CHAPTER II

THE BASIC PRINCIPLES OF LEGAL ADMINISTRATION
AS KNOWN FROM THE DHARMASUTRAS OF GAUTAMA.

The first book of the aryans is the Rgveda. Gradually the other three Sanshitas evolved viz. Yajurveda, Samaveda, and Atharvaveda. The duties of the aryans were written or prescribed in the four Vedas. From the beginning of the Vedic era the aryans were much devoted to jnanakandha for long time. The sages were much amazed with the natural objective phenomena of Usas, Surya and Maruts etc., and they spent most of the time by their songs and prayers. Gradually they scattered in different places and they were involved in conflict with dasyus. As a result complications arose in their vast life and also in society. They were involved and attached with complicated duties or works (karma) from the path of pure knowledge. Thus karmakanda was developed in the society. The sages devoted themselves in many types of performance of sacrifices with the expectation of attainment of result relating to this world (aihika) and reward in another world (paratrika). This karmakanda gradually developed so much that it appeared in a vast form. As a result it was impossible for man to remember pros and cons of customs of sacrifices and they felt the necessity of composition of a book. To meet this necessity
the literature 'brahmana' was composed. Gradually the 'brahmana' literature took so vast form, it was felt that the brief form of this was more necessary and urgent. Thus brahmana literature being compiled in sutras with the help of smrti was named as 'Kalpasūtra'. Kalpasūtra consists of four sūtras, viz. Srautasūtra, Grhyasūtra, Dharmasūtra and Sulvasūtra. The customs of the Vedic sacrifices are available in Srautasūtra. The customs of Upanayna, marriages and other sacraments are found in Grhyasūtra. The customs and rules and regulations of individual and social life of four-caste-system (caturvarṇa) and four orders of life (caturāśrama) are compiled in the Dharmasūtras. The size, measurement and rules of construction of altar of sacrifice are the subjects of the Sulvasūtra.

The Dharmasūtras were approximately composed between 5th cen. B.C. to 7th cen. B.C. Gautamadharmanasūtra was composed approximately in 5th cen. B.C.

The Gautamadharmanasūtra wants the scheme of the duties of the four castes and four stages to be enforced by the students. It claims to be merely based upon Vedic teaching. The Dharmasūtras are the first steps in the legal literature.

The Gautamadharmanasūtra has been printed several times
(there is the Anandasrama edition with the commentary of Haradatta, and the Mysore Government edition with the bhasya of Maskari; it was translated by Bühler in S.B.E., Vol. II, with an introduction). It is the oldest of those we have. Specially the followers of the Samaveda studied the Gautamadharmsutras. The commentary on the Caranavyuha tells us that Gautama was one of the nine subdivisions of the Sañayaniya school of the Samaveda. The Gobhilagryhya which belongs to the Samaveda cites Gautama as an authority. Therefore it is not improbable that a complete Gautamasutra consisted of sauta, grhya and dharma doctrines once existed. There are other indications which resemble close connections between Gautama and the Samaveda. Chapter 26 of the Dharmasutra about krochra penance is the same, as the Samavidhana Brahmana. Among the purificatory texts (21 in number) mentioned in Gautamadharmsutra, there are nine that are Samans. The mention of the five utterances ('vyahrtis') is similar with the number in the vyahrtisama though the order is different. It is however to be noted that Gautama is a generic name. In the Kathopanisad, both Naciketas and his father are styled Gautama. In the Chandogyopanisad there is a teacher Haridrumata.

1. Kathopanisad, 1.1.10, ñantasamkalpana sumana yathä syäd
   vitamanyur gautamo mabhi mṛtyo
According to Haradatta the Dharmasūtra has 28 chapters. The Calcutta edition adds one chapter on karmavipāka after chapter 19. In many places Gautama unmistakably refers to his own previous dicta; e.g. 'yathoktam va'.

The contents of the Gautamadharmaśūtra are as follows:

1. Sources of dharma, rules about interpretation of texts, time of upanayana for the four varṇas, rules about sauca and ācamana, method of approaching the teacher;

2. Rules about those not invested with sacred thread, rules for the brāhmačarīn, control of pupils, period of study;

3. The four āśramas, the duties of brahmačarīn, bhiṅisu and vaikhānaṇaṇa;

1. Chhandogypenisad, 4.4.3,

haridrumatam gautamametyovaca brhamacaryam bhagavati
vatsyamyupeyam bhagavantamiti haridrumata gautama
4. Rules about the householder, marriage, age at time of marriage, eight forms of marriage, sub-castes;

5. Rules about sexual intercourse on marriage, the five great daily sacrifices, the rewards of gifts, madhuparka, method of honouring guests of the several castes;

6. Rules about showing respect to parents, relatives and teachers, rules of the road;

7. Rules about the avocations of a brahmana forbidding to sell or deal in;

8. The forty Samskaras and the eight spiritual qualities (such as daya, forbearance etc.);

9. The observances for a snātaka and householder;

10. The peculiar duties of the four castes, the responsibilities of the king, taxation, sources of ownership, treasure-trove, guardianship of minor's wealth;

11. Rajadharma, the qualities of the king's purohita;
12. Punishments for libel, abuse, assault, hurt adultery and rape, theft in the case of the several varṇas, rules about money-lending and usuary and adverse possession, special privileges of brahmaṇas as to punishments; payments of debts, deposits.

13. Rules about witnesses, falsehoods when excusable;

14. Rules of impurity on birth and death;

15. Śrāddha of five kinds, persons not fit to be invited at Śrāddha;

16. Upakarma, period of Vedic study in the year holidays and occasions for them;

17. Rules about food allowed and forbidden to brahmaṇas and other castes;

18. The duties of women, niyoga and its conditions, discussion about the son born of niyoga;
19. The cause and occasions of prayāscitta, five things that remove sin (japa, tapa, homa, fasting, gifts), purificatory Vedic prayers, holy food for one who practices japa, various kinds of tapas and gifts, appropriate times and places for japa etc.

20. Punishments of a sinner who does not undergo prayāscitta and the way of doing it;

21. Sinners of various grades, mahāpātakas, upapātakas etc.

22. Prayāscittas for various sins such as brahmahatya, adultery, killing a Kṣatriya, Vaiśya, Śūdra, cow and other animals etc.

23. Prayāscitta for drinking wine, and nasty things, for incest and unnatural offences, and for several transgressions by brahmaśarin;

24. Secret prayāscittas for mahāpātakas and upapātakas;

25. The penances called kṛcohra and atikṛcohra;

26. The penance called Čandrāyana;
27. Partition, stridhana, reunion, twelve kinds of sons, inheritance.

The Gautamadharmasūtra is written entirely in prose. The author neither quoted nor composed any verse like other Dharmasūtras. The language of Gautama resembles that language of Panini than the Dharmasūtra of Baudhāyana and Āpastamba.

Besides the literature Vedic Samhitās and Brāhmaṇas, the Gautamadharmasūtra mentions the following works viz. Upaniṣads, the Vedaṅgas, Itihāsa, Purāṇa, Upaveda, Dharmasāstra. He borrows the first six sūtras of the 26th chapter from the Āraṇyaka. Gautama refers to Anvikṣiki. He refers to only one teacher Manu1. Gautama accepts some proposition of Manu about brahmahatya, surāpana and violation of the bed of the guru. Gautama refers only to one Dharmasūtra of Manu.

1. Gautamadharmasūtra, 21.7, trīṇi prathamānyanirdasyān manu
In numerous places Gautama refers to the views of his predecessors in the words 'ekte' \(^1\) and 'ekeśam' \(^2\). This proves that Gautama was pioneer in great literary activity in the sphere of dharmaśāstra. Gautama \(^3\) seems to be reminiscence of the Nirukta.

Baudhāyana admits that Gautama was the earliest author on dharma. Baudhāyana prescribes some peculiar usages of North and South India. But he quotes Gautama and says ultimately that certain customs should not be taken as authority (even though they are non-Vedic). This refers to Gautamadharmasūtra \(^4\). In another place Baudhāyana says if the brahmin cannot make a living by his own occupation, he can accept the livelihood of a Kṣatriya and quotes the views of Gautama as opposed to this.

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1. Gautamadharmasūtra, 2.15, eke godānādi
   Ibid, 2.40, naikē yuvatīnāṁ vyavahārāprāptena
   Ibid, 2.56, ācāryāḥ srestho gurūnāṁ mātetyeke

2. Ibid, 28.17, abhisandhimātātputriketyeśam
   Ibid, 28.38, savarṇaputro'pyanyayavṛttonte labhetaikesam

3. Ibid, 11.28, daṇḍo damanādityahustena dāntanam damayet

4. Ibid, 11.20, desajātikuladharmāsca āmmaaivaviruddhah pramāṇam
In other aspect Baudhayana follows Gautama by each and every word. Bühler gives a verdict that the sūtra in the extant Gautama is an interpolation. Govindasvāmi, the commentator of Baudhayana, suggests that Baudhayana refers to another Baudhayana. Baudhayana borrows the chapter of prāyāscitta from Gautama with slight changes. There are besides, many sūtras of Baudhayana which are similar to Gautama e.g. their opinion on Vaikhānasa.

śrāvanakena gnimādhaya.
agraśmyabhoji.
devapi trmanuṣyabhūṭārsipūjakaḥ.
sarvātithiḥ pratīśādha-vārjaḥ.
vaśkamapūpayunījita.
na phālakṛṣṭāmadhitisthet.
grāmam ca na pravīset.
jaṭilasvīrājina-vasaḥ.
nātisamvatsaram bhunijita.
Gautama is referred to in the Manusmrti as the son of Utathya. Yajñavalkya, Aparārka, Kullūka, Kūmarila, Sāṅkara, Viśvarūpa and Medhatithi quote more frequently from Gautama.

The above discussions help us to arrive at the approximate age of Gautamadharmsutra. He is separated by a long gap from the Sāmavidhāna Brahmana. Gautama is later than Yaska. He wrote at a time when Pāṇini’s system which was either not in existence or had not attained any eminent position. The Gautama-dharmsutra was known to Baudhāyana, Āpastamba and Vasiṣṭha and was in the same state long before 700 A.D. The influence of Buddhism is noticed in Gautamadharmsutra. He uses the term bhikṣu instead of the term parivṛṣṭaka that occurs in Baudhāyana, Āpastamba and other Sūtra works. Gautama says that Yavana is the son of Kṣatriya male and Śūdra female. Yavanas were known at the time of Alexander’s invasion, so it proves that every work in which the word Yavana is found, must be later than 320 B.C. According to Bühler, the word Yavana which occurs in Gautama may be an interpolation. This is not a satisfactory explanation.

1. Manusamhita, 3.16,
śudrāvedī patatyaatruterutathyatanayasya ca
śaunakasya sutotpattyā tadapatyataya bhṛgoḥ
If Bühler believes that Indians borrowed their alphabet centuries before Alexander from the neighbours of the Greeks, why it is improbable that the Indians may not have heard of the word Yavana centuries before Alexander and why Yavanas may not have resided in India long before that date. The foregoing discussion proves that Gautamadharmaśutra cannot be placed later than the period between 600–400 B.C. ¹

Pre-Gautama days and the society at his time mostly depend upon the Veda. The religion of the Veda influenced the society so much that religious world was much more important than temporal world. As Gautama gave much importance to religion, he did not discuss legal or judicial affairs systematically or methodically. The legal chapter was scattered here and there in his book. This obviously proves that he neglected judicial matter (vyavahāra). On the other hand, Gautama gave much importance to customs or ācara and penance (prāyaścitta).

Pre-Gautama days are the history of continuous struggle between aryans and non-aryans. The history of pre-Gautama days narrates how the aryans ultimately settled down in India after defeating the non-aryans. At that time India was not only an abode

¹ P.V. Kane, History of Dharmasūtra, Vol.I, pp. 37–39
of aryans and non-aryans, various types of different castes, mixed castes and sub-castes, also settled down in India. Not only that some non-Vedic religion, like Baudhā, Jainā, Pāṣupata and Pāñcarātra-religion evolved in society. These religions not only demoralised the Vedic society, they were disastrous for this society also.

Pre-Gautama days saw some sorts of disintegration of legal system in different parts of India. Destabilisation was the result of non-aryan-aryan conflict and constant feud thereafter. Thus it was necessary for the śūtra writer like Gautama to stop this sort of disintegration by writing some law texts based on the Vedic tenets.

In Vedic age people had stern belief that the state had evolved on the basis of the theory of divine origin.¹

¹. The 'theory of divine origin of state' has been elaborately discussed in the first chapter.
According to the Vedas the state is the most universal and most powerful of all social institutions. The state, as a concept of political science and public law, is a community of persons more or less numerous, permanently occupying a definite portion of territory, independent, or nearly so, of external control and possessing an organised government to which the great body of inhabitants render habitual obedience. MacIver's definition which carries with it a pluralistic tinge is: 'The state is an association which, acting through law as promulgated by a government endowed to this end with coercive power, maintain within a community territorially demarcated the universal external conditions of social order'. This definition which, in many ways, is the best, emphasizes 'law', 'government', 'coercive power', 'communal unity', 'clearly marked territory', and 'the universal external conditions of social order' - elements which should enter into any sound view of the state.

The essential elements of the state are population, territory, sovereignty and government.

