of slavery itself, and the means of liberation; the method of becoming a slave, and the status of children of slaves; the rights of slaves to own property, and their passing as part of the estate of their deceased owner, all these find comparable rules in both systems. The *Dharmasastras* takes a different view of the effect of liaisons with slaves, but this would appear to be a reforming rather than a customary principle.<sup>43</sup>

There appears to be hardly any feature of the Sinhalese king which would distinguish him from the Indian counterparts. Election, succession, nomination of heir apparent, subjection to law, absence of legislative power, ownership of all land, exaction of services from the people; source of honours and appointments, ownership of minerals and treasures, entitlement to fines, source of justice: all these characteristics have their Indian parallels. The right to take property by right and to forfeit tenures for default of services are rights enjoyed by both the Indian and *Kandyan* King. All this is not to suggest that some divergences did not exist, or that *Kandyan* Kingdom had no peculiarities. It would be strange if it had not. The peculiar isolation of the Sinhalese made it almost inevitable that some special customs should

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<sup>40</sup> Ibid. 449.

<sup>41</sup> Creese, p. 282

<sup>42</sup> Chiba, 1993, p. 204.

<sup>43</sup> Derrett, p.138.

emerge there. Yet, in so many small matters the Kandyan king resembled his Indian counterpart. The king's willingness to patronize more than one religion was also a feature that was characteristically Indian.<sup>44</sup>

The uncertain character of civil cases in Kandyan Law reflects the vague character of that chapter in the *Dharmasastra*, and this can hardly be a coincidence. The great similarity between the two systems on the issues of contracts and indebtedness, the feature of self-help, the thin division between civil and criminal law, the special function of the king in repressing crime, but his indifference to tortious wrongs, the feature of compensation, of restitution *plus fine plus damages*, the objections to sorcery, the gradation of crimes and the gradation and types of punishment-in all these contexts *Dharmasastra* parallels are very generally forthcoming. All the details do not tally-for example, taking animal life was not a crime in Kandyan kingdom but it was invariably an offence in India-but the characteristic features are almost identical. In particular we must notice the notion that fellow villagers were collectively responsible for crimes committed in their area, and that the king must compensate the wronged party.<sup>45</sup>

On the other hand, the Tamils established an independent Jaffna Kingdom after immigrants from southern India occupied the northern area of Sri Lanka between the thirteenth and fourteenth centuries. The indigenous law of the Jaffna Tamils with some variations with the caste structure is known at present as *Thesavalamai*. Both legal systems are truly of different origin and history, but they clearly belong commonly to the basic Indian legal culture represented by the *Dharmasastra* which was also adopted with variations in countries like Burma and Thailand.<sup>46</sup>

As the Tamils established a settlement of their own people in the interior of the island, and introduced amongst them the same form of government, the same laws, and the same institutions as prevailed at that time in their native country. It further appears from the ancient sources, and from modern historical accounts, that this form of government, and these laws and institutions, had never been altered or modified by any foreign conqueror, but had continued to prevail in their original state, from the time they were first introduced into the interior of Ceylon, till the year 1815.<sup>47</sup>

The rules in the *Thesawalamai* closely resemble the customary laws prevailing in the parts of India, and traces of a common origin of the rules in the *Thesawalamai* and the Hindu Codes are easily discernible. According to the *Thesawalamai* a distinction is drawn between hereditary property, acquired property and dowry which respectively correspond to ancestral property, self-acquired property and *stridhanam* of the Hindu Law although the incidents attaching to each of these may not be the same under the two systems. The hereditary property goes to the sons and the *stridhanam* to the daughter according to the *Thesawalamai* as under the Hindu Law. Marriage among the Brahmin Tamils in Ceylon has the same essential features as it has in Southern India. The marriage is celebrated when the children are too young to form an opinion and no divorce is possible. A woman can marry once and

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<sup>44</sup> Ibid. p.140.

<sup>45</sup> Ibid. p.141.

<sup>46</sup> Ibid.

