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OATHS AND ORDEALS

IN

DHARMAŚĀSTRA

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CHAPTER - IOATHS AND ORDEALS IN DHARMAŚĀSTRA WORKS

The Oaths and ordeals are the divine means of proof, discussed under the law of evidence by the Dh.writers, the ancient law-givers of India. These are the methods of investigating the truth according to which the accused person is asked to undergo some trial in which conditions favourable or unfavourable, supposed to be the dictates of god, decide the innocence or the guilt of the person. The Dh.writers have made a thorough investigation of all the aspects of the method which was practised by the ancient people. They recognised the merits of the method and channelised it into a definite system by ordaining detailed rules for its application and definite forms or modes of its execution, so as to make it work as an efficient legal instrument.

The Dharmaśāstra commanded a very deep influence on the minds of the people and the conditions of the society. The people lived the principles laid down in these works and followed its rules with all the minutest details. Ordeal was a living institution in India. It was found practised through all the centuries of the Indian history. Historical records reveal to us that the people of India practised these ordeals as they were detailed in the Dh.works. The customs of the various tribes of India also show that they preserved the Dh.ordeals intact since they tally with the minutest detail given in the Dh.works. The study of ordeal thus becomes an interesting sociological study of the Indian people-investigating the method into its theory and practice.

There is a lot of criticism against the practice of ordeal. The method appears to be irrational and barbarous to the modern

mind. It is however universal, found in almost all the countries of the world. Some of the European scholars of the nineteenth century however tried to show that it mainly belonged to the undeveloped people of the world. A.Dubois who believed ordeal which was "common enough in almost all ancient heathen nations" to be the "degrading example" of the "foolish beliefs of which human mind was capable of" and observed that "it was in existence in most christian countries till 13th century", pointed out that "trial by ordeal was one of the principal features of Hindu Jurisprudence"¹. 'One or two ethnological points', says A.E. Crawley, 'may be noted with regards to these ordeals. At no time did Roman law have anything to do with the ordeals. It was known to Greeks in its Aryan forms, but here also law ignored it. The Chinese and American Indians similarly refused to develop the system. It is forbidden in Quran. The great spheres of prevalence of ordeal are Indian, African and Teutonic peoples.'²

In the following pages, an attempt is made to analyse and study the ordeals discussed in the Dh.works in all their aspects and try to evaluate the Indian ordeals as such.

The law of every country is the outcome and the result of the economic and social conditions of that country as well as the expression of its intellectual capacity for dealing with these conditions (Bryce). The relevant intellectual ideas include ideas in respect of the relation of man to god and of man to man and as

1. A.Dubois : Hindu Manners Customs and Ceremonies, p.661 fn 1,2.

2. ERE, Vol.IX p.507.

~~and as~~ to the aim and purpose of life on earth.³ It is therefore preferable for us to go first through the subject and scope of the Dharmaśāstra works in which ordeal happens to be a topic for discussion.

Subject and Scope of the Dh.Literature :

(1) Meaning of Dharma -

Dharma is one of those Sanskrit words which cannot be easily rendered into English or any other language. Even if we go through the literal or the dictionary meanings of the word, they would be many. The word Dharma can thus mean 'ordinance, usage, duty, right, justice, morality, virtue, religion, good works' etc. Dharma is also personified as deity. [Dharma is the presiding deity of all the ordeals described in Dharmaśāstra. God Dharma is invoked and adored in these trials and is asked to declare the truth regarding the dispute for which the person is asked to undergo the ordeal]

The word Dharma is derived from √ Dhr (to uphold, to support, to nourish) and in a few cases in the RV we find that the word is used in its derivative sense i.e. upholder or sustainer (e.g. RV I.187.1, X.92-2, etc) but in most of the other cases, it has come to mean a religious ordinance or fixed principles or rules of conduct. In AV XI.7.17, it seems to be used in the sense of 'merit acquired by the performance of religious rite'. In Ait.Br.(VII.17) it seems to be used in an abstract sense i.e. 'the whole body of religious rites'. The Brhadāranyaka Up.(I.14.14) treats Dharma and Satya as equivalent. In the Chāndogya Up.(II.23) it is pointed out that 'there are three branches of Dharma - one is (constituted by)

3. S.Varadachariar : The Hindu Judicial System, p.9.

sacrifice, study and charity (i.e. the stage of the householders), the second is (constituted by) austerities (i.e. the stage of being a hermit) and the third is the Brahmachārī's dwelling in the house of his teacher- all these attain to the worlds of meritorious men and who firmly abide in Brahman attains immortality." It will be seen that in this passage the word Dharma stands for particular duties of the Āśrama.

The word Dharma has thus passed through several transitions of meanings. Its most prominent significance gradually came to be 'the privileges, duties and obligation of a man, his standard of conduct as a member of the Aryan community, as a member of one of the castes, as a person in a particular stage of life. The word is employed in this sense in the Dh. works.⁴

(2) Sources of Dharma

'Veda is the source of Dharma and the tradition and practice of those that know it,' says Gautama.⁵ 'The authority (for the Dharma) is the consensus of those that know Dharma and the Vedas', points out Āpastamba.⁶ Manusmṛti lays down five different sources of Dharma i.e. the Veda, the tradition and practice of those that know it, usages of the various men and self-satisfaction.⁷ Yājñavalky declares that the Veda, traditional lore, usage of good men, what is agreeable to one's self and desire born of deliberation-these are known to be the sources of Dharma.⁸

4. Kane : Hist. of Dh. Vol. I pp. 1-6.

5. वेदो धर्ममूलम् । तद्विदां च स्मृतिकीले । GDS, I. 1-2.

6. धर्मज्ञसमयः प्रमाणम् वेदाश्च । Āp. D. S. I. 1-2

7. वेदोऽखिलो धर्ममूलं स्मृतिकीले च तद्विदाम् । आचारश्चैव साधूनामात्मनस्तुष्टिरेव च ॥

Manu II. 6 :

8. श्रुतिः स्मृतिः सदाचारः स्वस्य च प्रियमात्मनः । सम्यक् सकलपुणः कामो धर्ममूलमिदं स्मृतम् ॥ Yāj. I. 7.