It is obvious there can be no state unless people live together an associated life. The question relating to number of persons necessary to constitute a state is only of theoretical interest although ancient writers gave much stress on it.
Plato in his laws fixed the number of citizens for an ideal state at 5,040. Aristotle considered 100,000, too many in relatively recent times, Rousseau was an ardent admirer of the compact population. According to him 10,000 would be an ideal number. Modern states vary in size and population as widely as Russia, China and the U.S.A., on the one hand, and Monaco and San Marino on the other, the latter of which has an area of only 38 square miles. The Vatican city under the Pope, constituted in 1929, covers 109 acres in the heart of Rome. Iceland has a meagre population of 132,000.

From the legal point of view, population as an element of the state includes both those who rule and those who are ruled. The people, of a state possess a dual character. In the capacity of those who have a share in framing the will of the state, they are citizens, and in the capacity of those who obey the will thus formed they are subjects.

As citizens, people possess rights and as subjects they have duties.

There can be little doubt that without fixed territory there can be no state. Yet not all political thinkers are
absolutely agreed on it. The modern state undoubtedly requires a definite portion of earth's territory over which it can have undisputed authority. In contrast with the ancient state, the modern state is essentially territorial in character. A nomadic people cannot be said to constitute a state, although they may have some form of political organisation through common subjection to a leader or chief. In fact territorial sovereignty or the superiority of the state over all within its boundaries and complete freedom from external control, has been a fundamental principle of the modern state life.

A fixed territory is so much an essential factor of the modern state that no two separate and unrelated states can claim jurisdiction over the same area. The only apparent exception is that of the federal state, where two states exercise authority over the same territory. It should be remembered that 'they are related states' and 'the sphere of each is carefully determined by the provisions of the written constitution'.

As a rule, the territory of a state is contiguous. Yet there are exceptions. The far-away Alaska and the Hawaii have now been added to the American Union as the fortieth and the fiftieth states.

Sovereignty and law are the two distinguishing
characteristics of the state. By sovereignty we mean ultimate authority, an authority from which there can be no appeal. Associations other than the state may have population, territory, and even some form of compulsive organisation, but they have no sovereignty. In the last resort, all individuals and groups of individuals within the state have to submit to the will of the state. This fact we express by the term internal sovereignty. In external relations, too, the modern state claims final authority. It may obey international conventions and understandings, but until world government becomes a reality there is no power on earth that can compel obedience of the state to a higher entity. This attribute of the state we express by the term external sovereignty. By virtue of its sovereign authority the modern state claims supremacy in internal matters and freedom from the control of external governments.

MacIver and many other modern writers do not agree. To MacIver, the state is an association, unique in its kind and of invaluable significance but still an association, like the rest.

As seen already, government is the political organisation of the state. It is the instrumentality through which the sovereign will of the state finds concrete expression. If the ultimate
sovereign in a democratic country is the people, the legislative sovereign is the government. A state without government is inconceivable, for the state wills and acts through the government. No particular forms of government is essential. The form of government depends upon the nature of the state which in turn depends largely upon the political thought and character of people.

MacIver says that the state is the organisation of which government is the administrative organ; and since the organisation is greater than the government, the state is the greater and more inclusive. To quote him directly: "A state has a constitution, a code of laws, a way of setting up its government, a body of citizens".

In time of Gautama society was established on the basis of village. This system was a great obstruction for the formation of democratic government. The society of Gautama gave much importance to the interest of individual than the interest of mass. This idea specifically goes against democracy. In later age, an opposite idea of Gautama was developed and established in society.

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In the period of Gautama the size of state was very small. Gautama's precepts are fit for only a small state. The state where he lived was either a very small or a tiny feudatory of a big one. The Vedic society was mainly responsible for small and limited size of state. Society was developed on the basis of the Veda and the system of four-castes. The non-Vedic activities and the anti-Vedic culture were most neglected in society. Besides that the importance and largeness of a state depend upon existence of many courts in a state. The more there will be many courts in a state, the importance and largeness of a state is established. In time of Gautama there was no court excepting one appeal court. There was no gradation of court in his time. Such as big court, small court, and civil court did not flourish at this period. Even, in time of Gautama there was no arrangement of representation. Besides that the revenue system was also very simple in his time.

In Vedic period, people had urge to acquire the title 'samrāt' (emperor) after conquering an empire. But in śūtra period there was no evidence of the word emperor or empire.

The existence of a state is unthinkable or impossible without a leader. There was no denying the fact that from Vedic period the king was the main leader of the state. The government was mainly monarchical. "Monarchy is the predominant type of
The monarchical system of government was in vogue in time of Gautama also. Although the king was the supreme in a country, he was a puppet in the hands of the brahmans, when brahmanical supremacy influenced the Vedic society and dominated over Kṣatriya-power.

Although the Dharmaśūtra literature was the backbone of framing laws, the political administration and the judicial laws were not discussed in the books systematically and methodically.

"The Dharmaśūtras do not contain any systematic exposition of legal principles and political doctrines such as we find in the Dharmaśāstras and Arthasāstras of the later ages."

As regards politics they view the state or society as an organic whole, in which the different elements such as the king and the people play their part according to law, or dharma, imposed or at least sanctioned by the divine will. For the allegiance here is not to any party or political principle, but to dharma conceived as an eternal and immutable law or order, which is divine in character. Such is the background against which the state is conceived in the Gautamadharasūtra1.

The society in Gautama's time originated strictly on the basis of four caste system (caturvarṇa) and four orders of life (caturśrama). The brahmans occupy the highest position in society. The śūdras were the most inferior, hated and neglected caste of society. The mass of the society adored the Veda extremely. Non-Vedic activities were strictly forbidden. People had to always bow down to the brahmans. People had a firm belief that negligence towards the brahmans means disobedience to the Vedas. Besides that if they disobey the brahmans they will have to undergo severe type of prāyāscita-punishment. For this reason people could not ignore or disobey the brahmans. As a result people became more superstitious and conservative (orthodox)

1. R.C. Majumdar, Vedic Age, pp. 482-483.
under the dominance of the brahmins. The liberal caste Kṣatriyas also became orthodox under the dominance of the brahmins. Even the king was submissive to the brahmins. The king had no freedom to solve any serious problems without the opinions of the brahmins. The society of Gautama originated mainly on the basis of conflict of the acceptance of highest position of the brahmins and lowest position of the fourth caste, i.e., the śūdras. The śūdras were the most hated, neglected and inferior class of the society. Their main livelihood or occupation was to serve the three upper classes. They were deprived of mantras of the Vedas, Vedic sacrifices and upanayana.

The people in the period of the Gautama were too much religious, theist and orthodox. They lost all their reasons and intelligence. They were not at all logical and scientific. People had firm belief that they can remove all types of agonies, sorrows, ailments and death by constant worship of gods and goddesses and also by the medicine of charmers. Mystic influence not only captured the mass, even king was under mystic influence. It proves that they were extremely superstitious. The brahmins are most responsible for this and their influence played a big role in this matter.

The society generally was established on the basis of village. The word 'pura' was noticed in Vedic period. Family
system was in vogue in Gautama-period. The eldest person of
the family was the master of home. Nobody dared to disobey
his command. State was generally patriarchal. In the period of
Gautama the birth of a son was much desired than the birth of
a daughter. People performed the sacrifice of guest (atithiyajña)
by entertaining the guest.

Each individual has his duty and responsibility rather
than rights and privileges fixed by law and this applies as
much to the king as to his nearest subject. To perform his life
a duty not merely political, social and moral but also religious
in character. For on this depends not only his well being in
this life, but also his salvation in the next life.

The society of Gautama not only consisted of four-castes,
but many other different types of castes came into being.

The rigidity of caste system was not so much strict
before the Vedic era. The main reason was the interaction of
civilisation between the aryan and the non-aryan. Gautama was
partly successful to establish rigidity among four castes.
Gautama was partly successful to establish rigidity among four
castes. Gautama was alert and careful to maintain difference and
individuality among each other by establishing separate kinds
of laws for the Brāhmaṇas, the Kṣatriyas, the Vaisyās and the Śudras.

The history of origin of the system of four castes is found in the puruṣasūkta of Rgveda. The brahmins were the most superior class among the four. The superiority of the brahmin was proved by birth. This is supported by Āpastamba who observes.

$$\text{catvāro varṇā brahmaṇa kṣatriya vaisya śudrāḥ}
\text{teṣām purvāḥ purvo janmataḥ sreyaṁ}
\text{jātinām brahmaṇaḥ sresthāḥ}$$

The meaning of the sutra is the four castes are brahmin, kṣatriya, vaisya and śudra. Of these four the preceding is greater than the succeeding one. The brahmin is the most superior of all the castes.

Gautama and Manu honoured the brahmins like god -

1. Āpastambadharmaśūtra, 1.1.1.5.
mahāti devatā hyeṣa nara-rūpena tiṣṭhātī i.e. the brahmin who is god, is present among us in the guise of a human being. The brahmins were the creators and custodians of the vast literature that had grown up, they were the guardians of the culture, of ages, they were expected to shoulder the burdens of teaching and preserving the vast literature. The theory of varṇa raised the brahmins to the highest pinnacle of reverence.

The difference of the brahmins with other caste was expressed by a nice way. As for example only the brahmins had noble right to take part in sacrifice.

The brahmins were divided into two classes - (a) rājapurohita-without his assistance, it was very difficult for king to rule the country (b) the other class is grāmya-purohita. They lead a peaceful life. The brahmins were much superior to the kṣatriyas - this truth was proved in Vājasaneyī, Satapatha Aitareya and Pāṇcaśiṁsa-brāhmaṇa. The brahmins were the main source of kṣatriya power. But on the other hand, the superiority of the kṣatriyas is proved in Kathakasamhitā. In Aitareya-brāhmaṇa,

1. Manusamhitā, 7.8
2. Satapatha-brāhmaṇa, 4.14.6; 12.1.3.12
The position of the brahmin was degraded. Here the brahmin was described as drunk and acceptor of gifts.

The main occupation of the brahmins is studying, teaching, sacrifice, offering and acceptance. In time of difficulty, the brahmins can pursue other occupations. The occupation of the ksatriyas is acceptance of weapons. Even Gautama allowed the brahmins to earn their livelihood by agriculture and commerce, if they are not done by them.

We come to know from Samkhya-yanasrauta sutra that power of the brahmins increased day by day. Even the brahmins became king as they wished. We shall try to prove by few statements of Gautama how the brahmins hold highest position in society. Gautama observes — "brahma ksatrena sampaktam devapitrmanusyan dharayati" the meaning is the brahman, being united with the ksatriyas upholds God, father and human being. Another is "brahma-prasutam hi ksatramrdhyate na vyathate". The meaning is the ksatriyas being

2. Ibid, 11.27.
united with the brahmins become prosperous and never fall into danger. The high position of the brahmins was also held in Aitareya-brāhmaṇa. As for instance "tadyatra vai brāhmaṇaḥ ksatram vasameti tadāvastam samrddham tadviravadāsmin viroc āyate"\(^1\), it means that state is prosperous where the brahmins control the ksatriyas, the children there become brave.

The same statement was also noticed in Taittiriya-brāhmaṇa, e.g. "brahmane vai prajanamupadrustäh"\(^2\) the brahmins are the instructors of the people.

Although the king was the chief administrator of country, he had no power without the help of the brahmins. That is why Gautama says - "raja sarvasyeṣte brāhmaṇavarjam"\(^3\). It clearly holds the king is the administrator of all excepting the brahmins. Besides that the brahmins enjoyed maximum facilities in society.

After the brahmins, the ksatriyas hold the second high position in society. The kinsmen (relatives) of the king were

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1. Aitareya-brāhmaṇa, 37.5
2. Taittiriya-brāhmaṇa, 2.2.1
3. Gautama-dharmasūtra, 11.1
regarded as the kṣatriyas. The main occupation of the kṣatriyas is study (adhyayana), sacrifice (jājana), offering (dāna), administration (sāsana) and war. Protection of people, and control of criminal and mischievous, are the main duty of the kṣatriyas. In time of danger the kṣatriyas could accept the occupation of the vaiśyas. But upper three classes could never accept the occupation of the śūdras in time of danger also, as there was a vast difference in position between the śūdras and upper three classes.

After kṣatriyas the vaiśya holds third status in society. The main occupation of the vaiśyas was studying, sacrifice (jājana), offering (dāna), cultivation, business of herdsmen, commerce and money-lending. In Aitareya-brāhmaṇa the position of the vaiśya was degraded. It is said that "he is to be lived on by another and to be oppressed at all".

The society was dangerously demoralised in the period of Gautama as the vaiśyas came in contact with the śūdras. In this period, the relation between the vaiśya and the śūdra

1. Gautamadharmasūtra, 10.7-8.
2. Gautamadharmasūtra, 10.50.
intensified through their occupation and livelihood. For that reason the great necessity was to demarcate between the aryan-vaisya and the śudra - the śudras who were regarded as doubtful ancestors of the aryans.

The fourth position was held by the śudras. They were said as non-aryans and dāsa. The śudras were divided into three classes e.g. (a) anirvasita (ṣūtradhara and blacksmith), (b) nirvasita (cāndāla) and bhojyānna & abhojyānna (c) sāchhūdra and asāchhūdra. The main occupation of śudras is to serve the upper three classes. That is why Gautama says - "paricaryyā tu uttareṣām".¹

In Manu-samhita, śudras were regarded as dāsa. But Gautama denied the statement. He said that śudras did not always earn their livelihood by serving three highest castes, they are enough refined, educated and cultured. He proved it by his saying 'śilpa-vṛttisca'² i.e. the śudra's occupation was art also.

