

SYNOPSIS

CHAPTER-I

OATHS AND ORDEALS IN DH.WORKS

Oaths and Ordeals - divine means of proof discussed under the law of evidence by the Dh.writers - made thorough investigation of all the aspects of the method-recognised its merits and channelised it into a definite system as to make it work as an efficient legal instrument.

Ordeal living institution in India - practised thorough all the centuries-Historical records reveal that it was practised as per Dh.recommendations - customs of various tribes also support it - people of India preserved the Dh. ordeals-study, an interesting sociological study of the Indian people investigating the method in its theory and practice.

Partial views of the European scholars of nineteenth century - Attempt to study ordeal discussed in Dh.works in all its aspects.

Law of every country - out come of economic and sociological conditions and intellectual capacities - The Hindu Judicial System reviewed.

Meaning, sources of Dharma - scope of Dharmasāstra-Four Sāstras (Dharma, Artha, Kāma and Mokṣa) based on integrated principle of life-are mutually complimentary-K.P.Jayaswal's theory regarding Dharma and Artha laws and role played by ordeal in the invasion of Dharma over Artha-theory reviewed.

Ordeal discussed by various writers reviewed in chronological order - problems in studying the texts-topic gaining importance-covered more space in later works-ordeal discussed by Gautama, Āpastamba, SL, Manu, Viṣṇu, Yāj, Nār, Br, Kāt, Pit, Minor Smṛtikāras, commentaries and digests such as Mitākṣarā, Smṛticandrikā, Vyavahāra-prakāśa, Divyatattva, Sarasvatīvilāsa etc.-independent manuals on ordeals.

CHAPTER II

NAME, NUMBER AND CLASSIFICATION OF ORDEALS

- I- Names or words used for ordeals-samayakriyā, śāpatha, Divya, kriyā, Parīkṣā - study of these words indicates various aspects of the divine methods. They also show a general development of the divine means of proof.
- II- Number of ordeals raised from two to nine - Other popular methods.
- III- Classification - Ordeal classified from various points of view - Review of the Indian Ordeals in the light of the world ordeals.

CHAPTER-III

EVIDENTIAL VALUE OF THE ORDEAL

Judicial procedure described in Dh.works - four stages - Pūrvapakṣa(Plaint, Uttarapakṣa(Reply), Kriyā(Evidence) and Nirṇaya(Judgment) - rules regarding the onus of proof - Pratyākālita, an important stage deciding the type of proof

required - proofs sanctioned by the Dh. writers, Law of Evidence-evolution of - ordeal was original, human proof came later - Ordeal developed as a means of proof by various writers - Kāt. stressed the evidential aspect. (i) Need for using a powerful proof (ii) Ordeal not on par with the human proof-various rules explained (iii) Characteristic features of ordeal as a means of proof - is inevitable in the cases without any proof, has a practical utility - proves the positive aspect of the plaint and disproves the negative of it- any of the litigents can willfully undertake it. Human proofs have their own limitations-is full of psychological merits.

CHAPTER IV

DIVYAMĀTRKĀ

Study of the general rules regarding the ordeal :-

- (1) Conditions necessary for undertaking an ordeal - rules regarding Śīrṣaka.
- (2) Persons entitled to undergo the ordeal (Divyādhikārī)
 - (a) consideration of ordeal from the caste point of view. (b) unhealthy elements in the society. (c) suitability of the ordeal for a particular society
 - (d) personal ability of the individual undergoing the ordeal - ordeal selected on the basis of the strength of the person which may be either of the kind of physical endurance required for a particular test or that of the psychological set up of the person.

Various types of persons either suitable or unsuitable

analysed - conclusions derived from the rules - extended general protection to infant and helpless-a spirit of tolerance, kindness and concern for the weakness of mankind.

- (3) Rules for selecting a proper ordeal. (a) consideration of ordeal from the point of view of the seriousness of the charges-various rules discussed-this aspect of ordeal gradually getting lesser importance-reasons for (b) consideration from the point of view of the suitability of the season -various rules discussed-restrictions gradually relaxed - Ordeal conducted at an auspicious moment(Muhūrta) (c) consideration from the point of view of the place of conducting trial-Various rules discussed-When analysed reveal some of the aspects of ordeal in general - Ordeal gradually becoming more public-rules closely followed by the people
- (4) The cases for which ordeal is recommended-general review of the kinds of disputes or the titles of law-what is an Aparādha-Aparādhas,Padas and Chalas, civil and criminal law - cases that are particularly recommended for trial by an ordeal.
- (5) Ordeal as a method : (i) Ordeal a means,not an end-must be properly used only by experts-may fail because of various reasons (ii) retrial-rules for (iii) No ordeal against any other ordeal (iv) general procedure (v) ordeal-social beliefs or the public opinion- (a) authority questioned (b) suspicion regarding the validity of the trial (c)

Frauds in the trial (d) is more useful, must be used with reservation. (e) to undergo an ordeal-socio religious duty -gives prestige.

