CHAPTER III

PROCEDURAL LAW

The Hindu legal texts, i.e. the smrtis lay down at least a rudimentary basis of a judicial system in India. However, whether these texts served only as ideals or were actually administered in any court of law is a point of debate. There are present, no doubt a systematic and detailed code of regulations, a set of people to administer these laws and also guidelines for providing efficient justice. But how far pure and technical procedural law was there in practice is difficult to ascertain. As observed by Maine, “We can see that Brähmanical India has not passed beyond a stage at which a rule of law is not yet discriminated from a rule of religion”. In Manu and Yājñavalkya, law of procedure can hardly be traced on judicial lines. It is only in the works of Nārada, Bṛhaspati and Kātyāyana that an effort to lay down procedural law is noticed.

Hindu law of procedure is somewhat a later development. While in Nārada’s work, is traceable the nature and characteristics of judicial procedure, Bṛhaspati takes it ahead on several other aspects such as division of lawsuits into civil and criminal, functions of representatives of court, different titles of law and to an, until in Kātyāyana, it reaches a high watermark especially in the description of the constitution of dharmaśikaraṇa (Court of justice)

In the Ṛgvedic conception of law, there is no reference to positive law. Its conception of rta, the eternal law as firm and immutable (ṛtasya drdha dharunani santi) is an inflexible bending force associated with rituals. Its transgression was not only violative of human laws but was supposed to be punishable even by supernatural forces. Law in this sense was not only transcendental but presupposed its relation to religion as eternal and beyond the purview of any kind of litigation. It remaining centered on rta, from which was born the ideal of truth which formed the basis of law. Like the Ṛgveda, the Atharva Veda looked upon rta and satya as the twin basis of law. To them declaring truth was equal to declaring the law.

Dharma, as part of the rta referred to a kind of moral function. It was the notion of dharma and its opposite adharma
which gave rise to the idea of rewarding good and punishing the evil of mortals in society. In the whole set up of law based on ṛta or satya or dharma, the king or sovereign was considered secondary to the cosmic law and hence law existed without and above the sovereign.

It is only in the Dharmaśūtras that the king appears to be infested with the special charge to administer justice, also at the same time when the divine theory of kingship seems to be favored by the law writers.

The Dharmaśūtras covered a wide range of topics dealing with law, which were probably adopted by Manu, Yājñavalkya and others. The topics were like – (1) Legal procedure, (2) The Pariṣad or legal assembly, (3) Evidence, (4) Witnesses, (5) Marriage, (6) Niyoga (7) Possessions and ownership, (8) Stridhana, (9) Partition), (10) the Law of debt, (11) Relations between Masters and servant, (12) Trade laws, (13) Theft, (14) Gambling, (15) Sexual offences and so on. However, in these discussions pertain more to the ceremonial and religious conduct than pure law. Legal topics were referred to incidentally and not as a matter of deliberation. R.B. Pal has rightly analyzed that “Although purely legal matters are scanty in these books, they speak of law, in the course of their discussions. as much as it was necessary for the regulation of the society as a whole, with the king as the head of the administration of justice and the Brāhmaṇa as the head of the religion and society set up.” Nonetheless, law, civil and criminal, enforceable by the king and the court of law makes appearance in the Dharmaśāstras.

The codes of Manu and Yājñavalkya represent a vertical development in the concept of law. In them, the king is seen to assume wide powers and emerging as the fountainhead of justice. Attending to law and justice appears as among the primary duties of the king. The principal obligations of the king according to these law givers was deemed to be, to protect the subjects, to maintain the status given with respect to varnas and āśramas, to punish the wicked and do justice to the persons wronged. The king’s role with respect to law emerged out of his duty of providing protection. Since it was the ultimate responsibility of the king to protect his subjects from any wrongs, he becomes the apex of the system of law and justice. He was not there to provide law but abide by the laws already prevalent.
Manu and Yājñavalkya, in spite of being codes of law on Acāra and Vyavahāra, the approach is less juristic in treating the topics of law and more elaborate on the sacerdotal issues or rules of conduct. It is in the works of Nārada, Brhaspati and Katyāyana that, the legal acumen in exponentiating juristic laws is explicit. Kane aptly remarked them as the triumvirate in the realm of the Ancient Indian law and composition of the Hindu Legal literature. So also in Patkar’s study, the law codes of these authors belong to the latest production of the śruti epoch of Hindu law and their legal character as also their judicial content are decidedly more advanced than those of either Manu or Yājñavalkya śruti.

Nāradasmṛti, points out Patkar, available in the recensions deals exclusively with the Vyavahāra topics of Dharmaśāstra. Taking a line different from his predecessors Manu and Yājñavalkya who deal with what may be styled as Dharma – the Vyavahāra portion containing mixed matter of law and religion, the acāradharma, prayāścitta etc. Nārada covers the whole gamut of secular law, civil and criminal and so do Brhaspati and Katyāyana.

In the introduction, Nārada professes himself as a compiler of traditional law from the source Mānavadharmaśāstra. He states his work to be an abridged version of the larger Manusmṛti. The extant Nāradasmṛti probably constituted the ninth chapter of the original code headed as ‘judicial procedure’. This part is designated as Matṛka or Vyavahāramatṛkā, containing a summary of proceedings at law or general rules of procedure. The Nāradasmṛti can be bifurcated into two main divisions. The first part dealing with the necessity of the administration of justice, the nature of plaint composition of court, evidence, witnesses etc. The second handles the different topics of law and the eighteen titles of law, treated with remarkable clarity in approach. His famous aphorism with regard to judicial procedure is the one which regards it as having four feet, four bases, four means, it benefits four and produces four results. Na"rada has laid down the law of arrests.

Brhaspati work, which is available only in reconstructed form has seven sections on Vyavahāra, |samskāra, ācāra, sṛāddha, aśaúca, āppaddharma and prayāścitta, totaling a 2300
slokas. He has exponentiated on the principles of law and is the first law giver to make a clear distinction between civil and criminal suits. According to him the law suits are of the two kinds v.z. 1. Arthasamudbhava or Civil and 2. Himsāsamudbhava or criminal. The former originate in demands regarding wealth, while latter in injuries. Those originating in money are of fourteen kinds and those from injury of four kinds. He has mentioned the different grades of court kula, sreni, gana ending with the king as the apex court of appeal, as well as courts with different standing like those established (pratiṣṭhita), not established, those established by royal authority (mudrita) or those were king himself, participated in the administration of justice (sāsīta or sāstrīta).

Kātyāyana’s code, as available deals primarily with Vyavahāra or civil law with only a small portion devoted to criminal law. Toeing the line of Nārada and Bṛhaspati, Kātyāyana opines on the duties of king, the characteristics of judicial procedure and the two branches of Vyavahāra, the Dharmashastra or sacred law and the Arthaśāstra or science of politics and government. As Kane remarked – he closely follows both the writers in legal phraseology and in technique. His treatment of stridhana is exponential for which Kane remarked his treatment of topic as ‘attained classical rank’ He was probably the first to define carefully the several kinds of strīdhana (such as adhyāgni, adhyavāhanika, pātiddatta, śulka anvādheyāna and saudāyika) to lay down women’s power of disposal over the several varieties of strīdhana and the prescribe lines of devolution to strīdhana. Two terms ‘Stobhaka’ and ‘Sucaka’ are used by Kātyāyana smṛti for the first time. The first is a person appointed by king to apprise him of certain offences while the second acts as an informant of crime for the sake of remuneration. He has also described two types of documents – the Pascātkara and the Jayapatra.

Besides these dharma texts, the Arthaśāstra has delivered various topics dealing with procedural law. In fact, the discussions in Arthaśāstra seem to be more logical and rational.

Among the inscriptions, it is in the Chammak Copper Plate grant of Mahārāja Pravarasena”, that we come across reference to ‘dharmaśṭhāna’. In Kālidāsa, we came across references ranging from civil to criminal to court of law, role of king, law of punishment to other aspects of judicial procedure. The
Mṛcchakaṭṭika, the Daśakumāracarita and the Madrākṣasa help further in drawing a near practical picture of law of procedure that might have existed in the period under study, although the references in nearly all of them is purely incidental.

Procedural law that might have existed in the period under study will have to be studied with respect to its various components such as (1) the administration of justice, the judicial procedure and the structure and constitution of courts, (2) the law of evidence encompassing the documents, witnesses, possession and ordeals, (3) the titles of law or categorization into civil and criminal, (4) the punishment, law of arrests and imprisonments or the penal law.

**Administration of Justice**

"Justice, being violated destroys, justice being preserved preserves, therefore, justice must not be violated, lest violated justice destroy us."  

The spirit of justice dreamt by Manu is worded in the above verse and also in verse 17 at the same place –

"The only friend who follows men even after death is justice, for everything else is lost at the same time when the body (perishes)". To carry out this ideally efficient administration of justice not only Manu but all the smṛti writers as well as authors of Sanskrit dramas stressed the cardinal importance of king in the set up of law. Presuming that protection and preservation mere the twin roles of the state, the king was visualized by legal theorists and characterized by dramatists as an upholder of law and the fountain head of justice. As Kauṭiliya speaks – ‘A king who observes his duty of protecting his people justly and according to law will go to heaven, whereas one who does not protect them or inflicts unjust punishment will not’. The monarch is not only enjoined to protect the people but he is required to do so in accordance with the laws derived from the sacred sources and in a just manner. What material gains a king would require? His spiritual remuneration for being just and not unjust is that he would be blessed with permission in heaven. The role as a protector of law hence accrues from his role as a guardian of his subjects and protection is not possible without punishing the wicked. Emphasizing this as a conscientious law
for king, his role has been linked to the rewards in the notion of heaven.

Elaborating this role as a feature of law of procedure the smṛti writes emphasized on the king (1) attending personally to the administration of justice, (2) acquiring knowledge for a first and equitable disposal of cases according to varna hierarchy and other distinctions (3) appointing a body of Brāhmaṇa councilors or judges for the sake of application of law to the cases under litigation. The first implied that the king had to have a thorough knowledge of the scriptures or treatises, he had to be learned and reverent of the sacred law and had to administer law in consultation with his Brāhmaṇa advisors. As Manu puts it — “Having fully considered the time and place (of the offence), the strength and the knowledge (of the offender) let him justly inflict that (punishment) on men who act unjustly”.25 Similarly, the Yajñavalkyasṛti enjoined - “a king should attend personally to the administration of justice everyday, surrounded by councillors”.26 According to him, the protection of the subject is the highest duty of a king possessing the (necessary) qualification of anointment, that (i.e. the protection) however is not possible without (restraining the wicked) punishing the guilty.

Manu emphasized on cases being taken up according to the castes.27 The Varna basis is equally explicit in his assertion that let a Brāhmaṇa interpret law for the king, but never a Śūdra. This implied that the Śūdras were emphatically forbidden to act as bearers of law, while Kṣatriyas and Śūdras could be employed in cases of necessity.

Third, the king was to be assisted in the task of administering law by a body of advisors, prādvivāka (judge) amātya (minister), purohitā (family priest) and assessors (sābhyas), but Kātyāyana adds Vanij (merchants) to this list too. (Kātyāyana, verse 56-59), when the king was unable to try cases, he would appoint a learned brahmana (and by interpretation, even the Kṣatriyas and Vaiśyas it need be) (Kātyāyana 63-67, Manu, VIII – 1) and Yajñavalkya II, 37).

This discussion, also needs to examine the status of the king vis-à-vis law. Unlike the west, where the king being a temporal and ecclesiastical head was deemed to be a creator of law, India had a notion of a positive law inherent in its tradition. The king, since the Vedic times was seen as a seer and Upholder
of law. Law, whether cosmic or divinely sacred was independent and above the sovereign. Law and king existed as two separate entities, only the king was expected to administer laws, in a just spirit, being the protector of laws created for the well being of people.

In the Arthaśāstra, a verse says – “Because the king is the guardian of the right conduct of this world, with its four varnas and four asramas, he (alone) can enact and promulgate laws (to uphold them) when all traditional codes of conduct perish (through disuse or disobedience”). However, this should not be taken to imply that Kautilya permits the king to create laws, what is suggested is that king is the ultimate guardian for the upkeep of law. He makes a plea for the superiority of written law for the reasoning explaining the derivation of a particular law) sastra from dharma is no longer available.

The prime law and obligation of the monarch, hence was protection and the maintenance of varnasramadharma. Manu declared protection to be the highest dharma of king. Nārada states the king’s duty to be to protect his subjects, listen to the aged and wise, to look into the disputes of the people and be energetic in the royal functions. There are similar references in Kālidāsa, Viṣṇudharmottara Purāṇa, Kāmandaka Niṭisāra and Mārkaṇḍeya Purāṇa.

In the inscriptions, too within this period, the same ideal seems to prevail, that the king was the protector of the subjects who were like their children. Aśokā, in the Separate Kalinga Rock Edict I declared "all men are my children" He wishes happiness and welfare for all, like his children in this world and the next. Maintenance of Varnāśrama dharma seems to be a prime duty. An inscription of A.D.529 addressed for king Samskobha of Parivrajaka family describes him as devoted to the establishment of Varnāśramadharma. The Mandasor Stone Inscription of A.D.532 of Yasodharman mentions one of his predecessors Abhayadatta as acting to the advantage of those who belonged to the four castes. The Asirgarh CP inscription of the Maukhari king Sarvaravarman compares that king to Viṣṇu for he preserves the varnāśrama system. Harṣa’s father Prabhakarvardhana claims to have overseered the system of all castes at all stages.

