CHAPTER-III

NATURE AND EXTENT OF THE VYAVAHĀRAMĀLĀ

The aim of this work is-

(a) To point out various judicial problems inherent in society.
(b) To show how the same problem was solved in the Smrītis.
(c) Whether in the Vyavahāramālā, it was solved in conformity with the Smrītis.

On the basis of these considerations it can be shown how the legal rules contained in the Smrītis were applied in daily life. Since some judicial problems were mentioned in the V.M. and solved according to the rules of the Smrītis, it shows that these rules were well known to everybody.

This study seems to be the first experiment in the interpretation of Sanskrit literary works from the point of view of law.

Smrītis surely deals with litigation. Such as surety was introduced in order to safeguard the execution of justice according to the ancient Indian civil procedure. The judge had to collect
evidence and then pronounce judgment. There were various kinds of evidences, however the most important were the documents, witnesses and ordeals.

There was immediate need for a unique administrative and judicial system due to the reformation of the administration during Sangha period. In this task, the dominant role was played by V.M. The South Indian kings whose lives were based on Dravidian culture after the sangha period, were not ready to accept the laws, enshrined in the Arthaśāstra of Kautilya, Kāmandakīya Nītiśastra and Sukranīti. It is due to this reason that the physical culture of South India is entirely different. In Kerala, the prevailing culture is Dravidian in nature. Language, customs, commerce, revenue etc are also different. In the same manner physical and spiritual situations are also different. So there was immediate need for making a unique system. As a result judicial codes such as V.M. originated. Thus the kings of Kerala were able to implement a useful judicial systems for themselves.
Historical aspects of kerala judiciary – an introduction.

From the central Asian countries via Iran, Āryans reached, settled in India and the society formed later was Indo-Irānian. The society existed before their arrival was scattered. Realising the political system in India, being weak, Āryans who were foreigners, by diplomatic deeds established their suzerainty in India. Thier systematic and diplomatic administrative skills helped them very much in establishing supremacy in India. Support was also given by their language. They were able to modify the administrative system and social life from the pāli and prākr̥t languages based on the systematic Sanskrit language and thus acquired full authority. In that period the Dharmaśāstrās and Smr̥tis flagged off their victory. Later the Āryan culture became a part of Indian cultural system and popularized as Indian civilization. Even today the so called Indian culture is a part of the civilized and systematic Āryan culture.
The people of the pre-historic time who did not absorb the ideas of Āryan culture and who decided to sustain their own cultural tradition failed to prevent Āryan invasion and collectively migrated to south India. By this north India fully came under the influence of Āryan culture, but those who migrate to south India established and sustained a unique culture of their own. Later on it came to be known as Dravīdian culture. In India a clear division such as Āryan or north Indian culture and Dravīdian or south Indian culture came to exist.

As a result the Āryan social system became separated from the Dravīdian culture of south India. As the time went on, good aspects of Āryan culture such as beautiful epics and other literary works (nītiśāstra, smr̥ti etc) became popularized and the Dravīdian culture began to absorb these ideas. After the Sangha period Āryan culture spread even in the south India. This resulted in a mixing of culture of the Dravidian civilization and Āryan civilization. So without ignoring Dharma Nītiśāstrās of Āryan people, a language, literature and Nītiśāstrās works
which was suitable to south Indian manners required to be produced by them. Hence with some modifications in the literary works of the Āryan culture, they were presented again. For this the south Indian linguistic scholars took many efforts, e.g. Thirukkural, cīlappatikāra, etc. in the same way, in the judicial field, a work which is worth to be mentioned is V.M.

The special feature of V.M is that it imbibed the ideas of Āryan works such as Śruti, Śmr̥ti and Dharmaśāstrās. Besides adopting their language styles, even though it formed (developed) in accordance with the south Indian social system. As a result it has got its own uniqueness. This work is a contribution of kerala to the Āryan culture, to the south Indian culture and as a whole, to Sanskrit.

Till recently Kerala consisted of dominions, of Travencore, Cochin and Malabār which was under the direct rule of the British and part of the Madras province. In 1949 Travencore and Cochin merged to form the states of Tiru-Cochi. In 1956 with the reorganization of states took place on linguistic
basis in India. Travencore, Cochin (tiru- cochi) and Malabār joined to form the new state of Kerala. In 1927 Kerala Sāhitya Parisāyat was formed on the basis of language. Colonel Munro assumed leadership in 1810 as the British resident and Diwān of Travencore. In 1812 he assumed charge as the Diwān of Cochi. Under his leadership western model of law and order began to be introduced. In 1812 during the reign of Rānī Gouri laksāmi Bāi law based on western models in the form of ‘Cātātāvvariōla’ introduced in Travencore. This was followed in Kochi 1812, Kochi during the regency of Kerala Varma Mahārāja. In 1802, during the rule of Diwān Corn Wallis, a legal volume named ‘Cornwallis code’ was published.

