**CONCEPT OF DHARMA; OVERVIEW OF HINDU JURISPUDENCE**

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**Abstract**

Like early European jurisprudence, Hindu jurisprudence is intertwined into the fabric of religion. It gradually drifted away from religion and toward Dharma. Dharma, as a concept, is less well-known and has had various meanings throughout history. Dharma has a tenuous connection to morality, conscience, and human active reasoning. During Ashoka's era, it was considered the order of the day and dictated all actions of the subjects of the state; the dharma as preached by Buddhists and Hindus, and subsequently, a new era of Dharma emerged, which was an excellent culmination of pre-existing concepts and principles.

The fundamental objective of this paper is to examine the concept of DHARMA, which encompasses its history and primary sources, a general examination of its theory and interpretations, a discussion of how it has changed over time, and a juxtaposition of dharma with contemporary notions of law and justice.

**Introduction**

According to Hindu literature, dharma encompasses all aspects of life. According to Hindus, 'Dharma' encompasses not just what is recognised as law in the contemporary sense, but also all standards of good and correct human conduct.

The phrase 'Dharma' is one of the most comprehensive and significant concepts in all of Sanskrit literature.[[1]](#footnote-1) This word derives from the Arabic word dhr, which means 'to sustain,' 'to support,' 'to uphold,' 'truth,' 'traditional or ceremonial, "moral obligation,' 'ethical,' and 'legal.'[[2]](#footnote-2)

According to Hindu mythology, the word "Dharma" signifies "obligation." Dharma has varied meanings depending on the context and religious allusions. For example, Buddhists feel that the word Dharma implies simply a global law that is very important, whilst Jains and Sikhs believe that it is only a religious route for the victory of the truth.

**Meaning of Dharma**

Dharma is often assumed to have descended from and superseded the Vedic notion of Rita, which literally meant "the straight line." Rita refers to the Law of Nature, which represents moral laws based on righteousness. When something is Rita, it just means it is true, correct, and nothing else. Dharma evolved with Rita, but finally took over since Rita's old paradigm was unable to cope with and solve the issues that arose as social complexities increased. Natural law is represented by Dharma.

According to Justice M. Rama Jois[[3]](#footnote-3), Dharma is "that which sustains and secures progress and wellbeing of all in this world and eternal bliss in the other world." The Dharma is given in the form of a command." There is also a discussion on defining dharma in Mahabharata[[4]](#footnote-4). According to Madhav Acharya, "it is most difficult to describe Dharma." Dharma has been defined as anything that aids in the upliftment of living beings. As a result, Dharma is unquestionably that which ensures the welfare (of living beings). Dharma, according to the wise rishis, is what maintains."

Dharma is anything that is right, just and moral. Dharma aims for the welfare of state and mainly, its people.

**Origin of Dharma**

The Supreme Court of India's Justice Markandey Katju[[5]](#footnote-5) stated that ancient India saw great advancements in several fields, including mathematics, astronomy, medicine, grammar, philosophy, literature, and law. Researchers in numerous nations, including philosophers, jurists, and historians, have frequently been entranced by the origins and traditions of religion in law. It has produced a wide range of legal literature, insightful juristic ideas, and important insights into the underlying principles of contemporary legal systems.

Dharma originates from Vedas, which are Sruti (heard knowledge), and they are the supreme source of information for humans, as they contain narration of what is heard from ancient priests, and they contain narration on everything possible ranging from military to politics to common people's life. Its other sources are Smriti, which are interpretations of Vedas, and four sages, known as Smritikars, who have propounded the dharmasastras.

They are:

Manu

Yagnavalkaya

Brihaspati

Narada

The other source has been Puranas which are eighteen in number and contains information about the creation and dynasties of God, sages and kings and detailed description of yugas. All the sources are on the same footstep and no one has supremacy over the other.

One passage from the Brihadaranyaka Upanishad that exemplifies this idea is

*"Punyo vai punyena Karmana bhavati, Papah Papeneti,"*

which means "everyone becomes good by good deeds and evil by bad deeds," or "everyone reaps what he sows," and what is good is defined by Dharma.