It will thus appear that Veda, Smṛti and Sadācāra (custom) are considered to be the principal sources of Dharma. We find many Vedic passages that shed a flood of light on marriage, forms of marriage, kinds of sons, partition, inheritance and so on. It will appear however that the Vedas do not contain positive percepts on matters of Dharma in a connected form but contain incidental references to various topics that come for regular discussion in the Dh. works. It can be therefore said that the rules contained in the Dharmasūtras and other Dh. works had their roots deep down in most ancient Vedic tradition and the authors of Dharmasāstra were quite justified in looking up to Vedas as a source of Dharma.⁹ Smṛti is a general term which can be applied to all orthodox non-vedic works such as Pāṇini's grammar, Śrauta, Grhya and Dharma sūtras, Mahābhārata and other works. In its narrow sense however it is identified with the Dharmasāstra and means the Smṛtis of Dharmasāstra. Smṛtis mirrored the beliefs and practices of people and soon commanded authoritative position so that they were regarded the source of Dharma. Recognition of the authority of smṛti was itself an important step forward in the development of Hindu law. Smṛtis imply human authorship and thus introduced human agency in declaration of the law. Hindu jurists attach great importance to sadācāra or the custom of the people and accept it as the source of law.

(3) The Hindu Judicial System -

For a correct understanding of the Hindu Judicial System, it is necessary to take note of social condition and sociological

9. Kane : Hist. of Dh. Vol.I p.9.

theories of ancient India, its political philosophy and its religion and religious philosophy.

The RV life was pastoral, agricultural and therefore rural as distinguished from the persons commercially occupied together in cities. This circumstance determined that the course of social and political life in India must be different from the city states of Greece and Rome. From the earliest times, life in India had been so organised on the basis of autonomous village that the village institutions were not only recognised by the later Dharma-sāstras but were strong enough to defy and survive all the political vicissitudes of the country till the recent times.

Hindu sociologists believed in what may be called the organic theory of society. Each section of the community had its allotted place and function and each was as important as the rest for the achievement of the common welfare.

The king was as much subject to the law as any other citizen. He could not make or alter law. Neither the Republics nor the monarchies nor even the empires developed a strong and comprehensive central administration and this accounts for the permanence of the popular element in the Hindu judicial system.

Admixture of religion and ethics is to be found in all ancient systems. In Hindu law this circumstance was the result of a definite philosophy. The judicial system of Hindus cannot be correctly understood without a proper appreciation of the Hindu theory of Dharma.¹⁰

10. S.Varadachariar : The Hindu Judicial System p.9 ff.

King's Justice :

Definite history of the evolution of law proper starts in India with the emergency and growth of king as a judge. In the earliest stages of the ancient Indian society, administration of justice was the function of the social groups of kulas and guilds, but already in the earliest Dharmasūtras we find that the administration of justice was firmly established as an important function of the king. The judicial authority of the king is not founded on any fiction of his divine personality but upon positive law and had its ultimate historical basis in his function as a military chief. He is looked upon as the upholder of the social and moral order. For the purpose of maintaining Dharma he is endowed with the power of Danda.

As it has been referred above, ancient Āryans did not consider king as the source of law. Law had come down from Veda, Smṛti and Sadāchāra. Law was what had come down from past ages from the sages who had specialised in its study. The duty of the king was to maintain and uphold that law. The power and prestige of king no doubt appears to have grown with times, but the essence of Arya laws from vedic times was that the king should place himself under the guidance of the sages.

When the King's authority and duty to administer justice was firmly established as we find already in Dharmasūtras, we find it laid down immediately that he has to ascertain the law from learned men and from kulas and guilds. Later law-givers give him authority to give directions to local guild organisations and he is empowered to make it obligatory on his subjects to follow Rājākṛta laws.

As the judicial function of the king grew we find two-fold developments (i) obligation of king to know the law from competent authorities. (ii) the judicial authority of the king came to be delegated to permanent judges. We find king's courts developed.

One result of the enlargement of the administration of justice of king's courts was that the law became more and more systematic and its study and practice went into the hands of practical lawyers who specialised it. In their hands the corpus juri of ancient India received enormous development to keep pace with the progress of time and went more and more in minutest details.

The legal procedure in ancient India is a fine illustration of the kind and development that the law had in the hands of practical jurists. The judicial procedure fills little space in early works, the Dharmasūtras. Earlier works treat meagre the procedure law as a part of substantive law. There must have been some usages and practices which were habitually resorted to in the king's court without their being recorded in the laws. But the absence of such rules in law-books certainly shows that such practices had not hardened to concrete rule or any rate assumed sufficient importance to be recorded in the texts of law.¹¹

Ordeal in Dharmasāstra can be studied and better appreciated only in the context of the general features of the Hindu Judicial System.

11. N.C.Senagupta : Evolution of ancient Indian Law p.47.

(4) Scope of Dharmasāstra :

The sources of Dharmasāstra discussed above make it clear that the Dh.literature is based on the old vedic tradition. The earliest of the Dh.works, the Dharmasūtras form themselves a part of the kalpasūtras. The word kalpa (or rather kalpasūtra) is used in two senses, one comprehensive including the aphoristic literature on vedic rituals, on domestic ceremonies and also on law, government and administration of justice, the other sense covers only those aphoristic works that deal with the vedic sacrifices and matters concerning with them. If the first sense is taken then kalpasūtras are classified into three classes i.e.

(i) Śrautasūtras that deal solemnly with the vedic sacrifices,
(ii) Grhyasūtras that deal with the domestic ceremonies such as Upanayana, Marriage and with daily and periodical rites and employ Mantras for them mostly from one śākha of the veda. (iii) Dharma-sūtras (also depending upon the vedas as the highest authority) that treat of some of the topics dealt with in Grhyasūtras but add provisions of matters concerning economic life, politics, government, civil and criminal law. It will appear that the Dharmasūtras are closely connected with the Grhyasūtras in subjects and topics, but the Dharmasūtras very rarely describe the ritual of domestic life (which is detailed in the Grhyasūtras). They merely touch upon it. Their scope is wider and more ambitious, their principal purpose is to dilate upon the rules of conduct, law and custom.¹²

The Dharmasūtras are followed by the Smrtis. There are certain points which distinguish Dharmasūtras from the Smrtis.