Before this, legal system and punishment existed solely on regional customs and country codes of conduct. Contemporary records reveal, the practice of codes of conduct, habits, and country rituals and so on. Citizens in Kerala did not enjoy benifits in the implementation law and order. Information
has been gained from temples, granthās, orders of kings and palm leaves or Īlās of that time.

Courts existed during those times for the ordeals of truth for crimes. It mainly consisted of ordeals (tests) by water, fire, poison etc. Among these the most important was punishment by fire. The punishment consisted of dipping the fingers of the culprit in boiling oil or ghee. The criminal’s crimes would be written on palm leaves and kept aside covered in cloth. If the person’s fingers got burnt, he was established as a criminal and hence befitting punishment was ordered. In Kerala such courts existed in the temples of Sucīndra, Valayanādu and Ettumānūr. The punishments were ordered according to the caste of the criminal. This points to the practice of custom and habit, in the pursuit of law and order and punishment. We can therefore consider that this sort of punishment was in accordance with the social norms in those days.

The Brāhmīns however were largely immersed in religious activities and interested in translating religious laws.
Hence they had undoubtedly a critical role in society. The severe punishment dealt to Brāhmins was excommunication. While Śūdrās were punished by fire and those of the lower castes were punished by hanging. The Higher castes or Savarnaās had illegal marriage rituals like sambandham and thālikketōtu. There also existed the practice of denying the father’s wealth to sons and heirship rights were mainly for women. However they became custodians of family wealth through the marumakkatāya practice.

It was during the reign of Rāni Gouri laks̐mi bai in 1812 that administration based on new models began. In twentieth century Sri Mūlam Thirunāl (1885-1924) established a niyama nirāmānā sabha in Cochin for making laws.

Legal theory was propagated during different eras based on different concepts. It was most suited to religious thoughts from the time of the Vedas. Later it became exclusive to theory and social customs. Still later it grew into political concepts and Arthaśāstra. The purānas like the Mahābhārata and Rāmāyanā
speaks of a civilized community and notable men in it about B.C. 3000. Their particular granthās revealed the social life and the suitable legal practices of the time. We can acquire information regarding the codes of conduct, and ideals of Dharma from Mahābhārata and Rāmāyanā. There exists a lot of illustrations for fidelity in mental life, sincerity, truth, brotherhood etc. Even rules of battle were circumscribed by the principles of Dharma. However the Mahābhārata also points to the tendency of breaking these rules. Hence it is assumed from these tenets that disparity existed in the practice of ethics and good conduct in society. The most popular granthās in India are the Vedas and Śāstrās composed after the arrival of the Āryans. Concepts of law and justice can be seen in the Vedas of the Āryans who entered India in about 1800 BC from west Asia. So we can conclude that the composition of the Vedas is about B.C. 1200. There were amongst those Rṣis, Scholars on a quest for truth, who enlightened men. During the time of Manu people benefited from scriptures of Hindu law in the form of Smrītis.
There was in fact no other work to reveal the omni potent Manusmṛti. Thereafter society was protected much from Yājvalkyasmrṭi, parāsarasmrṭi, and so on. Therefore the administration based on such smṛtis came in to force as also the Dh.S and Nītiśastrās.

According to the change in administrative system, the V.M had influenced Drāvidian culture especially civil and criminal laws from time to time. With the advent of foreigner’s laws, the judicial codes in V.M lost its prominence.

The Significance of Vyavahāramālā.

With the arrival of the British, the Āryan culture began to spread gradually to the South Indian territory. By the end of the nineteenth century North India came under foreign rule and by the beginning of twentieth century, South India also came under the influence of foreign rulers. As a result the prevailing judicial system on the basis of V.M, became meaningless. Just as the judicial code, in North India, faced destruction. South India also faced the same denigration and by the middle of twentieth century
the modified judicial system- democracy and federal system came in to existence.

India lost the Āryan culture, unique to North India, and at the same time, South Indian legal system emphasizing Drāvidian culture was buried for ever. On the other hand, Indian judicial code and the construction came into existence, combining the federal system of America and Britain. However the values of Āryan and Drāvidian culture still exists in India. However the systems like Śruti, Smṛiti, V.M which are assumed to have expired, still influence the changing judicial codes. The ancient culture is still the basis of Indian judicial system.

