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CHAPTER I

INTRODUCTION

The institutes of the various sages are the primary source of Hindu Law. These ancient legal texts treat law in the widest sense of the term. The rules prescribed in them embrace the religious rites and ceremonies and the moral duties of different classes of the community and law. The laws are designated as prescriptions and prohibitions for the life of the members of Varṇas and Āśramas (Varṇānāmāśramānāmca bruhi dharmānāṣṭaḥ - Manu). The texts therefore lay down rules of conduct of individuals in society in all walks of life. It is therefore social law too. The important feature of ancient law which deserves to be noticed, is that, law does not make any distinction between religion, ethics or morality, individual and social rules of conduct on the one hand, and the provisions of what may be called the positive law, on the other.

Mahāmahopādhyāya Kane also states that, 'numerous topics are comprehended under the title dharmaśāstra'. In the Manusmṛti - an authoritative text - all kinds of religious, social, legal rules are propogated. There does not seem to be very strict distinction between the laws of morality, religious code of conduct and that which can be called positive law.
In the history of civil and criminal law the distinction appeared gradually. This distinction can be clearly seen in the Yājñāvalkyaṁśrī. Yājñāvalkyaṁśrī is divided into three parts, viz., Ācāra, Vyavahāra and Prāyaścitta. The Ācāra or ritual part treats of the initiatory ceremonies, the duties of different castes and Āśramas, the domestic and social usage and rites of purification and sacrifice etc. The second part of Vyavahāra or law deals with adjective and substantive law. Yājñāvalkya has devoted three hundred and seven verses for the development of legal procedure and titles of law. Manu has dealt with the law in his eighth and ninth chapter and rules are many times scattered in many places in the whole text. Manu's eighth chapter comprises four hundred and twenty verses. The third part of Yājñāvalkyaṁśrī is devoted to Prāyaścitta or expiation, which deals with the religious sanctions and the mode in which sin, incurred by the violation of rules can be purged off. Manu also has dealt with the Prāyaścitta, but Manusmrī is arranged in the chapters and not clear parts like Yājñāvalkyaṁśrī. It is to be noted to the credit of Yājñāvalkya that he, for the first time, divided the topics of Manu in his Dharmaśāstra into 3 broad divisions. Another feature is that he has become more technical and legal and less of a moralist.
Nāradasmṛti does not include the Ācāra and Prāyaścitta parts. It concentrates only on Vyavahāra, i.e., legal procedure and eighteen titles of law. Written law in all probability known as the kingly law comes to its real supreme status in the work of Nārada. This is the first and the only work of eminence, that we have on only law. Nāradasmṛti is the only text which is strictly dedicated to Vyavahāra, i.e., Judicial procedure and civil and criminal law, that knows no friends and enemies, no likes and dislikes, no favours and hatreds. In other words, the systematic exposition of ancient Indian civil and criminal law as such is given by Nārada in one thousand and twenty eight verses; for the first time. It is held to be the highest authority in the smṛti works by most of the commentators of smṛti texts. Nārada's introductory chapter on Judicial procedure and meticulously systematic arrangement of eighteen titles of law is more practical and bears special significance; remarkable indeed is its wholesomeness to the exposition of law. Smṛticandrikā explicitly states that it follows the Nāradasmṛti in preference to that as regards the nomenclature and the sequence of the titles.

Nāradasmṛti comprises one thousand and twenty eight verses (including appendix) and out of these more than seven hundred verses are quoted by Medhātithi, Mitākṣarā and by other commentators of smṛti texts. This itself shows the authoritative nature of this work.
Date of Narada

It is very difficult to say definitely when and where this great law giver flourished, but certainly he is later than Manu and Yājñavalkya. Narada himself tells in the beginning of his work that his treatise is based on Manu's code. Narada follows Manu in many respects. Manu's name is mentioned at many places and various rules are quoted by saying that they are laid down by Manu. There are fifty verses that are common to Manu and Narada. He is certainly later than Yājñavalkya, because Narada is not mentioned in the list of ancient writers on dharma given by Yājñavalkya. Had Narada been earlier than Yājñavalkya, certainly Yājñavalkya could not have missed such an important law giver. At many places Narada follows and mentions Manu but he does not mention Yājñavalkya by name. At the same time many rules of Narada show a close similarity to the rules of Yājñavalkya. It could mean that Narada is either a near contemporary to or a little later than Yājñavalkya. In all probability, Narada seems to be later than Yājñavalkya because, Yājñavalkya enlists only five kinds of ordeals, while Narada gives seven kinds of ordeal, and Narada's treatment is more exhaustive than that of Yājñavalkya. Again, if Yājñavalkya is later than Narada, then Yājñavalkya could have included or mentioned exhaustive study made by Narada.
on Vyavahāra and could have made improvement on it. But this is not so. Moreover, Nārada follows Yājñavalkya at many places and makes certain improvements on the basic concepts of Yājñavalkya. Yājñavalkya does not say 'title of law' i.e., Vyavahārapada. He instead uses the term 'chapter' i.e., Prakaraṇa. His treatment of the legal title is brief and it can be noted from Mitāksara that to understand and to elaborate certain rules, it quotes Nārada. Advancement of law found in Nārada is not seen in Yājñavalkya. So the conclusion can be drawn that Nārada flourished after Yājñavalkya.

