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Concept of Law and Dharma in Indian Jurisprudence

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Abstract: This research paper titled "concept of law and dharma in Indian jurisprudence" aims to explain the meaning of jurisprudence and its nature, and jurisprudence and the connection of dharma in the Indian jurisprudence which includes the origin of the dharma in jurisprudence with the help of legal evidence behind the topic.

I. DECLARATION

I declare that the paper "concept of law and dharma in Indian Jurisprudence" has been prepared by me B.B.A. LL. B (Hons) degree program of the school of law, Alliance University. I collected our information for this work from several resources such as eBooks, the internet, books, etc. I tried to collect the information from various sources and tried to combine it into the paperwork.

II. INTRODUCTION

Dharma is an important idea with different meanings in different religions across the country, like Hinduism, Buddhism, Jainism, Sikhism and others. The idea of dharma is being used in many Vedic religions and its importance and reasonable degree is developed. Indian law is rich in the ideas and the diversity in the country made the Indian law a wealthy law. Indian law gets acknowledgement from different strict laws, tradition, and customs. Dharma shapes the fundamental establishment of Indian law because the majority of the population in India consists of Hindu, Dharma plays an important part in the formation of the Indian law.

During the ancient times, Hindus used the word Dharma in place of law. Earlier people used to define dharma as a person's moral and social obligation in the society, both as an individual and as a member of the society. The primary aim of dharma is to regulate human behaviour in its cosmic and human context. jurisprudence is the study of the theory, principles, and philosophy of law, as well as the interpretation and application of legal principles.

It is a broad and complex field that encompasses various schools of thought, including natural law, legal positivism, and legal realism, among others.

The meaning and scope of jurisprudence have been a topic of debate among philosophers and legal scholars throughout history, which has led to diverse and sometimes conflicting views on the subject. Some argue that jurisprudence is a branch of philosophy, while others see it as a distinct discipline that is part of the social sciences. Despite these different perspectives, there is a general agreement that jurisprudence is concerned with the nature of law, its origins, its relationship to morality and justice, and its role in society.

III. JURISPRUDENCE

Jurisprudential thought aims to concentrate on both theory and reality. It speaks to the fundamental principles that underpin the greatest form of law. In general, the study of jurisprudence is the foundation and core of all legal sciences.

Jurisprudence is a particular type of legal study in which we are interested in considering the nature of legal concepts and the core elements of the legal system.

The earliest individuals to study law were the Romans. The term "jurisprudence" comes from the Latin word "Jurisprudential," which can mean either "Understanding of Law" or "Skill of Law." Juris means "law," while the Latin word "prudential" means "knowledge, science, or skill." Hence, jurisprudence refers to knowledge of the law and its application. Jurisprudence is defined here as the full body of fundamental general legal precepts that form the basis of actual legal standards. Because of this, it does not refer to the study of laws or specific areas of law, such as consumer, criminal, tort, or property law, but rather to the underlying principles that guided the development of those areas of law.

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A. Definition of Jurisprudence

The term "jurisprudence" has been defined by several well-known jurists. Bentham, Ulpian, Austin, Salmond, Keeton, H.L.A Hart, and Julius Stone are a few examples of such jurists.

One of the most well-known jurists and the man who is credited with founding jurisprudence is Jeremy Bentham. Bentham defined jurisprudence as the ability to discern what actions have been taken in the context of internal administration. In this context, "jurisprudence" refers to a body of philosophical principles or conceptual frameworks that are employed to understand the law.

Ulpian, a Roman jurist, defined jurisprudence as the study of right and wrong in relation to deities and people.

Austin was a well-known legal expert who is today referred to be the Father of English Jurisprudence. He was the first lawyer to compare law to science. Jurisprudence, in his opinion, is the theory of positive law.

Jurisprudence, in Salmond's view, is the study of the basic principles of civil law. The laws upheld by courts in the administration of justice are referred to as civil law. He provided two definitions of jurisprudence. They are:

1) Generic Sense
2) Specific Sense

H.L.A. Hart's legal thought was in opposition to strict positivism. He considered jurisprudence as a science of law from such a wider vision and broader viewpoint by integrating morality and the law.

Jurisprudence, according to Julius Stone, is the lawyer's extraversion. It is the lawyer's evaluation of legal concepts, theories, and procedures in light of recent developments in non-legal domains.

B. Scope of Jurisprudence

Divergent authorities provide the law varying interpretations and presumptions, which results in conflicting views on the precise bounds of the area of jurisprudence it covers. When jurisprudence has been expanded to embrace moral and theological elements, there is doubt. Austin's ability to make distinctions is evidenced by the fact that he separated law from morality and theology and only used the term to refer to the body of rules established and upheld by the sovereign or highest law-making power inside the realm. Jurisprudence cannot address matters of ethics or religion, hence it is limited to the study of notions of positive law.