12. Kane : Hist.of Dh. Vol.I pp.10,21.

e.g. (i) Many Dharmasūtras are either parts of the Kalpa belonging to each Sūtracarana or are intimately connected with the Grhyasūtras. (ii) The authors of Dharmasūtras do not claim to be inspired seers or superhuman beings, while the Smṛtis such as those of Manu and Yājñavalkya are ascribed to gods like Brahmā. (iii) The Dharmasūtras are in prose or in mixed prose and verse, the Smṛtis are in verse. (iv) The language of Dharmasūtras is generally more archaic than that of the Smṛtis. (v) The Dharmasūtras do not proceed upon an orderly arrangement of topics while the Smṛtis arrange their contents and treat the subjects under three principal heads viz. Ācāra, Vyavahāra and Prāyasācitta.¹³

Subjects coming under Dharmaśāstra covered a very wide range. It touched all the aspects of human life. Dharma as we have seen above is not only a religious or an ethical concept but a sociological concept also, which concerns with the human life-concerning with an individual in his personal capacity or in his relation with the society or the government.

(5) The Four Śāstras :

Aims of human life according to the Indian tradition can be classified into four aspects i.e. Dharma, Artha, Kāma and Mokṣa and accordingly we find four Śāstras - the Dharmaśāstra, Arthaśāstra, Kāmaśāstra and the Mokṣaśāstra. But, we have to remember that the Indian philosophy teaches the integration of the four aspects, [The Mahabharata claims that Vyāsa composed the work as a great Dharmaśāstra, Arthaśāstra, Kāmaśāstra and the Mokṣaśāstra (Ādiparva II.83)] and as far as the activities of man in this world are concerned, we know that the Dharma is

the ruling aspect which should control and guide the Artha and Kāma aspects. The point to be stressed here is that these Śāstras may be individually taken as distinct since each of them discussed a different point of view, essentially however, they are based on the principle of integration and should therefore be taken as mutually complimentary and not contradictory. One must not suppose of any rivalry amongst these Śāstras.

Let us take the example of the Dharmasāstra and the Arthasāstra. Arthasāstra essentially deals with the Rājadharmā but these topics are dealt with by the Dharmasūtras and the Smṛtis. (Vide Gautama X-XIII, Manu VII-VIII, Yāj.I.309-68, II.1-307 etc.) Dharmasāstra deals with all aspects of society and therefore, ~~they~~ ^{it} ~~also~~ deals with the Rājadharmā. Arthasāstra includes politics, economics, law and justice. Two chapters in the Arthasāstra-Dharmasthīya and Kāṇṭakasōdhana - deal with the judicial administration.

(6) Dr.K.P.Jayaswal's Theory regarding the Dharma and the Artha laws

In his 'Manu and Yājñavalkya', Dr.K.P.Jayaswal has put forth a theory that before Manu secular law must have been developed in the schools of politicians and statesmen and therefore dealt with only in Arthasāstra, that the Dharmasāstra did not make secular law as their proper subject and that Manusmṛti was the first Dharma work to invade the province of law proper. The object of this invasion was to recast the law on the lines accepted to Brahmins taking advantage of the opportunity offered by Śūngas.

He puts his theory as follows : 'The jurisdiction of Dharma and Artha laws ^{was} ~~were~~ formerly separate. This is corroborated

by Dharmaśāstra literature. Āpastamba says, 'Rājā purohitam dharmārtha-kusālam (II.10.15)' ¹⁴... when the Dharma laws joined hands with the Artha laws. The former had to suggest certain principles of Dharma school e.g. Āpastamba adds, 'Na ca sandehe dandam kuryāt' (II.11.2) or 'Suvicitam vicitryā daivaprasnebhya rājā dandāya pratipadyeta (II.11.3). That none should be punished in case of doubt is an equitable doctrine of Dharma school which would have probably found approval in Artha school. But Artha laws never allowed ordeals in their proofs. They are not allowed in Kauṭilya's Arthaśāstra laws. They have not been shown even the courtesy of being discussed and then rejected. After the Brahmin political and social revival under śuṅgas and kāṇvas, the cause of ordeals was vigorously advocated. A century or two later, a political revolution is dramatised as the result of the courts not allowing the ordeal trial to Brahmin accused in a murder case. The Dharma school which dealt with the matters divine advocated that divine mode of proof even in the law court and they coaxed the king with the promise of the other world....¹⁵

'The Arthaśāstra laws never recognised the use of ordeals in Vyavahāra or trial at law. It was however a mode of proof or disproof in trials at Dharma. It had been so far ages. Āpastamba advises the king to employ it in Dharma trials in doubtful cases (II.29.6). Manu is at pains to show why ordeals should be recognised. He cites old cases from Vedic literature that ordeals

14. K.P.Jayaswal : Manu and Yājñavalkya p.4

15. Ibid. p.8

had been gone through. Now as Vyavahāra was made a handmaid of Dharma, ordeal was imposed on law. True, it was confined to the old Prāyaścitta cases, cases of heinous sins and was limited in employment to cases where no proof was available. Yet, it became a recognised institution. Not a line, not a word, in controversy or otherwise is mentioned about the proof by ordeal in Arthasāstra, and all the works of the tradition of Arthasāstra discourage it. Nārada discourages it and Sukranīti points out very limited utility. That the Arthasāstra could not recognise it stands to reason. The Arthasāstra school held that law was a human creation, a creation of society, of thinkers as asserted by Sukranīti in clearest accents.¹⁶

On pp.137 and 138 of his book, Dr.Jayaswal investigates a detailed comparison of the arrangement of the topics in the Dharmasthīya chapter of the Arthasāstra with the topics coming in the VIII chapter of the Manusmṛti and points out how Manu has purposely brought in oath at a particular point which can obviously be seen as an interpolation or a foreign discussion in the whole body of discussion undertaken.

It is not possible to accept Dr.Jayaswal's theory for various reasons. (i) we have already pointed out that these Śāstras should be taken as complimentary and not contradictory to one another. The Manusmṛti insists on Dharma as the principal matter and calls upon all to give up Artha and Kāma that are opposed to Dharma (Manu IV.176), on the other hand Arthasāstra emphatically states that 'Artha ^{alone} ~~here~~ is supreme, for Dharma

16. Ibid. p.134.

and Kāma depend upon Artha¹(I.7.6-7). Thus through Manusmṛti and Arthasāstra deal with many matters that are common to both, the principles and emphasis are different and that is why they are considered different. In fact, they should be taken as parallel. (ii) The main purpose and province of the Arthasāstra is to set out the functions of the state and deal with the administration of its various organs and it is in this relation that it offers two chapters (of Dharmasthīya and Kṛtakasādhana) on the administration of justice. It must be remembered that Arthasāstra is not essentially a work on law and judiciary. On the contrary, we find that topics of law and administration of justice are discussed in old Dharmasūtras, and are found developed into an important section of the later Dh.literature. Law or the judicial system is thus principally developed in Dharmasāstra. It becomes the regular subject of the Dh.works. (iii) Dr. Jayaswal speaks of Manu's invasion of Dharmasāstra material on the secular law of Arthasāstra. He gives the case-example of ordeal which according to him is typically a Dharmasāstra material interpolated or invaded into the secular law of Arthasāstra. It must be pointed out here that Kauṭīliya is the oldest extant work on Arthasāstra. None of the earlier Arthasāstra work is now available. It will be therefore nothing more than a guess to assume that topics of secular law must have been fully dealt with in them. Moreover it is not proper to believe that the Dh.writers were opposed to the secular law or the law of reason as Dr. Jayaswal puts it, because we know that the Dh.writers accept the superiority of Vyavahāra over Dharma.¹⁷