1. Gautamadharmasūtra, 10.53
2. Ibid, 11.62
They were artists. Not only that, the 'trimūrtiyogi-siva' of Mohenjodara clearly proves that the śūdras were great sculptor and constructor. They had thorough knowledge about sculpture and construction. The śūdras were not always dishonest and immoral. The sachhūdra never drank spirituous liquor. Sometimes the śūdras accepted the occupation of the ksātriya and of the vaisyas excepting the brahmīns. In later ages the śūdras, even became king e.g. the king of Nanda dynasty. Thus the theory that they are always barbarians and non-aryans is not correct. They were always regarded as 'ekajāti' as they were discarded from the right of upanayana. Gautama himself said that "śūdras caturthah varṇah ekajāti". Besides that they were deprived of sacrifices and recitation of Vedic hymns. They may misinterpret the meaning of the Veda, that is why the brahmīns did not allow them to study the Veda. Gautama was very strict towards them so that the Veda could not be demoralised in the hands of them. He said - "atha hāsyā vedamupāśrīvatāśrapajatubhyām - śrotrapratipurāṇamudāharane jihvāchchheda dhārane sārīrābhṛtedah". If the śūdra listens to the Veda, the burnt and melted tin will be poured into his ears, and if he remembers the Veda, then his body would be pierced into two

1. Gautamadharmasūtra, 10.51
2. Ibid, 12.8
After the enunciation of severe punishment upon them, they did not dare study the Vedas. They were most neglected, untouchable and hated caste of the society. The statement of Gautama proves it — i.e., "jirnanyupanachhatrabasaḥ kurcadīni uchhiṣṭaśanam"1 i.e., sūdras had to take rejected, torn old cloth, shoes, umbrella and rejected food of higher castes. The difference between the brahmans and the sūdras also has been referred in Gautamadharma sutra when he says — "asanaśayanavakpathiśu samapreṣyaudanda"2.

In judicial administration, severe and strict laws have been promulgated against them. If they are involved in any non-Vedic activities, they had to undergo capital punishment.

Sometimes Gautama showed liberal attitude towards the sūdras. As he said — aryanāryorvyatikṣepē karmanah śamyam3 — if aryans and non-aryans interchange their occupations and conduct, the one taking that of the other, there is equality between them. Here the word 'samata' is significant.

1. Gautamadharmasūtra, ll.1. 60-61.
2. Ibid, ll.3.5.
3. Ibid, 10.69
difference between the two classes i.e. the Aryans and the non-Aryans will be always strictly maintained. But in special case sometimes both the Aryans and the non-Aryans will be equal.
The word 'anārya' mentioned in the above sutra evidently stands for the śūdras.

Various types of mixed castes and sub-castes appeared in the period of Gautama. All these mixed castes belong to pratiloma and anuloma class. Inter-caste marriage is also one of the reason of origin of mixed caste. Gautama has mentioned some of the mixed castes e.g. Amboṣṭha, Ugra, Niśāda, Daumānta, Pāraśava, Śūta, Magadha, Ayogava, Kṛta, Vaidēhaka, Cāndāla, Mūḍhāvasikta, Pulkaśa, Bhṛjjakantha, Māhīṣya, Vaidēha, and Yavana, and Karaṇa. Among these mixed castes some are said

1. Gautamadharmasūtra, 1.4. 14-17.

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anulomāntaraikantaradvayantarāsu jñātāh savarṇāmbastho
graniśadadeusmantapārasāvah
protilomāstu sūtamagadnāyogavakraṁ vaidēhaka cāndalāṁ
brahmaṇyaśijjanatputrānvarṇebhyā anupurvyād brahmaṇasūta
māgadhacāndalāṁ
tebhyā eva ksatriyā mūrṇāvasikthaksatriyadhīvarapulkaśāṁ
stebhyā eva vaishya
bhṛjjakanthamāhīṣyavaiśyavaiḍeṇānparaśavayavanakaraṇasūdra
nāḥuddhreyaka
to be the non-aryans. The caste vṛātya originated this time. Generally the persons who did not perform hymns of sāvitrī in proper time are known as vṛātyas. It has been noticed that the vṛātyas have much accepted non-Vedic activities in their life. The sāṅkara caste also deserves consideration in this regard. They originated from non-aryans. As time rolled on they gradually got in the Vedic society and their activities and religion became common with the aryans. The sāṅkara-castes who originated from the non-aryans are Gāndālas, Niśāda, Yavana, Māgadha, Pulkasa or Pukkasa and Dāivara.

Gāndala is the caste who belongs to the class pratiloma. He was born from the sūdra-father and the brahmin-mother. Gāndala belongs to the dāsa class. They lived in the region of the valley of the Ganges. They were oust from all types of religions. Manu opines that the gāndāla should never stay in the town. He also adds that nobody should use the things of gāndālas which are used by them. Fa-hien remarks that there must have gulf of difference between four castes and gāndālas in every sphere of life. Fa-hien further cautions about the gāndālas that if any gāndāla enters into village or in a town, everybody should be cautioned by any signal before their arrival. It proves that gāndālas were mak most hatred and neglected and untouchable in society. The people of four-castes should always be away from them.
Miṣāda is another type of Anuloma-caste. He was born from the brahmin-father and the vaisya-mother. From the Atharvaveda we come to know that they were the residents of the Vindhya and Satpura region. Originally the Miṣādas were the non-aryans, but gradually, coming in contact with the aryans they ultimately were aryansed. Even they got the right to perform 'darsā-puṇa-māsa' and 'agnihotra' sacrifices. There were another type of Miṣāda who were known as hunters. Other type of Miṣāda's main occupation was fishery. They sold fish. Mitākṣara has differentiated between Anuloma-Miṣāda and Pratiloma-Miṣāda. Pratiloma-Miṣāda's main livelihood was selling of fish. In Śantiparva of the Mahābhārata there was a description about the Miṣādas. They were generally red-eyed and black-haired people.

Yavana is another type of saṅkara caste who was born from the śūdra-father and the kṣatriya-mother. According to Manu, Yavanas belong to the kṣatriyas. In later ages they were converted into the śūdras as they neglected the Vedic activities. In Mahābhārata Yavana have been placed as the non-aryans along with the Sakas. The word 'Yavana' originated from Greek Ionian. Thus it appears that the Yavanas were foreigners. In later ages they came into India and began to live there. According to some scholars Yavanas belong to non-Vedic class.

Maṇadha is another type of pratiloma-caste and originally
they were the non-aryans. He was born from the vaisya-mother and the ksatriya-father. They were messengers and their another occupation was love for music.

Pukkasa or Pulkasa is another type of sankara caste. They were originally non-aryans. He was born from the ksatriya-mother and the sudra-father. Hunting was their main occupation.

Duivara is another sankara-caste who belongs to dasa class. He was born from the ksatriya-mother and the vaisya-father. Their main occupation was fishing.

Suta is another sankara-caste. They were not the non-aryan. They belong to pratiloma-class. They were born from the ksatriya-father and the brahmin-mother. According to Manu, sutas were charioteers. According to Vaikhanasa, suta's main responsibility was to remind the king of his duty. According to Karna-parva sutas were servants of the brahmins and of the ksatriyas. Sometime sutas played the role of 'vināgāthī'(singer). Their main duty was to sing and admire king's fame, qualities and his good deeds. In a word, in king's court they were just like Vidusaka.

Sutas were sometimes regarded as the Ksatriyas.
Thus it will be safe to come to conclusion that in the period of Gautama, various types of castes evolved in a society. In Vedic society their influence is significant. There was a vast difference among aryans and mixed castes concerning their culture, civilisation, religion and customs with Vedic society. As for example the main criteria, i.e., the system of four-castes of aryan-civilisation was not noticed in non-aryan society. According to non-aryan's view one person at a time can be priest, fighter and an artist also. But the four-caste system of aryan-society cannot think of it. There was a basic and fundamental difference between two societies regarding this, Gautama and other law-makers strictly maintained vast difference and individuality among the four castes by promulgating various types of customs, laws and orders and different types of occupations for each and other on the basis of superiority of caste, dynasty and status of a person. The society of the non-aryans was matriarchal. Mother was the mistress of the family and she was honoured with highest position. 'Kumāri-pūjā' was frequently introduced in them. They worshipped the goddess like Kanyā-kumārī and astamatrākā. They were in favour of image-worship. In time of Gautama, they worshipped worldly gods whose origin is from the non-aryans. He referred to 'manuṣya-yaṇja' in anadhyāya chapter.

1. Gautamadharmaśūtra, 16, 34.
Gautama did never fully deny the non-aryan customs, because in his time the brahmins who are learned of the Vedas also are conversant with popular rites and customs. Gautama proves it by his statement - "lokavedavedangavid". The meaning is the brahmin should be aware of popular rites and customs, the Veda and the vedāṅga.

The religion of the brahmins was basically based upon the system of worship, sacrifice and rituals. But just the reverse was noticed in religion of the non-aryans. The non-aryans had no faith in sacrificial activities. The main occupation of them was agriculture, commerce and industry. So there was a vast difference between the civilisation - concerning of social, economical, political and religion.

As time rolled on, civilisation of the non-aryans influenced the civilisation of the aryans. The aryans came in contact with the non-aryan in many aspects of daily-life. By mutual contact in economical life the aryans accepted the occupation of the non-aryans. The aryans are influenced by the language of the non-aryans too.

1. Gautamadharmasutra, 1.8
Gautama took much care, so that the aryan civilisation could not be demoralised by the influence of the non-aryan civilisation. For the safeguard of the society, Gautama declared that the Veda was the source of all dharmas and he controlled whole society on the basis of the Veda. He engaged all the learned brahmins to control the society. People had to bow down to the spiritual power of the brahmins. They did not dare ignore the command of the brahmins.

But there are other religion like Bauddha, Jaina, Pasupata and Pāñcarātra which could not accept the Veda as the source of all laws (dharma). Even the Vṛtyas could not honour the Veda.

The first and foremost aim of Gautama was to establish a religious state. He gave much importance to the religion. Each and every sphere and aspect of life should be based upon religion. The importance of religion influenced him so much that he totally forgot about temporal world. The Veda guided the religion (dharma). Everybody must regard the Veda for the protection of the religion. The non-Vedic and anti-Vedic activities are strictly forbidden in society. His statements proves it, i.e. amnā airaviruddhān pramāṇam

1. Gautamadharmaśutra, 2.2.20.
the meaning is - the laws which are not opposed to sacred records have also authority. Gautama has actually ignored judicial aspect (vyavahāra) of the society as he has always given importance to religion. To him customs of country (ācāra-dharma) and customs of penance (prāyaścitta-dharma) was much more important than judicial laws. Gautama has given much importance to the spiritual world than judicial world, we find this evidence in law-suit. There we observe if a person gets the punishment of prāyaścitta and legal punishment at a time, he has to undergo the prāyaścitta-punishment. It can be easily inferred from that, the brahmanical supremacy played important role in legal administration.

In the period of Gautama the Vedic society was vitiated by the appearance of various types of castes, by the origin of different religion and by the establishment of non-Vedic activities. To save the Vedic society from the disaster, the brahmins who are learned in the Vedas, declared that the Veda is the source of all religion (dharma). 'vedo dharmamūlam'. The learned brahmins got

1. Gautamadharmsūtra, 1,1,2,

kaṁmaṁyō' bhūdayaniṁsreyasaheturaupurvākyā ātmagūpō
dharmah tasya mūlam pramāṇam veda mantrabrahmanatmakajñjatāve-
kavacaṁam ca tāvāro veda ṛgyajusāmatmakāsta eva dharme pramāṇam
na yogipratyakṣam Ṛṇumāṇam nārthopattirna sākyadyagamaṁ tena
tarṇulā evopanayanādayo dharmā vaksyante na caityavandana-
keśolluncanādaya iti dharmagrahaṇamupalakṣanām adarmasyāpi
pratiśedhātmakā veda eva mūlam nīṣedhāvīhāyo hi bhrahmābhāyā-
dau visaye pravṛttam nivartyaṁ na ca ragadeśadāṁ visaye
pravṛttastato nivartayitum sākyāḥ yadyasaṁ visaye'usthitāḥ
pratyavayahetūrtaṁ syadīti nīsedhāvīhīreva pratyavayahetutām
gamanāti.
united to establish administration with the help of the Veda. The Veda was accepted as the source of all religions than 'yogipratyakṣa'; 'anumāṇa'; and 'sākyādyāgama'. The inner significance of the word the Veda is - veda mantrabrāhmaṇākhyo grantharāṣṭrī vidajñāne jñayate tānena dharmādisverūpamitī vedah yadyapi smṛtyāderetattulyatvam tathā'pi parivrāja-kādīvadṛḍhat-vādadoṣaḥ tathā ca smṛtyantaram - 'srutistu veda vijñeyo dharmaśāstram tu vai smṛtīḥ sa ca ṛgvedādibhedaḥ bhidyate'.

Regarding the source of Hindu Law it is to be mentioned that though the Hindu does not yield to the English lawyer in his respect for precedent, yet, owing perhaps to the fact that the decisions of Hindu courts were never recorded in writing case-law never formed a part of the judicial system of the Hindus. But since the establishment of the Anglo-Indian Courts, judicial decisions have not only become a source of the Hindu law, but have been the chief agency by which changes have been effected in that law. Except in a few rare instances, the British Indian Legislature has, in pursuance of the policy of religious toleration, abstained from interfering with the Hindu law. Nor has any new commentator been able to modify the law by engrafting his own views on it; for, with the establishment of the British rule in India, the doctrine has been established that the power of effecting changes in the existing law is vested exclusively
in the legislature. So that, for nearly a century, the progress that Hindu law has made has been due entirely of the action of the courts. One distinctive feature of the progress is the development of the distinction between legal and moral injunctions, and the separation of the religious element in the law from the civil.