Bhagwat Saran Upadhyaya writing on Kālidāsa’s views on law and justice remarked that the king’s schooling in the
scriptures as well as treatises on polity gave him a thorough knowledge of law with the help of which he was expected to administer justice. The punishment of the criminals ‘in proportion to their crimes (यथापराभद्यश्रान्तम्)’ required the king to have a sharp grasp of the judicial laws (शास्त्रीयकृतिभाब्) which alone could give him an idea of the legal remedies in proportion to crimes. Upadhyaya says - "He was not a fountain of law but only its administrator as we find no reference in the writings of Kalidāsa to the king being in any way connected with the making of laws". Let's remind us of the king's coronation oath from the Mahābhārata which gives body to the idea that laws existed prior to the king. The coronation oath reads thus - "Whatever law there is here and whatever is dictated by ethics and whatever is not opposed to politics I will act according to unhesitatingly. And I will never be arbitrary." This shows that king himself had to revere the dharma laws. The epic Rāmāyana talks of the virtues of judicial administrators of which king himself was a part. It reads that an administrator "should set his heart on protecting the people. An administrator who carefully protects all the inhabitants of his dominion like his own life and like his own son endureth for ever and attains the region of Brahmā". Also, "The administrator that carrieth away his royal affairs agreeable to justice, hath not to repent afterwards". However, one section of law, in which the role of the monarch could be seen as proactive was in the awarding of capital punishment. Kalidāsa enjoins upon the king to take a middle course as regards the award of such a punishment. His ideal regarding this is summed up in the phrase ‘Yathāpāparādhadaṇḍa’. However, here it may be quoted that when the court reported the guilt of Carudatta to the king, it reminded him that according to Manu, the Brāhmaṇa could not be subjected to capital punishment (Vādhadaṇḍa) and could only be banished from the country. But the king actually over ruled the decision of the court and imposed capital punishment. This would imply that at least in some cases, royal decision settled the issue.
Among the inscriptions of Aśokan edicts we came to know that Emperor Aśoka not only deemed his duty as the fountainhead of justice, but had an eye for details and loopholes that might creep in the judicial system. His exhortation to cultivate mental and moral qualities is already well know. He calls upon his sons and successors to teach people by their own example. Also “... to administer justice, impartially, conscientiously and honestly”.

Amulyachandra Sen studies that the Separate Kalinga Rock Edict I, undoubtedly presupposes grave miscarriage of justice and high handedness on the part of some provincial administrators, Pillar Edict IV also hints at irregularities in judicial administration when it recommends uniformity of procedure and uniformity of decisions. It is apparent that Aśoka paid heed to matters of justice in detail and was aware of his responsibility as a king, the fountainhead of justice.

However, his professing of ahimsa did not lead him to abolish the capital punishment for criminals. This is clear from the respite he gives, three days to the prisoners condemned to death.

In the separate Kalinga Rode Edict I, Dhauli version, Aśoka opines on the need of integrity on the part of judicial officers. In the administration of the law it reflects not only his urge to ensure an efficient judicial set up but also his deeper understanding of justice as a concept and his relation with his subjects.

The Mahāmaṭras concerned with judicial procedure are addressed thus – “Whatever I conceive, I wish that to bring into practice by action and carry that into effect by (proper) measures .... In this matter I regard my instructions to you to be the chief means, because you are set or employed over thousands of timing beings (with the idea) that you may surely secure the affection of all men (or goodman) All men are my children just as I desire for my children that they may be associated with all kinds of welfare and happiness both in this world and in the next, so also I desire (the same) for all men.... Again there may be same individual person who incurs imprisonment or torture and for this reason, in this (matter), the result may end in captivity without a (due) cause and on this account many other people may become graved deeply or
intensively. In this case, you should deserve that you should follow a middle (i.e. impartial) cause (of justice).... In fulfilling (my) instructions you will gain heaven and also discharge you debt (to me)“.

SKRE, 1 Dhauli version.51

These lines of no less than Emperor Aśokā reflect his eagerness to effect in practice his benevolent thoughts on the matter of justice. He considers his instruction supreme for his administrators, who he feel have been appointed for the purpose of securing welfare of people over thousands of other people. He exhorts their status as representatives of state as well as people and reminds them that just as he, the monarch is the patriarch of all his subjects, the officers should pertain as agents to secure the happiness of the subjects, with in this world and the next citing an instance he says, a person may be falsely convicted and on these grounds may be tortured or imprisoned, the officers ought to take an impartial stance in justice and see that no person is grieved wrongly and welfare is enforced generally. And after giving such detailed instruction, he says the rewards for following such instructions in imparting impartial justice would lead him to heaven, the ultimate bliss in the Indian conception and also enable him to repay his debt to the king who gave them an opportunity to serve the people.

Aśokā exhibits the perfect specimen of a smṛti entailed monarch, in these lines as one who considers himself as the father of his subjects, one who attends to matters of justice personally or through his officers endeavors to ensure proper administration through his councilors and one whose aim is welfare and happiness of men. In fulfilling the monarch’s orders, the rewards of heaven accrue-- in this too, he appears to be a character from the texts. A word which creates ambiguity is Sumanuṣyā which would imply that the officers (Mahāmātras) were appointed to secure the welfare of all good men.Sen explains that the officers must have been directed to win the affection of all people and not particularly of good persons alone.52

In the Girnar Rock Inscription of Rudraman of the Sāka year 72 (150 A.D.), the Kṣ; atrapa king is discussed at length.53 A.B. Diskalkar has pointed out the use of the word (हस्तोच्छय) hastocheya. Some scholars suppose that epithet means that Rudraman made many religious gifts. But Dr. Kulkarni says that
the expression "the raising of the hand of a person engaged in making any kind of gift, is that it is moistened by the water poured into the hand of the donee(cf Kādaṁba — of Anvartaprayoītānārdikṛtkaṇa which implies occasionally a person making gift is described as taking or raising a pitcher from which the water is poured into the hands of the recipient)54 Diskalkar prescribes that in "The present case, the expression (अन्नक्षेत्रप्रयोतानाद्वितकर) instead of meaning to convey the idea of donation should better be taken in the sense of dispensation of justice. For according to Manu (VIII.2)55 a king when investigating cases of law should of so seated or standing 'raising his right hand'.

(The भिन्न गुरुष्य दशिता) Rudraman must have earned the strong attachment of Dharma, i.e. justice by raising of his right hand i.e. by the proper dispensation of justice"56.

The Manusmṛti describes how the king ought to maintain a dignified demeanor and examine 'Daily (deciding) one after another question (all cases) which fall under the eighteen titles (of the law) according to principles drawn from local usages and from the Institutes of the Sacred law'.57 And, it is unable to do so, then he may appoint Brāhmaṇas to by them, Nārada emphasizes the personal role of king thus - "After having seated himself on a judgment seat the king should be equitable towards all beings discard selfish interests and act the part of Yama Vaivasvata being just in the reward or punishment according to good or bad actions of persons..."58

Sūtṛi writers have prescribed a set of ideals and suggestions for the king to imbibe in the processing of dispensing justice. Manu says "what may have been practiced by the virtuous, by such twice born men as are devoted to the law that he shall establish as law, if it be not opposed to the (customs of) countries, families and castes (jāti).59 Further, this only suggests that certain general practices which stemmed from virtuous conduct of learned Brāhmaṇas and which mere in consonance with the customary laws could be legitimized. At another place, the Manusmṛti opines "(A king) who learns the sacred law must inquire into the laws of castes (jāti), of districts, of guilds and of families, and (thus) settle the peculiar law of each."60
Upadhyaya's studies of Kālidāsa's verses on law and justice tell us that the king's schooling in the scriptures as well as treatises on polity gave him a thorough knowledge of law with the help of which he was expected to administer justice. The punishment of the criminals in proportion to their crimes (Hindi Raghuvamsa, 1.6) required of the king a sharp grasp of the judicial laws (Hindi Raghuvamsa, 1.9) which alone could give him an idea of the legal remedies in proportion to crimes. The king was the protector (Gopta) of the people and he applied law to the ends of justice.

Manu enjoins that the king shall protect the inherited property of a minor until he returned from his teacher's house or until he passed his minority. Likewise, he urges the monarch to take care of the barren women, of those who have no sons, of those whose family is extinct of wives and widower faithful to their lords, and of women affected with diseases.

In the very next verse, Manu prescribes that "a righteous king must punish like thieves those relatives who appropriate the property of such females during their lifetime."

From Kālidāsa's writings we get to learn that the king sat in his court of justice along with his minister for law and justice and others as is evident from the word asmabhih used in plural. The court of justice was situated in the outskirts of the palace where the king sat at the proper time (Kale) marked out by the Śāstra and looked into the lawsuits. The seat of justice was variously described as Vyvahārasana, Dharmāsana and Karyāsana. The term Vyvahārasana, suggests Upadhyaya denotes the real capacity of the king as the dispenser of legal justice adjudicating on the points of law.

From the Kādaṁbaṇī we gather that in the morning the court was held. The Daśakumāracarita states that the king should look into the disputes of the people in the second part of the day divided into eight parts. Katyāyana śrīti prescribes the time for holding the court as three parts of the day after the first part i.e, from seven a.m. to noon. There were holidays on which the courts enjoyed holiday on 8th and 14th tithes, full noon day and amavasya of every month.

Katyāyana exalts the role of a righteous king in the context of law, like other śrīti writers.
- The king who looks (into causes) according to the sacred law along with the judge, the ministers, The Brāhmaṇas, the family priest and the assessors (sābhyaś) attains heaven. Elsewhere, he speaks where the king himself looks into all actions, according to the dictates of dharma, there the people behave well and reside in happiness. And – He (the king) should discard the teachings of politics and resort to the dictates of dharmasāstra (sacred law). This seems to be similar to Yājñavalkya assertion, where the latter says describing the rules of judicial procedure, that "the rule, is that the science of law is stronger than the science of politics."

Manu prescribed that – having fully considered the time and place (of the offence, the strength and the knowledge (of the offender), let him (firstly), inflict, that (punishment) on men who act unjustly. Likewise, Yājñavalkya spoke that the king divested of anger and avarice should administer justice, along with learned Brāhmaṇas, in conformity with the principles of legal science.

Here three instructions are combined –

that the king should maintain an unquestionable integrity and cool temperament, essential for maintaining balance

(1) he should take the assistance of learned Brahmanas,
(2) It should be in conformity with principles of legal science – or to say the rules of procedure.

Likewise, Viṣṇu enunciates that - let the king dictate due punishment for other offences also, after having ascertained the class and the age (of the criminal) and the amount (of the damage done or sum claimed) and after having consulted the Brāhmaṇas (his advisors).

A question could be raised as to whether the king himself could take cognizance of any offence within his realm and initiate a legal suit. Manu's voice was that neither the king nor his servant should cause a law suit to be started. This is opposed to the enunciation in Mahābhārata, where Pitāmaha permitted it. Nārada allows the king to recognize ten kinds of aprādhas or offences of which the king should take note of without being approached by the parties.
From Kātyāyana's use of words "Śucaka" and "Stobhaka" and the role prescribed for them as informants of and the role prescribed for them as informants of king, it appears that the king could have an independent stance in initiating suits in certain exceptional cases. Also, he explicitly tells that king should not initiate any law-suit under pressure from any litigants or for greed of wealth.\(^76\)

Manu forbids the king from being a witness of law.\(^79\) Also the text declares that neither the king nor any servant of his shall themselves initiate a lawsuit or hush up a case brought by some other men.\(^80\) Kātyāyana denounced that — “when a king directs (the judge or member of the court to do injustice to (to give a wrong decision in the case of) disputants, then a member of the court should be beseeched the king (that his order will lead to injustice) and should turn him away from wrong doing”.\(^81\) This appears to be thinking far ahead of its time. Kātyāyana is indeed a jurist with an eye for progressive components in the law of procedure. The fact that the king could be beseeched appeared to be more a deterrent clause than a practical one. There are no such hard instances. Nonetheless, the principle of accountability of the head of the State as a fountain of justice is remarkable by its appearance.

In the Viṣṇus ena's charter, we have an example of an order issued by a ruler endowed with subordinate titles like Mahākarttakritika, Mahādaṇḍandanayaka, Mahāpratihāra, Mahāśāmanta and Mahārāja. The designation might be indicating either a royal agent of a judge of a superior court or he may be like the present day Legal Remembrancer, inviting the attention of the king to what was done or left undone.\(^82\) It seems to be a plea (ṛcārasthitī patra) for incorporating elements of prevalent customary law that were either existent or were aspired to be brought into practice.