- (6) judgment derived from the ordeal. (a) four types of Nirṇaya -Dharmānirṇaya based on truth-confessed at culprits initiative or proved by ordeal-throws light on Hindu Judicial system - (b) Technical aspects - (i) Śirṣaka (ii) Mantras recited (iii) Śirahpatra (iv) Result to be watched by many persons (c) Jayapatra (d) felicitating the innocent, punishing guilty.
- (7) Divination in the Dh.ordeals.
- (8) Stages in the development of the ordeal.

CHAPTER-V

DIVYAVIDHIH -

Procedure of ordeal can be divided into three stages.

- (i) Preparation (ii) R̥tual and (iii) Trial. (1) purificatory rites or preliminaries to be observed by the Prādvivāka and the person undergoing the trial (ii) Prādvivāka should conduct the activities of ordeal as Adhvarya would do in a sacrifice - rituals to be performed divided in two parts - Invoking ~~data~~ deities-offering oblations-procedure of invoking and adoring various deities-Mantras to be used-offerings offered to the deities-offering oblations in fire.

Tying of Śirahpatra-conclusions from the rules regarding the general procedure.

(1) DHATA-DIVYA -

Important ordeal in the Dh.system-mainly developed as a model ordeal-typically Indian ordeal-symbolises the very concept of judicial goal - emerges with the significant development of the Indian law - N.C.Senagupta's view regarding the form of the trial - name(Dhata, Tulā) explained - recommended for a very free use - persons entitled to undergo - consideration from time, place and value of the offence - points of view - procedure described by Viṣṇu, Yāj, Nār, Br, Kāt, Pit and other writers - Important points discussed - (a) The preparation of the balance - (i) type and size of the wood (ii) design of the weighing machine (b) The Trial - (i) First weighing and marking the positions of the scales (ii) conducting preliminary rites (iii) Mantras to be recited (iv) reweighing the person (c) Retrial - rules for (d) Signs of the success or failure of the trial.

(2) AGNI-DIVYA -

One of the primitive ordeals-form accepted by the Dh. writers-evolution of-cases for which used-consideration from time-place-value of the offence-points of view-Procedure described by Viṣṇu Yāj, Nār, Br, Kāt, Pit and other writers. Following points discussed - (1) Preparation of circles - (a) number of circles (b) methods of drawing circles (c) adoring the respective deities of the circles (2) Invoking Agni and performing Sāntihoma (3) Rubbing the grains of rice -(a) before the trial (b) after the trial (4) The Iron-ball : Heating and placing on

the hands of the person (5) Invoking the fire (6) Signs of the success or the failure of the trial : Ordeal not dangerous or risky. Numerous examples of the fire ordeal on record-uniformly popular in all the parts of India-an extensively practised ordeal.

(3) JALA-DIVYA -

Primitive ordeal-form accepted by Dh.writers-consideration from time-place-value of the offence-points of view-procedure described by Viṣṇu, Yāj., Nār., Br., Pit., Kāt., and other writers : Following points discussed : (i) Reservoir used (ii) Selection of the site on the bank. (iii) Persons required- (a) for the support of the person undergoing the trial (b) for discharging and brining of the arrow. (iv) The trial-(a) discharging and bringing the arrow (b) preliminary rites (c) taking up the positions (d) mantras recited (e) retrial (v) Signs of the success or failure of the trial.

SC refused to discuss on the ground that it was ^{obsolete} absolute -keith's view-SC's remarks should not be taken literally-claim made by SC refuted by SV.- Water ordeal going into background-discussed in Kkh-form was not actually dead, described in Aine-Akbari, referred to by Śrīgarṣa, Alberuni's description does not agree,- in later period water ordeal had two-fold development-(a) made more simple (b) became more dangerous.- Forms like Nadicī kriyā during Maratha period or crocodile ordeal in South India.

(4) VISA-DIVYA -

Poison derived from Sr̥ṅgī plant-ordeal derived from nature-most powerful ordeal-tried for most serious cases-consideration from time-place-value of the offence-points of view-reveals Āyurvedic functioning of the poison-procedure described by Viṣṇu, Yāj., Nār., Br., Kāt., Pit., and others.-Following points described - (i) Poison recommended-rules confirm the Āyurvedic properties of the poison (ii) taking the poison and watching the results (iii) Mantras recited, (iv) signs of the success or failure of the trial.

Another form-taking out a black serpent from a pot-method in practice since ancient times-commentaries and digests refer to it-not regularly recognised and discussed by the Dh. writers.- Poison ordeal(first variety) not really risky- Dh. writers took every precaution to see that the trial does not turn fatal-consistently going into background-not revived in modern times.

(5) KOŚA-DIVYA -

Last in the list of the five ordeals-mild ordeal with psychological value and enhanced divinatory significance-made open for universal application-Kośa is really an oath-admitted amongst ordeals for its merits-persons entitled to undergo the ordeal-not forced on anybody-Procedure described by Viṣṇu, Yāj., Nār., Br., Kāt., Pit., and other writers.- Following points discussed-(i) Place of the ordeal (ii) bathing the deities in the

water (iii) Preliminaries (iv) Mantras to be addressed. (v) trial (vi) Signs of the success or failure of the trial.