17. धर्मश्च व्यवहारश्च परितः राजशासनम् । चतुष्पाद् व्यवहारोऽयमुत्तरः पूर्वोक्तः ॥ Nār. I. 10

There may be material differences between Manusmṛti and Arthasāstra, but this itself will not help to establish Dr. Jayaswal's theory. Though Arthasāstra and Dharmaśāstra are contra-distinguished on account of the differences in the two śāstras in ideals and in methods adopted to reach them, Arthasāstra is really a branch of Dharmaśāstra as the former deals with the responsibilities of kings for whom rules are laid down in many treatises on Dharma. (iv) Dharmaśāstra discusses ordeal while Arthasāstra does not. Dr. Jayaswal points it out as a Dh. topic. Is it the only topic discussed in this śāstra? Dharmaśāstra has a broader base. Take Ācāra, Vyavahāra and Prāyaścitta - the three important sections of the Dharmaśāstra and it will provide a general answer to the question of the place of law in human life. Dharmaśāstra discusses law in all its aspects. It will point out what is law or what it should be, what are its sources, its procedure, various titles of law and so on. Dharmaśāstra discusses various kinds of proofs and ordeal is one of them. And how does ordeal come into Dharmaśāstra? Law is derived from the customs of the people, and Dharmaśāstra accepted ordeal because it was the deep-rooted custom of the people.

The Arthasāstra scheme of courts is different from that of Manu. The Arthasāstra does not seem to attach much importance to the various popular tribunals. It provided for administration of justice by king's court appointed in a Saṁgrahana (a group of ten villages), dṛoṇamukh (group of 400 villages) and Sthāniya (group of 800 villages) and the places where the districts met, the courts were to consist of three Dharmasthas and three Amātyas.

The Manusmṛti and following it, the Smṛtis of Yājñavalkya, Nārada, Brhaspati and Kātyāyana continue the Sabhā system which seems to be in vogue from Vedic times. The Sabhā system brought popular element in the Hindu judicial system. The Dh.writers attach importance to the customs of the people. They accepted ordeal on merits. This made law nearer to the people. (v) Division of Dharma and Artha law propounded by Dr.Jayaswal is an improbability. It is remarkable that in all the legal systems of the world, law in its initial stage is mixed with religion. 'The legal activities of every civilised people show a movement through three stages of development - divinatory, formalistic and intellectual. In order to operate effectively and to accomplish their mission, all the three stages must be supported by the belief that the law is of divine origin and of higher power realised in a worldly existence and that it is not a human product to be mastered by will' - observes Heusler.¹⁸ The Hindu judicial system unifies happily the ideals and realities of life in developing its law and the administration of justice.

It must be observed that Kaṭilya himself accepts the importance of Dharma and therefore there is no point in distinguishing the two śāstras with a sense of rivalry and condemning one because it recommends ordeal and show the superiority of the other because it does not.

Thus after taking a general review of the subject and scope of the Dharmasāstra literature and of the Hindu judicial

18. Heusler : Ancient formalism, PLI p.638

system as such and reviewing the views of Dr.K.P.Jayaswal with regards to the Dharma and Artha laws and the recommendation of the ordeal by the former\$, we shall now see in chronological order how ordeal is discussed and developed by the various Dh.writers. In this discussion we have accepted the chronological positions of these writers as decided by Dr.P.V.Kane in his History of Dharmaśāstra(Vol.I).

The literature on Dharmaśāstra falls into three well-known but somewhat overlapping periods. (i) The first period is that of Dharmasūtras and Manusmṛti. It is a period dating from at least 6th century B.C. to the beginning of the Christian era. (ii) Next comes the period when most of the versified Smṛtis were composed and it ranges from the first centuries of the Christian era to about 800 A.D. (iii) The third period is that of commentators and the writers of digests. This period covers over a thousand years from about 7th century to 1800 A.D.

We must point out here an essential difference between the works produced in the first two periods and those in the last one. The works produced in the first two periods provide original texts of the sages while the main job of the works produced in the third period is to explain these texts. We shall therefore take here (i) and (ii) in one group and discuss them first and then review the works of the third period.

There are certain difficulties which a student of Dharmaśāstra has to face in deciding the texts or knowing the exact views of the various smṛtikāras. These may be pointed out here in general.

(i) The Smṛtis are the products of different and widely separated ages. Sometimes we find a lacuna in the information available. The extant works are not able to fill in the gap. e.g. Manu refers to only two ordeals while Viṣṇu and Yāj. give us the list of five ordeals, source of which is not known to us. Nārada and Kātyāyana lead us to believe that they were probably in possession of a larger version of the Manusmṛti in which ordeals were treated with more details, but this work is not available to us.

(ii) Some of the works are known only through quotations. The original texts of these writers are not available and we have to depend upon reconstructed Smṛtis. Pitāmaha, for example, is a very important writer on ordeal. He has given the most elaborate treatment of the ordeal but is known only from quotations.

(iii) Sometimes we find the same verses ascribed to different authors in different works. There are many verses on ordeal which are commonly ascribed to Nār.-Br, Br-Pit, Kat-Br-Pit and so on.

In spite of the difficulties pointed above, it is possible to see that the ordeal is developed harmoniously into a definite system by the Dh.writers. It will therefore be advantageous for us to see in chronological order how ordeal is discussed and developed by the various writers.

It is rather interesting to note that the earlier writers give very scanty information about ordeal, while it is discussed with more details in the later works. 'Ordeals are antique institutions and mostly come under custom. One would therefore

expect them to be stated fully in early Smṛtis and to be neglected in those which were composed in epochs and environments that discouraged resort to them. It is just the other way', observes Mr.K.V.Rangaswami Aiyangar who concludes that 'the application of the usual generalisation of chronological position being indicated by the fullness of treatment will conspicuously fail in this instance'.¹⁹ In course of our discussion we shall see below the reasons why we get more details about ordeals in the later works. We shall firstly see the development of the ordeal in each of these works individually.