**King's Judicial Aides**

In the task of dispensing justice, the king was supposedly assisted by the learned Brāhmaṇas and other court personages. Manusmṛti says — "But if the king does not personally investigate the suits then let him appoint a learned Brāhmaṇa to try them."\(^83\) This learned Brāhmaṇa along with three other Brāhmaṇas versed in Vedas formed what Manu calls the ‘court of (four faced) Brāhmaṇa. Further, he says that even a despicable Brāhmaṇ who
subsists merely by the name of race could interpret the law for
king. The commentators analyzed the said verse to say that if
necessity be, Manu permits even Kṣatriyas and Vaiśyas to be
employed for this purpose, but never a Śūdra.84

The Arthasastra prescribed that there shall be established
a bench of three judges who shall hold court a frontier posts, sub
district headquarters and provincial headquarters (samgrahanas,
dronamukhas and sthāniyas).85 Their text which suggests that
impersonation might have been prevalent. In verse 3.20.17, the
text says – “No one shall pretend to be a magistrate and examine
a suspect under oath”. Further, there is a verse what exhorts the
judge to take an initiative in certain types of lawsuits. It says –
“The judges themselves shall take charge of the affairs of Gods,
Brāhmins, ascetics, women, minors, old people, the sick and
those that are helpless (e.g. orphans) (even) when they do not
approach the court”. How and if at all this could have been
practiced seems difficult to visualize. The idea innate, however,
implies that judges ought to take care of those revered and those
vulnerable across the society.

Visṇusmrī too underlines the unanimous role of the
Brāhmaṇas in the legal matter as advisors.86 Kātyāyana says in
the absence of the king, a Brāhmaṇa who is well versed in the
science of law should be appointed as Chief Judge to preside
over the judicial proceedings.87 Brhaspati declared the duty of the
Chief Judge (Pradadvīka) to be to put question to the applicant as
well as to the respondent and to declare whether a prime facie
case could be made out. Because of this he was called
Pradadvīka88, as Kātyāyana has also defined – “It is settled that
one who asks questions with reference to the matter in dispute is
a ‘prād’ (questioner), he who distinguishes in that (dispute as to
what party is in the right) , is hence called pradadvīka (a
judge)”.89

Nārada considered Pradadvīka as one thoroughly
conversant with the eighteen titles of law with their numerous
Sub-divisions. He should be an expert in the science of politics,
being at the same time a devoted student of revelations and
traditions, he should examine the law to the point under
consideration and dispense judgment after careful deliberation.90

Kātyāyana prescribes that a king should appoint such a
judge who is not cruel, who is sweet tempered, kind, who is
hereditary, clever, energetic and not greedy.\(^9\) He, too like Manu avoids a Śūdra in the rule as judge, but permits the 'Vanij', the merchant. He clearly states – “Where a brāhmaṇa (evidenced with qualities enumerated) cannot be had (the king) should appoint a Kṣātriya or a Vaiśya proficient in sacred law, but he (the king) should carefully avoid a Śūdra (as a judge)”.\(^9\)

Hence, the overall scenario was that a king was to administer law and justice personally by attending the sabha (the court house) and was to be assisted by advisors, the prādēvīkā (judge), amatya (minister), purohita (family priest) and assessors (sabhyaś), Kātyāyana adding vanij (merchants) to this list. If he is personally unable to carry out the task, he could appoint a learned Brāhmaṇas as substitute (Kātyāyana – 63-67, Manu, VIII.9, Yājñāvalkya, II, 37.)

Interestingly, the judges are pressurized by moral injunctions prescribing the rewards, guilt and penances according to their performance. Manu says, “When an injustice is done, one – fourth of the sin attaches to the wrong doer, one – fourth to the witness, one fourth to the judges and the remaining one fourths to the king”.\(^9\) The Viṣṇusmṛti enunciated that – “that detestable judge who dismisses without punishment such as deserve it, and punishes such as deserve it not, shall incur twice as heavy a penalty as the criminal himself”.\(^9\) Likewise Yājñāvalkya says that if the members of the judicial assembly give any decision contrary to the law and custom through affection, temptation and fear, each of them would be liable to double the punishment provided for the caste.\(^9\)

Kātyāyana smṛti states that a judge particularly assessors conversing, privately with a party are liable to punishment.\(^9\) Further, it is the duty of the Sabhya not just to decide justly to also to prevent the king from being unjust.\(^9\)

In two other verses Kātyāyana describes the ultimate fall out of judges misrule. In verse 72, he says where the sabhyaś decide (a matter) in violation of the sacred law there dharma (justice) being overcome by adharma (injustice) does undoubtedly destroy (the king). And in verse 73, he declares where justice is slain by injustice while the sabhyaś look on (with apathy), there the sabhyaś (members of the court) are themselves destroyed.
These ideals hence prescribed for the king and his judicial aides, were not only lofty and high sounding, but also questionable as to how far these actually went to the court or were professed by the jurists. These assertions however, bring to table the point that in the early days, the judicial system was laden with high ideals and a sense of juristic wisdom was coaxed upon the judges to imbibe and practice. Manu's assertion in the share of sins makes no sense unless we consider it to be an assertion towards declaring the shared responsibility of various agents of justice. Justice was never practicable by a single authority. It has always been a concept that needs to percolate down to the grassroots, with each level performing its said role.

The Aśokan edicts reflect upon the role prescribed for the judicial officers by Emperor Aśoka. The administrators or the judicial officers were designated as Mahāmatras and they were the highest class of officers. Those who looked after religious matters were called Dharmamahāmatras. The sutas, too belonged to the same class. Other officials of Aśokan records are the Prādesika, Rājyuka and Rāstrika who were styled as yuktā who was like governor of the group of districts. Some of these may have been of the mahāmatra rank.

Aśoka emphasized on the need of integrity on the part of there officials in the administration of justice. In the separate Kalinga Rock Edict, he considers all men as his children, who he would like to associate with all kinds of welfare and happiness in this world and next and exhorts his judicial officers to understand this policy and adopt an impartial course of justice. But it says “success may not be attained on accounting a certain (group) defects or mental inclinations viz, any, sudden loss (of mental balance), harshness, haste or impatience want of application (or indiscrimination), laziness and awareness to you should desire that this class (of defects) may not be yours. The roof of the entire thing lies in the absence of sudden loss (of mental balance, or of perseverance) and also absence of haste in the application of the principles (of justice). The man who becomes languishing or weary cannot exert or get up to more properly. But (you are to) move, advance and proceed on (for reaching the goal)”.  

One may argue that such assertions cannot be taken, on face value. But this assertion of Aśoka is important because, here we have a state head talking about law and its course, a
royal charter legitimately formalizing the ideals of justice and well being to serve as guidelines for judicial advisors and an instance where a king exhibits his own ideals by exhorting his officials to inculcate integrity of a high order. We should not assert that this is an example of textual law in practice, for matters of integrity can never be generalized or put as laws, secondly, these again talk about the ideals that needed to be put into practice. More than examples, they serve as aspirations representative of their times. There are however, no windows providing the actual working of it, except an impression that we can gather from the plays of the time, which again are literary sources of a particular gain.

What Āśoka actually did in the judicial administration is learn from the P.E. 4\textsuperscript{96} - The beloved of the King. Priyadarśi spoke thus-

"This Dharma - rescript has been called to be written by me (when) crowned twenty six years.

My Rajjukas are occupied among the people, among many hundred thousands men (The hearing of) petitioners or (conduct of) by them has been made independent of me, in order that the Rajjukas may discharge (their) duties confidently (and) fearlessly (and) may confer welfare and happiness on the rural people and benefit (them). They should bear in mind what causes happiness or pain (to the rural people) and learning (themselves) devoted to the Dharma, should exhort the rural people, in order that they (the rural people) may attain (happiness) in this world and in the next world.

They may discharge (their) duties unperturbed, fearlessly and confidently for this (reason) has (the hearing of) petitions or (the conduct of) trials by the Rajjukas been made independent of me.

This indeed is desirable that there should be uniformity in judicial procedure as well as uniformity in sentences (passed).

And even as far as this do I grant (viz) to imprisoned persons whose trials are over (and) who have been sentenced to death, a respite of three days is allowed by me.\textsuperscript{99}
Three important facets emerge out of Aśokan judicial administration apart from the ideal of welfare of all people it sets up—

First, he makes the Rajjukas independent of himself, the monarch thus emphasizing the clause of impartiality of judicial authority, especially from the executive authority.

Second, concepts like uniformity in judicial procedure (Vyavahārasamatā and daṇḍasamatā) to be desired and practiced by legal personages reflect the emperor’s juristic instincts and conception of enlightened justice based on uniformity of procedure and judgments.

Third, his giving respite to prisoners sentenced to death bring to light three things — that capital punishment was not abolished by Aśoka, who believed in highest non-violence the principles of ahimsa. He was ready to give some respite (in this case three days) to such prisoners convicted to death during which their relatives could present an appeal to the Rajjukas (it probably could be a money fine) and if there be no relatives of such a convict he may undertake some penance such as giving gifts or observing fasts. The principal of re-trial or revoking the judgment already declared is also remarkable is that he would be blessed with permission in heaven.

This seems to be departure from what the textual sources speak on it — Manusmṛti words it that “whenever a suit has been decided or a fine declared a wise man should consider it as (finally) decided, and must not annul it”. In case of punishment other than capital punishment, Nārada however allows on re-appeal — The ‘retrial’ is addressed as punar-nyāya’ in the texts and was allowed where one of the litigants mostly originated from the lower courts to the higher and finally to the king.

Kauṭilyan Arthasastra uses the term ‘dharmāsthā’ in plural and less of Sabhāyas or Sabhāsads. The dharmāsthās may have been experts in law. Sabhāsads may not have been so. The dharmāsthās were required to bring into the Vyavahārika arthas i.e. cases arising out of mutual transaction.

Kālidāsa refers to a Minister holding charge of twin portfolios of Revenue and Law and Justice. It seems that the Minister Piṣuna in Abhijnansākuntalam as rightly studied by
Upadhyaya must have taken to his charge of the portfolios of Revenue, Law and Justice apart from Finance. This Minister is referred as sitting in a court and disposing cases. The Minister of Law and Justice sat with the king when the later heard cases in his seat of justice (Vyavahārasana) and prepared a report of the cases thus disposed of.

When the king was indisposed to sit in the open court, the Minister of Justice, personally received petitions from citizens, examined them and then sent them to the king in his seraglio. Upadhyaya writes this has been graphically described by Kālidāsa as an incident of common practice, as can be inferred from the King's following utterances — "Speak to Minister Pisuna with my words thus, owing to having kept awake for long, it was not possible for us to occupy the judgment seat today. Whatever business of the citizens may have been looked into by his honor should be handed over, after being put on record".

In Kālidāsa there is a reference to Nāgarika as the Chief Police Officers of the town. Upadhyaya says the Nāgarika of the Abhijñānaśākuntalam was perhaps like the Kośṭapāla of the later times, the head of the establishment of the guards of the city. In the play, this official leads a criminal to the Court of justice with the help of guards (rakṣinah)

In the Vikramorvāṣi, too, he is connected with the city administration. The king entrusted him with the taste of hunting a winged offender when at evening, it goes to its resting place. The reference by the king to Nāgarika of the Vikramorvāṣī suggests an officer of higher grade than the one referred in the Śākuntalā. Upadhyaya studies that the latter was a petty officer, placed immediately over the guards.

The court proceedings were probably started by the Sodhanaka, the Court persons entering to arrange the seating in the Court, when the seats were neatly. The Judge accompanied by the Sreṣṭhin, Kāyastha and others were conducted to the court room by the Sodhanaka. Next, the Judge ordered the Sodhanaka, to go out of the hall and to call the plaintiff. Then the judge use to be generally entering the court. Then the judge allowed the plaintiff to put up his case and ordered the Kāyastha to write from the statement which was first recorded in the floor to make it easy for correction.
The sabhā or some sort of judicial assembly has been described by nearly all the major smṛtis as consisting of the king, the Chief Judge and the assessors. It needs to be distinguished from the Vedic connotation of Sabhā which use to be an associate of learned men, attended by the king frequently. This sabhā used to be a part of selected men working under the larger assembly, the Samiti as explained by K.P. Jayaswal. Moreover, the sabhā, used in the legal context by the Smṛti writers was a body instituted to attend to the administration of law and justice. Its members were called Sabhya and they participated in the judicial proceedings, according to the Smṛti writers.

The king was supposed to attend to the administration of justice along with these Sabhyas, as comes out from Yajñavalkya’s enunciation. The Sabhās originally consisted of the Brāhmaṇas alone, while Kātyāyana distinguished between the Brāhmaṇas and other Sabhyas who in his days consisted of merchant and class of good birth and conduct, aged, wealthy and free from greed.

From the inscriptions, we came across number of officials and staff associated with law, consists and administration of justice. The Chammak Copper Plate grant of Maharaja Pravarasena II refers to the dharmāsthana or the court. From the grants addressed to various officers, we came across references about officers relating to the administering of law and justice. The excavations carved out at Basarh (ancient Vaisali) by Bloch, brought to light numerous clay seals which were issued by Prince Govinda Gupta, it mentions various officials of his administration including the Mahādānḍānāyaka or the Chief Justice and Vinayasthitī Sthāpaka the Minister for Law and order.