Kośa is often grouped with the water ordeal-we find a fusion of the two ordeals in some of the methods practised by the people of India.

(6) TANDULA-DIVYA -

Introduced by Nār.,-comes first in the second list of ordeals-recommended for the cases of theft, used in all sorts of disputes-persons entitled to undergo-available in all seasons procedure described by Nār., Br., Kāt., Pit., and other writers. Following points discussed : (i) (a) grains of rice to be used (b) immersing them on the previous day (ii) preliminaries (iii) the trial (iv) signs of the success or failure of the trial.

Tandula appears to be a modification of Kośa-changes introduced in actual practice-ordeal depending on the influencing of the masticatory process-also available in Indo-nesia-a popular ordeal in India.

(7) TAPTAMĀSA-DIVYA -

Introduced by Nār.,-recommended for theft, an ordinary ordeal in the Dh.system-procedure described by Nār., Br., Pit., and other writers.- Following points discussed : (i) performing the general rites (ii) Heating of the liquid-(a) the vessel used (b) liquid used (iii) dropping the metal piece (iv) mantras to

be used (v) taking out the metal piece from the boiling oil (vi) signs of the success or failure of the trial.

As introduced by Nār., Taptamāṣa happens to be an ordinary or second rate ordeal, but by 11th century it starts gaining prominence-soon it became a very powerful ordeal-there was a growing demand for this ordeal-it is the same as the Ravā-divya practised during the Maratha period-it was the most widely practised and most dominating ordeal amongst all the ordeals-one of the most popular world ordeals.

(8) TAPTAPHĀLA-DIVYA -

Mainly developed by Br.,-is definitely a later addition in the Dh.system though the name itself is very old-is an independent ordeal, different from the Agni divya with which it is often identified-used for light offences-procedure described by Br., -Following points are discussed (i) performing the general rites (ii) heating the Phāla (iii) licking it by tongue (iv) signs of the success or failure of the trial.

Popular ordeal practised in many parts of the world-is thoroughly discouraged and neglected in India-may not be genuinely Indian ordeal.

(9) DHARMAJA-DIVYA -

Last ordeal in Dh.system-an inferior ordeal-Procedure described by Br.,-Following points discussed (i) General procedure (ii) establishing the images of Dharma and Adharma

(iii) trial (iv) signs of the success or failure of the trial.

Ordeal based on the idea of divination made more personified and direct. In Maratha period, it appears in form of 'Gorā caṇā, Kālā caṇā.

CHAPTER VI

O A T H S -

Oath and ordeal distinguished-older writers did not make any distinction-distinctly mentioned for the first time by Nār.- some writers divided the two into water-tight compartments-majority of writers accepted both of them as based on a common principle-Following points discussed - consequences for perjury-grades of oaths in accordance with the value of offence-results declared through oath-procedure common to all oaths-various forms.

CHAPTER VII

INSTITUTION OF ORDEAL IN INDIA -

Ordeal described in Vedic literature-reference in classical literature-court scene in Mṛcchakatika-referred to in Kādambarī, Pañcatantra, Naiṣadha, Gāthāsaptasatī etc.,- Ordeal of rice-flour described by Rājatarāṅgiṇī-Ordeal described by Yuan Chwang, Suleman Soudagar, Alberuni, Hamilton-ordeal described in epigraphic records-ordeal during Muslim period-tried

by Jalaluddin Khilji, Akbar and others-described in Ain-e-Akbari -Ordeal during Maratha period-revived-implemented it as an efficient legal means of proof as per system developed by the Dh. writers - various cases quoted e.g. Polad Shah Said Vs Bābākhan Ghorī-Bhise brothers-Narsoji Jagdāle Vs. Bāpuji Musulman, Kṛṣṇāji-Bin-Bodkā Vs. Somāji Bin-Bodkā, Rāgho Nārāyaṇa Prabhu Vs Ganesh Dattāji Prabhu, Kānhoji Shirke Vs. Devaji Shirke, etc-ordeal tried during the period of Ranjitsingh-tried in Military camps-conducted and witnessed by Ali-Ibrahim Khan, magistrate of Benares, -witnessed by R.C Temple-a living institution in India-closely followed Dh.rules.

CHAPTER VIII -

SOCIAL^R. ANTHROLOGICAL. PSYCHOLOGICAL AND LEGAL INVESTIGATION INTO THE PRACTICE OF ORDEAL -

Purpose for which ordeal is used is misunderstood. -

Role played by ordeal in human history or social evolution, in the development of legal ideas, or philosophy involved in it-discussed under following heads- (i) Basic instincts and influencing forces (ii) ordeal and rationality (iii) various aspects-(a) ordeal and divination (b) ordeal and Eschatology (c) ordeal and priesthood (d) ordeal and curse (e) ordeal and luck or chance, treatment of the innocent (f) Psychological aspect (g) ordeal and torture (iv) Ordeal-general nature of (v) stages in the development of the ordeal (vi) legal development of the ordeal.

APPENDIX -I : Ordeal as practised by some tribes in India.

APPENDIX-II : Skt. verses on Oath and Ordeal by various writers.