(1) Gautamadharmasūtra : This is the oldest Dharmasūtra available to us. It cannot be placed later than the period between 600 B.C. to 400 B.C. Chapters 11 to 13 discuss the topics of Rājadharmā and the administration of justice. Gautama recognises witnesses as the proof for establishing truth in legal disputes. He quotes the opinion of 'some' according to whom oath can be used for the establishment of the truth. Oath should be conducted in the vicinity of gods or in the Brahminical or Royal assemblies. It should not be conducted to a Brahmin. The Sarasvatīvilāsa quotes a Sūtra of Gautama according to which the Phāla ordeal should be conducted to a Sūdra. The Sūtra is not available in the printed Gautamadharmasūtra and obviously appears to be of late origin.

(2) Āpastambadharmasūtra : Āp.Dh.Su. is written in a more concise and compact style. Āpastamba advises the king to use ordeal in the cases of doubt. Though chronologically Āpastamba comes later than Gautama (Āpastamba can be placed between 400 B.C. to 350 B.C.), law of evidence known through this work speaks of earlier stage

19. K.V.Rangaswami Aiyangar : Brhaspatismṛti, Intro.p.131.

of affairs. Gautama gives more details about ordeal than Āpastamba.

(3) The Dharmasūtra of Śaṅkha and Likhita : The Dharmasūtra of Śaṅkha and Likhita is ancient one. It is very largely, if not entirely, in prose. From the quotations available in Nibandhas, it appears to have closely resembled the other extant Sūtras on Dharma in style and contents. The Sūtra discusses four of the five famous ordeals discussed by Viṣṇu and Yāj. and the other forms. It is remarkable that the names or the titles of the ordeals enumerated by them are slightly different from those of the other writers. The names also explain the essential form in which the ordeals are conducted. Thus, instead of Tulā, Agni, Jala and Viṣa of the other writers, the authors prefer to name these ordeals as Tulārohanam, Lohadhāraṇam, Apsu Praveśaḥ and Viṣāsanaṁ.

(4) Manusmṛti : Manusmṛti should be taken with the older Dharmasūtras of Gautama and Āpastamba as far as its treatment of ordeal is concerned. Manu refers to the ordeal as a custom practised from ancient times, points out its utility in the disputes which have no proofs and mentions three methods of trials (i.e. Fire, Water and Touching the head of Son or Wife).

This is not the place to discuss various problems regarding the authorship or the text of the Manusmṛti as it has come down to us. It however appears that Nārada and Kātyāyana probably knew a larger version of Manusmṛti in which ordeals were treated in details, while the possibility of ascribing views to Manu by later writers just for glorifying the subject cannot be ruled out, as is observed by Dr.Kane - 'Apart from the Manusmṛti

(in which phrases like Manurabravīt occur a number of times), such references do not occur at all in Yāj. There are only a few places in Nār. where such phrases occur and in other earlier Smṛtis also there are a few such references. Some later smṛtis do mention Manu in some cases. The reason is obvious. Manu was famed as the great law-giver of ancient times. Some practices and rules had changed in course of centuries. Later writers wanted changes according to their lights to be recognised, but if they had stated them in their own names, little weight would have been attached to them, therefore they probably hit upon the plan of saying in some cases that the view propounded by them had the authority of Manu.' 20

In many cases, phrases like 'Manurabravīt', Manurāha or Manoranusāsanam can better be taken as 'Pādapūraṇa'. 21

(5) Viṣṇudharmasūtra : This sūtra contains one hundred chapters. The first and last chapter are entirely in verse while remaining ones are in prose and verse. Though the number of chapter is so large, the Sūtra is not so extensive. There are many portions in the Sūtra which clearly indicate a later period of the work. The sūtra contains common passages with those in Manusmṛti. Dr.Kane opines that the VDS borrowed the verses ad hoc or adopted them from the Manusmṛti. The original VDS (mostly in prose) according to him may have to be placed about 300 B.C. to 100 A.D.) 22

20. Kane : Hist.of Dh.Vol.I p,324.

21. Ibid : p.322.

22. Ibid : p.125.

Chapters 9 to 14 discuss the ordeal. Viṣṇu discusses ordeal rather elaborately which clearly indicates a later stage of the development of ordeal than one found in earlier Sūtras or the Manusmṛiti. Important points with regards to ordeal referred to by Viṣṇu are (i) Free use of ordeal is recommended in the criminal cases while in the civil cases it is to be selected appropriately according to the value of the offence. (ii) Ordeal should be selected appropriately in accordance with the ability of the person undergoing the trial (i.e. his physical health, occupation, caste, general nature or mental set-up must be considered before deciding a particular trial) and the season in which it is to be conducted. (iii) Viṣṇu gives a set of popular methods (such as Dūrvākara etc.) and then recommends the five ordeals. (iv) He describes the procedure of the five ordeals and points out the general preliminaries that are to be observed before the trial. It will thus appear that Viṣṇu has developed all the aspects of the ordeal which are discussed in details by the later Dh.writers.

(6) Yājñavalkya : Yāj. is the first writer to give a systematic treatment to the ordeal. He devotes nearly 20 verses for ordeals. In II-22 he refers to the evidential aspects of the ordeal. In II-95 he mentions the five ordeals (The list of five ordeals given by him has almost become proverbial for the later writers) and puts conditions under which they could be used (e.g. Sīrṣaka etc. He discusses the ordeal from the points of view of (a) The person undergoing the trial, (b) The value of the offence and describes the general preliminaries and the procedure of each of the method.

Viṣṇu has discussed all the aspects of the ordeal while Yāj. has put them in a systematic form. Any way, Viṣṇu and Yāj. together

form a group of writers indicating a stage of the development of ordeal in the Dh.literature. They are the pioneers who mainly developed the Dh.system of the ordeal. The later writers have only elaborated the aspects developed by these writers. For the date of Yāj. Dr.Kane observes, 'There is nothing to prevent us from holding that the extant Smṛti was composed during the first two centuries of the christian era or even a little earlier.'²³

(7) Nārada : There are two versions of Nārada on Vyavahāra, a smaller and a larger one. The text of the longer version was published by Dr.Jolly in Bibliotheca Indica series (1885). An ancient MS of Nār. from Nepal dated 1409 A.D. contains two additional chapters on theft and ordeal. Dr Jolly includes the first as an appendix and omits that on ordeals on the ground that it is not authentic. Prof. Chintamani prints the text of this chapter on ordeals in the Nepalese MS, held to be spurious by Dr.Jolly in C.Kunhan Raja presentation volume. Before that, the chapter was included in the edition of Nārādīyamanusāhita with the bhāṣya of Bhavaswāmin, published by K.Sāmbaśiva Shastri in 1929 in the Trivendrum Sanskrit Series.(Vide Appendix II).