Some of the decisions on Hindu law, though professing to be founded on the written law, have, either from an imperfect understanding of that law, or from a designed non-compliance with its purely religious injunctions, deviated completely from the original rule; and the question arises, how far they are entitled to be followed in preference to the original authorities. While, on the one hand, lawyers who set a high value on the uniformity and consistency of the law, maintain that these decisions ought to be followed; on the other hand scholars who have critically studied the subject, and who place an equally high value on the correctness of the law, protest against the perpetuation of error. No doubt, there are arguments in favour of both sides. Where a decision at variance with the original authorities stands alone and has not been followed, there will be no inconvenience in departing from it when the error is discovered. But where a decision, though erroneous, has been followed as a precedent in a series of cases the solution of the question involves some difficulty. For, though it is wrong to
perpetuate an error, it would hardly be right to rectify the error by unsettling the law and overruling a precedent which might have long been the basis of men's expectations and conduct. Where there has been a uniform current of decisions, notwithstanding that they may be erroneous, the reasons for following them will on the whole, be found to preponderate, unless the error appears to be so clear as to lead to a fair presumption that the rule laid down in the decisions could not have been uniformly accepted as settled law by the profession or the public. But the question is one of degree. What is meant by a uniform current of decisions? and how clear the error involved must be in order to justify departure from established precedents, are questions for the determination of which no hard and fast rule can be laid down.

The society is not static, it is always progressive. Man cannot be satisfied with a rigid law or dharma. With the advancement of progressive society, the outlook of man also changes and advances. The grammar is composed on the basis of the language, exactly laws are also framed on the basis of advancement of society. With the revolutionary changes in progressive society man is not pleased with only verdicts of the Veda. The people devoted themselves in such customs and activities which were not found at all in the Veda. The law-makers
cannot deny 'समयाचारिका-धर्म' (conventional laws) and customs (अचार). For this reason धर्मसास्त्रas are composed and which are regarded as second source of religion (धर्म). Gautama mentioned that "vedo dharmanam samvadbha smrtisile"¹. The Veda is the source of all religions and 'स्मृति' and 'सिला' are also the sources of religion. The literal meaning of the word 'स्मृति' is memory or recollection. Manu said that स्मृति was the धर्मसास्त्रa of the brahmins who were learned in the Vedas. This is proved by the statement i.e. - स्मृतिरुपनिवंदनम दुः मनु - यामवासित्सह भर्गवंशारो ......... यजुवल्क्य-प्राचेदिभिः कृतम².

After the explanation of the word 'स्मृति' the inner significance of the word 'सिला' may be discussed. The word सिला means customs and good habits (behaviour-'सिस्ताचारा') and 'सिस्तागामा' i.e. गामा means 'Veda', the Vedas of the polite persons. The origin of the word सिलa is from the root सिल. Haradatta means 'celebration' i.e. 'अनुस्थानम' by the word सिला. Maskari means the word सिल 'unacceptable customs whose nature varies from country to country, w.g. - सिलमुपनिवद्धाः समस्चाराः कारकमान्गेतादिः वाहत्वा pratidesābhidhyamānatvādapanivaddhan īti maskarībhasyaṃ.

Thus the conclusion may be made that the Veda, स्मृति, 'सिस्ताचारा' and सिला are the source of dharma.

2. Maskari=bhasya, 1.2.
From Gautama downwards many writers dilate upon the sources of dharma. Gautama states: 'the Veda is the source (mula)''

1. Gautamadharmasutra, 1.1-2, de do dharmamulaṃ tadvidam ca srutisīle
   Apastambadharmasutra, 1.1.1-3,
   athātaḥ saṃyācārikāḥ dharmaḥ vyākhyasyaṃ dharmaḥ saṃyāyasaṃyasaṃ dharmaḥ
   pramanam vedasea
   Vasisthadharmasutra, 1.4-7,
   srutisrutiṃ vidvihito dharmaḥ tadābhe siṣṭācāraḥ pramanam
   siṣṭāpunarakaratāḥ agrhyamanāka-ranāḥ dharmaḥ.
   Yajnavalkyasmṛti, 1.7, srutisrutiḥ sada-cāraḥ svasya ca priyamajmanah
   saṃyaksānkalpajāh kāmaḥ dharmamulamidam svētaṃ

Manuḥsmṛti, 1.6,
   dharmamulam srutisīle ca tadvidāṃ acāraścaiva sadnāmaṃatmaṣtuṣṭīyeva
   Haradatta explains mula in Gautamadharmasutra as pramāna and
   saṃyācārikam as 'pauruṣeyoveyavasthā saṃyayaḥ sa ca triviḍāḥ
   vidhiṁniyamāṃ pratīṣedha iti saṃyamula acāraḥ teṣu bhavah
   saṃyācārikāḥ evam bhūtāndharmānīti karmajanyo bhyudayaniḥśreyā-
   saheturpurvākhyā atmaguno dharmaḥ. According to him saṃyācārikāṁ
   means relating to practices based upon agreement or conventions.
   Manu distinguishes between śīla and acāra. The first means,
   according to Kulluka and others, such moral qualities as 'devotion
   to learning, to gods and to parents' etc. mentioned in Harīta
   (quoted by Kulluka). All commentators connects 'svasya' in Manu
   II.12 and Yajñavalkya 1.7 with 'priyam', but Pandit Gattulal
   connects it with 'sada-cāra' which means according to him 'sampradāya'
   (in Satisiddhantamartanda 1.5 p. 49, Nirukta, ed. 1942).
of dharma and also the tradition (or smrtis) and practice of those who know the Veda. Similarly Apastambadharmasutra says:

'we shall propound the acts (that produce merit) which are evolved from conventions and the practices, the authority (for finding out the dharmas) are the conventions of those who know the dharma and the Vedas'. Vasistha provides: 'dharma is declared by the Vedas and Smrtis; on failure of these two the practice of the sisṭas is the authority (for finding out what dharma is); a sisṭa however is one whose heart is free from (worldly) desires and (only) such acts of sisṭas are (to be held as) dharma for which no (worldly or secular) cause (or motive) can be assigned. Manu and Yajñavalkya declare that Veda (or śruti), smrti and the practices of the good are the principal sources of dharma. The words employed in these works are śila, samaya, acāra or sadacāra or sisṭacāra. (the latter three denote the same thing). Apastamba employs both words viz. samaya and acāra, the first of which probably means 'agreement or convention or usage', while the latter means 'custom'.

1. The Taittiriya Upaniṣad I,11 contains perhaps the oldest extant indication as to who should be regarded as sisṭas, though the word itself is not used.

atha yadi te karmaviccikitsā va vrttaviccikitsā va syāt ye tatra brahmaṇah

sammarsinah syuh yathā te tatra vartetan tathā tatra

vartetanāḥ athābhhyakhyātesu ye tatra brahmaṇah ... dharmakāmaḥ

syuh yathā te teṣa vartetan tathā teṣā vartetān.
The word 'custom' now conveys the idea of some antiquity, while usage or convention does not necessarily convey that idea. A usage may be recent or it may be established by agreement among a certain class of persons (such as traders or craftsmen). We have to see what is meant when it is said that ācāra or āriśṭācāra or sadācāra is the source (mūla) of dharma. An indication of the meaning is furnished by the word 'pramāṇa' employed by Āpastamba and Vasiṣṭha. The meaning is that just as the revealed books (Veda) and the smṛtis authoritatively lay down what dharma is, so also in our quest to find out what dharma is in the varying circumstances of life the practices of those who may be called sistas furnish us with the necessary criterion or norm i.e. āriśṭācāra is the touchstone for judging whether an act is in consonance with what the śastras require us to do. The theory of the ancient writers was that the smṛtis were based on parts of Veda (that consists of mantras and Brahmaṇa texts) which though formerly existent are now not extant or available, that similarly the practices of those who were learned in the Vedas and were deemed to be sistas must be inferred to have been based on portions of Veda not now available. This theory was advanced by
such ancient writers as Apastamba and was taken up by many subsequent works. Manu also states that whatever dharma has been ordained for any person, all that has been entirely declared in the Veda for the Veda is full of all knowledge. But it does not follow from this nor is it ever meant that all practices of sistas are authoritative in matters of dharma. The qualification was added that where the practices of sistas are clearly referable to or are prompted by a seen motive or by the desire to secure pleasure, there they are not authoritative. Manu restricted the word sadācāra to the customs handed down from generation to generation among the four varṇas and the mixed castes in the country called by him Brahmāvarta. But many other writers did not so restrict it in this way.

1. Āpastambadharmaśūtra, 1/4/8, 10-13,

The first sūtra may be used for explaining Vasistha, gṛhya-manakāraṇa means 'that has a known or perceptible worldly motive such as covetousness'.
We have to distinguish between what are called the sources (mula or pramāṇa) of dharma and the sthānas of dharma. The former indicate to the inquiring spirit what dharma is (i.e. they are what are called jñāpaka hetu). The latter must be studied as aids by the expounders of dharma in order to correctly grasp what dharma is, i.e. the different lores (other than Veda and smṛti) are not directly the sources of dharma, but are only mediately so. This distinction is an ancient one as even Gautama provides that the king is helped in his administration of justice by the Veda, the Dharmaśāstras the auxiliary lores (āngas), the Upavedas and the Purāṇa.

1. Yaśnavalkyaśāstra,
puruṣānyāyamīmāṃsādharmaśāstrāṅgamīśritaḥ vedāḥ sthānāni
vidyānāṁ dharmasya ca caturdasa, on which Mitākṣara says
dharmasya ca caturdasa sthānāni hetavaḥ etāni ca traiyāṁ-
kairadhetavyāni, while Mitramiśra explains, 'vidyānāṁ
purusārthasādhanaajñānānām ata eva dharmasyāpi sthanabhupayah
vidyayaḥ pravṛtīdvarā dharmapravojjakatvāt'.

2. Gautama-dharmaśātra, 11.19,
tasya ca vyavaharo dharmaśāstrāṅganyupavedah purānam.
The general proposition that smṛtis are authoritative being established, a further question arises. What is to happen if a smṛti rule conflicts with the rule of the Veda? Sabara gives an instance where there of smṛtis. The Veda says 'one to whom a son has been born and whose hair is still dark (and has not turned grey) should consecrate the Vedic fires', while smṛti says 'a man should observe Vedic studenthood for 48 years'¹. In this case the proposition enunciated by Jaimini is that 'in case of conflict (between an express śruti rule and a smṛti rule) the smṛti rule should be discarded, for when there is no conflict (with an express śruti) inference may be made (that a smṛti rule is based upon some Vedic text)'¹. The example may be explained as follows: if a man is to consecrate Vedic fires when he has a son and his hair is dark, he must be between about 20 and 40 (i.e. a young man), but if a man were to observe brahmacarya for 48 years he would be about 52 years of age before he married (as the upanayana of a brahmana was to be performed generally in the 8th year of from the 5th year onward at the most). Only a married man could consecrate Vedic fires.

¹. Baudhāyanadharmaśāstra, 1.2. 1-5,
But a man's hair when he is fifty-two years of age or more can hardly be all dark. Therefore there is contradiction between the rule derived from the Veda and that derived from smṛti. Kumarila holds that all that is meant by Jaimini and even by Śabara is that there is a great distinction between sruti and smṛti in that the former is apauruṣeya and an independent authority, while the latter was a human author (liable to err), is either actually based on the Veda or is inferred to be so based, that the two therefore can never be said to be quite akin to each other as regards their authoritativeness and that lastly smṛti is not in itself to be regarded as authoritative. Kumarila therefore suggests that the proper subject of discussion in Jaimini is the works of Bauddhas, Śāṅkhya, Yoga, Pañcarātra, Pāṇḍupata and other heretical sects and the practices of mlecchas. These words contain some matters such as the emphasis on ahimsā, truthfulness, restraint of senses, charity and compassion, which are also emphasized in the Veda, but these words are not generally accepted by the

1. Tantravārtika, p.194,
atascaivam śrutismrtyorvissonena darśyate
ātanyakamva adhytvam na ca vyayuktatulyatā
followers of the Veda, are based on specious and false reasoning only (they are haitukas in the words of Manu), that they deny the authority of the Veda. Therefore Jaimini means that these works of heretic sects are not authoritative in matters of dharma as they are opposed to the Veda and should be discarded. Sabara cites smṛti passages which are not opposed to the Veda at all and says that such passages have seen a worldly motive such a covetousness and it is not proper to suppose that they are based on the Veda and are therefore authoritative, when a visible purpose or motive can be ascribed to them. Smṛti rules that are opposed to śruti rules and smṛti prescriptions that can be shown to have a clear worldly motive are not authoritative or absolutely binding, while the rest of smṛti texts are authoritative.¹

¹. Śāstradipikā, 1.3.4,

na drṣṭe hetau tetvāntaranumānam kramate drṣṭasastra lobha
eva heturuti .... atah śrutiviruddham drṣṭakaranaṁ ca
smareṇanapramānam tato'nyatpramanamāmi
It is now necessary to see how Dharmaśāstra works have dealt with the authority and binding force of customs and usages. 