Nārada has mentioned the word 'Dīnāra' at two places. On the basis of this, Dr. J. Jolly thinks that Indian 'dīnāras' are older than the second century A.D., therefore Nārada is later than 2nd or 3rd century A.D. According to Dr. Jolly, 'the first importation of gold dīnāras into India cannot be referred to an earlier period than the time of the Roman emperors, and the gold 'dīnāras' most numerously found in India belong to the third century A.D.'. According to Mr. Jayaswal, MrCchakatika speaks of nānaka and Nārada speaks about 'dīnāra' which indicates that Nārada belongs to the fourth century, and is later than the drāma. Winternitz follows Jolly and states that, all Sanskrit works in which the word 'dīnāra' occurs must be later than the 2nd or 3rd century A.D., Keith has however pointed out that
the introduction of 'dīnāras' into India need not be later than the beginning of the Christian era. Golden dīnāras were first coined in Rome in 207 B.C. and the oldest Indian pieces corresponding in weight to the Roman 'denarius' were struck by Indo-Scythian Kings who reigned from the first century B.C. Therefore it can be said that Narada might have flourished in between 100 A.D. to 300 A.D. 13.

Text

At present, two versions of Naradasmṛti are available, a smaller version and a larger one. Both these versions are edited and translated by a learned Western Scholar Dr. Julius Jolly. A smaller version contains eight hundred and seventy six verses and is translated into English by Dr. Jolly. It is published by Trübner and Company, London, in 1876. The larger version is also edited by Dr. Jolly with copious extracts from the commentary of Asahāya and other standard commentaries. This is published by Asiatic Society of Calcutta in 1885. This version has been translated into English by Dr. Jolly for the first time and published in the Sacred books of the East series, Vol. XXXIII, under the title "Institutes of Narada" in 1889. Extracts from Asahāya's commentary up to the twenty first verse of the fifth title of law are included by Dr. Jolly, in the English translation as well as the original sanskrit text. This
larger version edited by Dr. Jolly also includes an appendix on theft, which is found in Nepalese Ms. of Naradasmrti. Nepales Ms. of Naradasmrti contains two additional chapters on 'theft' and 'ordeals', but Dr. Jolly has included 'theft' as an appendix and omitted the chapter on ordeals on the ground that it is not authentic. 