The two Guhila grants, one of Bhavihita (Harṣa_ year 48 and another of Babhata (Harṣa) year 83 mention the judicial and police officials. The order of Bhavihita is addressed to several officials, including the C’ lauroddharanika (Police Officer to deal with cases of theft; and dandaṇḍapāsika (head of a group of policeman). There are many seals of the Gupta period belonging to simple dandaṇḍapālakas. The revised Corpus Inscriptionum Indicarum Volume III has analyzed the use of three
administrative terms together – (1) Mahādaṇḍanāyaka – Agniguptasya, (2) Daṇḍapas – adhikāraṇasya and (3) Yuvarāja bhattarakapadiya – bālādhikaṇaraṇasya. Bloch interpreted it as judge while R.D. Banerjee took it in the sense of principal judge', though later on he renders it by general. This term is mentioned thrice in the Allahabad Pillar inscription. In this, the officer who got the prasasti executed, Tilakabhatta, the officer who composed it, celebrated Harisena is mentioned and even his father, Dhruvabhuti are called simply Mahādaṇḍanāyaka. In South Indian records, there is a reference of a Brāhmaṇa and his father Kārana as Daṇḍanāyaka. This shows that more than being just a connotation for an officer connected with law and judiciary, it was a sort of hereditary title of the nobility. There is a Kannada inscription (outside in period of study, dated Śaka 1030) which speaks of Malliyakka as Daṇḍanayakiti, on account of not here husband but rather here father Isvaramayya who was a Daṇḍadhinatha or Daṇḍadhipa. This is similar to the titles of Mahārathi- Mahārathivi, Mahābhoja – Mahābhoji and Mahāsenāpati, Mahāsenāpatinī.

In the earlier Corpus Inscriptions (Vol. 111, 1886), J.F. Fleet remarked the Mahādaṇḍanāyaka, lit, a great leader of the forces, is a technical military title. Moreover as danda means ‘fine’ and ‘rod’ (of chastisement) as well as army or forces, the titles which have this as prefix are explained as judicial or military. Bloch rendered it as ‘judge’ while Sir John Marshall called him the ‘Chief Officer of Police’ Vogel explained him, as a high probably judicial official, and ‘Police officer’.

Bhandarkar, however concludes that in interpreting this title in Gupta epoch, Daṇḍanāyaka is to be taken as an equivalent of Mansabdar. He has based his conclusions from Rājatarangini and a Bhaṭa seal – which – runs – Mahāsvapati – Mahādaṇḍanāyaka – Viṣṇurakshitapad – anugrihiṭa – kumāramatī – adhikāraṇāṣya. Here, a Mahādaṇḍanāyaka Viṣṇurakshita is mentioned as Mahāsvapati or Supreme commander of the cavalry. Further the grade of Daṇḍanāyaka surmised long after the Gupta rule and was ultimately merged into the Mansabdar of the Mughal period.

On the other hand, it did not connote a ‘general’. In number of inscriptions like the Nagarjunikonda inscription, the charter of Vakatāka King Pravarasena II and another plate of a Pāla king, the Senapati is mentioned distinct from the Mahādaṇḍanāyaka.
Another officer with the prefix of Daṇḍa is Daṇḍapāsika, mentioned in the legend Daṇḍapāsikādhikārāṇsya on a Basādh seal Daṇḍapasika is distinguished from the Chauroddhāranika in the Valabhi and Chamba plates as well as Pāla and Sena charters. The Deo-Baranark inscription of Ivitagupta II also mentions Daṇḍika which is not a same as Daṇḍapasika. R.G. Bhandarkar finally concludes that— to him — Dandika or Daṇḍasakti implies a Kotwal or City Police Magistrate, Daṇḍapāsika to the Daroga or District Superintendent of Police and C.āuroddharanika, to the head of the Detective Bureau, whose duty is to apprehend a thief. “The Mallasarul Copper Plate inscription of Vijayasena mentions them as Police Officers”. western India, the Pālitana plate of Dharasena II and Valabhi grant of the same king refer to dāqcijapasika as officer in charge of punishment and criminal justice.

The charter of Viṣṇuṣena, Samvat 649, record an order issued from the Vāsaka (residence) at Lohāta by a ruler named Viṣṇusena (called Viṣṇubhata in the endorsement) who is endowed with the subordinate titles like Maḥākarthakritika, Maḥādaṇḍanāyaka, Maḥāpratiḥāra, Maḥāśāmanta and Maḥārājā. The actual meaning of Kartta Khtika is unknown, but it may have indicated a royal agent or a, judge of a superior court or an officer, like the present day legal Remembrancer.

The order of Mahārājā Mahāśāmanta was addressed to subordinate officers such as Rājan Rājputa, Rājsthaniya, Ayuktaka, Vinyutaka, Saulkikā, C.āuroddharanika, Vailabdhika, Drangikā, Chāta Bhāta and other officers. Of these, the Chauroddharanika appears to be a prefect of the police while Vailabdhika may have been the custodian of recovered stolen property as the ‘yukta’ of the Manusmṛti (VIII. 34).

In ācāra 15 in Viṣṇuṣena’s charter, says Vānikasya haste nyāsako nā sthāpaniyah, meanings the offers meant for the King are not to be deposited with the vārika. Monier Williams recognises the word ‘nāga vārika’ in his Sanskrit Dictionary and explains it as an elephant drummer or keeper and ‘the Chief person in a Court or assembly’.

The Charter in ācāra 28 names ‘uttarkulika’ who seems to be another class of vārika or official, associated with the law court.
The next ācāra (29) says uttarkulikā – vārikānam = eva kārana – sannidhan Chhatrena trir= aghushitanam nirupasthanad = vinaya rupaka _ dvayam sa – padam saha dharmikena. Here, 'Kārana apparently implies short of adhikarna, a law – court' and chhatra seems to indicate a peon or constable. It implies that, there was no excuse for the absence of the varikas of the uttarakulikā class when summoned to court by a court peon. The fine for such offence was two and one fourth silver coins if there was any good reason for absence.

The charter also mentions the clerks who wrote down the statement of cases in the law court (Vyavahāra – abhilekhitaka) and tells that if they were absent from the court after mid-day, they were liable to a fine of six and one-fourth silver coins.

In the times of Harṣa, the Banskhera Copper plate and Madhubana Copper – Plate refer to an officer - Pramatār Madhubana Copper – Plate mentions the dutaka as Maha pramatār, mahāsāmanta Skandagupta. The etymological meaning however, points to a person who must have been either a judge or an assessor of revenue. The Valabhi grant of Dhruvasenā III, (A.D. 654) mentions the messenger for this charter was the pramatr Śrī Nāga.

The Sanchi Stone inscription of Chandragupta II (462 A.D.) mentions Panchmandalya (modern Panchayat) as the village jury of five or more persons. Sircar says, rājakula means a person of royal family/also it means the King’s Court of justice.

In the inscriptions, another officer that we came across in the area of law and justice is Gaulmiḍa. He is mentioned in the Bihar stone pillar inscription of Skandagupta. In the Hirahadagalli copper-plate, inscription of Sivaskandavarman, A.D. 438, in South India, the word Gaumika is held by Buhler to stand for gaulmika. Gaulmika is explained as an officer in charge of a military squadron called ‘gulma’. He appears to be a military officer performing police duties.

It also mentions an officer called Araksadhikrta, who either a magistrate was looking after the watch over villagers or towns, or an officer responsible for protection of the king’s person (D.C. Sircar, Indian Epigraphy, p.357). The Bhamodera – Mohota Plate (582 A.D.) of the Maitraka Chief Dronasimha of Kathiawar offers a small list mentioning among other officers, Drangikā. Drangikā
derived from dranga similar to udranga may have implied, the officer of a watch station.

Eran stone pillar inscription of Samudragupta (335-76 A.D.) mentions Dyuta. Sirca says, he may have been the head of the department of superintending the gambling house.

Prādvivāka or the judge is mentioned in the smritis of Manu, Brhaspati and Katyāyana. Brhaspati explained that the judge examines the plaint in the question and answer and since he speaks gently at first (pragavadati) and so is called 'prādvivāka'. Katyāyana makes a sandhi vigraha and divides the word into prād and vivāka.

In the plays, we come across different types of judges with different mental constitution. In the Daśakumāracarita, words from the mouth of the cynical jester Vihārabhadra to the king are that the judges decide matters just as they please after taking bribes and the king incurs infamy and the sin of doing injustice. Sometimes, the judges showed partiality towards the relatives of the king. In the Mrchhakatika, the judge probably was unaware that the accused was the brother-in-law of the king and so postponed the case for the next day. But when Sakara, brother-in-law of the king threatened to replace the judge by the king, the judge had to change his decision and had to hear the case on that very day.

It means the judge could decide upon which case to hear and which one to postpone people, who were influential might have had at least same say in influencing the judge in matters of hearing from the Mattavilāsa – Prahasana, we came to know that 'riches were required to go to a court' indicating a degree of corruption in the courts of South India.

The Court proceedings were supposedly started by the Sudhanaka, the court people entering to arrange the seats in order. When the seats were ready, the judge accompanied by the sresthin, kāyastha and others were conducted to the court room by the ‘Sodhanaka’ (Mrchhakatika, IX, p.457). Once they were seated, the judge ordered the Sudhanaka to summon the plaintiff. The judge use to be greeted on entering the Court. The judge then permitted the plaintiff to take down or record the statement which was first recorded on the floor so as to make it easy for correction.
There are a number of enunciations which assert the responsibility of the Judge and the assessors. Yajñavalkya says if the members of the judicial assembly gave any decision contrary to the law and custom through affection, temptation and fear, each of them would be liable to double the punishment provided for the case.  

The Kātyāyana Smṛti, too states that a judge, especially assessors conversing privately with a party, are liable to punishment. Similarly, an assessor who awards decision without proper consideration shall pay twice the amount involved in the suit. It was the duties of the Sabhya to not only decide justly but also to prevent the king from acting unjustly. Brhaspati prescribed banishment and forfeiture of all property of such Sabhyas.

Kātyāyana says that when a king directs the judge or court to do injustice, he could be secluded by a member of the court and be turned away from wrong doing. He says, when a sabhya decide wrongly through affection, ignorance, greed or in fatuation, he should be punished, for then he is not sabhya (becomes unworthy of being a member of court).

Where an error has been made by the assessors, Kātyāyana tells he has to make good the loss occasioned by his decision.

These clauses are important as they not only reflect the ideal of integrity of judge but at the same time bring the judges themselves within the fold of punishment and accountability.

The Courts

The king being the fountain head of justice, it was his prime duty to ensure efficient administration of justice. If for some reason, the king was unable to attend to the administration of justice, the prāqṭivāka of the Chief Judge supervised and controlled the proceedings of the court. The king and the judge were assisted in their task by the Sabhyās, who were the assessors. In Manu and Yajñavalkya’s time, it used to be a Brāhmaṇa court but by the time of Kātyāyana, even merchants who belonged to a guild, were of good purity, character and fulfilled other eligibilities could be appointed.
The Arthasastra gave that there were two classes of law courts - the dharmasthiya (साधारण) courts and the Kantaksodhan courts (literally, the courts for the removal of thorns or disturbances). As for the 'vyavahārasthāpana or composition of the court, the dharmasthiya court constituted of three persons, proficient in sastras or three ministers (मार्गयिक) who together heard the cases. Similarly, in the Kantaksodhan court, three dharmātyas or assessors (pradesas) decided the cases.

A dharmasthiya court had within its jurisdiction, such cases which arose from personal grievances of one or few individuals against another or few individuals and secondly, here the punishments were in fine, not very heavy. It seems that the dharmasthiya court had no jurisdiction to penalize heavily or pass judgments such as death. A Kantaksodhan court on the other hand looked into matters affecting the king, the government and public at large or even heinous offences like murder.

Fines for grave offences could be high and the Court, it seems had the power to inflict capital punishment, with or without torture according to the gravity of offence. A dharmasthiya court was authorized to try the cases bearing on these matters.

- i) Validity of contracts
- ii) Violation of contracts of service
- iii) Relation between master and servant, employer and labourer.
- iv) Slavery.
- v) Recovery of debts.
- vi) Deposits
- vii) Rescission of Sale.
- viii) Resumption of Gifts
- ix) Robbery and violence
- x) Assault
- xi) Defamation
- xii) Gambling
xiii) Sale of Property other than the owner  अस्त्याधिकारिणम्
xiv) Rights of ownership  स्वस्त्याधिकारिणम्
xv) Boundary disputes  ग्रेवाधिकारिणम्
xvi) Construction of Buildings  वास्तुक्रम्
xvii) Sale of house property  वास्तुक्रमः
xviii) Damage to agriculture, pasture  वनादेशक्रमोऽव्यवहारणम्
xix) Miscellaneous hindrances  अन्न्यः वादोऽव्यवहारणम्
xx) Duties of man and wife  विवाहसंसुल्लभम्
xxi) Partnerships  सम्युपहसङ्गरसुल्लभम्
xxii) Inheritance and succession  दर्श्यभिवाहः
xxiii) Miscellaneous offences  प्राकृतिकान्ति
xxiv) Rules of procedure 144  विवादपदनियन्न

The Kantaks' odhan court, on the other hand had within its jurisdiction, such as protection of artisans, merchants, measures against national calamities, detection of criminals by ascetic spies arresting robbers on suspicion or an act, discipline in government departments capital punishment with or without torture, improper social intercourse etc.