Sadācāra is defined by Harita¹ as follows: the word 'sat' means 'good' and the good are those who are free from (moral) taint; the practices of such people are called sadācāra. Manu also defines sadācāra in the same way. Even the most ancient sutras testify to the fact that numerous customs and usages had arisen in different countries and villages. The Āśvalāyaṇagrhyasūtra² says, 'various indeed are the observances of (different) countries and villages; one should follow those in marriages; what, however, is common (to all or most) shall be declared by us'.

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1. Harita by Parasaramādhava part I, p.144, 
sadhavaḥ kṣiṇadosaḥ syuh sacchavdaḥ sadhuvācakah 
teṣamācaraṇam yat tac ca sadācāra ucyate

2. Āśvalāyaṇagrhyasūtra, 1.7.1-2, 
atha khaluccāvaca janapadadharma grāmadharmaśca tān vivāhe pratiyat 
yattu samānam tadvaksyamanāḥ
The Āpastambagṛhyasūtra declares, 'people should understand from women what procedure is to be observed (according to custom) and the Āpastambadharmasūtra provides that one should regulate one's course of action (in difficult or doubtful matters) according to the conduct which is unanimously approved in all countries by the Aryas (men of the three higher castes), who have been properly disciplined, who are aged, who have restrained their senses and who are neither covetous nor hypocritical and concludes with the aphorism 'some teachers hold that the rest of the dharmas (not set out in this work) may be understood from women and from men of all castes'.

Baudhāyanadharmaśutra states (on the subject of śrādha) 'the usages of people should be followed as to other rites to be performed'.

1. Āpastambadharmasūtra, 11.29. 14-15,

\[
\text{रस्वाजनापादेष्ये केंक्ता समेनितामय्यानां वृत्तां सम्यग्वितानां}
\text{वृद्धानासमेतमेदवतामलोलुपानामदैवत्कराम वृत्तासाद्र्यायं भाजेता}
\text{वषामभालोकवनिजयति स्त्रिभ्यां सर्वावर्द्ध्या सर्वावर्द्ध्या}
\text{धर्मासेवानप्रतियत्तियः।}
\]

2. Baudhāyanadharmaśutra, 1.5.13, शेषक्रियाम लोकानुरोध्वयां

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1. Āpastambadharmasūtra, 11.29. 14-15,

2. Baudhāyanadharmaśutra, 1.5.13, शेषक्रियाम लोकानुरोध्वयां
The general rule about the binding character of customs is set out as follows. Gautama observes, the dharmas (customs) of countries, castes and families, which are not opposed to the Vedic scriptures, are authoritative and binding. Gautama provides in the next two sūtras that cultivators, traders, herdsmen, money-lenders and artisans can lay down conventions or usages that would be binding on the respective classes, that when a dispute arises as to these usages the king should learn from those who wield authority over those classes and decide the dispute accordingly. Vasiṣṭha states, 'Manu has declared that the (peculiar) customs of countries, castes and families may be followed in the absence of rules propounded by the Veda', and he prescribes that the king should enforce these among the four varṇas. Āpastambadharmasūtra appears to lay down that the customs of countries and families (if not opposed to the Veda) are authoritative and are to be followed in the respective countries or families. But this view seems to be

1. Gautamadharmsūtra, 11.20,
   desajātikuladharmasātmānaśāiraviruddhāḥ pramāṇam karṣakavaṇik-
   pasupālakusidikāraṇaḥ sve sve vārge tebhyaśca yathādhikāra-
   narthāṃ pratyaśakyāṇa dharmavyavastāḥ
   Vasiṣṭhadharmsūtra, 1.17,
   desajātiddharma-kuladharmāṃ śrutyaśaḥāvādabhravīmaṇuḥ.
unacceptable to Baudhāyanadharmasūtra which says, 'there is difference of opinion regarding five (practices) in the South as well as in the North. We shall explain those peculiar to the South. They are: to eat in the company of (in the same plate with) one whose upanayana is not performed, to eat in the company of one's wife, to partake of stale food, to marry the daughter of a maternal uncle or of a paternal aunt. Now (the customs peculiar) to the North are: to sell wool, to drink rum, to deal in the sale of animals with an upper and a lower row of teeth, to follow the profession of arms and to travel by sea. He who follows (these practices) in any other country than where they are generally in vogue commits sin.

1. Baudhāyanadharmasūtra, 1.1. 19-26,
For, in respect of these customs the authoritativeness must be restricted to the respective countries. Gautama declares that this is false. And one should not approve of (accept) either (of the two sets of practices), because they are opposed to the tradition of śīstas (or opposed to the smṛtis and the views of śīstas). The Tantravārttika¹ mentions the argument of some concerning these passages of Āpastamba and Baudhāyana viz., that Āpastamba's very general statement that practices of countries and families are authoritative in the respective countries cannot be accepted as valid, as it is opposed to the views of Gautama as Baudhāyana expressly states that certain practices though prevalent in certain localities cannot be accepted as valid and binding ever in those localities because

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¹. Tantravārttika, p. 211, sarvēśāneveśamādīnāṃ pratidesāṃ vyavasthā āpastambena sāmṛtya duṣṭaduṣṭātvamāsrītaṃ yesāṃ paramparaaprāptaḥ purvajairapanuṣṭhitā ta eva tairna duṣyeyuracārasinetare janaḥ...

... tatasca manvādi vākyapratisiddhācāranāṃ prāmāṇyamāsākhyabhuḥ pagantum āpastambavacanāṃ tu baudhāyanena smṛtiviruddhduṣṭācarodāharanāṇyeva prayacchatanirakṛtam spastākāmedhiśvantaradarsanāṁna viruddhācārāṇamāpastambavacanasya va śrutimulatvopapattih.
they are opposed to the express words of such authoritative and highly venerated smṛtis (as those of Manu). Manu in several places provides for the enforceability of customs and usages. In Manu it is said, 'the conqueror should hold as authoritative and binding the lawful customs of the conquered country, just as they are stated to be' and in Manu it is provided, 'A king who knows dharma (sacred law) should carefully inquire into the customs of castes, of countries, of guilds and of families and settle (or enforce) the customs peculiar to each. Whatever may have been practised by the good and by twice-born men devoted to dharma, that shall be established (by the king) as the law, provided it be not opposed to the (customs of) countries, families and castes'.

Kauṭilya prescribes that the king should follow as regards inheritance and partition the customs that are in vogue in a country, a caste, a sangha (company or guild) or a village.

1. Manusmrīti, 8.41,
   jāti jana padāṇḍharmen srenidharmamsca dharma vit /
   samikṣyakuladharmaṃca svadharmaṃ pratīpagayet //
2. Kauṭilyaarthaśastra, III.7. p.165,
   desasya jātya sanghasya dharmo grāmasya vapi yah
   ucitastasya tenaiva dayadharmaṃ prakalpayet .

* * *
Kautilya defines what is meant by the customs of countries and families and states how and when they are to be enforced: 'That is said to be the custom of a country, which is in vogue in a country, is of long standing and is not opposed to the Veda and Smrti. That is called family custom which has come down hereditarily in a family; the king should preserve it as it is. In disputes between the residents of the same country or capital, hamlet of cowherds, town or village the decision should be based on their own conventional usages, but in disputes between inhabitants of these and others the decision must be in accordance with the sacred texts. Therefore the king should decide the causes of people according to the rules of Sāstra; but in the absence of texts he should carry out (the administration of justice) according to the usage of the country. Whatever conventions are settled in accordance with the consent of (the people of a) country should always be preserved in writing sealed with the royal seal. Such conventions should be sedulously upheld as if they were the dictates of Sāstras and the king should decide (disputes) after carefully considering them'. Here Kautilya principally concerned with the decision of legal disputes on the basis of the customs of countries and families, but his rules also have a general application. He also states that in the case of the conflict of laws by which the
Parties are governed sāstra prevails, Rāti Pitāmahā has a similar verse about the usages of towns, villages and guilds and mentions that Brhaspati held the same view. Manu also requires the king to decide the disputes of people according to principles drawn from local customs (desadrśta hetu) and from the institutes of law (sāstradrśta).

Very difficult questions arise in regard to the relative force of śruti, smṛti and sadācāra and numerous rules have been laid down in cases of apparent and real conflicts among them. As Manu, Vasiṣṭha and Yajnavalkya mention the sources of dharma to be śruti, smṛti and sadācāra in that order, the Mitāksara remarks that 'in case of conflict, each preceding one of those three has more force (or binding character) than each succeeding one'. Śruti or the Veda is recognised by all smṛti writers as the highest or supreme authority for those who desire to know what dharma is. If two Vedic texts of equal authority are in

1. Pitāmahā, grāmagoṣṭhapuraśreṇisārthaśenasānīvāsinām
   vyāgharaścaritreṇa nirnetabhya Prhaspatiḥ
2. Mitāksara on Yajnavalkya, 1.7
   eteśāṃ virodhe pūrṇapūrvasya valīyastvam
3. Manusmṛti, 11.13, dharma jijnāsamānānavām pramanāṃ śrutiḥ
conflict, then Gautama, Manu and Jabali declare that there is an option. For example, there are two Vedic texts: he takes the sodasini cup in the Atiratra. In this case there is an option. Similarly Vedic texts say that the daily Vedic agnihotra may be performed after sunrise, or before sunrise or when neither the sun nor stars are visible. Therefore there is an option, viz. the daily agnihotra offering may be made at any of the three times specified. But a Vedic text which is in apparent conflict with another is not always of equal force with that other.

The general rule is that when a custom or usage is opposed to the text of the Veda the latter must prevail. Apastamba states this rule emphatically in several places. In Apastambhadharmasutra it is stated: ‘for, an explicit sruti text has greater force than acara (usage) from which a sruti text (on what it may be supposed to be based) may be inferred. 

1. Gautamadharasutra, 1.5, tulyavala virodhe vikalpaḥ
2. Āpastambhadharmasutra, 1.1.48, srutirhi valiyaśya uṇaṃ aṃ aśa kād aśa rāt
Another rule that was laid down was that in case of conflict between Dharmasastra and Arthaśāstra, the former is of more weight or authority or that one should discard the rule in the Arthaśāstra. The rule of the Arthaśāstra has the accomplishment of a visible or worldly purpose as the goal, while the Dharmasastra rule has as its purpose the securing of unseen or spiritual results. Therefore the latter from a spiritual or ethical point of view is superior to the former.

The case of conflict between smṛti and customs has now to be considered. The general rule deduced from Vasistha, Yājñavalkya and supported by the Mitakṣara the śāstra-candrikā, Kullūka and several others is that smṛti is of superior authority to the usages of the śīṭas. The prescriptions of smṛtis (and even of śruti) need not be observed and should not be observed when they are vehemently condemned by the people. Commentators like Medhatithi went so far as to say that Dharmaśāstra is that which prescribes what is to be done for attaining dharma, that is smṛti from which dharma which one performs as a duty is.

1. Narada, 1.39,

\[ \text{yatra vipratipattiḥ syāddharmaśāstrarthasastrayoh} \\
\text{arthasastramutsṛjya dharmasastroktamacaret} \]
understood and therefore śiṣṭācāra also is smṛti. The smṛtis themselves embodied the practices of the people current in their days, as Manu declares, 'in this work dharma has been fully stated as well as the good and evil qualities of (human) actions and the ancient customs and usages of the four varṇas'. Manu adds 'ācāra (customs and usages) are transcendental law, and so are the practices declared in the Veda and the smṛti; therefore a twice-born person desirous of his own welfare should always make efforts to follow it'. This has been the basic text in modern decisions that recognise the binding nature of customs. It is therefore necessary to understand the exact meaning of this verse. Two constructions are possible; (1) that the word

1. Medhatitī on Manu, 11.10,
   iha sādācāro na śṛutrīna smṛtirnivandhābhāvāt nivaddhākṣāra
   hi smṛtayaḥ prasiddhāḥ atastasya smṛtitwama pārādayati
   yatkāryaṁ dharmaśṛptyarthaṁ taddharmasāstram yatra dharmaṁ
   śiṣyate kartavyatayaḥ pratīyate sa smṛtīḥ nivandhānivandhāvaprayo-
   jakau śiṣṭasamācārādapi dharmasya kartyavatavagatiḥ so'pi smṛtireva

2. Manu, 1.107, asmindharmo'khilenokto guṇadoṣau ca karmanāṁ
   caturnāmapi varṇānāmācārāsāvataḥ śaśvataḥ

3. Manu, 1.108, ācāraḥ paramo dharmaḥ śṛutyuktaḥ smṛtaḥ eva ca
   tasmādasmin sādā yukto nityāṁ syādātmavahā dvijaḥ
acāra is qualified by the words 'śrutyuțka' and 'smārta' and that the first half declares that usages declared in the Veda or smṛti are transcendental law (this is the meaning given by most commentators of Manu); (2) that acāra by itself and other rules of conduct declared in the śruti or smṛti are transcendental (i.e., here in the first half of the verse there is a reference to three kinds of acāras, as Govindarāja and Nandana explain).

Numerous caste customs have been recognised from ancient times to these days. Gautama, Vasiṣṭha, Manu, Kauṭilya and Śukra emphasize the validity of caste customs and call upon the king to enforce them. Yājñavalkya advises the king to punish those who amarka go away from the usages of their family, caste, guild, or group. Kātyāyana enjoins that the king should not disregard the fixed usages even of pratiloma castes and of the inhabitants of inaccessible places (mountain forts or habitations), even if they be opposed (to the rules of smṛtis). In the paribhāṣā-prakaśa Mitramisra holds that the usages of good sūdras free from moral defects are binding on their sons and others even though they do not know the Veda.