'Nār.flourished nearly at the same time as or somewhat later than Yāj.' points out Dr.Kane.²⁴ His treatment of ordeal shows that he comes next to Yāj. He indicates the immediate next stage of the development of ordeal.

Nārada himself is mentioned by name in connection with ordeals (253). In his treatment of ordeal, Nār. has in fact tried to reconcile the statements of Manu and Yāj. It will appear that

23. Ibid : p.447

24. Ibid : p.474

the earlier writers used the word Śapatha for the divine means of proof. Manu speaks of Śapathas while Yāj. gives Divyas. Nār.'s verses on Śapathas (239-40, 243-248) closely follow those of Manu VIII.109-116. In 249, he points out that the oath should be used in the light offences, while ordeal should be conducted for the grave charges, (this rule can be derived from the rules of Viṣṇu and Yāj. It is however mentioned in a crystal-clear form by Nār. here for the first time) and then gives in 252 the five ordeals which are the same as Yāj. II.95. Having thus synthesised the Śapathas of Manu and the Divyas of Yāj. (The synthesis between Manu and Yāj. is claimed by Nār. as his contribution to the system of ordeal in verse 253 in which he quotes his own name), he adds two more forms to the list i.e. the ordeals of Tāṇḍulabhakṣaṇa and Taptamāṣa. In both the cases, he starts giving details in the first person (Ataḥ param pravakṣyāmi etc). We thus find that Nār.'s treatment of ordeal establishes a clear link with his predecessors and can thus be taken in historical succession to Manu and Yāj.

Manu is named at several places in Nāradaśmṛti. Verse 250 speaks of Śapathas according to Manu and we see that Nār.'s statement on Śapathas closely agrees with those of Manu. But in many other places we find that Nār. does not agree with Manu and the views quoted by him as those of Manu do not correspond to the extant Manusmṛti. In 251, Nār. credits Manu with dividing ordeal into five kinds and in 326 he gives Manu's views about the poison ordeal. It must be pointed out that in both these cases we do not find corresponding passages in the extant Manusmṛti which can corroborate Nār.'s remarks. Obviously Nār. had a version

of Manu before him that was somewhat different in certain respects from our Manu or Nār. may be referring to Vṛddha or Brāhanmanu.' observes Dr.Kane.²⁵ 'The extant Manusmṛti contains only about 2700 verses. Nār. probably arrives at the larger figure by including the verses attributed to Vṛddha Manu and Brāhanmanu' - he points out elsewhere.²⁶

Nār.'s reference to 'Manu's five ordeals' should therefore be taken cautiously. It should be pointed out that referring to the five ordeals, corresponding Nār.'s verse in Nāradiyamanu-saṁhitā drops reference to Manu.

It must be pointed out that the five ordeals are mentioned in the Sūtra form in VDS and the Dharmasūtras of Śaṅkha and Likhita, but they are put for the first time in their most upto-date form by Yāj. We do not have any direct evidence which may point out the original source or the author who gave the five ordeals. Regarding the possibility of an earlier version of the Yājñavalkya-smṛti, Dr.Kane observes 'From the fact that the Sūtra of Śaṅkha-Likhita cites Yāj. among promulgators of Dharmasāstra, while Yāj. himself includes Śaṅkha-Likhita among the propounders of Dharma, it may be plausibly said that Śaṅkha-Likhita refer to an earlier Yājñavalkya-smṛti than the extant one. Beyond this there is no evidence to establish that there was an earlier version of the present smṛti... what the original Smṛti contained, whether it was in prose or verse or both, whether it dealt with only Ācāra and Prāyaścitta sections are questions on which conjectures may be

25. Ibid : p.472.

26. Ibid : p.345.

advanced but there are no substantial materials for arriving at even tolerably certain conclusions.' 27



If we therefore prefer to take 'Daivam Pañcavidham Jñeyamityāha Bhagawānmanuh'(251) as an Arthavāda or a case of Pādapūrāṇa, we can see Nār. as reconciling the Śapathas of Manu and the Divyas of Yāj. in his treatment of ordeals.

Nār. has contributed to the development of ordeal in his own way, though as a matter of fact he has only elaborated the rules given by his predecessors. (i) He thus details out the rules of the application of ordeal (241-42), but this has ultimately resulted in reserving ordeal in the very types of offences mentioned by him. (ii) Nār.'s efforts to reconcile the Śapathas of Manu and the Divyas of Yāj. have ultimately ~~led~~ led the later writers to distinguish the two varieties into water-tight compartments. (iii) Nār. stressed the Deśa-Kāla-Bala aspects of the ordeal. (iv) Nār. has added two new forms.

(8) Brhaspati : 'Nārada, Brhaspati and Kātyāyana form a triumvirate in the realm of ancient Hindu law.²⁸ All these three jurists exhibited an excellent analytical insight and most perfect acumen elaborating and explaining juristic principles and philosophy.

Br. is certainly later than Manu and Yāj. It is difficult to state his relationship to Nār. He agrees more closely with Manu than Nār. does, but in many respects he shows a great advance

27. Ibid : p.430

28. Ibid : p.496

over Nār. So, he is probably contemporary of or not much later than Nār. Kāt. looked upon Br. as an authority who must have flourished several centuries before. He cannot therefore be placed later than 4th century A.D. He must have thus flourished between 200-400 A.D.

Complete Smṛti of Br. on law has not yet been discovered. 'It will be, when discovered, a very precious monument of ancient India exhibiting high water-mark of Indian acumen in strictly legal principles and definitions.'²⁹

We find in Nibandhas, many verses on ordeal that are common with Br. and Pit. Prof.K.V.Rangaswami Aiyangar reconstructed Brhaspatismṛti in 1941. On p.131 of his introduction to this reconstructed smṛti he points out that Pit. describes ordeal in about 200 verses. On p.137, he points out the total number of verses on ordeal by Br. as 33 [Dr.Kane also in introduction to his reconstructed Kātyāyanasmṛti gives the total number of Br. verses on ordeal as 33], while in the 8th Chapter he collects 92 verses describing various ordeals, many of them are found ascribed to other writers. If we thus consider only those verses which are exclusively attributed to Br., total number of such verses may come between 30 to 35. We prefer to decide and arrange Br. verses on ordeals as given in Appendix II.