Dr. Mackenzine Brown notes that Dharma is more than laws, for it is what underlies law and creates law in the universe.[[6]](#footnote-6)

Dharma's fundamentals This is the universe's widespread view of order or rule. The Dharma sastras were thought to be ancient Indian codes of behaviour. Dharma is regarded as the essential principle of jurisdiction: Dharma, evidence, custom, and edicts of monarchs are the four legs of law; among these four, the latter is superior to the others in order. If there is a discrepancy between custom and Dharma, or between evidence and Dharma, the problem must be resolved in accordance with Dharma.[[7]](#footnote-7)

Law and dharma were not distinct notions in ancient Indian civilization. The concepts of justice, law, and religion were not differentiated in the dharma Sastras, Smrities, and Arthasastra, and justice was invariably associated to dharma and vice versa. [[8]](#footnote-8) The Mosaic Law of Israel regarded law and justice as closely linked[[9]](#footnote-9), with justice regarded as a unique part of morality to which law must adhere.[[10]](#footnote-10)

**Functioning Of Dharma**

Dharma is sanatana, i.e., which has eternal values; one which is neither time-bound nor space bound. The concept of Dharma is with us from time immemorial. [[11]](#footnote-11) Dharma is different from religion[[12]](#footnote-12); however, they are commonly misinterpreted to mean the same and thence used interchangeably. As the above said was distinguished by Justice J. Hansaria in A.S. Narayana Deekshitulu vs State of Andhra Pradesh & Ors[[13]](#footnote-13) by quoting Swami Rama’s book ‘A Call to Humanity’ by the following words:

*“Religion is enriched by visionary methodology and theology, whereas dharma blooms in the realm of direct experience. Religion contributes to the changing phases of a culture; dharma enhances the beauty of spirituality. Religion may inspire one to build a fragile, mortal home for God; dharma helps one to recognize the immortal shrine in the heart.”*

The supremacy of Dharma can be understood simply by noting that the Monarch was not above Dharma; he was ruled by it, and if he did not, the Dharmashastrakara granted the public the right to revolt against such an unjust, tyrannical, and unrighteous king or government. The treaties of Manu, Kautilya, and others contain various rights and duties of both the king and the people, and even recognised individual rights such as the right to private property, personal riches, and so on, which were bound by law for the benefit of the entire.

It has been underlined those individuals who wield political authority must wear the hand and glove of dharma, and that "principles of dharma regulate every field of activity, including national governance." [[14]](#footnote-14) The king's duty was clearly specified in Dharma Sastras, and for breach, the king loses the right to rule, and Dharma Rajya means 'rule of law.' Only if a king acts in accordance with the law will he be respected by the people (dharma).[[15]](#footnote-15) The first Hindu legal system enshrines both life philosophy and legislation, with a strong emphasis on morality, danda (punishment), and fairness.[[16]](#footnote-16)

CONCEPT OF DHARMA

Dharma in contradiction to general opinion does not mean religion nor supports any, but it is a whole body of rules and believes including in itself the religious rights, rules of conduct and duties. According to the Hindu Jurisprudence, Dharma means the duties in many ways. Just like the sociological duties, legal duties or spiritual duties. Through this context, we can say that Dharma can be referred to as the concept of justice.

One of the most frequently explained meanings of Dharma is duty. As previously stated, the meaning of Dharma varies depending on context and religious views. Buddhists, for example, define Dharma as cosmic rule, whereas Jains and Sikhs define Dharma as the path of religious activities. According to Hindu Jurisprudence, Dharma denotes "duty in various parts of life," which explains it as religious obligation, social, legal, and even spiritual duties.

Some people define Dharma as righteousness, allowing for moralistic interpretation. Dharma, in legal terms, relates to the principle of justice. As a result, there is no distinction between Dharma and Law, but it is usually viewed as a religious and moral foundation as well. According to the "Bhagwat Geeta," God produces life by applying Dharma principles. They are patience, forgiveness, self-control, honesty, holiness (cleanliness in the mind, body, and soul), sense control, reasoning, knowledge, truthfulness, and the avoidance of rage.

According to Hinduism, salvation, which signifies "Moksha," is the eternal Dharma for people. Dharma is mentioned in Hindu epics such as the Ramayana and the Mahabharata. They claim that carrying out one's Dharma is the proper goal of every individual. At the period, the king was also known as Dharmaraj since the king's major goal was to follow the path of Dharma. In contrast to other systems of thought, Hindu Jurisprudence focuses on obligations rather than rights. The nature of these Dharma varies depending on the individual.