In this connection the implication of moral conduct plays a very important role. There the Buddhist philosophy discusses an implication of moral conduct in the theory of pāñcasīla.
Having taken the Three Refuges, the Buddhist laymen takes it upon himself to observe the precepts. In the first instance these number five, but in particular cases and on particular occasions they are extended to eight or even ten. The five precepts are stated as follows:

1. Panatipata veramani sikkhapadam samadiyami
   (I undertake the precept to abstain from the taking of life).

2. Adinnadana veramani sikkhapadam samadiyami
   (I undertake the precept not to take that which is not given).

3. Kamesh micchacara veramani sikkhapadam samadiyami
   (I undertake the precept to abstain from misconduct in sensual actions).

4. Misavada veramani sikkhapadam samadiyami
   (I undertake the precept to abstain from false speech).

5. Sura-meraya-majja-pamadatthana veramani sikkhapadam samadiyami
   (I undertake the precept to abstain from liquor that causes intoxication and indolence).
The five doctrines of pañcasīla of Buddhist philosophy are most valuable teachings for carrying moral conduct. The real honest, virtuous and holy persons maintain all the five doctrines of pañcasīla. The persons who can follow all the five lessons of pañcasīla throughout his life, are regarded as monk in Buddhist religion who hold same rank of sīstas i.e. holy persons of Hindu religion.

The fundamental idea is that the pañcasīla doctrine of Buddhist Philosophy holds the same view about the holy persons like Hindu religion of ancient India. The pañcasīla doctrine of Buddhist philosophy likes to say that the man who abstains from non-violence i.e. killing of any animal, from false speech, from misconduct or activities which are full of worldly desire (kāma) and from drinking liquor, is really a holy person. And he should always be generous and should always give gift to people. In Buddhist philosophy these kind of people who always obey the doctrine of pañcasīla are known to be monk, vice versa.

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1. For comprehensive discussion on Pañcasīla vide H. Saddhatissa, Buddhist Ethics - Essence of Buddhism, pp. 87-112.
In Hindu religion they are regarded as śīṣṭas. They will be regarded as real virtuous persons who all throughout their life concentrate themselves in an ideal way of life, abstaining themselves from all types of non-virtuous activities of the universe. An unanimity has been noticed regarding the idea of holy persons or śīṣṭas in the criteria of two religions.

Now it is necessary to explain the word śīṣṭa. We have already discussed the brahmans who are learned in the Veda are śīṣṭas. Baudhāyanadharmaśūtra refers a proper definition about the persons who are śīṣṭas. śīṣṭa khalu vigatamatsaraḥ nirahankaraḥ kumbhidhanyā alolupā dambhadarpalobhamahakrodhavivarjitāḥ. The meaning of the śūtra is the persons who are not proud, i.e., polite and who are free from greed, delusion, hypocrisy, who keep only as much corn as is measured by kumbhi, ignorance, anger, jealousy are defined as the śīṣṭas. But it cannot be definitely said that, in ancient age all the people are virtuous and moral in character, because there are many instances that the śīṣṭas, sometimes out of lust and greed have done many immoral activities. We can prove this truth by the

1. Baudhāyanadharmaśūtra, 1.5.
statement of Gautama i.e. - 'drśto dharmavatikramah sahasam ca mahatam averādaūrvalyāt'. The meaning is: it is found that the sistas have done many non-virtuous and immoral activities and also have executed some mischiefs as they are very powerful and strong, which go against them.

Therefore the practice of the sistas who are learned in the Veda will be regarded as the source of dharma, but their immoral and non-virtuous activities will never be regarded as

1. Some non-virtuous activities are found in Maskaribhasya(I.3) e.g. prajapatiḥ svam duhitaram abhyadhyayat, yathendrasyāhalyāgamanañādi, yathā vyāsabhiṣmādināmānasāramāvasthānam iti maskaribhaṣyam.

2. The note of the word 'sahasā' is noticed in Maskaribhaṣyam - e.g. yathā ca nāradaḥ - sahovalamihocyate iti tena āśtram lokasāmyēyāharam canavekṣya yat kriyate tat sahasam yathā rāmasya tadākādiātāvadānā jāmadagnasya mātuṣśiracchedah, vasīsthasya jālpraveśah ityādi kathaṃ punardharmavyatikramasāhasayoh bhedaḥ ? viśayabhītāṣeṇa yaduktamācaryate ca dharmavyatikramas, krodhādyabhītāḥ bhāvāḥ yat kriyate tat sahasam iti maskaribhaṣyam (I.4)

3. Gautamadharmastra, 1.3.44.
source of dharma. In Vedic period the whole country was influenced by the ksatriya-power and when the ksatriyas became more repressive and also got involved in many non-Vedic activities then the brahmins became very alert and to save the country from the dangerous influence of the ksatriyas, in that proper moment the Veda was declared as the main source of dharma. It is the history of continuous conflict between the aryans and the non-aryans. Only the ksatriyas were able to control and defeat the aryans as the ksatriyas were most powerful and kingly caste by birth. That is why people always desired for a birth of a hero. The ksatriyas were always rewarded for their bravery and heroism. The vināgathin's foremost duty was to praise the majesty of the mother of brave hero. The same instance was found in Kausitaki-grhyasūtra i.e. athāha vināgāthiono rājānam samgāyateti yo va'pyanyakārतa iti.

1. The desire for a birth of a hero is witnessed in a sutra of Hiranyakesigṛhyasūtra —

"yasya yonim prati reto gṛhaṇa pumān putro jāyatām
garbho antaḥ jāyatām putraste daśasāmyah."

2. Kausitaki-grhyasūtra, 1.22.
Another example is also noticed in Āpastambīya mantrapātha¹.

"Yaugandharireva no rajeti salviravādiṣuḥ
vivṛttacakra asināstireṇa yamūne tava² the meaning is -

after the defeat, the army when they returned home, the people of the country salva, who were sitting on the bank, said "Oh yamuna, only the king of Yugandhara is our master". The birth of a hero was also prayed in Hiranyakesī-grhyasūtra.

Although the power of the ksatriyas was honoured highly in society but at the end of Vedic era, the ksatriyas became very much repressive. The power of the two assemblies viz. sabhā and samiti much decreased. The king after conquering the adjacent countries and performing the sacrifice āsvamedha and vājapeya declared themselves 'ekarat' or 'samrat' (emperor). They got involved in various types of non-Vedic and anti-Vedic activities. The statement of Gautama bears the truth i.e. 'drṣṭo dharmavyatikramah sahasam ca mahatam'².

1. Āpastambīya mantrapātha, 2.2. 13-13
2. Gautamadharma-sūtra, 1.3.
Inter-caste marriage was introduced and as a result sankara caste evolved in society. The ksatriyas were free from conservatism and became liberal. They came in contact with different types of castes when they had to stay in different parts of the countries in time of war. As a result marriage with low castes occurred with them and economical relation also established with low castes due to daily transaction. As a result distinction and individuality of the ksatriyas were lost. The high liberal attitude of the ksatriyas might be dangerous for the society, in fear of this Gautama declared - "amāyairaviruddhāḥ pramanām"¹ i.e. the non-Vedic and anti-Vedic activities won't be accepted as the sources of dharma.

Gradually the brahmins also began to refuse the ksatriya-supremacy. The brahmins did not accept them as king. They declared 'Soma' as their king e.g. esa vo bharato rāja somo' asmākaṁ brahmaṇānam rāja². The meaning is 'Bharata is your king, but Soma is our king'. This verdict indirectly declared the supremacy of the spiritual power of the brahmins. The

¹. Gautamadharmsūtra, 12.20  
². Taittirīyasamhitā, 1.8,102
ksatriyas could not deny the spiritual power of the brahmins. So the military power of the ksatriyas was stooped down under the spiritual power of the brahmins. In Vedic age, although the monarchical government was powerful but in later Vedic age the power of the king was absolutely in the hands of the brahmins who were established in society and they kept the Veda in their hand as their safeguard. The brahmins remained the master and saviour of the Veda. The first and foremost duty of the brahmin was to form the society and administration of the country with the help of the Veda. That is why they declared 'vedo dharmamulam' i.e. the Veda is the source of all dharma.

The society of Gautama consisted of four-castes. The main occupation of the twice-born-castes was study, sacrifice and offering e.g. 'dvijatinamadhyayanamijyadanam'2. Gautama has maintained difference, individuality and rigidity among four castes by fixing different occupations for different castes. But in case of difficulty or danger Gautama sanctioned the custom i.e. acceptance of occupation of lower caste for higher caste.

1. Gautamadharmsutra, 1.1
2. Ibid, 2.1
In this regard Gautama showed his much liberal attitude compared to later sutrakaras like Apastamba etc. But the brahmins could never accept the occupation of the śūdras under any circumstances. The main occupation of the brahmins was teaching, conducting of a sacrifice and acceptance - pravacanayajana-pratigrahāḥ\(^1\). The occupation of the kṣatriyas is protection of human being - rākṣaṇām sārvabhūtānām\(^2\). The occupation of the vaiśya is - agriculture, commerce, rearing of beasts and lending money - kṛṣivaniśśupālīyakusādam\(^3\). The occupation of the śūdra was to serve the three higher classes and praying for occupation from them - 'paricarya cottaśaṁ tebhyo vṛttim lipeta'\(^4\).

In Gautama's time inter-caste marriage and marriage between same caste was prohibited. The statement of Gautama is "asamanapraṇavaśrīvīvahāḥ ūrddvām saptamāt pīṭrvandhubhyo vijinaśca matravandhubhyāḥ pāṇeścāt\(^5\). The meaning is - if the

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1. Gautamadharmasutra, 11.2
2. Ibid., 11.7
3. Ibid. 10.50
4. Ibid., 2. 57-58
5. Ibid., 4. 2.3
bride and bridegroom's offspring (pravara) is the same same,
marriage won't be accepted between them, marriage between
seventh generation of father circle and from father's relatives
and fifth generation of mother's relatives will be permitted¹.

Gautama, not only by occupation but also by framing
different rules of upanayana for higher three classes has
maintained rigidity and distinction among three castes. He
has mentioned definite ages for upanayana of three higher
castes. As he says that the brahmins will wear sacred thread
in eight years of old - 'upanayanam brāhmaṇasyaṣṭasme²'. The
ceremony of upanayana i.e. sacred thread of the kṣatriyas and
of the vaiśyas will be celebrated in eleventh year and in
twelfth year respectively - ekādaśadvādaśayoḥ kṣatriyavaṁśayoḥ³.

1. Panchanan Tarkaratna, Unavimsatisamhita, ch. 4.
2. Gautamadharmsutra, 1.6.
3. Ibid., 1.12.
Gautama has maintained rigidity and difference in sphere of application of punishment. As for example if the kṣatriya by any reason blames or curses the brahmin, then he will get ten times punishment. If the vaisya behaves roughly with the brahmin he will get two hundred and fifty rupees of punishment. If the brahmin behaves the same treatment with the kṣatriyas he will get fifty rupees of punishment, if he behaves same with the vaisya, he will get half the punishment than before. If the brahmin misbehaves with the śūdra, he will be by no means punished. Now all the above statements of Gautama can be corroborated by his following verdicts -

\[
\text{Satam kṣatriyo brahmaṇakrośe}^1
\]

\[1\] Gautamadharṣamsutra, 2.3.5.
1. Gautamadharmaśūtra, 2.3. 7-10.

The rules of punishment of Manu and Yajnavalkya with that of Gautama may be compared thus:

Manusamhitā, 8.126 anuvandham pariñāya desākālau ca tatvataḥ / sarāparādhau ca lokya dandaṃ dandyesu pātayet //

Ibid., 8.129-130 vāgdandam prathamaṃ kuryaḥ dhandam tadantaram / tṛtiyam dhanadandantu vadhadandamataḥparam //

vadhenaḥ yada tveto na nigrantiṃ na saknāt / tadaiṣu sarvamapyetat preyunjita catuṣṭasyam //

Yajnavalkyasūtra, 1.354 tadavāpya nṛpo dandaṃ durvṛttesu nimetayet / dharmo hi dandaṇeṇa brahmaṇa nirmitah puraḥ //

Ibid., 1.356 saṃitiḥ paṇasaḥsṛi danda uttamasaḥsahā / tadardham madhyamah proktastādhandhamadhamah smṛtaḥ //

Ibid., 1.357 dhīgandastvatha vāgdand Doctrine dhanadandam advastathā / yojya vyastāḥ samastā va aparādha-vāśadime //

Ibid., 1.358 jñātāparādham desānca kālam vālamathāpi vā / vayaḥ karma ca vittaṃca dandaṃ dandyesu pātayet //
Gautama has maintained difference among four-castes in regard of impurity (asauca). He has mentioned different time for maintaining impurity for different castes e.g. he has referred to the days of impurity for the ksatriyas for twelve nights, and of the vaisyas for half a month and of the sudras for one month. The statements of Gautama in this matter is as follows:

\[
\text{ekādāsārātram ksatriyasya} \\
dvādasavātram vaisyasyārdhāmasameke \\
\text{māsam śudrasya}
\]

Inter dining was strictly forbidden in the house of lower caste by higher caste people. As for example the brahmins were strictly prohibited to take food in any other house excepting the house of the brahmin. But the brahmins were allowed to take food to the house of twice-born caste who were admired for their own activities. The statement of Gautama is:

\[
\text{prasastanām svakarmasu dvijātīnām brāhmaṇo bhunjita}
\]

1. Gautamadharmasūtra, 2.5. 2-4.
2. Ibid., 17.1
As a result untouchability crept in society due to prohibition of acceptance of food between higher castes of people and lower caste of people. The custom of untouchability had created a great demarcation and distinction among four-castes. The Sudras were always dishonoured, degraded and they were never in a same row or line and they did not get any seat in society falling under the crude reality of untouchability. As a result they could never reveal themselves in society. Thus Gautama strictly maintained individuality, difference and rigidity among four-castes by birth, occupation and customs and also by promulgating different rules and regulations for each and every castes. Gautama gave much importance to the rigidity of four caste system. Besides this, in his time the non-aryan's influence was about to destroy the aryan-civilisation, Gautama was very alert and careful to that devastating result of Vedic society. As for instance the brahmins accepted the occupation of money-lenders, merchant and artists (cf. the statement - 'kusidvaniksilpopajivi'). Gautama did not accept this type of non-Vedic activities and he was determined to form a strict and rigid Vedic society which consisted of four castes. There was no rigidity in the system of four-castes in Vedic period, but Gautama was successful to establish a rigid Vedic society on the basis of four castes system.

