

Documentary Authenticity and Social Order: Legal Record-Keeping in Smṛti Literature and Its Modern Relevance”

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ABSTRACT

The Smṛti literature, encompassing texts such as the Manusmṛiti, Yajñavalkya Smṛiti, and Narada Smṛiti, provides one of the earliest systematic frameworks for legal documentation and record-keeping in human civilization. These texts envision a legal system grounded in written evidence (lekha), authenticated witnesses, seals, and formal agreements, reflecting a sophisticated understanding of legal validity and social accountability. The Smṛiti writers recognized the importance of documentation in ensuring justice, preventing disputes, and maintaining transparency in transactions—principles that resonate strongly with modern legal practices. This paper explores how the Smṛiti concept of documentation, emphasizing integrity, verification, and community sanction, parallels contemporary mechanisms such as registration, notarization, and digital record-keeping. By analyzing the philosophical and procedural underpinnings of the Smṛiti system, the study demonstrates its enduring relevance to modern jurisprudence, particularly in developing culturally rooted, ethically informed, and technologically adaptive legal frameworks.

Keywords: Manusmṛiti, Yajñavalkya Smṛiti, Narada Smṛiti, lekha, sophisticated, emphasizing, sophisticated, jurisprudence, transparency, demonstrates

Recently, I was reading a book, titled as 'Ignited Minds' authored by the Hon. President of India, Dr. APJ Abdul Kalam. In that book he narrates that he was asked a question, which character in the Mahabharata appeals him most? Within a moment he answered, 'the character of Vidura'. Those who have expected the answer as either Krishna or Drapupadi were surprised to hear this answer and naturally asked, 'why'? He then explained-"I was attracted towards the character of Vidura for he showed the grit against the wrong-doings of the authority and had the courage to differ when everyone else chose to surrender before the tyranny of Adharma.' On reading this episode I was thinking, form where and how Vidura has gathered the courage to stand against the whole Kaurava-dynasty though he was the part of it? The answer I have received was two-fold. Vidura could do this for his pure and chaste character, which was his very nature and secondly, he has the strong base of the knowledge of Law and Administration. This knowledge is presented in the 'Udyogaparva' of the Mahabharata and is titled as the 'Viduraniti'. The perfect logical analysis of the wrong-doings enabled him to focus on the tyranny towards the Pandava-s and he remained as an incarnation of Justice among the whole family of injustice, a fatus in the mud, though it is an illustration from the Mahabharata, the whole Smṛti-literature supports and explains the Law and Judiciary system in ancient India. At a few times, the learned members of the society do possess the knowledge of Law-s and By-law-s in social, political and financial matters but the proper knowledge of legal documentation-system is lacking. This prevents the common man from going to the court and to fight for his rights and privileges. He prefers to be away from the court and tolerates the tyranny. This paper however, makes an effort to explain some selected terms in the legal documentation system in the modern India and this will be presented with the guidance from different Smṛti-s in ancient India.

According to the Smṛti-s, the main objective of the Law and Administration of Justice is to remove the troubles, both, secular and spiritual of the people. The responsibility is deposited on the shoulders of the king. The Smṛti-s use mainly two words; Dharma and Vyavahāra to indicate the Law and execution of Law and therefore, the king is called as 'Dharmādhikāri'. It is believed that in 'Kṛtayuga', Dharma prevailed in its fullest perfection but in the later ages it went on declining on account of theft, falsehood and deceit. Probably then, it was felt necessary to have the written documents. It is learnt that the Katyayana-Smṛiti' of 4th century A.D. to 6th century A.D. records some new terms like 'Jayapatra' or 'Paścāt-kār'. This seems to be the earliest reference to the written document in the Smṛti-literature. Kautilya, in his 'Arthashastra' no doubt, mentions such kind of Patra-s and uses the word 'abhilekhyā's and suggests thereby writing down the points but he has not stressed the point as to make it a proper documentation-system. He mentions that a person is to be appointed to write down the points from both the sides of the suit, the words lekha, lekha or abhilekha are in use but producing such documents at the time of filing the suit was not mandatory and a system to present them as an evidence, was not framed. He also uses two more words in this contest as 'Vyavahāra-

sthāpana, and 'Vivādapada-nibandha' but they do not refer to any written document. This makes the difference between the Kautiliya Arthashastra and the Smṛti -literature. The Smṛti-s are treated as Law-books by their nature and procedure but in the Arthashastra, along with several topics, Law and Judiciary are treated as the parts of the text. The Smṛti-s treat these topics as the main body of the text and therefore, concentrate on them with full attention.