Dharma was a broad notion that encompassed all stages of Hinduism's history since its inception. This was closely tied to rita throughout the Vedic period. In the Rigveda (about 1200 BCE), rita is a cosmic law that is the dharma that the god must follow in ritual actions. As a result, "dharma is an activity system that regulates the world in such a way that rita is not infringed."[[17]](#footnote-17) Anrita, which signifies asatya, was the antonym for dharma. By the evolution of the dharma notion, the term rita almost vanished in later Sanskrit.[[18]](#footnote-18). The Varnasramadharma and Svadharma were created in subsequent developments of Brahmanas, Aryankas, Upanishads of Shruti literature, and even in Smruti literature such as the shad-darshanas, law books, particularly Manu's law. The underlying principles of the universe are linked to priests' rites called karman in Brahmanas (about 900-600 BCE).[[19]](#footnote-19) This karman was supplanted in the second century BC by one's obligations in the social world based on their varna (social class) and ashram (stage of life), and was thus known as varnasramadharma, which was primarily emphasised in law literature. Svadharma is an impersonal ethical category. [[20]](#footnote-20)

Other sorts of dharmas include Apaddharma, which is a temporary shift in varna or asram in an emergency, and Asdharnadharma, Samanyadharma, and Sanatanadharma, which refer to general moral requirements such as telling the truth, among others. When there is a direct or indirect disagreement between Svadharma and Sadharanadharma, the most intriguing item in these categories emerges. Traditions influenced by Brahmanic literature prioritise Svadharama over Sadharanadharma, whilst traditions influenced by vendanta traditions reverse this order. [[21]](#footnote-21)

In both circumstances, they found themselves in a position of obligation, which frequently leads to a fundamentalist mindset. However, there is a third class that balances both via bhakti, doing what God wants, although it has a very small position in traditional systems of decision making. Though sruti is the normative source of dharma, nothing can contradict the Vedas, they are extremely difficult to interpret. The Purvamimamsa, one of the six systems of Hindu philosophy, expressly promises to teach Dharma.[[22]](#footnote-22) This was done to determine the normative imperatives of the Vedas.[[23]](#footnote-23)

Kalpasutra (teachings on right action) in smriti literature attempt to establish this dharma in three ways: srautasutras (interpret huge public rituals), gruhasutras (interpret domestic ceremonies), and dharmasutras (interpret sacred community).[[24]](#footnote-24) Dharma Sastras (about 100 CE) dealt with various imperatives and issues in vedic dharma. The Law of Manu is one of the most prominent dharma Sastras.

The major concept of the Bhagavad-gita is dharma. It also defended the varnasramadharma's four varnas. "It is better to accomplish one's own duty, however poorly, than to do another's well," Krishna states. It is better to die doing one's own duty than to do the duty of others."[[25]](#footnote-25) According to Basham, the dharma (obligation) relates to the four classes. This verse appears with modifications in the Bhagavad-gita and Dharma Sastra literature.[[26]](#footnote-26) Bhagavad-teaching gita's of dharma is also found in Epics, Puranas, and Agamas.[[27]](#footnote-27)

**Evolving ‘Concept Of Dharma’**

The Dharma have a unique nature that varies from person to person. Dharma is a very religious idea that has many facets.

The Supreme Court's motto is *"yato dharma tato jaya,"* which translates to "where there is dharma, there is triumph. The Bhagavad Gita is where it is taken. Despite being the oldest of its type, Hindu law has not deteriorated with time. Numerous Hindu laws include numerous Dharma concepts that are expressed in Hindu literature. According to *Debansh Khettry's* article*, "Sources of Hindu Law: A Critique[[28]](#footnote-28),"*

*“a rule not laid down or not recognized in the sources is not a rule in that legal system. The laws regarding marriage, adoption, divorce, maintenance, guardianship, etc. had been incubated from the concept of Dharma. Although, ‘Dharma is not law, it is much broader than the concept of law.”*

In numerous cases, the notion of dharma, or simply dharma, has been employed by various courts to assist them in reaching rulings, including the Honourable Supreme Court. One of the key cases is *Shri A.S. Narayana Deekshitulu v. State Of Andhra Pradesh & Ors* [[29]](#footnote-29), which exhaustively discusses Dharma-related problems such as 'what is dharma?' and 'Is Dharma the same as religion?' And each and every doubt was answered. As already stated, Dharma is distinct from religion. Even now, Dharma regulates the law through morals in and out of the courts, as in the case of the *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal & ANR. [[30]](#footnote-30)*

The court discusses the Dharma of the Constitution and the karma of adjudication in *Dattatraya Govind Mahajan vs. State of Maharashtra.[[31]](#footnote-31)* Dharma, which is regarded to be an orthodox area, is applied in circumstances that appear to be very unorthodox at first glance, such as the landmark judgement of Union of India and others v. National Legal Services Authority, 2014[[32]](#footnote-32) The Supreme Court of India's historic decision acknowledged transgender individuals as the *"third gender,"* confirmed that the fundamental rights guaranteed by the Indian Constitution apply to them equally, and provided them the freedom to self-identify as male, female, or third gender. Hinduism's references to homosexuality and its gods and goddesses, particularly Bahuchara Mata, the protector goddess of the Hijra, were key factors in the decision of this case.