1. GautamadharmaSutra, 15.18
The first and foremost criterion of Gautama was to establish brahmanical state and brahmanical court and he was fully successful to reach the norm.

In Gautama's period, the brahmins, as they were most superior caste, enjoyed maximum privilege in society. If this well-versed person would had done mischiefs, inspite of that he was never killed, punished, removed, condemned and disrespected by the king, Gautama's statement says - 'avadhyascavandhyaścadaṇḍyāscavahiskāryaścapanivajyaścapanihāryaśceti'. The brahmin was even exempted from capital punishment if he was involved in any serious crimes also the statement is 'na sañca brahmanaṇadādah'. The brahmins were exempted from tax - akaramśca. The chief executive of the country, the king was always careful to the honourable position of the brahmins. As for instance if the king met any brahmin who was learned in the Vedas, he has to leave the path for him out of respect - rajña tu śrotiṣya.

2. Ibid., 12.43.
3. Ibid., 10.1.
4. Ibid., 6.22.
The brahmin enjoyed maximum privilege in the court. It won't be an exaggeration if it is said that in Gautama's time the court was a 'brahma-sabha' i.e. it is consisted of learned Vedic brahmins, not raja-sabha i.e. not king's court. The brahmins had right to occupy maximum seats in the court. The king was only the representative of the brahmin. The brahmins were main advisors of the king in regard to legislature. The brahmins would get light punishment in serious crimes which were executed by them. If the brahmins would have done any crime towards the kṣatriyas and the vaisyas, they were fined less as compared to other castes. The days of maintaining of impurity was less for the brahmins as compared to other castes. The brahmins could perform many sacrifices specially sautrāmanī. They were not only the pioneer of the society, gradually the administration of the country was concentrated in the hands of them.

The influence of religion was noticed in the sphere of legislature and social laws. As for instance the right of inheritance was closely connected with the right of offering pinda, i.e. one inherits who offers pinda. The law of inheritance evolved on the basis of offering of pinda. One who will offer pinda will inherit the property. But Vijnānesvara never admits the influence of religion in the law of inheritance. According
to him the right of inheritance was connected with birth of son. It is irrelevant to the power of offering pinda. In this regard Maynes stated that "Rules of inheritance were probably closely connected with the rules relating to the offering of funeral oblations in early times. It has often been said that he inherits who offers pinda. It is truer to say that he offers the pinda who inherits. Vijnanesvara and those that followed him, by explaining that property is of secular origin and not the result of the sastras and that right by birth is purely a matter of popular recognition, have helped to secularise Hindu law enormously. Equally Vijnanesvara's revolutionary definition of sapinda relation as one connected by particles of body, irrespective of any connection with pinda offering has powerfully helped in the same direction."  

Law is divided into two - civil and criminal. Generally law regarding marriage, inheritance and adoption is included under the jurisdiction of civil law. Besides that eighteen types of vivadapadas i.e. judicial laws belong to criminal laws. The eighteen judicial law were known as worldly laws, and these are of course precising the Hindu Law - a term which needs elaboration.

1. N.C. Aiyar, Mayne's treatise on Hindu law and usage, pp.15-16.
There are some among scholars and lawyers who are disposed to think that it is impossible to refrain from asking, Has such a thing Hindu law at any time existed in the world? Or is it that Hindu law is mere phantom of the brain imagined by Sanskritists without law, and lawyers without Sanskrit?

The fact is that, though the Hindus have, from time immemorial, been governed by laws, their law, until the accession of British rule, was not law in the sense in which the term is used by English jurists.

In the first place, the distinction drawn by modern jurists between municipal or positive law and moral law is not observed in Hindu jurisprudence. The whole body of rules regulating the life of Hindu in relation of civil conduct, as well as to performance of religious ceremonies, is included under the general name of Dharmasāstra or religions ordinances and though in some śrītis, as in the institutes of Yājñavalkya, the Dharmasāstra is divided into three sections, relating respectively to ācāra or ritual, vyavahāra or jurisprudence and prāyaścitta or expiation, no such clear division is to be found in the code of Manu, the highest authority on the subject. Nor does the division between vyavahāra and ācāra coincide with that between law and religion. Thus, the law relation to marriage -
an important branch of every system of jurisprudence - is contained, not in the chapter on vyavahāra, but in the part treating of acāra. Indeed the distinction between law and religion is so completely overlooked, that Manu in more instances than one, provides purely religious sanction to enforce obedience to rules relating to civil rights. Thus when laying down the law of inheritance, he ordains that they who divide among themselves certain articles belonging to the women of the family, or neglect to maintain certain person excluded from inheritance, fall deep into sin.

It is true that, in a later work, the Dāyabhāga, the distinction between moral and legal injunctions is once introduced, but Jimutavāhana, in another place in the very same chapter admits as legally binding a certain rule which threatens violation with no other penalty than consignment to a region of torments in the next world.

In the second place, the notion that every law is a command of the sovereign, so fully developed in the analysis of Austin, was never associated with the Hindu's idea of law. The Hindu regards his laws as commando, not of any political sovereign, but of the Supreme Ruler of the universe - commands which every political sovereign is most imparatively enjoined
to obey. As obedience to the law implied only obedience to the divine will, it never wounded the pride of the most absolute despot, and the thought never entered the mind of a Hindu king that he could, if he chose, alter or abrogate any of the existing laws. The highest possible ambition of Hindu ruler was to govern according to primeval law, and the most perfect type of administrative ability, which the imagination of the Hindu poet could conceive, was the power to lead the subjects, without the least deviation, in the beaten track marked out by Manu. When the government of the country passed to the hands of the Mohamedans, the new rulers, from indolence or avarice, were satisfied with imposing the Jezia, and they refrained from interfering with the civil laws of the Hindus. The Mohamedan government, like most other Asiatic government, was a tax-taking and not a law-making government; and thus notwithstanding the mighty political revolution which it effected in India, the Hindu's idea of law, and the rules which regulated his domestic life remained unchanged.

We must not suppose that any of the so-called codes, such as those ascribed to Manu and Yajñavalkya, though they embody many of the prevailing practices of the times, ever represented the entire body of laws actually obtaining in the Hindu community or was meant to be enforced as the positive law of that community. The researches of modern scholars have
shown that most of these codes or smrtis, in their present form are metrical redactions of certain older compilations called Sutras, and that the older smrtis, the originals of the rest are not codes, but simply manuals, for the instructions of the students of the caranas or schools. Moreover, the importance assigned to the custom in the smrtis amply proves that, besides the rules laid down in those writings, there has always been a large body of customary laws in full force among the Hindus.

The peculiar constitution of the machinery for the administration of justice, in former times, also helped to make Hindu law a law of conscience and right feeling, free from interferences of temporal power. Of the several grades of courts the tribunal of first instance and two successive courts of appeal were courts of arbitration and not constituted courts of law, so that litigation very often came to a close before coming to the king or his chief judge.

The influence of these peculiarities in the nature of Hindu law on the gradual development of that law, has been most remarkable. While, on the one hand, the belief in its emanation from the deity make it in theory absolutely unalterable by any temporal power, on the other hand, the very absence of temporal sanction in the majority of cases, feebleness of its connection with temporal authority, rendered it practically a system most
readily adaptable to the varying wants of society. Now, the changes which have taken place in the course of time both in the internal structure and the external surroundings of Hindu society must have continually presented motives for deviating from the rules laid down in the primeval code—motives which can be but insufficiently counteracted by the spiritual sanctions by which most of those rules were enforced. This led to innovation, and what was excused as necessary or innovation in one generation, came to be regarded as custom in the next, and thus have been brought about, slowly but steadily, those numerous and important changes in the Hindu law, which may be seen at a glance by comparing the prevailing practices of the Hindus with those enjoined or reprobated in the institutes of Manu or any other ancient sage. Instances might be multiplied in which practices prohibited by Manu have become prevalent, whilst others allowable in his time have become not only obsolete, but actually repugnant to the feelings of the people.

To this mode of development of Hindu law by the displacement of old and obsolete rules by growing usages, the interpretation of texts by commentators has served as an important auxiliary. Each commentator, under the guise of interpretation, often moulded the ancient texts according to his own views of justice or expediency. And as the authority of each commentator was received in some places, and rejected
in others, there arose what have been styled the different schools of Hindu law. They are five in number viz. the Benaras, Mithila, Bengal, Dravida, and Maharashtra Schools.

The term 'school' was first used by Colebrooke with reference to the diversity of doctrine prevailing in different parts of India on points of law. Some critics then took exception to the appropriateness of the term, but Colebrooke himself answered his critics, and the expression 'school of law' has since become current in Anglo-Indian law literature. The present objection relates not to the propriety of the name, but to the reality of the thing named. Now it is not denied that different commentaries on Hindu law are followed in different parts of India, and that they differ from one another in point of doctrine in some respects; but these differences are not admitted to be numerous and it is urged that the idea of schools of law is foreign to Hindu lawyers. It will be sufficient to say that two well-known writers on Hindu Law, Srikrsna Tarkalankara and Mitramisra, evidently recognise the existence of different schools of law when they speak of the doctrine of Mithila lawyers, the doctrine of the eastern lawyers, and that of the southern lawyers. The expression, schools of law, is not therefore, altogether foreign to Hindu law; and as it represents a real distinction it may conveniently be retained.
There is another point in connection with the schools of Hindu law which deserves notice, namely the determination of their geographical limits. Prasanna Kumar Tagore has annexed to his translation of the Vivadacintāmani a map of ancient Mithila, but it is not easy to say that the Mithila School does not extend beyond the boundaries of ancient Mithila. Mr. Morley observes that it would be almost impossible to define with accuracy the limits of these several schools, though he has roughly indicated these limits to some extent. The question whether any particular locality falls within the limits of a particular school will, in every case, have to be determined by evidence showing what authorities are mainly followed in that locality.

It will be seen from foregoing observations that the Hindu law is a body of rules intimately mixed up with religion, and it was originally administered for the most part by private tribunals. The system was highly elastic, and had been gradually growing by the assimilation of new usages and the modification of ancient text-law under the guise of interpretation when its spontaneous growth was suddenly arrested by the administration of the country passing to the hands of the English, and a degree of rigidity was given to it which it never before possessed.
Now the question arises - Who are governed by the Hindu law? - a question of much practical importance, and not altogether free from difficulty. The readiest answer which one would be tempted to return to the question is, that the Hindus are the people who are governed by the Hindu law; and this, no doubt, is in accordance with the provisions of the Charters of the several High Courts and the different Civil Courts' Acts, which declare that in cases relating to marriage, succession, and a few other matters, the Hindu law shall apply to Hindus. But the question then arises, who are the Hindus? The name 'Hindu' is not very definite in its signification. In the Anglo-Indian law-language of the last century, the word 'Gentoo' (a word of curious derivation and supposed to be connected with gentoo, or rather jantu, an animal, and gentile, a pagan) occurs as a frequent substitute for it; and Halhed, the translator of the Digest of Hindu Law known as the Code of Gentoo Laws, tells us that word was used as a name for those who professed the brahmanical religion. The word 'Hindu' is of foreign origin, and is derived from the word 'Indus', or 'Sindhu'; and it was used by the Mahomedans to designate the people living to the east of that river. Etymologically, therefore, the word means an inhabitant of India, and applies to a Buddhist as much as to a Vaishnava. But this evidently is not its meaning in the enactments above referred to. There are indications in the Law, from which it is
clear that 'Hindu' in legal phraseology originally meant a bonafide follower of the brahmanical religion, or, as the Privy Council in the case of Abraham v. Abraham expressed it, a Hindu not by birth merely but by religion also. And considering that it is in pursuance of the policy of religious toleration that the Legislature has abstained from enacting territorial laws applicable to all India, and has allowed particular races to be governed by their own laws, one would expect this to be the sense in which the term is used in the above mentioned Acts. But it would hardly be right at the present day to limit the application of the term to bonafide followers of the brahmanical faith. To say nothing of those, and they are not a few, whose observance of Hinduism is mere matter of outwards form and social convenience, there are classes of persons, such as the Ādi or conservative Brahmas, who do not observe even that outward form. Such persons cannot be called Hindus in the above sense of the term; and yet it would be going too far to hold that they are not Hindus within the meaning, for instance, of section 313 of Act X of 1865, and that succession to their property should be regulated by the Indian Succession Act, and not by the Hindu law. To include such persons within the category of Hindus, we must extend the meaning of the term, and take it to signify not only Hindus by religion, but also their descendants who have not openly abjured the Hindu religion.
In the case of Raj Bahadur v. Bishen Dayal, Straight, J., observed: "If we are correct in our view that the status of a Hindu or Mohomedan under the first paragraph of section 24, Act VI of 1871, to have the Hindu or Mohomedan law made the rule of decision, depends upon his being an orthodox believer in the Hindu or Mohomedan religion, the mere circumstances that he may call himself or be termed by others a Hindu or a Mohomedan as the case may be is not enough". No exception can be taken to the conclusion arrived at in this case, which was that the Hindu law of inheritance was applicable to the parties; but the correctness of the view enunciated in the above passage seems to be open to question, as it would lead to difficult and delicate enquiries, not only as to orthodoxy of practice but also as to orthodoxy of belief. And we may add that the supreme court in the case of Bhagwan Koer v. Bose observed with reference to departure from the standard of orthodoxy in certain matters of diet and ceremonial observance, that such lapses from orthodox practice, assuming them to be established, could never have the effect of excluding from the category of Hindu in the Act, one who was born within it and who never became otherwise separated from the religious communion in which he was born.

