

Procedural Law in Smritis

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The basic principles of Truth, Reason and Justice which provide foundation for the social order are immutable. They have been and shall be the same in all ages and in all climes. In Vedic Samhitas (10000 to 5000 B.C.) which in the words of Prof Maxmueller represent "babblings of humanity" Rishis have sung panegyrics to the glory of "Ritam" or "Satyam". The first and foremost injunction to the disciples leaving the portals of ancient *Gurukulas* on the eve of their entering the social order was "Never to deviate from the path of truth-(SANSKRIT SLOK).

The immanence of truth was affirmed by the *Smritis* which declare "(SANSKRIT SLOK)- Observance of truth is the highest code of conduct." "Truth though absolute has many facets- (SANSKRIT SLOK)" say the Upanishads. "Truth is subtle- (SANSKRIT SLOK)" It needs a discerning eye to discover it. In Mahabharat when questioned by Yudhishtir as to what is truth, what is untruth and when should a person tell the truth Bhishma says,

(SANSKRIT SLOK)

"The question you have put to me is a difficult one because it is difficult to say what is righteousness or truth. It is not easy to describe it." (Mahabharat, Chapter 105, S. 9). He goes on

(SANSKRIT SLOK)

"To tell the truth is righteous. There is nothing higher than truth. But where falsehood prevails as truth, truth should not be said there. There, again where truth passes for falsehood, even falsehood should be said." (Mahabharat Shanti Parva, Chapter 109 S. 9, 4 and 5).

"Law" says Aristotle, "is either universal or special. Special law consists of the written enactments by which men are governed. The Universal law consists of those unwritten rules which are recognised among all men." Law, however, in common parlance, can be described as a set of rules framed by the society in its best wisdom to regulate the conduct of its members *inter se* and *qua* the society itself. The primary purpose of Law is to assist in sifting truth from falsehood, to serve the cause of justice and to uphold the social order based on justice. "(SANSKRIT SLOK)"- Law provides a recognised channel for the enforcement of the rules of morality recognised by public opinion in any community.

The recognition of fixed rules compendiously known as Law helps in the administration of justice as it provides a safeguard against individual aberrations. The necessity of conforming to publically declared principles protects the administration of justice to a large extent from the disturbing influence of improper motives. Law is no respecter of persons. It has, therefore, to be certain and uniform. "To seek to be wiser than the laws" says Aristotle, "is the very thing which is by good laws forbidden." For the enforcement of legal principles in the dispensation of justice uniformity and certainty is desirable not only in the application of those principles but also in the procedure for their application. And there lies the importance of procedure and fixed rules of evidence which help the court in unravelling the complexities of truth and in applying the principles of substantive law in the adjudication of Issues.

In the ancient literature of "*Smritis*" which came into existence at the dawn of human civilisation (some time between 1000 and 500 B. C.) we find an elaborate code of civil and criminal procedure and detailed rules of evidence. Some of these provisions bear striking resemblance with the corresponding rules in modern laws of evidence and procedure. It is not possible in this brief article to give an exhaustive summary of those rules. But a few of them by way of illustration are quoted below from the Institutes of Manu (Dr. Ganganath Jha Edition) the most ancient and authoritative amongst the "*Smritis*".

Constitution of the Court

(SANSKRIT SLOK)

"The Judge shall enter the august court with a dignified demeanour accompanied by three learned men capable of giving good counsel and having occupied the chair of justice investigate the suits."

Compare this provision with the modern concept of open courts and jury trial.

Commencement of trial

(SANSKRIT SLOK) (Chapter VII, S. 23)

"Having occupied the chair of justice with his body well attired and mind composed he shall salute the guardian deity (chair of justice) and then proceed with the trial. "

Mark the importance assigned to judicial robe and preservation of judicial equilibrium.

General rules regarding judicial procedure

(SANSKRIT SLOK) (Shlokas 44-45)

"When engaged in judicial proceedings the Judge shall keep his eye upon the truth, upon the object, upon himself, the witnesses and upon the place, the time and aspect. Just as a hunter discovers the foot prints of a deer by the drops of blood, so should the Judge discover the truth by means of inference." In other words the Judge will sit with an open mind concentrating his discerning eyes on the issue before him, its surrounding circumstances and evidence and shall arrive at the truth by logical inferences flowing from the direct and circumstantial evidence.