Relation Between Manusmrti and Naradasmrti

Narada himself tells in his introduction to his treatise that, origin and base of this work is Manusmrti. He gives exhaustive information about different versions of Manusmrti. This introduction describes that Sage Manu first composed a book of twenty four sections, which consisted of one hundred thousand verses and eighty chapters. These twenty four sections were as follows: (1) creation of the world, (2) the various kinds of living beings, (3) the extent of virtuous country, (4) the constitution of judicial assembly, (5) the performance of offerings according to the Vedas and Vedangas, (6) established usage, (7) forensic law, (8) the extirpation of offenders, (9) the mode of life of a king, (10,11) the system of the four castes and four orders, (12) marriage laws, (13) the mutual relations between husband and wife, (14) the order of succession, (15) the performance of obsequies, (16) the elucidation of difficult points regarding purification, (17) the rule as what may be eaten and what
not, (18,19) the law regarding vendible commodities, and those which must not be sold, (20) the various kinds of crime, (21) heaven and hell, (22) penances, (23) the Upanisads, (24) secret doctrines. This book was handed over to the divine sage Narada. He learnt it and thought that the gigantic work would not be easily remembered or digested by the mortals. He therefore abridged it to twelve thousand slokas. This abridged version was again handed over to the great sage Markandeya. Markandeya learnt it and again reflected upon the limited duration of human life and thought that such a gigantic work would not be studied and understood completely by any individual during the short life span. He therefore still further abridged the book and reduced it to eight thousand slokas. After abridgement, Sage Markandeya gave the abridged version to Bhrigu's son Sumati. Sumati also gave a thought to degrading human capacity (mental and physical) to learn and lessening span of life through the four ages. He therefore further abridged the book accordingly. He abridged it to only four thousand slokas and twelve chapters, from which Narada elaborately wrote this present treatise on the ninth chapter. It is quite clear from Narada's preface that there were four authors of Manusmrti, i.e., Manu, Narada, Markandeya and Sumati, respectively. Anyway, this belief handed down through convention and tradition proves that several hands have worked on the smrti till it came to its present form.
The extant Naradasmrti is described as an abridgement made by Narada of the ninth chapter or Vyavahara of the original code of Manu, which was in one hundred thousand ślokas. The mythical history of Manu's code given by Narada seems to have some bearing. Narada's preface seems to be known to early authors, such as Medhatithi who states in his commentary that, this work consisting of hundred thousand ślokas was composed by Prajāpati and abridged successively by Manu and others\textsuperscript{16}. Dr. Jolly puts the matter, thus this Medhatithi's statement goes to prove that the preface to the Naradasmrti had attained notoriety as early as the ninth century A.D., and must be nearly or quite as old as the remainder of the work\textsuperscript{17}. This history of abridgement seems to be supported by Medhatithi. It is stated in the Mahābhārata that the original Dharmaśāstra produced by Brahman in one hundred thousand chapters was successively reduced to ten thousand chapters, then five thousand chapters, three thousand chapters and one thousand chapters by Śaṅkara, Indra, Brhaspati and Kāvyā respectively\textsuperscript{18}.

Extant Naradasmṛti as described above is an elaborate text on law and claims its origin to the code of Manu. This comprises one thousand and twenty eight ślokas or verses. It is certain that Nārada was well aquainted with the code of Manu which was either similar or closely connected with the extant Manusmṛti. Dr. J. Jolly rightly points out that,
Nārada was apparently acquainted with a work either identical with or closely allied to the extant code of Manu. Nārada’s analysis of the contents of the original code composed by Manu in one hundred thousand ślokas corresponds in the main to the topics treated in that work as it now stands. Nārada has quoted the opening verse of the gigantic original work which agrees with Manu’s fifth and sixth verse in the first chapter. Verse quoted by Nārada is, 'This universe was wrapped up in the darkness, and nothing could be discerned. Then the holy self-existing spirit issued fourth with his four faces'. Verses in extant Manu’s code are: (1) "This universe existed in the shape of darkness, unperceived, destitute of distinctive marks, unattainable by reasoning, unknowable, wholly immersed, as it were in the deep sleep". (2) "Then self-existent (Svayambhu himself) indiscernible, but making all this, the great elements and the rest, appeared with irresistible (creative) power dispelling the darkness."

There are many instances where Nārada quotes Manu and these refer to the authoritative enunciations of Manu that may actually be traced to the Manusmṛti. Mahāmahopādhyāya P.V. Kane observes that, there is one remarkable fact to be noted about the relation of Manu and Nārada. There are about fifty verses that are common to Manu and Nārada, viz., Manu VIII, 12-14 and 18-19 are Nārada Sabhā verses 8-10 and 12-13 in a different order, Manu VIII, 140-141 and Nārada - Rādāṇa
The question may arise that if Nāradasmṛti is an expansion of the part of Manu's code, i.e., Vyavahāra, then what is its important contribution to law? How far is it different from Manu? It is important to note that Nārada follows Manu in many respects, but it is not just reproduction of Manu's doctrines. Germs of many theories advanced by Nārada are found in Manu, but it is to be seen as to how...
these theories have been developed by Narada. Judicial theories put forth by Narada certainly show its originality and independent nature and an advancement of development of law as compared to Manu. It is undoubtedly an independent original work which bears special value in exposition of the whole ancient judicial system and civil and criminal law. On account of its originality and authoritative nature Naradasmṛti occupies an unique place among the ancient Indian law books. Dr. J. Jolly rightly points out that, the so-called Narada was far from offering a mere slavish reproduction of Manu's doctrines in his work. On the contrary Naradasmṛti must be considered as an independent and therefore specially valuable in exposition of the whole system of civil and criminal law, as taught in the law schools of the period. It is in fact only smṛti completely preserved in MSS, in which law properly so-called is treated by itself, without any reference to rules of penance, diet and other religious subjects and it throws a new light on its importance and social and political institutions of ancient India at the time of its composition.