Br.'s contribution to ordeal may be noted as follows.

(1) Br. has given four kinds of judgment. Dharmanirāṇaya is one of them which is established on account of culprit's own initiative for self-confessing the truth or when it is achieved through

29. Ibid. : p.484.

means of ordeal. The concept of Dharmanirnaya brought out by Br. would itself indicate the mature moral principles on which law is based and would bring out the role played by ordeal in it. (Vide discussion regarding 'The judgment derived from ordeal' in the IV Chapter). (ii) Br. has stressed the evidential aspect of the ordeal and its gradation in accordance with the value of the offence. (iii) Br. describes nine divyas, but he is specially credited for developing the Phāla-divya.

(9) Kātyāyana : Kātyāyana is a very important writer who has largely contributed to the development of Hindu law. He contains the same advanced views about law and rules of procedure as are found in Nār. and Br. He is even in advance of these two writers in certain matters. He gives numerous definitions. The date of Kāt. can be settled only approximately. He presupposed Nār. and regarded Br. as a very leading authority. It may be said that Kāt. flourished between 4th and 6th century A.D.³⁰ Kāt. made great contribution to the development of the ordeal. (i) He concentrated upon the evidential aspect of the ordeal. He insisted upon always using the powerful proof and pointed out that ordeal could not get preference to the human proofs which were more powerful. He at the same time gave an exception to this general rule and recommended ordeal in certain cases. (ii) He introduced a very important rule of all ordeals for all persons, discouraging a sort of discrimination amongst these methods on the basis of the caste of the person undergoing the trial. (iii) He recognised

30. Ibid : p.502.

popular methods prevalent in a particular society. (iv) He dis-allowed certain persons from undergoing trials. (v) He allowed representatives to undergo the trial in certain cases. (vi) He allowed retrial if the first trial failed. (vii) Consideration of ordeal from the point of view of the value of the offence was introduced by Viṣṇu and Yāj. but it was worked out in details for the first time by Kāt.

We get Kātyāyanasmṛti reconstructed by Dr.Kane. Kāt. many a times refers to the views of Bhṛgu. Two such stanzas in which Kāt. quotes Bhṛgu on ordeal are : (i) In all Sāhasas of the worst type, the truth should be found out by means of divine proof even though there may be witnesses. (Verse 231 in Dr.Kane's edition). (ii) According to Bhṛgu, the ordeals of balance etc. are prescribed for those who are suspected in league with marauders who have incurred popular censure but in such cases there is no undertaking (by the complainant to pay fine) (Verse 413).

It is remarkable that some of the views ascribed to Bhṛgu by Kāt. are found in extant Manusmṛti, but in several passages we do not find any counterpart in extant Manusmṛti. Both the verses quoted above in which views of Bhṛgu on ordeal are referred to, do not have correspondence in the extant Manusmṛti. These facts about Kāt.'s references to Bhṛgu and Manu raise many several difficult questions.—Whether Bhṛgu and Manu stand for two entirely different works or for the same work and whether he refers to some other version of the Manusmṛti ascribed to Bhṛgu. In my opinion he is not referring to two

separate works and that we had before him a version of the Manusmṛti promulgated by Bhṛgu but somewhat different from and probably larger than the present Manusmṛti' observes Dr.Kane.³¹

(10) Pitāmaha : Pitāmaha is known to us only from quotations. He is most elaborate on ordeals. He describes nine ordeals in about 200 verses. Pit.'s special contribution lies in the ritualistic development of the ordeal. He gives in details the religious rites and rituals that are required to be performed before the trial. He stresses the need to adhere strictly to the rules of procedure of these methods. Pit. may be assigned to some date between 4th and the 7th century A.D.

We have seen above that Yāj. and Viṣṇu standardised ordeal and moulded it in a definite system by developing its various aspects. They thus enunciated the lines or the framework in which the topic of ordeal could be discussed. Nār., Br., Kāt. and Pit. form the next stage of the development of the ordeal. They belonged to an age of formalisation and classification. They also recognised newer methods which were becoming more popular and deep-rooted in the society. During this period, ordeal was thoroughly investigated in all its aspects and was developed in a full-fledged science. 'The ordeal should be conducted by the persons expert in the science of ordeal' - these writers point out. It is rather interesting to observe that there appears to be a sort of complimentary distribution in the stress laid down by these writers on different aspects of ordeal e.g. Br. and Kāt. laid more emphasis on the consideration of ordeal from the point

31. Ibid : p.500.

of view of the value of the offence, while Nār. and Pit. put more stress on the favourableness of the season.

Any way, the topic of ordeal attracted more attention from these writers. Ordeal was gaining more importance. Dh.writers therefore devoted more space to the discussion of ordeal in their works. Reasons for such a growth can be given as follows:-

(a) One of the principal reasons for getting more discussion on ordeals in later works was that these writers gave a sāstric treatment to the topic of ordeal which was accepted by them in their system. The Dh. writers realised the importance of ordeal as a deep-rooted ~~sys~~ custom. They recognised its utility and admitted it as a method of proof. After admitting it in the legal system, it was their duty to develop it properly. The Dh. writers went into the details of the method and developed it in a full-fledged system. With the advancement of law one naturally expects lesser importance to be attached to the ordeals and we find that these writers have put so many curbs on the use of a ordeal as such, the discussion of the topic has however gradually grown in size. The reason is the sāstric treatment of the subject. Sāstric treatment consists of systematising the subject to be discussed. It involves in defining the norms and classifying its varieties and expects a sort of harmony in the development of the heads or the branches of the subject.

Law of evidence developed gradually. Human proofs came late. They however did not abolish the divine testimony. Both the proofs developed side by side. Discussion of ordeal in these works is

naturally co-related with the discussion of other proofs. Other proofs are developed and discussed with more details, so we find a proportionate elaboration of the rules of ordeal in these works.

(b) Another reason for devoting more space to the discussion of ordeal was that, it really grew more popular and was wide-spread. Ordeal declared truth through divine intervention and exercised its influence on the religious minded persons. Ordeal is a religious-legal method. It spread fast during the mediæval period when religion had extensive influence on the minds of the people. Universal history of ordeal shows such a development. Priesthood had influenced ordeal. In the days of Pit. we find that ordeal was altogether turned into a religious ceremony.