Evidence (Who is a competent witness)

(SANSKRIT SLOK)

"In all civil suits trustworthy men, irrespective of castes, fully conversant with morality and free from avarice should be made witnesses. Interested persons, relatives and helpers of the suitor, persons of proved corruption, a minor, one who is intoxicated or demented or tormented by some powerful feeling of love or rage, one who has renounced the world and the Judge shall not be called as witnesses. However, in the event of proper witnesses not forthcoming evidence may be given by a minor and an interested person in the suitor. In the case of anything done in the interior of a house or in a forest or in the case of injury to the body - any person who may be cognizant of the facts may give evidence on behalf of the parties to the suit." (Chapter VIII, S. 63 to 69).

(SANSKRIT SLOK) S. 72

"In criminal cases of violence, theft, adultery, assault etc., the character of the witnesses shall not be investigated."

Compare this provision with section 54 of the Evidence Act.

Evidence to be direct

(SANSKRIT SLOK) S.74

"The person who happens to see or hear anything relevant to a case he should speak out exactly as to what he has seen or heard."

Evidence to be relevant

(SANSKRIT SLOK) S.78

"What the witnesses state naturally in relation to the question in issue alone should be accepted. Apart from that what they state from consideration of righteousness, etc. is useless."

Examination of witnesses

(SANSKRIT SLOK)-S.79

"After administering oath the Judge shall question the witnesses present in court in the presence of the plaintiff and the defendant gently asking them to declare freely and truly whatever they know about the subject-matter of the suit."

Assessment of evidence

(SANSKRIT SLOK)-S. 25, 26

"He shall discover the internal disposition of the witnesses by external signs; by variations in their voice, colour aspect, gait and gestures and also by looking into their eyes because the inner mind is indicated by such variations."

It is a detailed instruction for the Judge to derive conclusions from the demeanour of the witnesses.

Ex-parte order

"A defendant in a civil suit who does not appear without valid reasons for three fortnights to answer the claim shall be saddled with an *ex-parte* decree with proportionate costs.

Where there is no oral or documentary evidence the case can be decided by giving 'Shapath' to the parties." (S, 107 and 109).

Decision

(SANSKRIT SLOK) S. 41

"The Judge knowing his duty shall determine the law for each suitor after examining the provincial laws, the laws of the guilds and families." In other words in order to apply the correct law in deciding the "lis" the Judge shall take into account the provincial laws, laws of guilds and the families.

Criminal trial-Punishment

(SANSKRIT SLOK)-S. 126

"After having ascertained the motive of the crime, the time and place when and where it has been committed and having taken into consideration the condition of the accused and the nature of the offence the Judge shall inflict punishment on the guilty."

All the relevant considerations which should weigh with a Judge dispensing justice in a criminal charge are succinctly mentioned in this couplet.

(SANSKRIT SLOK)-S. 129

"First of all he shall inflict punishment in the form of a reprimand, then in the form of a reproach and thirdly in the form of a fine, and lastly a corporeal punishment." In the context 'SANSKRIT WORD' signifies corporeal punishment and not necessarily capital punishment. This shows that corporeal punishment was to be inflicted as a last measure only when the warning, reproach and fine were not considered adequate to meet the ends of justice. It is difficult to find a more humane system of dealing with the delinquents.

Manu enumerates causes forming basis of legal proceedings under 18 heads covering a wide range of issues relating to property, debts, contract, sale of goods, partition, partnership, disputes between master and the servant, landlord and the tenant, disputes regarding boundaries and criminal charges of assault, theft, violence, adultery, gambling and betting.

Narad and Brihaspati who flourished several centuries after Manu have expanded this list and have given a fuller description of legal procedure. Narad enumerates seven faults of a plaint and Brihaspati deals with the technique of drafting of a plaint and written statement and serving of interrogatories on the opposite parties. Brihaspati recognises the importance of 'Yukti--reasonable logic in the application of the legal principles to the facts of a case. He says that "the decision of a case on the basis of unadulterated scriptural law divorced from reasonable logic results in causing damage to the law itself".

(SANSKRIT SLOK)

It is not within the scope of this article to give a detailed account of the legal procedure and rules of evidence enunciated in the various "*Smritis*" (Yagyabalka, Narad, Vashishtha etc.). A few illustrations have been given above only to show that the ancient Hindu law givers were fully conscious of the importance of the fundamentals of legal procedure and evidence in the administration of justice.