IV. ORIGIN OF DHARMA

Dharma originated from the Vedas, which are Sruti (heard information). Sruti is the representation of what is heard from the old ministers, and the Vedas are the most important source of information for people. They contain portrayals on everything that might be within reach, from military to governmental matters to everyday citizens' life. Its various sources include Smriti, which is the interpretation of the Vedas, and four sages who are referred to as Smriti Kars and who have espoused the dharma sastras. As follows:

1) Yagnavalkaya
2) Manu
3) Narada
4) Brihaspati

The other source is the Puranas, which include eighteen chapters and contain information on the creation of God, his lines of ancestors, wise men and kings, and a detailed description of each yuga. Each of the sources is moving at a comparable pace, and none stands out above the rest.

One line from the Brihadaranyaka Upanishad, "punyo vai punyena Karmana bhavati, Papah Papeneti," which means "everyone turns out to be acceptable by acceptable deeds and terrible by awful deeds," can be used to summarise the idea that led people to adhere to the Dharma: "each one gets what he really asks for and what's benefit is characterized by Dharma."

In Sanskrit, the word "dharma" implies to uphold, maintain, or bear. Dharma is based on the legal system, which states that every person has a responsibility to other people in the community and has a right to exist. Karma, which defined people's Dharma in ancient times, was a prevalent belief. Hence, Yudhistir from the Mahabharata is also known as Dharma Raj. It is an idea that contributes to the improvement of all living things. As a result, that which guarantees the wellbeing of living things is known as the Dharma. Legal, social, religious, moral, and other conceptual distinctions that are important to people seem to be less difficult to understand than confusing since it seems to cut across all of them. It indicates the highest commendation that is rightness, Justice, goodness, purpose rather than chance.

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V. TYPES OF DHARMA

There are various types of dharma some of them are listed below: -

1) Samanyadharma (Morality, qualities of the soul) – this type of dharma include mercy, truth, control over the mind, purity , offerings, control over the senses , non-violence, pilgrimage , compassion, honesty, absence of any greed and no one can criticize any of the above .

2) Varnadharma (Dharma of a class)- this type of dharma is applicable to the four classes of people which is Brahman (Priest), Kshatriya (Warrior), Vaishya (Businessman), and Shudra (labourer).

3) Ashramdharma (Dharma according to stages of life) – this type of dharma is limited to a certain stage of life and it also include four type of ashrams which is Brahmacharyashram, Gruhasthashram,Vanaprasthashram and Sanyasasashram.

4) Gunadharma (Dharma according to the qualities) – this type of dharma tell duty to be performed by the person who is holding a particular position or role . for example, the duty of king is to nurture his subjects. The impute of five cosmic elements are also called Gunadharma.

5) Svadharma – this type of dharma tells to practice it own duties, rights which each and every people is being provided with. It is unique dharma because every person has born out of his/her own traits , nature and capacities which is known as swabhav. For example – the swadharma of the fish is to live in water but milk is better than water , if any fish will insist to live in milk will die.

6) Sanatana Dharma - this type of dharma is used by Hindus to refer to Hinduism. In sanatan dharma the term Hinduism is denoted as 'eternal' or set of duties and responsibilities that is prescribed to every individual irrespective of class, creed ,caste or sect.

VI. NATURE OF DHARMA

The word "Dharma" is first used in reference to the universe's foundation in the Rig Veda, during the Vedic period, and it is believed that God created life using Dharmic principles. Thus, according to Hinduism, moksha is the eternal Dharma for people. The idea of Dharma has recently been improved and moralised by the Upanishads.

In Hindu legal codes like Manusmriti, it also has a juridical sense that explains citizens' legal obligations. Manusmriti covers topics including marriage, succession, administration, economy, and civil and criminal law. Upholding the Dharma is a king's primary duty. With the advancement of the concepts of law and justice, their significance and application have grown. All social, legal, political, and spiritual rights have their ultimate origin in divinity.

Hindu law, in contrast to other schools of law, places a greater focus on obligations than rights. This is true because Dharma, in all of its meanings, specifies what each person's highest obligations are. These obligations may take many forms depending on the person, but they are always consistent. A king's Dharma, for instance, is to uphold religious law, but a farmer's Dharma is to provide for his or her family.

Another characteristic of Dharma is how much it resembles schools of jurisprudence based on natural law. This is because traditional Indian law held that people's rights were bestowed by God. In light of this, divinity is the ultimate source of all social, legal, political, and spiritual rights.