Besides the prominent Smṛtikāras discussed above we find minor Smṛti writers who discuss only certain aspects of the ordeal. The commentaries and the digests quote stray verses on ordeal attributing them to these writers. These writers are Hārīta, Vyāsa, Yama, Prajāpati, Atri and others. Digests also quote verses without ascribing them to any author as such. They are referred to here as Anirdiṣṭakartṛkavacana. Commentaries and digests also quote verses regarding ordeal from the Padmapurāṇa and the Kalikapurāṇa.

Purāṇas are also influenced by the Dharmasāstra. Amongst the non-Dharmasāstra-works discussing the ordeal, special reference should be made to the Kaumārikākhaṇḍa of the Skandapurāṇa. 44th chapter of the Kaumārikākhaṇḍa describes 8 forms of ordeal.

The description is obviously influenced by the writings of Nār. Br., Kāt and Pit. It also discloses typical purāṇic trends mixed with it. e.g. it warns of the various sufferings in the worst type of hell for the culprits who play with this important method of divine origin and assures merits for the person who undergoes it faithfully.

Sukranīti is another such work which describes ordeal as known and practised by the people. It also speaks of the merits or demerits one would accrue by either undergoing ordeal faithfully or by playing mischief with it.

We have seen above that the Dh.literature can be divided in general in three periods i.e. the Sūtras, the Smṛtis and the commentaries and digests. In the last stage of the commentaries and digests, we find that commentaries on Smṛti works continued to be written almost to the end of this period but the general tendency from the 12th century onwards was to write works not professing to be commentaries on a particular Smṛti, but works that were in nature of digests containing a synthesis of all the dicta of Smṛti writers on the topic of Dharma. Primary function of these works is to explain the original text or to discuss a particular topic as it is found in Smṛtis. They thus served a very useful purpose in preserving and giving accounts of the different texts as existed in respective times. The explanations offered in these works however reveal the social and political conditions of the time and are thus very helpful in giving an idea regarding the actual administration of the ordeal. Commentaries of Asahāya, Viśvarūpa, Medhātithi, Maskarīn, Vijñāneśvara, and Aparārka are thus full of information regarding the ordeal.

Digests like Kalpataru, Vyavahāranirnaya, Smṛticandrikā, Divyatattva, Vyavahāraprakāśa, Vyavahāramayūkha and Sarasvativilāsa dealt with ordeal in an exhaustive way and supplied very important information regarding the method as it prevailed in their times. The Smṛticandrikā for example dropped the discussion of the Water and Poison ordeals on the ground that they were obsolete, while the Sarasvativilāsa has refuted its claim by pointing out that in Utkala the ordeal of water alone was resorted to and in Saurasena and Magadha the ordeal of poison alone was resorted to.

It is interesting to note that the discussion of ordeal in the Dharmasāstra finds complete accordance with the actualities of the times. The Dharmasāstra works have been produced from different parts of the country and some of the commentaries and Nibandhas were produced under royal patronage by authors who were themselves associated with public administration or were judges. Āpastamba (according to Jolly) was of Andhra country, Baudhāyana of South India, Nārada of Nepal, Medhātithi of Kashmir, Aparārka belonged to Konkana, Haradatta to South India and Nanda Paṇḍita to Benares. The author of Subodhinī belonged to the North India, Viṣṇūśekhara produced the Mitākṣarā under the patronage of Cālukya rulers, Hemādri was a minister of the Yādavas of Devagiri, Lakṣmīdhara was a minister at Kanauja, Candēśvara was a minister and judge under some Mithilā rulers, Madhava was a minister of Vijayanagar and Vācaspati Miśra was a court Paṇḍita under one of the later Mithilā rulers. The author of Nṛsiṃhaprasāda was a Viceroy (at Devagiri) under one Ahmednagar rulers and the author of the Sarasvativilāsa was a ruler of Orissa. Why should they all

have indulged in pastime of writing about a system of judicial administration which never existed ?' 32

Whatever is said in Dharmaśāstra regarding the ordeal is happily corroborated through other sources. References to ordeal in literary works co-related with the observations of the Dh. writers - so did the Historical records. Ordeal is reflected in the epigraphic records as also in the accounts of the historical travellers. Many of the Hindu states established in the 17th and the 18th century after the downfall of the Mughal Empire, revived the Hindu Judicial System. The Dharmaśāstra tradition was again revived and the subject of ordeal got increased importance. Through the Maratha records, it is quite clear that the Dh. ordeals were revived once again. Considering the importance of the subject, special manuals were compiled or written on the subject of ordeal collecting the latest information from the Dh. literature, discussing the forms and the procedures of these methods. These works are :-

- (1) Divyanirṇaya of Dāmodara Thakur (compiled under the auspices of Muhammada Shah)³³
- (2) Divyadīpikā of Dāmodara Thakur (compiled under the auspices of Sangrāma Shah)³⁴
- (3) Divyasamgraha of Sadānanda.³⁵
- (4) Divyānuṣṭhānapaddhati of Nārayaṇa Bhaṭṭa.³⁶

32. S.Varadachariar : The Hindu Judicial System. pp.231-232.

33. Cf. Notices of Sanskrit MSS in Bengal by Dr.Mitra and Haraprasad Shastri, Vol.V p.282.

34. Ibid. Vol.VI p.40. *old edition*

35. Kane : Hist.of Dh.Vol.I p.562.

36. A catalogue of Sanskrit MSS in the Library of HH The Maharaja of Bikaner, p.387.

- (5) Divyāvatārah - Compilation made by the Pandits of the
Madras College.³⁷

Ordeal has gone down deep in the society as the custom of the people. It has a great utility in the legal sphere and is adopted by the modern law in form of legal oath. It is not dead even today and is practised by the people in some form or other. It is prominent in the tribes. The tribal information regarding the practice of the ordeal is collected here which only substantiates the far-reaching influence of the Dh.ordeal on the Indian mind.

Ordeal was practised in all parts of the world. It played a great role in the development of the legal ideas as also in the social evolution of mankind in general. The anthropologists and the legal academicians have therefore tried to investigate the various aspects of this important method. It is interesting to see that the analysis of the oath and ordeal made by old Dh. writers exactly corresponds with the conclusions of the modern writers on the subject. Taking all this data into consideration, a study of the oaths and ordeals in Dharmasāstra is now undertaken here.

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37. Govt.Oriental Manuscripts Library, Madras.