*Shabarimala Case[[33]](#footnote-33):* In response to a plea filed by S Mahendran, the Kerala High Court ruled that women between the ages of 10 and 50 were not permitted to enter the temple to worship out of respect for tradition. The Supreme Court, however, stated in its 2018 decision that women of all ages could visit the temple:

*We have no hesitation in saying that such an exclusionary practice violates the right of women to* ***visit and enter a temple to freely practise Hindu religion and to exhibit her devotion towards Lord*** *Ayyappa. The denial of this right to women significantly denudes them of their right to worship.[[34]](#footnote-34)*

Hence, Dharma cannot be kept outside the scope personal laws that govern human behaviour.

Dharma has been utilised by courts as prestigious as Constitutional benches in place of duty and truth, and even the flag bears the Ashoka dharma chakra.[[35]](#footnote-35) The courts have construed articles 25 and 26 in accordance with Dharma, stating that when the articles are read and religion means coexistence with the wellbeing of other[[36]](#footnote-36), which is not an orthodox position. As previously stated, the concept of dharma is fully explored in *Narayana Deekshitulu vs State Of Andhra Pradesh & Ors [[37]](#footnote-37)*, where there is a comparison between constitutional laws and Raja Dharma, and the definition of dharma is attempted to be clarified by using various verses from all over the world.

‘Dharma in context of Rajya only means law’ and Dharma is secular or maybe the most secular.’

The same view is held until now, by all the courts and is not disputed that Dharma is an eternal bliss, which has seen many pars and parcels of human life, mortals, but remained immortal. All courts have kept the same perspective till now, and it is undisputed that Dharma is an eternal happiness that has seen many parts of human life, mortals, but has remained immortal.

**Conclusion**

A universal law known as the Dharma served as the ethos of the Indian way of life. It is the Dharma, which is the proper law of life and the real standard for living and social organisation rather than a cult, dogma, or code in the western sense. It is this Dharmic rule, which is dynamic and ever-changing in response to societal demands and advancements rather of being absolute, inflexible, or static. Hindus thus excelled in articulating philosophical principles and developing scientific conceptions and methodologies, which have had a significant impact on society's laws and way of life.

Dharma and law may appear to be diametrically opposed, but their underlying concept is the same. In general, law is an unbroken element of Dharma, and the two form a single integrated whole. On the one hand, Dharma is seen as religious, however this is not the case, as confirmed by the Honourable Supreme Court in numerous decisions cited in the preceding sections. Dharma has guided and continues to guide human behaviour, morality, and laws to varied degrees. On the surface, there may appear to be no connection between the two, yet upon closer examination, both are interconnected integrated wholes.

Hindus were characterised by a spirit of intellectual inquiry that drove them to doubt experience, the outside world, their gods, and the doctrines of their old religion. They were not constrained by the tyranny of governmental power, religious dogma, or even public opinion pressure. With a single-minded devotion uncommon in the annals of intellect, they explored and articulated the law of Dharma and truth. In ancient India, the law of Dharma made an audacious effort to create an orderly social life in which each person achieved his or her goals within the confines of morality or social norms. It is the highest law that keeps people in society as a whole.

'Dharma' is one of several sources of current law that shapes society. As a result, 'dharma' and law are inextricably linked and intertwined. Dharma has demonstrated its timeless quality by withstanding the test of time.