Besides, these headman and elders of the village supposedly played an important role in settling disputes. The headman could even 'deport' out of the village under his charge a thief or an adulterer if such a step became necessary. 145 The king with his learned Brāhmaṇa formed the highest court of appeal. There were probably courts in favour forming the headquarter of villages and in terms of headquarters of 400 villages apart from the royal law court.

The text of Manusmṛti says 'where three Brāhmaṇas versed in the Vedas and the learned (judge) appointed by the King sit down, they call the court of (four faced) Brāhmaṇa'. 146 Yajñāvalkya mentioned three types of local courts, puga, sreni and kula. Brhaspati too gave the same sequence of courts and ordained that an appeal shall be to the sreni from the decision of the kula court and the puga court from the decision of the sreni court.147

According to Nārada, gatherings, corporation, association etc. are the other tribunals invested with the power of justice, in addition to the court established by the king and the king himself
of these, each succeeding one is, superior to the one in the preceding order.  

This court mere like the panchayats and they were not however, private or arbitrary courts but people's tribunals which were a part of the regular administration of justice, and their authority was fully recognized.  

Brhaspati, explains that 'when a cause has not been investigated by a kula tribunal it should be decided after due deliberation by companies (of artisans)' when it has not been examined by companies, it should be decided by assemblies and then by the appointed judges and finally the king'. Further, the tribunals, other than the king and the one presided over by Chief Judge, had no jurisdiction in violent crimes or disputes involving violence (Sahasra). The king alone had the right to impose fines or corporal punishment.  

Brhaspati has entailed the functions of the guild courts. The right of making laws for the corporation and for settling disputes is given to farmers, craftsmen, cowherds, moneylenders, robbers, actors and artisans. When a dispute lies between chiefs and the subordinates, the king shall interfere. Further, he even suggests that for the forest dwellers, the court shall be held in the forest, for warriors in the camp and for merchants in the caravan.  

Sir Henry Maine considered these popular courts as stemming out due to the absence of regular royal court at village level owing to the prevailing anarchy in the country. But this seems to be inconvincing as popular courts were always encouraged as a part of established policy of the government. Guild courts were welcomed and encouraged for these settled the matter at local level and lessoned the burden of central administration, thereby contributing in imparting justice.  

In fact, the guild courts exerted some kind of local pressure, in the sense that members of the guilds use to be in possession of relative facts of any dispute. The presence of such compeers' infact acted as deterrent to telling lies blatantly in the court.  

The Chammak Copper-plate grant of Maharaja Pravarasena II refers to the dharmasthana. Naradasmi
mentions 'dharmāsava' as the king's court of justice. S.K. Aiyangar considers 'dharmasava' as a permanently appointed hall of justice where the committee of village sabha could assemble and carry on their work, the committee was in continuous session and more regular than any other committee. But from the nature of work it did, C. Minakshi has opined that it seemed to be a court of the Central Government. The Mṛcchakaṇṭha mentions the court building as adhikārāṇamandapa.

Kātyāyana describes the gradation among these who decide cases – family, council, corporation, assemblies, one appointed (as a judge) and the king, these have the responsibility in (deciding) disputes. Each succeeding are out of these is superior to the preceding one.

The Nālanda Spurious Copper Plate Inscription of Samudragupta mentions Aksapataaladhikrta, or the keeper of records, Sircar explained Aksapataala, as the court of law, a depository of legal documents.

The king hence was the apex court of appeal with the tribunals under his jurisdiction. The right of imposing fine or corporal punishment was the sole prerogative of king.

Kātyāyana describes Vyavahāra as –

When the ramification of right conduct, that together are called dharma and can be established only with effort have been violated, the dispute (in a law court between plaintiff and defendant) which springs from what is desired to be framed (such as a debt) is said to be Vyavahāra. ‘Vi’ is employed in the sense of various, “ava” in the sense of “doubt’ ‘hāra’ means ‘removing’, vyavahāra is so called because of its removing various doubts.

Procedure is defined by Kātyāyana further as ‘what the plaintiff complains of (before the court) is the root of the litigation, the two springs (of vyavahāra).

Judicial procedure

‘Vyavahāra’ is the Sanskrit terms used both in theory and practice for judicial procedure. Nārada has described judicial
procedure at length, dividing into two types – one with a wager (sapana) and the other without a wager. Brhaspati mentions a few peculiarities and tells about the judicial assembly in detail. Judicial procedure entails a review of the trial, summons, restraints, surety, retrial and the jury system, plaint and reply witnesses and documents etc. are said to be non-rendition of what is due and urgency. Next, vyavahāra tells is said to have four feet, i.e. stages, viz. the plaint, the defence (or reply), the deliberation (as to binder of proof) and the adducing of proof. 

The judicial trial in the smṛti period seems to have been attended by the King personally. In his absence, it was conducted under the supervision of the prādvivāka, or the Chief Judge. Manu prescribed that the king, desirous of investigating law cases, must enter the court of justice, preserving a dignified demeanor, together with Brāhmaṇas and experienced councillors. There, either seated or standing, raising his right arm, without ostentation in his dress and ornaments, let him examine the business of suitors.

Here, D.B. Diskalkar has pointed out a similarity in raising hand (as mentioned earlier in the chapter)in the Girnār Rock Inscription of Rudraman (Saka Year 72-150 A.D.) (which actually speaks of the great Maurya Emperors Chandragupt and Aśokā and their interest in irrigation works in such a distant country from the capitals as Kathiāwād.)

The sanctity of the court and judicial trial is emphasized by Manu in these words – the court must not be entered or the truth must be spoken, a man who either says nothing or speaks falsely becomes sinful. At another place, Manu says, as a hunter traces the kin of a (wounded) deer by drops of blood, even so the king shall discover on which side the right lies, by inferences (from the facts).

The trial began only when the plaintiff narrated his grievance caused by the defendant, who is then summoned, and the king if satisfied that there is sufficient ground of investigation, the trial of case began before him. Both the parties had to furnish surety before the commencement of the trial, on the failure of which, he was kept under the charge of a court officer called sādhypāla. After the filing of the complaint and reply by the defendant the assessors passed judgment after adducing to the prōofs. The Chief Judge decided which side would begin the
case. However, Nārada and Katyāyana tell that this right belonged to the one who suffered greater injury – Brhaspati, advocated taking the castes of the concerned parties under consideration.

The charter of Viṣṇusena (Samvat 649), which enlists seventy two acharas says, in ṛcāra eight,

Arthi – pratyarthina vinā vyavahāro na gṛāhyah i.e. a law suit could be taken up for disposal only when the complainant and the defendant were both present and never in the absence of both parties.  

Further, in the next achara, it recommends that –

Āpanē āsanasthasya chhalō na gṛāhyah which implied (1) the pretext of being engaged in work at the shop should not justify the absence of a party to a law-suit from the court (of 8 above) or that no careless statement of accusation was acceptable from a person who had been at the time of occurrence busy in selling things in shop or market.

Only a proper complaint was acceptable to the court. Ācāra 17, of the Viṣṇusena Charter tells –

Āvedanakēna vinā utkrishti na gṛāhyā

Āvedanaka indicates a formal complaint in the court' while utkṛṣṭhi, derived from Pali Ukkutthi and Sanskrit utkṛṣṭhi may imply 'waiting. Hence, a proper complaint and not mere wailing, was acceptable to the court.  

The śṛṅtis have described the topic of summons. In the earliest times, there was no means at court's behest to summon the accused except that the plaintiff could produce the defendant. However, Nārada, Brhaspati and Katyāyana have spelled rules for summons. The king could summon either through a letter under seal or through an attendant or defendant. There were rules for who should not be summoned. These provisions may be supplemented with the provisions communicated in Viṣṇusena's charter. Ācāra 21 in this charter says –


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This implied that persons engaged in such works as sacrifice or a marriage ceremony should not be summoned to court to refute the charges against him. *Artha* may refer to ‘originating’ in wealth (*artha mula*) or civil (and not *himsā mula* or criminal case) or there may be reference to two different sets of persons who should not be summoned viz. (1) one engaged in *yajña*, etc. (like *Ṛhaspati*, p.22 says – *saur – oḍvah oḍyatō –* etc are in the list of the *n-asēdhyāh* or who could not be summoned) and (2) one involved in other cases (as *Yajñavalkya* says at a place *abhiyuktam cha n = ānyēna*).¹⁶⁶

In the ācāra preceding this, the charter says –

Grih – āpana sthitam mudrā – patraka dūtakaih sāhasa – varjjam – āḥ vānam na karaṇiyam.¹⁶⁷

i.e. persons engaged in the work at home or at their shops should not be summoned to court by means of a seal ring or letter of by a messenger unless they were involved in a criminal case.

Ācāra 29 of the same charter tells about a situation of the absence of *vārika* class.¹⁶⁸ It seems there was no excuse for the absence of the *varikas* (officials) of the *uttarakulkā* class when thrice summoned to the court by a court peon. The fine for the offence was two and one-fourth silver coins even if there could have been a good reason of absence.

In this context, the next clause seems quite interesting that if the clerks who write down the statements of cases in the law court were absent from the court after midday, they were liable to a fine of six and one-fourth silver coins.¹⁶⁹ No pretext tells the acara 31, of the absence of *Uttarakulikā – vārikas*, absent from the court (a – *madhyāhnād = ūrdhavam* after mid day was to be accepted.

*Kātyāyana* advocated that a king should not summon a young women whose family is dilapidated, a lady of good family, a women who is recently delivered a maiden who is of higher caste than the claimant (since) these are declared to be under the tutelage of their kinsmen.
Summoning is declared with cases of these women on whom family depends, women who are unchaste courtesans, women without family and degraded women.\textsuperscript{170}

Fines were there for disregarding orders of summons.

Restraint, i.e. asedha was probably some sort of impositions upon the movement of the defendant either by plaintiff or by the court pending the arrest of the defendant, if there was an apprehension that the latter could abscond. However, in times of Nārada, a royal order or court order was necessary to arrest the defendant. Kātyāyana made concessions with respect to arrest for husbandmen, or soldier or one who has already promised. Law of surety was present too, in early procedural law. This surety was for the appearance of the litigant parties as distinguished from the surety for monetary transactions. However, reservations seem to have existed with those who could act as sureties. Kātyāyana tells if any of the parties failed to provide a surety, as required by law, he would be kept in charge of a person called sādhyapāla, who was like a modern bailiff.

Kātyāyana vividly puts forward the method of questioning the plaintiff (The King or Judge) should question the litigant (who approaches) at the proper time (of the Court) who bows (to the King or Judge) and who stands before him ‘what is your grievance, what is the injury done to you, don’t be afraid, speak out, man!’ The (Judge) presiding in the court should ask ‘by whom, where, at what time and why (was the grievance or injury caused)’ when this asked whatever he replies should be considered (by the judge) with the assessors and the brahmana and if the cause he judicially entertain able, then he (the Judge) should deliver the (Court) seal to the plaintiff for calling (the defendant) or he should order the (Court’s) officer (to call the defendant).\textsuperscript{171}

Kātyāyana has same interesting provisions regarding the nature of plaint – The plaint that is opposed to (the interests or usages of the country, that is prohibited by the king, that contains a mixture of several titles of law, does not succeed (i.e. must be rejected as bad).\textsuperscript{172} Further, that plaint is regarded as unacceptable which lacks (the mention of) the time and place (of the cause of action), that awaits the (statement of the) material (dravya) claimed or the amount and that is wanting in the
dimensions of the thing claimed. It (the plaint) should be concise in words, abounding in meaning (contexts), unambiguous, not self contradicting, free from arguments that would defeat it and capable of refuting opposite statements.\(^{173}\)

Elsewhere, Kātyāyana tells – He (the scribe) who writes down the words of the words of the plaintiff or the defendant be punished as to thief, by the king who desires to enforce dharma.\(^{174}\)

Kātyāyana, who represents the high water-mark in the judicial procedure, takes about the duration for reply and the kinds of reply, too. He says, time should be granted (to the defendant to file his reply), viz a day, a month of a fortnight or a season (two months) or even a year or even beyond that according to the requirement of the importance or otherwise of the cause.\(^{175}\) He makes a reference to regard to tradition and prevalence, when he says the king should able (the defendant) to give a reply according to the requirement of justice after paying regard to whatever rules of practice have been handed down traditionally in matters (of dispute).

Kātyāyana enunciates that a reply could be of four kinds, on admission of the truth (of the plaint), denial, a special plea and the rule of former judgment (or res judicata).\(^{176}\) He tells that there can never be a (proper) reply which is ambiguous, irrelevant, incomplete, too wide, covering only a part of the plaint.\(^{177}\)

Dwelling on the matters that cause failure in litigation, which does at length, he declares that “One who changes his pleading should be fined five panas, one shunning judicial investigation (kriyādvesi or one who hates kriyā, i.e. members of the court and intentions) should be fined ten panas, one failing to appear twelve panas, one who remains silent sixteen and one who absconds after receiving summons, twenty panas. Kātyāyana calls a person, cast out in their pending suit as hīnavādī. According to Nārada, there were five classes of hīnavādis,\(^{178}\) anyavādi, kriyādvesi, nopasthāta, niruttāra and āhūtaprapalāyi. Anyavādi implies a person who after lodging a complaint abandons or puts forward a different one, Kriyādvesi means one shunning judicial investigation, nopasthāta implies a litigant who does not present himself before the court after being summoned niruttāra meaning litigant who on questioning remains silent.
The stage of adducing proof comes next which implies the law of evidence (kriyāpāda) which we will refer to later separately.