<sup>47</sup> D'Oyly, p.1

cannot make another alliance even after the death of the husband. <sup>48</sup> In the case of some other castes, however, divorce seems to have been recognised. Adoption is recognised as an institution as under the Hindu Law. A perusal of the *Thesawalamai* shows that many of the rules contained therein find their counterpart in the Hindu law. The reference to the Law of Malabar frequently made in the *Thesawalamai* is apparently akin to the Hindu Law as prevailing in Travancoe. Thus according to these instances cited by several writers the *Thesawalamai* and the Hindu Law have had a common origin. They both sprang from the customary usages of the people of India.<sup>49</sup>

## Thailand

The influence of *Dharmasastra* spread much farther beyond Burma towards the east and the south. In Siam there is found the tradition of a law-book of *Manusmriti*, and the extracts which were published in the first volume of the *Journal of the Indian Archipelago* (1847) from a Siamese law-book of 1614 A.D. It contains much that is Indian. The Pali customs and usages at the conclusion of a marriage ceremony, the rule that the interest in case of a debt should never exceed the amount of the capital, that the King inherits a property for which there is no legal heir, that the boys should be brought up in traditional values, the long list of inadmissible witnesses, etc. are clearly of Indian origin.<sup>50</sup>

This *Dhammasattha*, originally written in Pali, purports to be of Mon origin. It seems to have been known to the Thai peoples settled in the Menam basin before the foundation of the Ayuthia kingdom (1350), and it is possible that within its surviving version many works of the same type have been fused. We find there king *Mahasamanta* and his minister *Manu* (called *Manosara*), and the text is given by rehearsal on *Manu*'s part from what he read on the wall which surrounds the world. But it marks an important piece of progress in juridical technique by means of the new divisions and distinctions which it introduces.

For example, contentious matters, instead of being reduced to the classical 18 titles of law, are classified under 39 rubrics, 10 being rules of procedure and 29 rules of substantive law.<sup>51</sup> But the most important novelty is the appearance, beside these fundamental rules (*mula-attha*), of a new source of law, constituted by the "ramifications of litigation" (*sakha-attha*), i.e. rules derived from the first. The fundamental rules are those which the hermit *Manu* (or *Manosara*) read on the *cakkavala* and are found set out in the *Dhammasattha*.

They are the expression of the eternal law which should inspire *Mahasamanta* and future kings when giving justice to their subjects. As for the derivative rules, these resulted, in course of time, from the application by *Mahasamanta* and his successors of the principles laid down in the *Dhammasattha*. They could not be actually enumerated, although the fundamental rules are necessarily limited in number.

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<sup>48</sup> Tambiah, p. 6.

<sup>49</sup> Ibid., p. 7.

<sup>50</sup> Jolly, p.93.

<sup>51</sup> Masao, p.15.

Thus the Thai *Dhammasattha* recognised in advance that there may be a legal value in decisions passed by kings in conformity with its precepts. A procedure is expressly provided for the transformation of a royal decision into a rule of law. They must be stripped of the features which gave rise to them, and reduced in abstract terms to the concise form of the precepts of the law.

They could then be added to the text of the *Dhammasattha* itself under the relevant rubric. It seems that such a procedure was actually followed during the Ayuthia period at every change in the reign, when it was entrusted to members of the High Court of Justice, composed principally of Brahmins versed in the science of law. The corpus of the old Siamese laws presents, therefore, a partially finished codification, in which the derivative rules of law, forming as many articles, are classified under the various rubrics of the *Dhammasattha*, after a brief account of the fundamental rules.

In this way they assist and illustrate the teaching of the *Dharmasastra* which exhort the king not to judge lightly, and to pay careful attention to the presumptions of fact, not to speak of indirect methods which may be utilised in criminal matters. But these are only the necessary qualities of justice, equity and good conscience which they seek to develop in the judge, qualities needful if one is to try the case well.<sup>52</sup> The evolution of law towards a system having a legislative aspect was thus already suggested by the *Dharmasastra* themselves, insistently warning the king that a judgment is not just unless it is given in conformity with the precepts of the *sastras*.

## Cambodia

The large number of Sanskrit inscriptions recovered in Kambuja and Champa show the prevalence of use of Sanskrit texts in ancient Cambodia. These inscriptions refer to many Sanskrit texts in grammar and philology, philosophy, politics, and economy, and this indicates the zeal and enthusiasm with which all classes of people high and low, took to the study of Sanskrit texts.<sup>53</sup>

These inscriptions give clear evidence of a thorough knowledge of almost all the Sanskrit metres and the most abstruse rules of Sanskrit rhetoric and prosody, intimate acquaintance with various branches of literature such as Veda, Vedanta, Purana, *Dharmasastra*, Buddhist and Jain literature, different schools of philosophy, and Vyakarana, specially the works of Panini and Patanjali. Specific reference is made to the famous medical treatise of *Susruta*, and to the most prominent text in *Dharmasastra*, the *Manusmriti*, from which a verse is actually quoted.<sup>54</sup>

An inscription from Champa dated 1081 AD, says that the king, “was fully endowed with all the qualities viz. the knowledge of 64 *kalas* (arts). He knew and practised the four expedients viz. conciliation (*sama*), gifts (*dana*), discord (*bheda*) and punishment (*danda*). He maintained all the eighteen titles of law and the uniformity (of procedure). He acted like visible *Dharma* in this world”.<sup>55</sup> Another inscription dated 1088 AD says that the king follows, “the three objects (*trivargga*), wealth (*artha*), virtue (*dharma*) and pleasure (*kama*), without showing preference to any.