Though Narada follows the Manusmṛti to a considerable extent in the nomenclature and the arrangement of eighteen titles of law, still he differs from Manu widely in several essential aspects. Some of the titles are differently named by Narada. His treatment of legal procedure in particular
abounding as it does in technical terms and nice distinctions and exhibiting decided preference for documentary evidence and written records over all testimony and verbal procedure exhibits originality and improvements made on Manu. The detailed study made in the following chapters would bring out, Nāradasmṛti's importance and special contribution to ancient judicial procedure, civil law and criminal law. This is the basic purpose of the study undertaken by us.

Structure of Nāradasmṛti

Nārada's arrangement of his subject is very systematic. After the short preface he deals with the extremely important subject of judicial procedure, plaint and the courts of law, which consists of methods used in enforcing legal rights and remedies. These include rules for conducting a trial and appeal for retrial of the case. This guides about the process whereby one party secures redress or compensation from another. Unless these procedures are understood, it is in vain to read directly titles of law. This also serves as a guide for the assessors of the court of Justice and the King. His narration of legal procedure, and all allied topics shows that mature and highly developed and technical advancement which is not to be found in Manu or Yājñavalkya. In fact it has gradually advanced from Manu, to Yājñavalkya to Nārada.
After these introductory chapters, eighteen titles of law are discussed, which are called 'Vyavahārapada'. Nārada does not treat 'Vākpārusya' and 'Dandapārusya' separately and treats them in one title. One pariśiṣṭa is added after eighteenth title, i.e., caurapratisedha, which elaborately deals with the theft. The eighteen titles are arranged in the following order by Nārada:

1. Debt - This is the largest title in the Nāradasmṛti, comprises three hundred and forty eight verses. According to Asahāya it can be divided into twenty-five sub-topics. One peculiar thing is Nārada has discussed the complete law of evidence as a part of first title of law.

2. Deposits - Definition of deposits and six kinds of deposits are discussed herein.

3. Partnership - This chapter is regarding traders who jointly carry on the business for the purpose of gain.

4. Resumption of Gifts - This is discussion regarding valid and invalid gifts and rules for the same.

5. Breach of Contract of Service - This title is divided into two parts. One part deals with the duties and livelihood of students and another part strictly adheres to the labours and their wages, difference between hired servants and bonded slaves and rules regarding them.
6. Non-payment of Wages - This is regarding payment and non-payment of labourers' wages.

7. Sales Affected by Another Than the Rightful Owner - The title itself is explanatory of its nature.


10. Transgression of Compact - This title deals with the rules about established usages of different assemblies, societies and religions.

11. Boundary Disputes - Disputes regarding all types of landed property is discussed here. The disputes regarding the cattle owners and the cowherds are also included in this chapter.

12. The Mutual Duties of Husband and Wife - This title deals with almost all the aspects of this important institution of marriage.

13. Inheritance - Rights of inheritance and the duties of the members of family and other relations are dealt here.

14. Heinous Offences - This is an criminal title of law. This includes rules of detection on theft.

15. Abuse and Assault - Narada has dealt cominelly with these two titles of law.
17. Games - This title of law puts forth the rules regarding gambling and betting on animals and rules about the disputes among them.

18. Miscellaneous - Rules regarding the disputes which are not included in other seventeen titles of law or the disputes which are to be decided by the king are included here.

Chapter of appendix is devoted to theft i.e., criminal offences.

This description of Naradasmrti is based on the larger version of Naradasmrti edited by Dr. Julius Jolly.

Except for a few verses most verses are composed in Anuṣṭubha Chanda. It is in fitness of things to see the important contribution made by Narada to ancient law by studying different chapters of Vyavahāra of Naradasmrti in detail.

Method of Study

The method of study is adopted on the lines laid down as follows:

(i) Reading one and all verses and distributing them into different topics which Narada has discussed and analysed. The idea is to distribute Narada's writing first topic-wise so that next he can be read and studied topic-wise.
(ii) The topicwise distribution will also clearly show how his topics are similar to those in his great predecessors, Manu and Yājñavalkya; it will also show how the concept of 'Dharmaśāstra' and 'Dharma' is changing; how from the ethical, social, religious and moral prescriptions and prohibitions, law has changed to become technically law proper in Nārada.