Kātyāyana describes that is (styled) sādhya (the claim to be established) which the plaintiff himself proposes to clearly establish and that is (styled) ādhara (means of proof) by which the entire claim (of the litigant) is established. ¹⁷⁹

The decision rendering or the judgment is the final stage of the judicial procedure, known as ‘nirnayapāda’. This aspect has received an elaborate treatment at the hands of the smṛti writers. The final decision is declared by the king and arrived at after king’s consultations with the learned members of the court, after the establishment of evidence in support of the case according to the laws as laid down. That party is declared successful which establishes its point of row by means of evidence to the satisfaction of the court. The copy of the judgment in his favour is designated as ‘jayapatra’ or the document of victory corresponding to the modern day decree of the court. One who fails to establish his case, or who exhibits a case contrary to one in question or is found guilty of a vitiating case is termed as the defeated party.

The advanced smṛti writers, Nārada, Brhaspati and Kātyāyana spell out the four fold character of a judicial decision, as depending on moral law or dharma, the issue of the case, custom and an edict of the king. ¹⁸⁰ Law, without adducing to proof oral or documentary, is a decision by dharma. In Kautilyan times, it was law as administered by dharmasasthas. When a decision is according to vyavahāra, the decision is taken by applying principles of dharmasastra in judicial procedure, resting on the testimony of witness or documentary evidence. When any decision is according to the local custom or in conformity with prevalent tradition, it is termed, a decision based on custom or caritra. Finally, a decision based on the royal command is in the form of edict. This could be at variance with local custom. But Kātyāyana urges that decision based on royal order should not be in conflict with the rules laid by smṛti.

The content of the deed of judgment are described briefly by Nārada and Brhaspati and has been dealt in detail by Kātyāyana. The latter lists that the decree ought to carry –
The statement of the plaintiff and defendant,
The reply claimed by plaintiff
Documentary evidence or testimony of witness
The decision for the dispute and
The manner in which the matter is considered

by the king or the prādīvīkā (Chief Judge).

Kātyāyana tells of two kinds of judgment, one which was awarded after the success of the party with much contest (paścātkara) and the other given to a party on success in a suit without full or complete trial of an action (jayapatra).

Some provisions have been spelled out for ex-parte decree. According to Kātyāyana, in the adduce of the defendant at the time of trial, an ex-parte decree could be passed in the form of plaintiff (except when the defendant has been prevented to be present for reasons beyond control).

Rules regarding adjournments are visible, although ancient India did not allow any permission to plaintiff to ask for time to prepare his claim. It was Kātyāyana who allowed the plaintiff a time period of three to seven days to collect his wits and for the ground that defendant gets time to file his reply too. It was allowed in both civil and criminal cases. Where however, time value was important, no additional time was permitted. Brhaspati does not favor adjournments and allows it when god or king prevented an accused concerned from making his defense. All the smṛti writers unanimously oppose a cause of adjournment in criminal cases such as abuse, assault, adultery, theft and the hike. Kane has observed that rules for adjournments were more rigid in times of Kautilya than Kātyāyana.

There are scanty references to pleaders or recognized agents who appeared in courts on behalf of the contenders. Pleaders were permissible only where one was timorous, idiotic, mad, sick, kinsman, slave, pupil and so on. Nārada permitted recognized agents (prativādin) and even brother, son or father of the litigant to appear in court (p. 32, v.23).

As regards retrial, or punar-nyāya, there seems to be few rules in the smṛtis. From times of drama, it was deemed that once a legal transaction was over, the decree executed, no retrial was allowed. Retrial was allowed if the decision was contrary
to justice. Recalling Manu, Brhaspati declared that the king should punish the judges' party to the trial along with victorious party therein. Where the successful party has been instrumental, he along with assessors are liable to fine. In such cases, the king should try the suits himself and punish the ministers and judges for miscarriage or non-deliverance of justice. In cases where a party is not satisfied with decision of a lower court or false evidence of the witness has let to urgent decision, the case be reopened for trial.

Mm Kane observes that same sort of jury system was resorted to for settling disputes, although references to it are not very conclusive.

**Law of evidence** (or Kriyāpada)

Evidence, which forms the timid stage in the judicial procedure in early India has been dwelled at great length by the smrti writers Nārada and Brhaspati ordained that after. The case been filled, the plaint should present the evidence and establish the truth. Hindu jurists declared that evidence could be from these sources (1) documents, (2) witnesses and (3) ordeals. The broader category is, however, human, comprising the first two and divine consisting of the third. Ancient legal jurists also looked upon possession as an additional means of human proof. Brhaspati used the expression inference *(anumāna)* for possession.

The human proofs were given more preference by the smrti writers than the divine ones.

- In the presence of human proof, divine proof was not resorted to, even though they be covering a small part of allegation of the plaint. Divine proofs were:

1. if human proofs were unavailable
2. in cases of assault or heinous crimes, as enunciated by Katyāyana (V.229)
3. where there was doubt with regard to validity of documents or witnesses
4. where the witnesses are equally balance or disputes about loss of life (in such cases witnesses should not be examined Katyāyana, V.232).
Moreover, documentary evidence was declared to be more suitable or to be accepted with regard to transactions such as sale, mortgage, partition etc. of immovable property, similar to the practices prevalent in our times. Kātyāyana prefers documents, if available to witnesses or ordeal (V.223).

Kātyāyana, even assets, somewhat a rule of closure in modern judicial system which he tells that it was the duty of the litigant to resort to more weighting means of proof and once he took recourse to weaker means, he was not allowed to take recourse of the stronger one and thus could lose the case.  

*Documents*

Documents are and were considered the supreme with respect to their evidential value. In monetary transactions, documents served as indubitable means of apprehending frauds. Compared to witnesses where the possibility of deliberate error was always existent, the worth of documents was greater. However, the earliest Hindu legal procedure relied more on the testimony of witnesses and ordeals. Documents were deemed valid, however, if they were in proper formation, free from ambiguity and prefect in all respects.  

Documents could be declared valid or invalid. In order to be valid, it was not to be adverse to the usages in the country and śmṛti laws. The śmṛtis talk of causes that could invalidate a document. Such as, Nārada tells (V.137), a bond written by an intoxicated person, or a person charged with a crime, a woman, a child or a document caused to be written by force is considered invalid.

The royal documents or rājaśāsanas needed to have the royal seal compulsorily to be valid, while public documents (laukikā) were expected to conform to a particular format.

The laukikā document, the śmṛti writers tell that should have mentioned the name of the royal family in order, the year, the month and day of the transaction. The name of the creditor and debtor preceded by father’s name, the nature of property, as also rate of interest were to be vividly enlisted. And lastly, the document should also bear signatures of the witnesses. Any script could be used for the sake of writing of the document.
Nārada and Kātyāyana permit the validity of secondary evidence as well. When a document is split, or stolen, burnt or if writing of the original document is obliterated, a fresh document could be executed by the parties to the suit. However, this could be allowed only be if the court was satisfied to the reasons for the loss of the original document.

Nārada deals with documents briefly, Bṛhaspati is more elaborate and he warns us against clever forgeries. In Kātyāyana, the provisions for documents, their types, nature, and validity are more comprehensive. He devoted seventy four verses to the topic of documents. He is more elaborate about needs of testing the documents.

Interestingly, in the inscriptions, there is an allusion to a forged śāsana which shows that ancient forgeries existed, too. The Madhuban Copper Plate of Harṣa, which furnishes great information on great Harṣa as an eminent king of India, tells about the transfer of the village of Somakunḍika situated in the viṣaya of kundadhāni, and in the bhūkti of Sravasti, to two learned Brāhmaṇas, the Sāmavedi Bhatti Vatasvāmin of the Sāvarna gotra and the Ṛgvedi Bhatta Sivadevāsvāmin of the Viṣṇuvriddha gotra. This village, it is told had formerly been enjoyed on the strength of a forged śāsana by one Vāmarathya, from whom it was then taken after destroying the old plate, Buhler tells the latter point shows that the rules of the smṛtis, which settle the punishment for forgers of royal edicts, were not unnecessary and that ancient forgeries existed.

Documents could be of different kind. Bṛhaspati names three types, those written by (the order of) the king, those written in particular place and those written by a person in his own hand. Royal writings were called “rājkiya” documents known as śāsanas or grants. These could be made under the king’s seal and were executed or copper plate or piece of cloth. The second type was a jayapatra or a deed of victory to the successful party in a law suit (this could have been like a modern day court decree). Kātyāyana uses paścātkara, another deed for judgment given in a case after thorough contest. A fourth type of document was prasāda – patra or a deed of favor – this was issued by a king to a person for his faithful services and laudable virtues in the form of landed or other property.

Nārada mentions two categories of documents,
(a) one in the handwriting of the party and (b) other in the handwriting of another person. Viṣṇu declared documents to be of three types attested by the king, or by (other) witnesses, or unattested.

A document, he tells is said to be attested by the king when it has been executed (in a Court of judicature), on the king ordering it, by a scribe, his servant and has been signed by his Chief Judge, with his own hand. It is unaltered when it has been written (by the) party himself) with his own hand. Viṣṇu especially tells that should the debtor or credit or witness or scribe be dead the authenticity of the documents has to be ascertained by (comparing with it other) specimens of their handwriting.

Bṛhaspati and Kātyāyana have described various kinds of janapada (of the people) documents. Bṛhaspati talks of vibhāga patrka or vibhāga lekhya, simapattra, dānalekhya, krayalekha, adhilekhyā, sāmvit patra, dāśa patra, mālekhyā, while both Bṛhaspati and Kātyāyana talk of Sthitī – patra, visuddhi patra and sandhi patrka.

A vibhāga – patrka, describes Bṛhaspati (V.11) was a deed of partition effected by brothers being divided in interest. Simāpattra in a deed defining the boundary line, made by villagers of two adjoining villages (Br. V.3, Kät. v.257) Dānalekhya was a deed of gift made when any property was given as gift (Br. V.12).

Krayalekha was a deed of purchase (of immovable property) while adhilekha was mortgage deed. Sāmvit patra was a deed of agreement (Bṛhaspati, V.15), not opposed to the king or the sacred law. Dāśa patra was a deed of bondage or contract for labor (Br. V.16). Rnalekhyā use to be a deed of debt. Kātyāyana describes sthitipatra (deed of conventions) as made for the validity of (for preserving intact) the usages of men versed in the four vedas, of a city, of corporations, of groups and of citizens. 190 Viṣuddhi – patra (deed of purification) was given to persons with attestations of witnesses when they performed penance and became free from sins. Sandhi patra (deed of peace) use to write of what happened when a person has been accused in the presence of the best of the people. 191
Witnesses

In the determination of truth, the deposition of the witness or the testimony of the person or persons who witnessed the event is very important. Documentary evidence was admitted much later in the ancient judicial procedure. It was witness which constituted the primary evidence. The evidence should be direct and not hearsay. In the Smṛti period, we came across detailed provisions with regard to the witnesses— who could be a witness and who could not be, their number, qualifications, manner of deposition etc. Similarly, from the Viṣṇuśeṇa’s charter, we came to know about the witnesses, who could be and could not be in various civil and criminal cases.

Manu describes the kind of men who could be witnesses and the manner in which those must give true evidence. According to him - Householders, men with male issue, and indigenous (inhabitants of the country, be they) Kṣatriyas, Vaiśyas or Śūdras are competent, when called by a suitor, to give evidence, not any persons whatever (then condition be) except in cases of urgency. This implied that probably, the bachelors were not considered trustworthy to depose or it could be that householders were imagined to be more responsible to depose. Either ways, it is strange that such qualifications as these or having a male issue should have determined the eligibility to be a witness.

Manu in the next two verses emphasizes that all the four castes men could depose, provided they were trustworthy, who know their duty and were free from covetousness. However, what could have been the yardstick for determining such subjective elements in a witness is difficult to imagine. However, he further tells that those who have interest in suit, are familiar friends or enemies of parties, or convicted of perjury or suffering witness or tainted by some mortal sin should be excused from the ring of permissible witnesses. He declares – “The king cannot be made a witness, nor mechanics and actors, nor a Śrotiya, nor a student of the Veda, nor (an ascetic) who has given up (all connection) with the world. Nor one wholly dependent, nor one of bad fame nor a Dāsyu, nor one who follows forbidden occupations, nor an aged (man) nor an infants, nor one (man) alone, nor a man of the lowest castes, nor one deficient in organs of sense. Nor one extremely grieved, nor one intoxicated, nor a madman, nor one tormented by hunger or...
thirst, nor one oppressed by fatigue, nor one tormented by desire, nor a wrathful man, nor a thief. Manu’s emphasis seems to be allow such men to be witness, who would have some sort of balanced judgment, who were neither sick or in want of something which could make them fallible or who were capable of understanding and deposing.