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<sup>52</sup> Dikshitar, p.218.

<sup>53</sup> Majumdar, 1961, 443

<sup>54</sup> Ibid. 1953, p.106.

<sup>55</sup> Majumdar, p. 165

He follows the four expedients viz. conciliation (*sama*), gifts (*dana*), discord (*bheda*) and bribery (*upapradana*) with respect to the enemies, the friends and the neutrals. He followed the eighteen titles of law prescribed by Manu (*Manumarga*).<sup>56</sup>

In yet another inscription dating back to fifth century, a king Devanika, perhaps a Cham conqueror, was installed in supreme power by "the blessed Sri Lingaparvata," the natural *linga* that dominated the region. He then resolved to create a *tirtha* in the form of a tank. He gave his tank the name of "Kuruksetra." He undoubtedly had in mind the "Kuruksetra" of the epic, for verses from the epic concerning "Kuruksetra" are quoted in his inscription. The inscription states: "May the celestial fruit, proclaimed formerly in the Kuruksetra and celebrated by the Devarsi, find itself here in the new Kuruksetra; ... may the fruits obtained in the thousand *tirtha* of Kuruksetra find themselves present here and complete."<sup>57</sup>

These inscriptions illustrate the categories of phenomenon and concepts that would have allowed the people of Cambodia and Vietnam to identify their own known facts and experiences within the framework of experience assumed in the *Dharmasastra* to be universal. For most things important and familiar in Cambodia and Vietnam, people were able to invoke Indian texts as ratifications of what they already knew to be true. Manu's seven constituents of government, and eighteen categories of law would have sounded as common sense to them.<sup>58</sup>

## Tibet

It is often claimed that Buddhism is an egalitarian social movement engaged in a non-political protest against hierarchy of Hinduism. The real story of Buddhism is not its apolitical social-protest stance but its consistent engagement with both small republics and royal courts.<sup>59</sup> By the time Tibetans became interested in Buddhism, they had long indigenous traditions of kingship and statecraft.<sup>60</sup> When Buddhism was adopted as the state religion in the eighth century, laws during that time do not seem to have had a direct basis in Buddhist sentiments.<sup>61</sup> Rather, it appears that a juridical system was already in place during the height of the Tibetan empire.<sup>62</sup> With the collapse of the imperial dynasty in the mid-ninth century, Tibetans went through a period of uncertainty and lawlessness. In the tenth and eleventh centuries, the indigenous composition of Buddhist texts gained speed, and the lore of ancient Tibetan emperors began to be included in the new religious literature which posed itself as a hidden treasure constituting the personal statement of these monarchs.<sup>63</sup>

From ninth to eleventh centuries CE some of the renowned Sanskrit texts in India, were translated into Tibetan and were included in the Tanjur collection. In this way some of the Sanskrit works were preserved in Tibet. It seems the Tibetans had a

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<sup>56</sup> Ibid. 172

<sup>57</sup> Wolters, p.189

<sup>58</sup> Ibid.

<sup>59</sup> Davidson, p.52

<sup>60</sup> Ibid. p.64

<sup>61</sup> Jansen, p.222

<sup>62</sup> Pirie, p.410.

<sup>63</sup> Davidson, p.64

special interest in the niti literature and in particular collections of moral and ethical maxims. Thus, one of the best known collections in India at that time of the Chanakya's maxims, viz. the *Chanakya-rajniti-Sastra* version, was preserved in Tibetan through a translation made in the tenth or eleventh century A.D. Since the first studies were made in the Tibetan Tanjur by A. Csoma de Koros in the first half of the nineteenth century, we know that eight niti works are included in the Tanjur. These works are as follows<sup>64</sup>:

1. Ses-rab brgya-pa shes-bya-bahi rab-tu-byed-pa; in Sanskrit *Prajnasataka-nama-prakarana*
2. Lugs-kyi bstan-bcos Ses-rab sdoh-po shes-bya-ba; in Sanskrit *Nitisastra-prajnadanda-nama*
3. Lugs-kyi bstan-bcos skye-bo gso-hahi thigs-pa shes-bya-ba; in Sanskrit *Nitisastra-jantuposana-bindu-nama*
4. Tshigs-su-bcad-pahi mdsod ces-bya-ba ; in Sanskrit *Gathakosa-nama*
5. Tshigs-su bcad-pa brgya-pa; in Sanskrit *Satagatha*
6. Dri-ma med-pahi dris-lan rin-po-chehi phreh-ba shes-bya-ba; in Sanskrit *Vimalaprasnottara-ratnamala-nama*
7. Tsa-na-kahi rgyal-pohi lugs-kyi bstan-bcos; in Sanskrit *Chanakya-Nitisastra*
8. Lugs-kyi bstan-bcos ; in Sanskrit *Nitisastra*