The above mentioned judicial codes which are based on Indian culture can be the guidelines for the world that is changing in accordance with globalization. Hence this type of judicial codes which are considered to be worn out should be re-examined and innovations should be made according to new social life style.

The work V.M. might have been created nearly in the seventeenth century. By its shape and nature it is a supreme work.
V.M. has been composed by imbibing the Smrītis of eminent Gurūs such as Manu, Vasisṭha, Vyāsa, Nārada, Yājñavalkya, Kātyāyana, Pithāmaha, Yama, Visūnu, Uśanas, Gouthama, Āpasthampa, Viswāmitra, Bharadwaja, Boudhāyana, Dēvalan, Śankan, Hārīta, Kāśyapa and Brhaṇaspati. But among them the prominent verses are of Manu, Nārada and Yājñavalkya.

*manumukhya sārasamutbhavaiḥ*

*sukumāraiḥ prasavair vacō mayaiḥ/*

*thri divāptibhalairnṛpōcūtām*

*racayāmi vyavahāra mālikām.1//*

Through these verses enriched by similes the writer has shown his obligation of V.M, to the Smrītis like Manu etc. The subjects like Vyavahāradarśanavidhi, Prādvivākadharma, sabhāsabyopādēśa, Vyavahāralaksanā, Paksābhāsalaksanā, Āsēdhapракaranā, Bhasotharapādanirūpanām, Sandhipракaranām, Kriyāpāsam, Sāksinirūpanām, Lēkhyanirūpanām,

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1 V.M. Introduction.
Sambhūya Samuthāna Prakaranām, and Sīmāvivāda are analyzed in V.M. All stanzas are the analysis of saints like Manu. How much it will be worth while can be assumed by the nirūpakās. Similarly V.M can be considered as a supreme science by linking laws and principles.

Authorship of Vyavahāramālā.

V.M was originated in about five centuraries ago. It’s Malayalam translation-form has published as the 9th text book of ‘Sṛīmūlam bhāsā grandhāvaly’. Authorship of original Sanskrit version is anonymous. According to ‘kerala Sāhitya carithram’ indicates that V.M was translated by a Śāstry patṭṭer in 884 malayalam era (Kollavarsam). According to language style of V.M leads, its original period may be between the 16th and 17th centuary A.D. Since the 17th centuary onwards V.M was considered and implemented as a juridical text in judicioury system of Kerala. So V.M is existed a number of years as juridical text. Even though there is no clear evidence to decide the authorship of V.M. Ullūr mentions in Kerala Sāhitya Caritram that
there is a Drāvida Brāhman a made a Malayalam version of V.M at the early period of 19th century A.D².

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In the PhD thesis on the ‘Translation and study of Vyavahāramālā’ in the Sanskrit Dept. Kerala University Trivandrum, the authorship of Vyavahāramālā is attributed to Mahisamangalam Nārāyan an Nambūtiri. In the scholarly

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² Ullur-Kerala sahitya Charitram- Vol-II- page 301.
works of Vatākkumkūr’s Keralasāhityacārītra and A. Sridharan’s Keralacārītra, Mahisāmangalam Nārāyanānan Nambūtiri is referred to as the author of Vyavahāramāla. On the contradictory there is no reference about the author in the Mss of V.M.

In the light of the above mentioned manuscripts no distinct authorship can be attributed for V.M. Ullūr. S. Paramēśwara Iyer, who translated the V.M did not mention any name of the author of V.M. The works which are considered to be of Mahisāmangalam are the following. Mahisāmangalabhānā, Smārtaprayacāttavimarśini, Rāsakṛidākāvya, Uttararāmāyanā campu, Nāisādham campu, Rājaratnavalīyam champu, Ködiyaviraham campu, Bānayudham campu, Brāhmanāipatītukal, Visṇumāyacarita, Thirunṛtha, Dārikavadha, Pārvatistuti, Sathīswayamvara. In these collections V.M. is not mentioned. Hence there is no justification in saying that Mahisāmangalam Nārāyanānan Nambūtiri is the author of the work V.M. I do not deny the statement that
Mahisāmangalam Nārāyanānam Namūbūtiri is the author of the work V.M, but it is a fact that the real author of the work V.M. can not be identified on the basis of the evidences in the light of present studies. Especially, Ullūr .S. Parameswara Iyyer, who wrote the Kerala Sāhitya Caritram, did not mentioned about the author of V.M, even though he also translated it into Malayalam.