In another gender tainted clause, Manu tells that “women should give evidence for women and for that “Women should give evidence for women, and for twice born men twice born men (of the same (kind) virtuous śūdras for śūdras, and men of the lowest castes for the lowest” . However, he permits that – “On failure (of qualified witnesses, evidence may be given (in such cases) by a women, by an infant, by an aged man, by a pupil by a relative, by a slave or by a hired servant.” But the judge shall consider their testimony as untrustworthy. Manu is however, firm in asserting that in all cases of theft and adultery of defamation and assault (where it is difficult to find, witnesses, hence above qualified one, the competence of witnesses) the competence of witnesses should not be examined too strictly.

The ideas of Manu against women seem to reflect in his verse 77 of the same Chapter which tells – “One man who is free from covetousness may be (accepted as) witness, but not even many pure women, because the understanding of female is apt to waiver, nor even many other men who are tainted with sin. At the same time, he does not waiver from showing concern for women, if witnesses spoke false. He says, “whatever places (of torment) are assigned (by the sages) to the slayer of a Brāhmaṇa, to the murderer of women and children, to him who betrays a friend, and to an ungrateful man, those shall be thy (portion), if thou speakest falsely’. Here, it seems to take a tough line on men with respect to false deposition. The inconsistencies of clauses of Manusmṛti however cannot be ruled out given the heterogeneous or rescensionary character of the text.

Kautilya, on law of evidence, tells that in any case before the judges, admission (by the defendant of the claim against him) is the best. If the claim is not admitted then the judgment shall be based on the evidence of trustworthy witnesses, were shall be persons known to their honesty or those approved by the court. Kautilya also debarred the following from the purview of qualified witnesses – the brother of the wife of the claimant, his
Kauṭilya’s thought with respect to witness seems to be a step above Manu. The Arthaśāstra does not impose insensible qualifications for witnesses as much as Manu does. Although Kauṭilya, too emphasis the element of trustworthiness in witnesses, he differs from Manu in that he allows the king to be a witness in certain cases as well as a Čāndāla. By asserting that men who volunteer as witness should not be accepted, it may be seen as an apprehension for men rarely want to depose willingly and if they do, it might seem suspicious, he could be a secret witness or a spy too.

Similarly, Yājñavalkya, too distinguished between competent and incompetent witnesses – Seen men who were devoted to religious austerities, men liberally disposed, men sprung firm high families, fulfill men, men devoted to religious observances straightforward men men blessed with loss and men possessed of wealth (were deemed) competent witnesses, (provided they are) not less than three and devoted to the performance of Srauta and Smṛta rites, each respectfully according to their caste or class or all for all (castes and classes).²⁰⁰

A women, a minor, an old man, a rogue, an intoxicated person, one infatuated against whom an accusation has been brought, a stage drama, a heretic, a forger, one deformed, one degraded, a relative, one having an interest in the subject matter, an ally, an enemy, a thief, a desperado, one who has been found guilty, an outcast and others are incompetent witnesses (V. 70-71). Yājñavalkya, presents a quick proposition, in verse 83 (1) that where man of the four orders are (likely) to suffer capital punishment, there a witness may speak the untruth. And by this prohibition against true evidence, Gharpure explains, a permission for refusing to give evidence or for giving false evidence is given for witnesses of whom it has been prohibited before.²⁰¹ In 83(2), he suggests a: purification from that (sin) the
special oblation of rice known as the Sārawata should be presented) by the twice born.

Nārada (Ch. 1. 139) distinguishes eleven types of witnesses distinguished in law by the learned. Five of them are known as appointed (Kṛta) and the other six as unappointed (aṅkṛta). A subscribing witness, one who has been reminded, a casual witness, a secret witness, an indirect witness, these Nārada says are the five sorts of appointed witnesses. The unappointed witness are the king, the judge, the (people of a) village are acquainted with affairs of the two parties, one deputed by a claimant, a family witness who represents in family quarrels.

Bṛhaspati has described these twelve witnesses in detail – subscribing witness (Likhita) who enters in the deed, the name of caste, his father’s name, place stay etc, a witness distinctly mentioned in a deed (Lekhitā), a secret witness (gūdasāksin) who stays cancelled at the time of occurrence, when a person is invited to attend to a transaction of money (smaṛta), in events of family partition, sale, gift etc. the persons who are invited for in a good terms with both sides, called family witness as (Kulyas), a witnesses by chance or spontaneous witness who happens to offer his witness (Yadracchika), a messenger witness (dūtaka) deputed by the parties, an indirect witness, who tells what somebody has told before going abroad or about to die a common witness (Kāryamadhyagāta) to whom both parties communicate, a king, who could be summoned under special circumstances, the judge, together with the assessors in a fresh trial and villages who could act as witnesses in case of boundary disputes.

Nārada enjoins that all men of all castes, free from blemish could depose either in disputes pertaining to respective castes or in all cases in general. Katyāyana is however, more explicit in enunciating that normally, a litigant of lower caste should not engage witnesses of higher castes and men of lowest castes - Caṅḍālas, śūdras and others should be witnesses for lowest castes alone. When disputes are between different groups such as guilds, corporations etc., heads of such groups should be considered appropriate witnesses. An exception is when, in the same group same person harbors ill-will against persons of the same group. And in cases of disputes among women, same group should preferably be women.
Nārada explains the reasons for excluding a child, a woman, a single witness, a relative and an enemy from being witnesses because, he says a child would make false statement through ignorance, from affection and an enemy from a desire of revenge.

Kātyāyana maintains, in a similar manner that women should be a witness for women (when women are litigants), for (litigants of) the first three castes (witnesses should be of) the same caste as themselves, well balanced sudras for śūdra (litigants), and men of the lowest castes, such as caṇḍālas should be witnesses for lowest castes.

Bṛhaspati entails that in boundary disputes relating to house and field, peasants, artisans, hired labourers, headmen, hunters, gleaners, root-digger and fisherman are to act as witnesses. In relation to boundary disputes Nārada’s list of false witnesses encompasses jugglers, public dancers, sellers of spirituous liquor, oil pressers, elephant drivers, leather workers, caṇḍālas, śūdras, peasants, son of śūdra women and outcastes. Nārada moderated the earlier provision regarding varna witnesses and provided that members of all varnas could depose as witnesses in case of all varnas.

When the witnesses differ, the sūtrī writers emphasize that the statement of majority has to be accepted but if there was no clear majority the statement of those who were more pure was to be accepted and if the meritorious were divided equally, then those who were best were to be accepted as true.

As for the number of witnesses, Manu and Nārada declared that a least three witnesses were required in a cause. Bṛhaspati tells, they could be nine, seven, five, four or three witnesses or only two if they were learned Brāhmaṇa. He tells that a single witness would never be sufficient in deciding the matter. However, if he is a dutaka, Manu and Bṛhaspati allow him to be single witness. Bṛhaspati tells that single witness could furnish valid proof, if he was a messenger, an accountant, a King or Chief judge.

The Charter of Viṣṇuśeṇa, in the nature of acara sthiti patra throws some light on the witnesses’ aspect of judicial procedure as it may have prevailed in actuality. Acāra 16 in this document reads –
Para-vishayat – kāran – abhyāgato vaṣṭjakah
para – rēshē na grāhyah –

This could have meant that a merchant belonging to another district or kingdom should not be accepted as a witness in a criminal case involving persons of a locality where he happened to be present on account of some reason or other.^^^

Further, acāra 18 tells,

Vākparushya – danḍapārushyayoh, sākhitive, sānī na Grāhya – implying the sārika bird could not be allowed to be a witness in cases of defamation and assault.

The concept of witness has been studied by Dr. Kane in the History of Dharmasastra, very exhaustively. His concept of witness is based on the Viṣṇu Dharmasastra, VIII 13 and Medhtithi on Manusmrī, VIII. 74. S.G. Moghe has examined the concept of witness in, the Mahābhārata and Dharmasastra literature in an article in the compilation ‘A peep at Indology’.

In the Dharmasastra literature, the concept of witnesses was connected with a merit or demerit. In the Mahābhārata, this concept was dissociated from heaven and earth According to Moghe, the concept of witness in the epic is associated with punya and pāpa (good deed and sin). There lies the benefit for telling truth in the form of heaven and hell for telling lies. The Mahābhārata, 11.61.70 has contributed interesting thought. In the Mahābhārata, 11.61.76, it is pointed that he is called a witness who has directly heard (the conversation or) speech between the concerned persons) and kept in mind and who speaks the truth. It is further said that such a witness is never dissociated from Dharma and Artha, the two important goals of human life. What is interesting is that, it tells – whenever any sin takes place and is not censured the person who is the senior most and who is particularly present on the spot, incurs half the sin. One who is the direct performer of a sin incurs one-fourth of the sin. One fourth of the sin is, however, incurred by the members of the assembly, who did not censure the censurable deed.^^^

This implied that the performer of the sin was given lesser blame than those senior most person and members who did not
forbid the considerable deed. Further, the *Mahābhārata* (II.61.71) tells that the senior most person become free from sin once they blame or condemn such wrong deeds. In such a situation, the performer of the sin is held responsible.

The text metes a different treatment to the witnesses speaking untruth. The text (in 11.61.74) tells that those who speak untruth destroy the effect of Īṣṭapurta of seven generations on both the sides (of father and mother) and they further experience the sorrows of other ladies. 215

It is here that the text of *Mahābhārata* stands out with respect to treatment of false witnesses. It talks of the dire consequences of speaking untruth in their life rather than advancing the concept of going into a hell.

Moghe has pointed out another novel view from *Mahābhārata* as to who should not be accepted as witnesses. The *Mahābhārata* (V.35,37) points out that a palmist, a merchant who was formerly a thief, a medical practitioner who was formerly a painter, an enemy, a friend, and an actor should be treated as unacceptable as witnesses in the court matters. 216 This view point of the *Mahābhārata* has no parallel in the entire Dharmaśāstra literature. This view seems to be based on the point of view of witnesses from the point of view of professions. The Dharmaśāstra bases the concept of witness on the fruits of heaven and hell while *Mahābhārata* bases it on the direct consequences (in respect of īṣṭapurta)

**Possession**

Possession was regarded by ancient Indian jurists as one of the modes of evidence especially in disputes of immovable property. Possession was recognized to be of two types – one with title (*Sāganā-bhukti*) and two, possession without title (*anāgamābhukti*). 217 And Kātyāyana tells Documents, witnesses and possession these are regarded as three pramāṇas (means of proof). Among human pramaṇas, possession is regarded as equal to a faulters (valid) document. 218 In the earlier verse, Kātyāyana took possession which continues for three generations is independent (means of proof of ownership without for three generations), then it (is proof of ownership) if accompanied with title.
Title, along with possession gave rise to ownership of property. However, it is deliberate whether title alone, without possession could create ownership. Nārada explicitly prohibits ownership if there is no possession and only title. On the other hand, he declares possession without title as theft. Similarly, Kātyāyana states that mere possession cannot prove ownership in certain cases such as female slaves, property of a temple, state property, property of minors and of men learned in Vedas as also what was inherited from father and mother.

However, long possession led to ownership provided it was uninterrupted and continuous. Nārada, Brḥaspati and Kātyāyana laid down that possession for three generations or beyond human memory created ownership without title. Rules were also provided for an adverse possession that matured into possession, although the time period for such cases was different according to various smṛti writers.

**Ordeals**

Ordeals were the divine means of proof that supposedly showed themselves from very early times. The most common instances of ordeal was the fire ordeal undertaken by Śrī at the behest of Rāma, to prove her purity and innocence. Ordeals were supposed to be resorted only in the absence of human proofs. However, Kātyāyana laid down that in a dispute, if one party resorted to human proofs and other to divine ordeals, the human proofs alone are to be taken into account.

Nārada tells that ordeals are to be resorted when a transaction takes place in a forest or with regard to an act of violence or in lonely place, at night, inside a house or when a bailee denies a deposit. Similarly, Brḥaspati advises that a forger of gems, pearls or coral, one withholding a deposit, as ruffian or a person accused of adultery should be tested through ordeals. In charges of grave offences or misappropriation, transactions which took place in remote past, truth was suggested to be established by means of ordeals.

Manu described two kinds of ordeals, fire and water. Yājñavalkya and Nārada prescribed five ordeals consecrated water, scale, poison, fire and water, to be administered only on serious charges. Brḥaspati enunciated nine ordeals – fire, water,
scale, poison, ploughshare, sacred litigation, grain of rice, hot gold, price and lottery. Kātyāyana described seven ordeals.

The Kādaṁbari of Bāna mentions four ordeals, fire, water, poison and balance. Account of the Chinese traveler Hiuen Tsang refers to four ordeals, water, fire, weighing and prison.

Ordeals of balance was prescribed for offences like treason, sedition etc. or for persons involved in scandals or involved with people of suspicious character. Kosa ordeal was administered on charges of suspicious at the time of family partition. Bṛhaspati tells an ordeal of person was to be resorted to when the property in dispute was of the value of one thousand panas. When this value was three hundred panas six ordeal or ordeal by kosa (sacred liberation) was used theft of one hundred panas were to be settled by ordeal of dharma while thieves of cows were to be subjected to ordeal of plough-share (phāta divya).