It is to be noted that there is a glimmering of the distinctive between the civil and criminal disputes; i.e. Arthavivāda and Himsrasamudbhava-vivāda respectively. The documentation naturally pertains to the civil part of it. There are 14 Law-suits in civil and 4 in criminal, both of them have the same procedure to decide the matter and it is in the same court but in modern times the distinction is made and followed in the procedure of civil and criminal disputes. When the necessity of documentation arose it also gave rise to the concept of Lawyer as a knowledgeable person in Law and drafting. The views of Nārada, Kātyāyana and Bṛhaspati show that the skilled help was required in the litigations. The commentary of Asahāya on Naradasmati indicates that those who are wellversed in the Smṛti-literature could offer help for monetary consideration to the parties that have appeared before the court. Such a person could work as a recognized agent even in the Indian Civil Procedure Code Order III. Their Fees were fixed. Such representatives were appointed by the parties and not by the judges. It is interesting to note that the text of 'Milindapanha'; a Pali-non-canonical text mentions the word 'Dhammapanika' as an equivalent to the word 'Smārtadurdhara', which means a Lawyer or a representative on fees and it comes nearer to the schedule III of the Bombay pleaders Act XVII of 1920.

The types of documents can be classified under three main heads as the 'Rajapatra-s' i.e. the Government-documents, 'the Nyāyādhikarana-patra-s' i.e. the documents of the court and the third category is that of the 'Janapatra-s', which mainly includes the documentation in financial matters. The Rajapatra-s or the Government Documentations, are further classified as 'Jayapatra' [letter of Judgement], 'Prasārapatra' [a king's letter of appreciation of good service], 'Ājnāpatra' [royal command], 'Prajnāpanapatra' [a letter requesting the Purohita or a learned Brahmin etc.]

Under the Nyāyādhikarana-category there are many types such as the plaint, the summons, the injunction etc. The most important among them is the 'Plaint', commonly called as a complaint. It is also known by different names as Paksa, Bhāsa, Pratijna or pūrvapaksa and the complaint of a plaintiff is written down. The plaintiff who files a complaint is called Arthin, Vādin or Abhiyoktr. The person against whom the complaint is filed is called Pratyarthin or Prativadin. If the complaint of Vadin is submitted in writing then the defense of the Prativadin is also written down. The amendment in a complaint is permitted till the complaint is finalized. The points in a complaint are specified and are the same, which Kautilya has mentioned." The plaint is written in Sanskrit or in vernacular language. As regards the documents to be preferred for the court-matters, they may be preferably written in the Brahmi-script. In the plaint there should be the mention of the year, month, day, the document to be relied upon in the court, the amount of debt, country, village, caste, family-names and occupations of both, the plaintiff and the defendant. In respect of the immovable property, there should be the name of the field, name of the king and the names of father, grandfather and great grandfather, as required by the 'Katyayana-smṛti' relied upon by the Mitākṣara on Yajnavalkya-smṛti. 12 It is also to be noted that all the points mentioned above need not appear in every plaint.

Another important document is the Asedhapatra, which incorporates the modern idea of Injunction order or the prohibitory order. 13 By the order of the king, the plaintiff could restrain the defendant from leaving a place, for a particular time, going on journey and also doing certain activities, till the final disposal of the suit. If, however, such an injunction order is disrespected or not honoured by the defendant, then he is to be punished. If, the plaintiff restrains the defendant from exercising his limbs or free breathing, even the plaintiff may be fined but if the defendant is held up on account of a river flood or in a forest then he is not to be fined at all. The Katyayana-smṛti¹⁴ makes provision of a third person, known as the 'Court Receiver' in the modern legal parlance. Some portion of the money is to be kept with such a third person. In some cases, even the surety is taken from both the sides, probably, in writing. If any one of the plaintiff and defendant is unable to give any surety he will be kept in custody of the court bailiff [Sadhyapala] and is required to pay the daily wages of a bailiff. If the person manages to run away from the custody, he was to be fined 8 panas as held by the Katyayana-smṛti, quoted in the Parasara Madhava.