The Tibetan translation of the *Chanakya Nitisastra* consists of two hundred and fifty stanzas divided into eight chapters. The introductory verse points out the usefulness of the study of the work and lays down some precepts of common character most of them being found in other texts like *Mahabharata*, *Garuda Purana*, *Arthasastra* and *Dharmasastra*. In the first three chapters some counsels of practical prudence for family life are given. Chapters from the fourth to the sixth have been mainly devoted the enumeration of the requisite qualities of the king, royal ministers, commander in chief, and other officers of the kingdom. The last two chapters, i.e. the seventh and eighth which are comparatively long contain verses miscellaneous character. These verses have been collected and compiled from the niti sections of the *Mahabharata*, *Arthasastra*, *Dharmasastras*, *Puranas*, and from *Panchatantra* and *Hitopdesa*.<sup>65</sup>

The Tibetan translation of *Chanakyaniti*, is much like *Arthasastra* in that there much common sense in both texts that is in accord with practical morality. There lingers around the texts a distinct influence of the *Mahabharata*, and the *Dharmasastra*. It may be remarked that the *Chanakyaniti* is a concise work on general ethics and polity compiled by unifying fundamental rules of social life with day to day practical wisdom to make the life successful with prosperity and happiness on the basis of Vedic insights communicated through the Epics, *Dharmasastra*, *Arthasastra*, and the *Puranas*.<sup>66</sup>

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<sup>64</sup> Sternbach, p. 364.

<sup>65</sup> Pathak, p.34,

<sup>66</sup> Ibid. p.20.

## Conclusion

It is for sake of the wellbeing of Individual and society that the *Dharmasastra* explored ways of good conduct of individuals and of social cohesion by balancing coexistence and autonomy. Diverse *Dharmasastras* suggested contextual systems of high moral and social conduct in which individuals and societies could grow and flourish in the path of security and development through willing obligations to the laws of nature and society. Only a combination and coordination of *Dharma*, *Artha*, and *Kama* can ensure wellbeing of individual and society.

The approach of the *Dharmasastra*, and its adaptations in *Dhammasattha* and other texts and practices in Asia, of combining truth with justice, equity with law and discretion with reason has a universal message for modern law. This conception of law goes beyond the Western concept of modern law which divides reality into that which we can see and say clearly and the rest, which we can better pass over in silence. What we can see and say clearly amounts to little. If we omitted all that is unclear we would probably be left with completely superficial and trivial repetition of words. By paying too much attention to what we perceive with our senses, we lose connection with the essential values of human life. If a dispute is decided by mere words of injunctions it is violation of *Dharmasastra*.

It is often assumed that in the work of arguing and deciding disputes, the judges and the lawyers, much less the litigants, can easily and clearly comprehend the process that is followed. Nothing could be farther from the truth. As *Asya Vamya Sukta* and *Vag Sukta* of *Rg Veda* says, the meaning is in insight and not merely in words. Sources of information, precedents, reason, custom, intuition, individual understanding of law morals, all these elements enter in varying proportions to make the strange compound of the process of dispute resolution. It is uncertain, connected, complementary, emergent and creative. Decisions are made as much by the logic of probabilities and intuition as by the logic of certainty and reason.

The provisions for a diversity of arrangements to suit the location and vocation of the people and serve them in their local environment, collective decision making, integrity of judges and simplicity of procedure were the predominant features of the legal system given in the *Dharmasastra* like *Manusmriti*, *Yagnavalkyasmriti* and *Naradasmriti*, and the *Arthasastra* and *Nitisastra*. These features of Hindu law contributed to its adaptations in the form of *Chanakya Nitisara* in Tibet, *Dhanmmasatthas* in Burma and Thailand, *Thesawalamai* and *Kandyan law* in Sri Lanka, *Kutaramanava* in Indonesia and *Vyavaharapada* in Cambodia.

These diverse texts embody both the spirit of justice, equity and good conscience as well as insight of the judges to make decisions that ensure complete humane justice. In the *Dharmasastra*, the judges were empowered to do complete justice without being always bound by the letter of the texts. This discretion ensured adaptability to mould decisions in accordance with given situations. The fact that this power was conferred only on the judges of learning, good conduct and conscience was an assurance that it would be used carefully for human wellbeing.

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