Dharma has many facets even though it is fundamentally a very religious idea. It has rules and legislation covering a wide range of topics. Texts like Manusmriti, for instance, cover topics like marriage, succession, civil & criminal legislation, administration, economy, and religion.

Hindu law places more emphasis on obligations than rights, in contrast to other systems of law. This is due to the fact that Dharma, in all of its nuances, encourages each person to have a clear obligation. The concept of these commitments may vary from person to person, but it is not the main concern. For instance, a rancher's Dharma is to provide food, whereas a ruler's Dharma is to uphold severe law.

Another characteristic of Dharma is how much it resembles schools of jurisprudence based on natural law. This is due to the outdated Indian law, which acknowledges that God granted each person's rights. Thus, divine nature is the undisputed source of all amicable, legal, political, and profound rights.

While having a very rigorous nature, Dharma has many facets. It includes laws and customs governing a broad range of topics. For instance, texts like Manu smriti address issues related to religion, business, finances, common and criminal law, marriage, advancement, and so forth.

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VII. INDIAN PERSPECTIVE OF DHARMA AND JURISPRUDENCE

One of the oldest legal systems in existence, the Hindu legal system is founded on the idea and philosophy of Dharma. It incorporates the idea of Nyaya, often known as justice, which is the universal law. Dharma is a Hindu idea that dates back to ancient times and is known as "Dharmashastras," which assures that humans coexist peacefully with the rest of the cosmos.

Some of the important Code of law are as follows:-

1) *Manu Smriti:* Manu Smriti is a systematic compilation of Dharmashastra norms that addresses all legal disciplines. Manusmriti is written in straightforward language, which gives it additional authority.
2) *Narada Smriti:* It consists of both substantive and procedural laws, according to Narada Smriti. Procedural laws specify how a crime is committed, whereas substantive laws specify the crime's offence and punishment.
3) *Arthashastra:* The Arthashastra is a collection of Hindu political pacts.

The common law system is the foundation of the contemporary Indian legal system. India is a secular nation as well. As a result, the old Hindu legal system is no longer applicable in the contemporary setting.

VIII. A COMPARISON OF DHARMA AND MODERN LAW

Dharma signifies routineness of commonly accepted order; it also includes religion, duty, and is inseparable from a quality or an order, despite the fact that modern legislation is based on justifications and encompasses rigid opinions. Dharma is an obligation-based philosophy, however under the current legal system, rights are prioritised over obligations. The current framework does not recognise the good or moral traits and instead of direct or goal, it currently centres around the demonstration and the results. Dharma in itself encompassed ethics, morality, and a noble lead of a man. The law depends on sensitivity and binds through the legal assents granted by courts, however the dharma presupposes a powerful and ties together by the fear of a comparable extraordinary (human).
In the modern meaning, law is tied to rights, legitimate obligations, and other things. Additionally, Dharma is all-inclusive and inescapable yet not having outstanding leadership and being specific in nature. The law relies on sense and really presupposes what man "should be."
The idea of the modern nation state that provides support to its people discovered to have roots in the Dharma. The Dharma and the Rigveda both clearly provide ample support for human rights and fundamental rights.

IX. PURPOSE OF LAW

Providing justice for its residents is the state's primary duty. Each state has the capacity to administer justice in accordance with its own legal framework. Even in ancient times, a ruler's primary responsibility was to ensure that their subjects were treated fairly.
In order for a judgement to be just, unbiased, fair, and right, it must represent something that is just and right.
According to contemporary legal doctrine, justice entails the application of ideas like equality and liberty. It also includes the acceptance and application of laws passed by the Parliament, which serves as the legislative branch. And the Supreme Court of India, in particular, performs the function in the judicial system.
Justice then refers to the courts' acknowledgment, implementation, and enforcement of the law.

A. Decline Of Dharma And Advent Of Positive Law

Dharma (Hinduism) started to lose its lustre and roots with the arrival of Muslim rule, which was followed by British rule. Dharma was replaced with koranic lessons during Muslim rule, but many practises persisted, so it continued to be primarily pure. However, the introduction of British standards and their ignorance of Indian laws severely damaged the concept of Dharma as they discovered that there were no laws in place to supervise people.
To fix the problem, they either introduced western law, or more precisely, normal law with the tools of balance, equity, and strong inner voice, or they forced western laws through codification into areas where neither the Hindu nor Muslim Natural law, lessons, or customs provided a law.
In any event, the social equality and liberties that people enjoyed were taken away. Indians were brutally treated, and their opinions were suppressed in all spheres of life, from politics to society to economics. The rights and liberties that Indians enjoyed under the strict control of the Law of Dharma were met with retaliation. Gandhiji said at his famous champaran speech that he disobeyed the law not out of disrespect for British law, but rather out of duty to a higher law of our being—the ill habit of heart—by which he implied Dharma.