(iii) A second look at the works of Manu and Yājñavalkya will naturally be of immense benefit and therefore will have a quick survey of the contents and thinking on the different problems discussed in the works of these two Ācāryas. Here, standard and authentic study of History works of Dr. Jolly, P.V. Kane, Jayaswal, Gharpure etc., is helpful.

(iv) The work will now be ready topicwise and with the study, Nārada's thinking and views will be noted.

(v) Notes are made in comparison with the views of Manu and Yājñavalkya, in case of each topic. This would give a clear picture of how laws on different topics evolve and develop further from Manu to Yājñavalkya to Nārada.

(vi) This would throw light on evolution of Nārada's thinking on each topic and how he advances on his two great predecessors. This would also help to fix Nārada's thinking and contribution in the realm of law.
(vii) On the other side it would give a clear picture of evolution of court law, the legal procedure, jurisprudence in all spheres, provisions of trial, verdict and punishment in case of all titles of law in the ancient days.

(viii) After this, in the writing of the thesis proper, all material collected and written down is distributed in to chapters so that Nārada's thinking evolves to the full.

(ix) Throughout the study, care is taken to see that Nārada is studied on the background of Manu and Yajñavalkya. This comparative method places Nārada's thinking, his maturity in the law in proper light and clear perspective. At places, it is also seen how Nārada is referred and quoted in the important works like Mitākṣarā, Vīramitrodaya, Dayabhāga and Vyavahāramayukha.

The advantages of this methodology are very clear. It is humbly claimed that this study of the work of Nārada, undertaken for the first time on these lines firmly resolve: (i) the place of Nārada in the realm of Smṛtikāras, (ii) his deep, subtle, clear and scholarly thinking, particularly of state and court law, (iii) his contribution to jurisprudence, (iv) his contribution particularly in legal procedure, (v) his uniquely original treatment of the titles of theft, law of inheritance, Marriage, and (vi) his relevance in the modern study.
3. Hindu Law of Inheritance, Tr. G. Sarker, Preface, P.IX.
4. Betai, R. S. 'Traits of Criminal Law in Ancient India, p.40,
5. नारदेयाबुद्धबुद्धानुसारिण्याच वचनः
   - Smrticandrika, quoted by P. V. Kane, H. D., Vol. 1,
     Part I, p. 468.
8. Yāj. I, 4-5
9. Nāradasmrītī (Nr.) Mātr. II, 34, Nr. Appendix, 60
10. Julius Jolly's (J.J.) Introduction to Nr. P. XVIII.
11. 'Jayaswal', quoted by P. V. Kane, H. D., Vol. 1, Part-I, p.474
13. Ibid., p. 477
14. J.J., Institutes of Nārada, Preface, p. 6-7,;
15. "इस दिन भावान्वनु पुरस्त तर्कभावानुपर्याचारस्थितितदेहुः
    शास्त्री संबंध । यद्व लोकस्त्रिप्रच्छसः प्रियांगोऽस्माणोऽस्माणा
    केद्रेष्टाद्याद्यवियानमाचारो व्यवहारः बुधकामियेऽर्जुनतृत्व
    वर्णश्रमविभागोऽ विवाहनय्ययः स्त्रीपुत्रसिकले दातानुकुमः
    शादृश्यान्तः श्रीवाचारसिकले भ्रात्राभ्यक्ष्य किक्रियाकिक्रिय-
    मौमालेश्वर वस्तुकेश्वर स्वानन्दरकालायुद्धः पुरायिश्वान्युपनिमोऽ
    रहस्यरहानानि । तथ वाद्यः विभागः पुकराणानि ।
  तदेव वेदद्रव्यस्तः सत्त्वविनिवध्य्य देवलीकृत्य नारदाय पुनः प्रयत्नः
  । स च
16. J. J., Intro., p. XII
17. J. J., Intro., P. XII.
18. Mahâbhârata, XII, 59/22, quoted by J. J., Intro P. XII
19. J. J. Intro., P. XIV
20. Mr. Mâtr., Intro, 5.
21. आतीरिद्व तमोगृहमुद्राततमाल्यम् ।
अपृतसमविषयं पुरसपमिव सवितः ।
ततः सवैयुमुनावंपयतो भ्यवभन्निन्दम् ।
महाभृतादि वृत्तालोकः प्राृहराति।तमेनुः ।
- Manu, I, 5-6.
23. J. J. Intro., P. XIV
24. J. J. Intro, P. XIV