1. J. Jolly, “Dharma,” *Encyclopaedia of Religion and Ethics* 4:702. [↑](#footnote-ref-1)
2. W.K. Mahony, “Dharma,” *Encyclopaedia of Oriental Philosophy and Religion* 1:213-217. [↑](#footnote-ref-2)
3. Jois, M. Rama, Legal and Constitutional History of India (Vol. I), 2010, ISBN- 8175342064. Universal law publishing co. [↑](#footnote-ref-3)
4. Mahabharata says “It (dharma) is most difficult to define Dharma. Dharma has been explained to be that which helps the upliftment of living beings. Therefore, that which ensures welfare (of living beings) is surely Dharma. The learned rishis have declared that which sustains is Dharma.” [↑](#footnote-ref-4)
5. Speech delivered by Justice Markandey Katju at BHU, Varanasi on 27 November 2010. [↑](#footnote-ref-5)
6. Dr. Mackenzine Brown, The white umbrella-Indian Political thought from Manu to Gandhi, University of California Press, 1953, p. 15. [↑](#footnote-ref-6)
7. Arthasdstra, III. 1 [↑](#footnote-ref-7)
8. N.C. Sen Gupta, Evolution of Ancient Indian Law 336 (Calcutta 1954). [↑](#footnote-ref-8)
9. Julius Stone, Human Law and Human Justice, p. 22. [↑](#footnote-ref-9)
10. H.L.A. Hart, The Concept of Law 152, 153 (1972). [↑](#footnote-ref-10)
11. All you need to know about Hinduism. Available at: http://history-of-induism.blogspot.in/2010/11/sanatana-dharma.html [↑](#footnote-ref-11)
12. Rajesh Himmat Lal Solanki v Union of India, Through Secretary, GHC, 2011. It was held that Dharma and Religion are two different things, is some practises are not prevalent in some religions it does not make them as adharma and in the same manner Dharma embraces every religion. In other words, following of Dharma is secular and not contradictory to Constitution. [↑](#footnote-ref-12)
13. A.S. Narayana Deekshitulu vs State of Andhra Pradesh & Ors, 1996 AIR 1765, JT 1996 (3) 482. [↑](#footnote-ref-13)
14. Fredrick Max Muller, India: What Can It Teach Us, p. 6 [↑](#footnote-ref-14)
15. R.C. Mujumdar, Ancient India, pp. 154,155 [↑](#footnote-ref-15)
16. ode of Manu was constructed between 200 BC and AD 200 [↑](#footnote-ref-16)
17. A.S. Narayana Deekshitulu vs State of Andhra Pradesh & Ors, 1996 AIR 1765, JT 1996 (3) 482. [↑](#footnote-ref-17)
18. Ambujam vs T.S. Ramaswamy, AIR 1973 Delhi 46, 8 (1972) DLT 292. Codification of Hindu marriage related laws into Hindu Marriage Act, 1955. [↑](#footnote-ref-18)
19. Emergency turns 39‏, On June 27, 2014 by A. Mandhani, Available at: http://www.livelaw.in/emergency-turns-39%E2%80%8F/ [↑](#footnote-ref-19)
20. A.D.M. Jabalpur Vs Shiv Kant Shukla, AIR 1976 SC 1207. [↑](#footnote-ref-20)
21. Golak Nath v. State of Punjab, AIR 1967 S.C. 1643. [↑](#footnote-ref-21)
22. His Highness Keshvananda Bharti v. State of Kerla, AIR 1973 SC 1462-63. [↑](#footnote-ref-22)
23. Dhyani, S.N., “Fundamentals of Jurisprudence”, 2004. Allahabad: Central law Agency. [↑](#footnote-ref-23)
24. The Constitution of India, 1950, Part III, Article 21. [↑](#footnote-ref-24)
25. Basham, *Classical Hinduism*, 94. [↑](#footnote-ref-25)
26. Basham, *Classical Hinduism*, 94. [↑](#footnote-ref-26)
27. Basham, *Classical Hinduism*, 106. [↑](#footnote-ref-27)
28. <http://www.legalservicesindia.com/article/329/Sources-of-Hindu-Law.html> dtd. 11 December 2021. [↑](#footnote-ref-28)
29. Shri A.S. Narayana Deekshitulu vs State of Andhra Pradesh & Ors, 1996 AIR 1765, JT 1996 (3) 482. [↑](#footnote-ref-29)
30. Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal & ANR., 1995 AIR 1236, 1995 SCC (2) 161. [↑](#footnote-ref-30)
31. Dattatraya Govind Mahajan vs. State of Maharashtra, AIR 1977 SC 915 1977 Indlaw SC 157. [↑](#footnote-ref-31)
32. National Legal Services Authority v. Union of India and others, 2014 Indlaw SC 250. [↑](#footnote-ref-32)
33. WRIT PETITION (CIVIL) NO. 373 OF 2006 [↑](#footnote-ref-33)
34. ["Women Of All Ages Can Enter Sabarimala Temple, Says Top Court, Ending Ban"](https://www.ndtv.com/india-news/keralas-sabarimala-temple-must-allow-women-of-all-ages-says-supreme-court-ending-restriction-1923556). *NDTV.com*. Retrieved 28 September 2018. [↑](#footnote-ref-34)
35. N. P. Amrutesh and Another v State of Karnataka and Others, 1995 Indlaw KAR 245, AIR 1995 KAR 290. [↑](#footnote-ref-35)
36. Shirish Christian v Maganlal Mangaldas Gameti and others, 2012 Indlaw GUJ 2255. [↑](#footnote-ref-36)
37. Shri A.S. Narayana Deekshitulu vs State of Andhra Pradesh & Ors, 1996 AIR 1765, JT 1996 (3) 482. [↑](#footnote-ref-37)