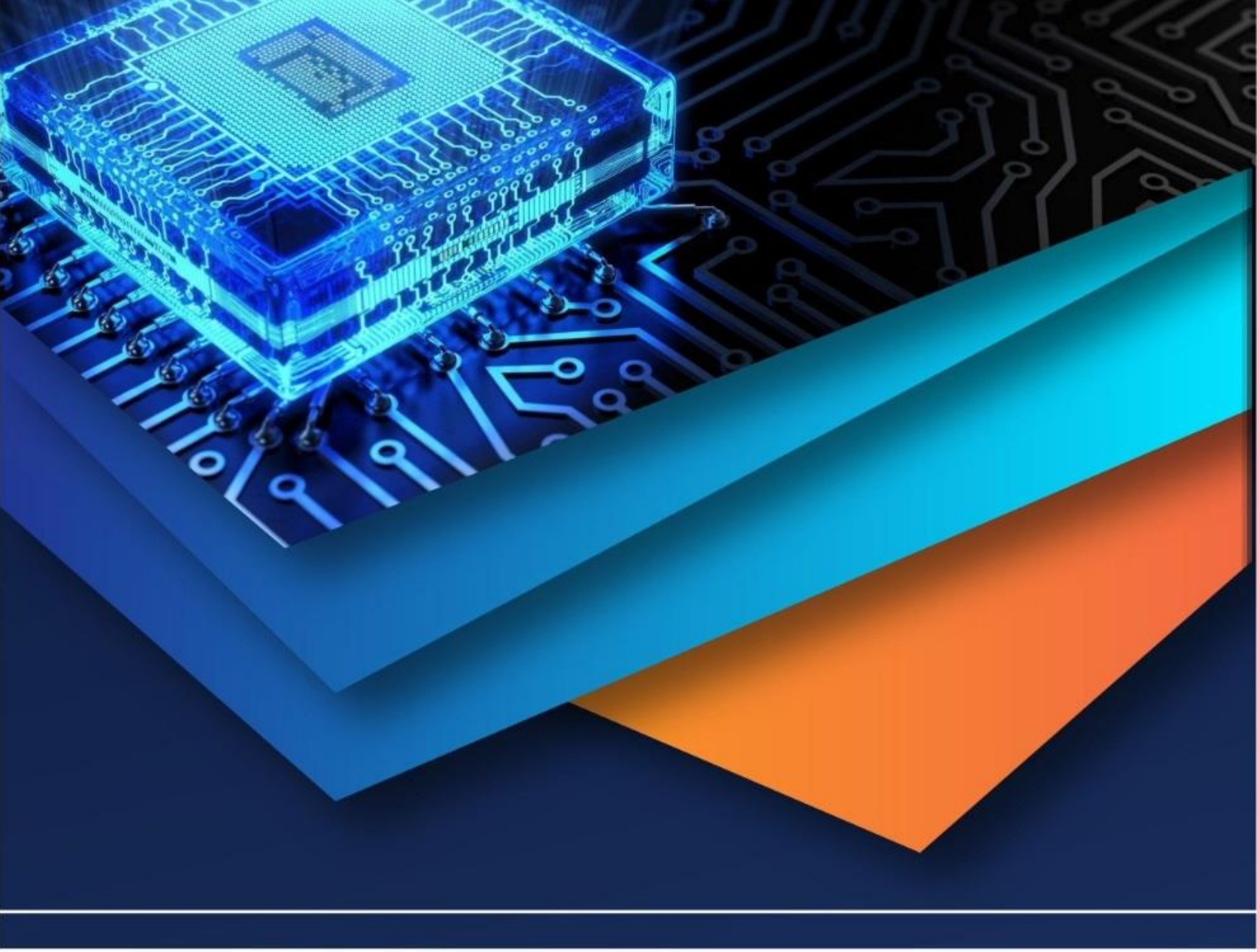
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X. CONCLUSION

Dharma and law, as seen above, may seem interesting, yet their underlying principles are the same. Law is a component of Dharma without conflict everywhere, and laws constitute a single incorporated whole. On the one hand, dharma is thought to be rigorous; nevertheless, this is not the case, and the equivalent has frequently been confirmed by the honourable Supreme Court as set out in the regions above. At varying degrees, Dharma has directed and continues to direct our actions, morals, and laws. On the surface, there may appear to be no relationship between the two, yet upon closer inspection, both are interconnected and work as a cohesive whole. One of the many sources of modern law is "Dharma," which is influencing society. Thus, one might say that ‘dharma’ and law are firmly related and joined. Dharma by finishing the assessment of time has shown its unceasing person.

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