**Titles of Law**

The Smṛti writers recognize the division of law into eighteen topics of law (litigation). They differ only in their order and nomenclature. These eighteen topics of litigation are popularly called vyavahāroḍu. There seems to be no clear cut division of civil and criminal laws but Nārada and Bṛhaspati seem to be aware of this distinction. Bṛhaspati distinguishes between two types of suits arthasamudbhava and himsāsamubhava, that is those suits originating in wealth and those in violence. However, there are no references to two kinds of courts looking into the two aspects – civil and criminal separately. It is more probable that the same courts tried both kinds of cases. There are references to some miscellaneous suits (prakirñaka) in which king and his officers could take initiative instead of the plaintiff.

Madhukar M. Patkar has analyzed that these eighteen topics of law could be arranged under five broad categories–


Monetary laws deal with topics such as debt and deposits. The law of debt lays down rules for interest, sureties, repayment, and liability and so on. Service laws imply laws which would
explain the relation between master and servant, teacher and apprentice or employer and employees. Group laws tell of partnership, joint undertakings, sale and purchase etc. Land disputes referred to laws regarding boundary disputes. Criminal laws could be classified under six heads:

1. Offence by words (vākpāruṣya)
2. Assault (daṇḍapāruṣya)
3. Theft (āsteya)
4. Violence resulting in injury (sāhasa)
5. Adultery (stṛīsamgrahaṇa)
6. Miscellaneous offences (prakīrnakas) in which King and his officials could initiate litigation.

Rules for trying the two types of cases were same. As Mm. P.V. Kane observed “It appears that the set of rules and procedure in both were the same (except as to the time allowed for reply, as to the qualifications of witnesses and as to the proxies) the same courts tried both kinds of disputes and not as in modern times when civil disputes are tried in one class of courts and criminal complaints in another and when the procedure also in both differs a great deal.^^^ Further, these eighteen titles did not exhaust the entire realm of law. Several disputes such as relating to collection of taxes, treasure trove etc. were there which could not be brought within the fold of litigation. Nārada declared these 18 titles as having 132 sub-divisions.

These eighteen titles of law have been described in varied sequence by the respective smṛti writers.

Manu declared the cases fall under eighteen titles of law according to the principles drawn from local usage and from the Institutes of the Sacred law. ^^\textsuperscript{224}

Of these (title, the first is the non-payment of debts (then follow), (2) deposit and pledges, (3) sale without ownerships, (4) concerns among partners and (5) resumptions of gifts. ^^\textsuperscript{225}(6) non-payment of wages, (7) non-performance of agreements, (8) rescission of sale and purchase (9) disputes between the owner (of cattle) and his servants (10) disputes regarding boundaries, (11) assault and (12) defamation (13) theft, (14) robbery and violence, (15) adultery, (16) Duties of man and wife, (17) partition
(of inheritance), (18) gambling and betting - these give rise to law suits in this world.

Nārada has included theft (steya) and adultery (stīṣamgrahaṇa) under one category, viz. sāhasa (violence), while Bṛhaspati, in line with Manu mentions them as two different topics. Also Nārada and Bṛhaspati divide Pāruṣya into vākparuṣya (abuse) and daṇḍa pāruṣya (violence), while Manu has only one title under Sāhasa.

REFERENCES
2. cf. *Bṛhadāraṇyaka Upaniṣad*, 1.4.14
6. For instance 420 verses in Manu are devoted to civil and ceremonial law, 336 verses on duties of husband and wife.
7 Ibid, *HD*, 1.213
9 Ibid, p 14
10 cf
12. Ibid, p.6, v.8
15. Ibid, p.18
17. P.V. Kane, *HD*. 1.213
18. Ibid
19 Discussed later under documents.
22 Ibid.
The protection of the subjects is the highest duty of a king possessing the necessary qualification of anointment, that (i.e., the protection), however is not possible without (restraining the wicked) punishing the guilty.

27. Buhler, Laws of Manu, Ch. VIII, v. 24, p.256 “Knowing, what is expedient or inexpedient, what is pure justice or injustice, let him examine the causes of suitors to the order of the castes (varnas)”.
29. Ibid, (3.1, 45), p.380
30. Buhler, LOM, Ch.VII, III.
34. CIll, III, No.35, II.15-17, p157.
35. Ibid, No.47, p.220.
37. B.S. Upadhyaya, India in Kālidāsa, p.143.
38. Kālidāsa, Raghuvamsa, 1.6
39. Raghuvamsa, 1.9 quoted by Upadhyaya, p.144.
40. Upadhyaya, op.cit, p.144.
41. Mahābhārata, Śānti-parva IIIX, 107; Kumbakonam, LVIII, 116, quoted from Upadhyaya, op.cit, p.144.
42. Benjamin Khan, The Concept of Dharma in Vālmiki Rāmāvana. Quoted from Ayodhyakaṇḍa, 46-23, 30, 37-7,8)
43. Rāmāvana, Yuddha Kāṇḍa, 12-30.
44. B.S. Upadhyaya, India in Kālidāsa, p.146.
46. A.C. Sen, Āśoka’s Inscription, referring, to RE-4-6 .13 SKRE 1, PE.7), p.35.
47. Ibid, referring to SKRE 1, PE.4.
50. Regnal Year B.C 256.
52. Ibid, word-notes, p.121.
53. The inscription actually speaks about the great Maurya Emperors Chandragupta and Āśoka’s interest in irrigation works in so far a country from the capital, as Kathiawad)
55. Buhler, Laws of Manu, SBE, vol. XXV, Ch. VIII, v.2, p.253, describes that after the king enters the court - “There, either seated or standing, raising his right arm, without ostentation in his dress and ornaments, let him examine the business of suitors”.
57. Buhler, Laws of Manu, SBE, Vol. XXV, Ch. VIII, v.3 p.253
63. Ibid, v.28, p.257. However, this appears inconsistent with its verse which tells the
years in which the brave women, the sonless women and women bearing
dughters should be abandoned.
65. B.S. Upadhyaya, op. cit, p.145
67. Upadhyaya, ibid.
70. Kane, Kātyāyana, v.56
71. Ibid v.14
72. Ibid, v.20
73. Ibid, v.21 (2)
74. Buhrler, *LOM*, Ch. VII. v.16, p.218
75. Buhrler, *LOM*, VIII v.43
76. Cf *Smṛti Candrikā*
77. Cf *Nāradasmṛti*, quoted in *Smṛti Candrikā*, II,p.27
78. P.V. Kane, *Kātyāyana on Vyavahāra*, v.27.
Kātyāyana states that the king either because of the person from litigant parties or
through greed for wealth should never cause to be started smṛtis among men who
have not dispute.
Kane, Kātyāyana smrti, v.27, p.3.
81 P.V. Kane, *Kātyāyanasmṛti*, v.78, p.131.
v.10 says - that (man) shall enter that most excellent court accompanied by three
assessors and fully consider (all) cases ( ) before the (king) either sitting down
or standing.
84. Ibid, Ch. VIII, v.20.
85. L.N. Rangarajan, Kauṭilya, the *Arthaśāstra*, (3, 1.1.)
86. Viṣṇusmṛti, Ch. V, v. 194, p.42
87. P.V. Kane, *Kātyāyana śrīmṛti*, v.63, p.11


89. Ibid, *Kātyāyana śrīmṛti*, v. 69, p.130.


91. P.V. Kane, *Kātyāyana śrīmṛti*, v.56, 129.


94. Yājñāvalīśrīmṛti, Ch. II, v. 4.

95. *Kātyāyana śrīmṛti*, v. 70.

96. Ibid, v. 72-78.


102. Malavikāgnimitra, p.178.

103. Malavikāgnimitra, p.124.

104. Vikramorvasī, p 124

105. Mrccchakatika, IX, p.454

106. Ibid, p.459

107. P.V. Kane, *History of Dharmaśstra*, 3.92


109. cf. Yājñāvalīśrīmṛti 2.2

110. CII, III, pp 248.49

111. Radhakumud Mukherjee, *The Guptā Empire*, p.48]


113. CII, Vol.III, p.95

114. Ibid

115. A.R. ASI, 1911-12, p.54.


117. Indian Historical Quarterly, vol. XII, pp.225 and ff.


120. Ibid, p.99.
121 I.A XV, p.187
122 E.I Vol XXX, p.169
123 bid
124 ibid, p 174
125 Monier Williams, Sanskrit English Dictionary, p.686
126 Daśakumārīcarita, VIII, p.131.
127 E.I, I, No.13 pp 88-92
130 Buhler, Laws of Manu, IX, 234.
131 Brhaspati, I, 12
132 P.V. Kane, Kātyāyanaśmṛti, 69.
133 D.C. Sircar, Indian Epigraphy, p.361
134 G.P. Sinha, Post Gupta Polity, p.173 quoted from proceedings of I.H.C., 1959, p.130
135 ibid, p.174.
136 Yājñavalkya 11.7
137 Kātyāyana, 40,79
138 ibid, 72-78
139 Br, v. 76.
140 ibid, v.79.
141 ibid, v. 81
142 R. S. Sharma, Political Ideas and Institutions in Ancient India, p. 251.
143 ibid, p.119
144 ibid
145 ibid, p.120.
146 Buhler, Laws of Manu, Ch. VIII, v.11
147 Aiyangar, Brhaspati, I, 28.30
148 cf, Naradasmṛti, p-6.V.7
150 Brhaspati, p.16, vv., 93-94
151 cf, Br, P.15, V.92.
152 cf, III, pp. 248-49
153 S.K. Aiyangar, Hindu Administrative Institution in South India, p.203
154 Nārada, I-34
155 C II, III, pp. 248-49
156 C. Minakshi, Administration & Social Life under Pallavas, p 59
157 D.C Sircar, Select Inscriptions,
158 P.V. Kane, Kātyāyanaśmṛti, v.25, p.122.
159 Ibid, v. 26, p.122
160 Kane, Kātyāyanaśmṛti, v.31, p.123
161 Buhler, Laws of Manu, Ch. VIII, v.1.
164 El. Vol. XXX, p.172
165 Ibid, एकारा, 22.
167 Ibid
170 Kātyāyana, v.97, 98.
171 Kane, Kātyāyana, v. 86-88, p.132.33.
175 Ibid, v.146, p.145
177 Ibid, v.188, p.152.
178 Nāradasmṛti, v.33, p.31.
179 Kātyāyana smṛti, v.213, p.158
180 Bṛhaspati, v.18, p.4
समन्वय वाद्यदेशं सबिंक्रिया नुपुख्या।
वर्गप्रारूपकमिति सर्दितादेष्वं विनिर्मिति ।
181 Buhler, Laws of Manu, IX, v.233
182 Kātyāyana, v.221, p.31.
183 Kātyāyana,v.253, p.34
184 Nāradasmṛti, v.136, p.86.
185 Nāradasmṛti, v. 146, p.90.
187 M.M. Patkar, Nārada, Bṛhaspati and Kātyāyana, p.77
188 Viṣṇu, VII, v.1,2.
190 Kātyāyana, v.254, p.166.
191 Ibid, v.256, p 166.
194 Ibid, v.68.
196 Ibid, v.72.
197 Ibid, v.89.
198 Rangarajan, Kauṭiṭya Arthaśāstra, VIII, p. 386.
199 Ibid, (3.11.29.33), p. 387
200 Gharpure, Yājñavalkyasṛṅti, v. 68-69, p.103.
201 Ibid, p.121
202 Gharpure, Nārada in Ch. I, 150, p.102.
203 Nāradasmṛti, v.155, p.93
श्रेष्ठाः श्रेष्ठाः पुरुष श्रेष्ठाः पुरुष श्रेष्ठाः।
ब्रह्मवर्णिनः ब्रह्म ब्रह्म स्मृति श्रेष्ठाः श्रेष्ठाः।
204 Ibid, v.191, p 101
205 Kane, Kātyāyana smṛti, V.351, p.184
206 Narada, I, 154
207 Manu, VIII, V.73, Bṛhaspati, VII, 35, Kātyāyana, 408
208 Manu, VIII, V.60, Nārada, I. 153
209 Bṛhaspati, VII
210 Manu, VIII, 77, Bṛhaspati, VII, 18.
211 E.I. Vol. XXX, p.172
212 S.G. Moghe, A Peep at Indology – He tells in the Tantara
Dharma Śāstra, B 7-8.

213 सम्बन्धसुन्तत्त्वाद्वयमायोऽस्मि यथायतास्मि यथार्थ
तत्रति सम्बन्धमायोऽस्मि प्रमाणमायोऽस्मि न हृदये
P.V. Kane, History of Dharmaśāstra, Vol. III, p.330

214 S.G. Moghe, a Peep at Indology, p.20

215 Ibid


217 Kātyāyana, v.317, p.176

218 Ibid, v.313

219 Nārada, v.77, p.66

220 Kātyāyana, v.330, p.180

221 Buhler, Laws of Manu, V.

222 M.M. Patkar, Nārada, Brhaspati and Kātyayana, A Comparative
Study in Judicial Procedure.

223 P.V. Kane, History of Dharmaśāstra, 3.259


225 Ibid, v. 4-7, p. 25.3.