

## P R E F A C E

The importance and object of the study of 'The Oaths and Ordeals in Dharmaśāstra' will be clear from statement No.I.

Oaths and Ordeals collectively come under the law of evidence. Oaths and Ordeals together constitute the divine means of proof. Earlier writers did not make any distinction between the two. It was however gradually getting crystallised by the time of Viṣṇu and Yājñavalkya. Nārada for the first time mentioned the two in distinct terms. Some of the later writers divided the two into water-tight compartments. Majority of the writers however accepted that the oaths and ordeals were based on a common principle of divine intervention and distinction between the two was just formal. In digests however we find them discussed in separate chapters. I have also mentioned them distinctly in the title of the present work, thus following the method adopted by the Dh.writers, though it is quite clear that there is no essential difference between the two. An ordeal is just a concrete oath or an oath in action. In spite of this essential unity, the two can however be separated as far as the form of trial and the method of declaring judgment are concerned. As such, oaths are discussed here in an independent chapter(Ch.VI).

Ordeal has been casually discussed by various writers, while a few isolated monographs deal with the system of trial by ordeal as such. An attempt to study the Dh. ordeal in all its aspects is made here for the first time. It has also been

endeavoured to evaluate the Indian ordeal in the context of the world ordeals.

One of the important features of the ancient Hindu legal literature is that it has been written in a Sāstric tradition. The principles and norms contained in these codes are consistently and uniformly carried on by all the writers. We find that each of the writer contributed in his own way, thus keeping intact the continuity of the general principles enunciated by the Sāstra. The subsequent writers thus carry on the ideas of the previous jurists in almost identical language. In the discussion of ordeals also we thus find identical language used by these writers. This identity of language, in fact, plays the role of Anuvṛtti which is very necessary to take into account for understanding the further developments or amendments made by the writers.

The method adopted for discussion here may, therefore, be noted as follows : While discussing any topic, I have first given the views of various Smṛtikāras in their chronological order and then discussed it with the help of the commentaries and the digests and investigated it further in the light of the corresponding historical or tribal data available. This would help to understand the particular aspect under discussion in all its vicissitudes. While discussing the various ordeals in the V chapter, I have first of all discussed the form of the ordeal accepted by the Dh. writers, its origin and development, and general rules for its application (such as those regarding

the time, place, eligibility of the person undergoing the trial etc) and then followed the general method. In order to establish a close link of development, I have given the procedure described by each of the Smṛtikāra and have analysed and discussed the salient points emerging, with the help of commentaries and digests and have tried to see how the details given by these writers are corroborated by corresponding historical or tribal accounts. The study of each of the method in this way would help us in knowing the development of the ordeal in each of its part, at each of its stage and would give us a complete graph of the ordeal: On theory side we would know the ordeal in all its aspects, while on practical side we would know its applicability and the phases of its popularity.

At the end of discussions, conclusions are drawn at respective places.

Discussing the practice of ordeals, preference is given to the examples available from historical and tribal accounts to those known through literary references or mythical stories.

Smṛtis of many writers are not available in original. Some of them are reconstructed by the learned scholars (e.g. the Kātyāyanasmṛti reconstructed by Dr.P.V.Kane), while many of them are still to be known only from quotations. Verses on Oaths and Ordeals by various writers are arranged here in Appendix II. These are referred to in foot-notes on respective

pages as mentioned in the appendix(e.g.Pit.5 in foot-note means 5th verse under Pitāmaha in appendix II).

Some digests - Smṛticintāmaṇi, Smṛtisāra, Vyavahāra-mātrkā, Vyavahāracintāmaṇi, Vivādacandra - were not available to me. I have referred to these digests as quoted in the Dharmakośa (Vyavahārakāṇḍa Vol.I Part I) prepared by the Prājñapāṭhaśālā, Wai.

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