The third important document is the Summons, which is an order to appear before a judge. This is a strict order demanding the presence of the defendant and it can not be violated for any reason. As regards the rules for summoning, it is evident that the opponent, against whom the suit is filed, must be summoned to the court. Even other persons connected with defendant, in that particular suit, may also be summoned. However, in the case of the soldiers, agriculturists, cowherds etc., their representative is allowed to appear before the court, as held by the 'Nārada-smṛti.' In more serious matters like the murdering of a woman or in adultery with her no representative is allowed, says Mitaksara on the Yajnavalkya-smṛti. The compulsory attendance on Summons, is actually condoned of the persons, like the diseased, very old persons [more than 60 years], persons in calamities, engaged in religious rites, a woman whose family in bad condition. In the case of the person, who is condoned from appearing before the court, the representative is allowed by the 'Vivadachandra' of Misaru Mishra.

In the third category of 'Janapatra-s' or the 'Artha-patra-s', there are different types. They are as follows.....1. Vibhaga-patra [deed of partition] 2. Dana-patra [deed of gift] 3. Kraya-patra [sale-deed] 4. Adhana-patra [deed of mortgage] 5.

Sthiti-patra [deed of convention]6. Rnalekha-patra [deed of debts] 7. Visuddhi-patra [deed declaring the purification of a person], which is probably equivalent to the declaration of mental and physical fitness-certificate in the modern terminology. The Yajnavalkya-smiti and Vyavahara-sāra mention the word 'Ciraka', which means a document written by the hereditary scribe, sometimes appointed by the king himself. It may incidentally be mentioned that Kautilya records 5 types of Ajnapatra-s²⁰ such as Paridana-patra, Parihata-patra, Nissrsti-patra etc. The Sarvatraga-patra is parallel to the National Permit in modern days. It is interesting to note that the 'Kutalekha', which plays an important role in the play 'Mudrārākṣasa', is also defined by the 'Katyayana-Smṛti' ²¹.

As regards the validity of the document, there are a number of measures. A document in order to be valid must satisfy certain requirements. It should not be opposed to the customs of the country and contents of the rules of the pledge. The sequence of the sense should be free from confusing or contradictory words. The same must be signed by the creditor, a debtor, two witnesses and the scribe to be authentic. Such a document is called as 'Pancarudha' i.e. signed by five persons. Genuineness of the document is to be proved by comparison of the signatures on the other documents executed by the debtors because there is every chance of the fabrication of the document resembling the original.

The document becomes valid when it bears a royal seal, though the debtor, witness and the scribe are dead. Oral evidence cannot contradict the written document as held by the 'Katyayana-smṛti'. ²² One document can be cancelled or superseded by the later or other document. It seems that the popular grammatical maxim 'Vipratishedhe param karyam' ²³ applies here also. When any document written in any another country is lost, burnt or becomes indistinct, another document is got to be prepared. This is the view of the 'Yajnavalkya-smiti' and the 'Katyayana-Smṛti'. ²⁴ It was further held that the Janapadapatra, a document written by a scribe and properly attested is superior to the document written in hand-writing by executants. In addition to this, the invalidity of the document is also specified. It is mentioned that a document signed by an intoxicated person, a person charged with an offence, by a woman or by a minor, brought about by threats or deceit should be treated as cancelled. The document is held as invalid owing to the defects in witnesses or the scribes or the fraud practiced by another party. The debt payment was also documented. When the debt is paid by a debtor to a creditor the original document of debts may be torn or returned or another writing may be passed to the effect of the receipt of the debts. This was the treatment to the validity and invalidity of the documents in brief.

As a conclusion, it may be said that the various Smṛti-s have given very systematic treatment to the concept of Legal documentation and have contributed towards the framing the modern Science of Law.

विधिपत्रविचारोऽयं स्मिकाराः प्रवर्तितः
उहापोहैश्च विश्वाः शास्त्रमुलाटको
हैसु अस्थातको मया गुद्धाः तस्यांशो हि विष्वाः
अंशमंशेन समित्या पूर्णतां यतु वर्तुलम् ।
प्रहिविधिसामुक्ता विद्विश्चनिब्धना
विद्वपरिशाधना चैपा सुफला स्यात्सफला च वः ।

REFERENCES

- [1]. Kalam Abdul, Ignited Minds, Penguin Books India, 2002, p.9-10.
- [2]. Mahabharata, Udyoga parva, 33-41.
- [3]. Moghe, S.G., History of Dharmasāstra in essence, MM.Dr.P.V.Kane Trust, Mumbai, 2000, p.353.