It remains, however, to ascertain who are Hindus by religion. For our present purpose, we may divide the population
of India into three sections, - first, the descendants of the aboriginal tribes who have more or less avoided complete conversion to the brahmanical religion; second, the descendants of the early Aryan settlers and of such aboriginal races as have been completely absorbed in the Aryan community; and third, modern settlers of various religious persuasions, such as Mahomedans, Christians, and Parsis. As the third class can never be confounded with the Hindus, we may leave it out of consideration. The second division, which comprises the Hindus properly so called, has never been completely homogeneous in religion, and it has thrown off various sects at different times. But as this heterogeneous body and its numerous offshoots admit more or less the authority of the Vedas, and conform to a few other fundamental tenets of the brahmanical faith, the highly tolerant character of that faith admits them all as being within the pale of orthodoxy, and so they may all be regarded as Hindus. There are only three Indian sects of importance - the Buddhists, the Jainas, and the Sikhs - who have entirely repudiated brahmanism, and who ought to be excluded from the category of Hindus; and, judging from the language of certain enactments in which those three sects are mentioned as classes co-ordinate with the Hindus, it might well be inferred that the Legislature intended such exclusion. But we may observe that, in the absence of evidence of any separate law or usage governing these sects, the Hindu law has
been held to apply to them. And we should add that the supreme court has held in the case of Bhagwan Koer v. Bose (I. L. R. 31 C. XIX) that the term Hindu in Act V of 1881 (Probate and Administration Act) and in Act of 1865 (Indian Succession Act) includes a Sikh. With regard to the enactments referred to above as lending support to an opposite inference, their Lordships observe, "But though in some modern acts, religions are thus distinguished with more detail than was formerly used, in others the old form of language is used and with the old generality of meaning". Perhaps it would have been more in conformity with their Lordships' view if the later acts had named the different sects as "Hindus including Jainas and Sikhs etc." instead of naming Jainas and Sikhs as classes co-ordinate with Hindus. Then, again, if, as their Lordships say, it would be absurd to apply the Indian Succession Act, based on English law, to Sikhs and Jainas, it might on the other hand be said to be not altogether reasonable to apply to them the Hindu law of inheritance, when the principle of spiritual benefit upon which that law is based, finds no place in the tenets of those sects. But it is unnecessary to discuss the matter any further, as the question must be taken to be concluded by the decision of the supreme court. The first section comprises a considerable portion of the population of Tamilnadu and Madhya Pradesh, and the hill tribes of various other parts of India. Their customs and their religion differ widely from those of the Hindus properly so called. They have no codes of law, but in some instances they have adopted much that is Hindu
in their customs and religion, and some of these tribes, such as the Koch and others, have been described by Dalton as the Hinduised aborigines of India. These semi-Hindu races have been sometimes regarded as Hindus, and therefore, subject to the Hindu law. But this is an error which proceeded from our ignorance of the customs and religion of these races. As more is now known of them than before, better provision is now made for the administration of justice to them. Thus we find in the Civil Courts Acts and Local Laws Acts, that, in addition to Hindu law, custom, which is the chief source of their law, is expressly declared to be the rule of decision in certain cases.

Though the Hindu law, being only the personal law of Hindus, can have no binding force on any one who renounces the Hindu religion, yet, we may, if he chooses, "abide by the old law, notwithstanding he has renounced the old religion". This doctrine was laid down by the supreme court in the case of Abraham v. Abraham. Their Lordships in delivering the judgement of the judicial committee in that case, observed: The profession of Christianity releases the convert from the trammels of the Hindu law, but it does not of necessity involve any change of the rights or relations of the convert in matters with which Christianity has no concern, such as his rights and interest in, and his powers over, property. The convert, though not bound as to such matters either by the Hindu law or by any
positive law, may, by his course of conduct after his conversion, have shown by what law he intended to be governed as to these matters. He may have done so either by attaching himself to a class which, as to these matters, has adopted and acted upon some particular law, or by having himself observed some family usage or custom, and nothing can surely be more just than the rights and interests in his property, and his powers over it, should be governed by the law which he has adopted or the rules he has observed.

It is to be observed that this liberty of renouncing or abiding by the Hindu law, extends only to matters not provided for by legislation.

The word vyavahāra is used in several senses in the sutras and smṛtis. One meaning of vyavahāra is 'transaction or dealing'. It also means 'a dispute, a law suit'. A third sense is 'legal capacity to enter into transactions'. - (rāṣṭrā balam dhanam apratvayavaharanam etc.) A fourth but a rare sense is 'the means of deciding a matter'- 'tasya vyavahāro vedo dharmasastraḥ yāryanā etc.'

1. Gautamadharmasūtra, 11.19
vyavahāra is taken to mean 'law-suit or dispute in a court' and 'legal procedure'. This sense is very ancient. In the medieval digests, both law and procedure are sometimes dealt with in one book as in the Vyavaharanirnaya of Varadarāja and Vyavahāramayukha; sometimes the titles of law are treated of in one work and judicial procedure in another. For example, Candesvara composed the Vivadaratnākara (on titles of law) and Vyavahararatnākara (on judicial procedure). The word vyavahāra is restricted in some works to judicial procedure alone (as in the Vyavahāramātrkā of Jīmūtavahana and the Vyavahāratattva of Raghunandana). The word vivāda which means 'dispute' is often used as a synonym for vyavahāra in the sense of law-suit or legal procedure or both. In Āpastambadharmasūtra and in Nārada vivāda means 'law-suit'. In the Vivadacandra of Misarumisra and the Vivadatanādava of Kamalakara both law and judicial procedure are treated of. Yajñavalkya appears to distinguish between vivāda (law-suit) and vyavahāra (judicial procedure).

The word 'vyavahāra' is defined by several smṛtis and commentators. Katyayana gives two definitions, one based on etymology and referring principally to procedure and the other giving the conventional sense having in view a dispute. The (upasarga) 'vi' is employed in the sense of 'various', 'ava'
in the sense of 'doubt', 'hara' means 'removing'; vyavahāra is
so called because of its removing various doubts. This defi-
nition places the administration of justice on a high place.
The purpose of all branches of Indian philosophy is the quest
of truth or reality. The purpose of legal procedure is, accor-
ding to Katyāyana the same viz., to find out the truth when
there is a dispute. But there are some points of difference.
The philosopher may take his own time in his search for truth;
but justice has to be done as quickly as possible. Further,
legal procedure has its own method and limitations in finding
out the truth, that is, it depends on oral and documentary
evidence, while philosopher's quest of truth may be purely
intellectual and subjective. Another definition is: 'When the
ramifications of right conduct, that are together called dharma.
and that can be established with efforts (of various kinds such as truthful speech etc.), have been violated, the dispute (in a court between parties) which springs from what is sought to be proved (such as a debt), is said to be vyavahāra. Harita gives an easier definition: 'that is declared to be vyavahāra where the attainment of one's wealth (taken away by another) and the avoidance of the dharmas of others (such as those of heretics) are secured with (the help of) the means of proof'.

The Mitaksara defines vyavahāra as 'avertment (about a matter) as related to oneself in opposition to another'.

A vyavaharapada\(^1\) means 'the topic or subject matter of litigation or dispute'. It is the same thing as 'vivādapada' which word occurs also in Kautilya and in Nārada. Manu shows that 'pada' means 'stāna'. Yajnavalkya defines it as 'If a person, who is set at naught by others in a manner that is opposed to the rules of smṛti and to good usage or conventions informs the king (or his judge), that is a vyavaharapada'. From very ancient times eighteen vyavaharapadas have been enumerated.

\(^1\) Mitaksara on Yaj. 11.6, vyavahārah tasya padam visayah Aparārka, padam stāham nimittamiti yavat
The underlying idea is that most of the disputes between men can be classified under 18 heads. Even Manu was conscious of the fact that the enumeration of 18 vyavahārapadas was a matter of a convenient arrangement and that the number 18 did not embrace all disputes whatever, but only the largest number of disputes and the most important among them. Medhatithi and Kulluka make this position quite clear.

It is not to be supposed that the 18 topics were first started by the Manusmṛti. Gautama mentions vakpārusya and danda-parusya, treats of some of the topics without specifying the technical names e.g. he refers to the subject of samgrahaṇa of theft of svāmipalavivāda of ṛṇādana of nidhi of dāyavibhaga. Similarly the Āpastambadharmasūtra speaks in scattered places of some of the topics of vyavahāra such as murder (i.e. sahasa) of adultery, theft, dāyavibhaga, vakpārusya. Vasistha also

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1. Medhatithi on Manu 8.8.

bhūyīśṭhagrahaṇaṁ prādhanya-khyāpanārtham anye'pi vyavahāra-
hetavah santi yatha nivasanārtham tvaya me vesma dattam tatra
kimityarvākamvatsara danyasmai dadasiti na oedam dattanapakarma
na hyatra svatvanvṛttirasti bhogānuññāmatram vasataḥ
mentions the word dayavibhāga and sets out rules about it and about means of proof about rādayana, about the twelve kinds of sons. The Baudhāyanadharmaśāstra employs the word dayavibhāga and gives several rules on that subject. Thus some at least out of the eighteen vyavahārapadas (such as vākyāparusya, dandapārusya, dayabhāga, steyas) were distinctly recognised centuries before the present Manusmṛti was composed. Manu prescribes that neither the king nor his officers should start a dispute (i.e. a legal proceeding), nor should he sit silent upon (hush up) a matter which has been brought before him by another (i.e. by a party). Gautama lays down that a party should humbly approach a judge with his complaint. There must have always been several matters, of which nobody might complain and which the king might have to look into suo motu. Manu after dealing with the 18 vyavahārapadas requires the king to make efforts to destroy kantakas (thorns, harmful persons) and dilates upon many aspects of his activities in this respect.

The enumeration of vyavahārapadas is very ancient and authoritative, but there is hardly any scientific principle of classification underlying them. A writer called Nibandhanakāra
quoted in the Sarasvativilāsa holds that in all the vyavahāra-
padas from ṛṇādana to ṛdayāvibhaga the relief claimed is some-
thing to be given or rendered (deya) by one party to the other, 
while in vakparusya, daṇḍaparusya, sāhasa, gambling and 
betting the principal relief is in the form of daṇḍa (punishment). 
Here there is a glimmering of the distinction between civil and 
criminal litigation. Two deep-seated principles in the adminis-
tration of law and justice everywhere are 'fulfil your promises' 
and 'cause injury (himsa) to no one'. It is therefore that we 
find Brhaspati stating that law-suits are of two kinds according 
as they originate in (demands about) wealth or in injuries. 
Yājñavalkya speaks of arthavivāda (civil dispute) and so made a

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1. Sarasvativilāsa, 1. p.51,

tatha ca gautamasūtrāṁ dvirutthānata dvigativiti 
vyavahāra ityanuṣajyate tatra nivandhanakāvēnoktam-
ṛṇādanādi dayābādīvaṅgantānāṁ devanivandhanatvam 
sāhasādipan-cakasya daṇḍanivandhanatvam iti dvirutthānate tyarthā 
itī
distinction between civil and criminal disputes. Law-suits originating in wealth are divided into fourteen sorts and those originating in injuries are of four sorts. These last are vakparusya (defamation and abuse), dandaparusya (assault and battery), sahasa (murder and other forms of violence) and strisamgraha (adultery). Here there is a clear distinction made between civil disputes (arthamula or dhanamula) and criminal ones (himsamula). Katyayana also says that disputes have their source in two viz. not rendering what should be given and injury (himsa). Though in this way a distinction was made between civil and criminal disputes among the 18 titles of law, it appears that the set of

1. Smrticandrika, p.9,

dvipado vyavaharaḥ syaddhanahimśasamudbhavaḥ
dvisaptakorthamulastu himśamulaścaturvidah
evamarta samutthani padani ca caturdaśa
pumareva prabhinnani kriyabhedadanekadā
pārusye dve sahasam ca parastrīsamgrahastathā
himśodbhavapaḍanyevam catvāryaḥ brahmapatiḥ
rules and the procedure in both were the same (except as to the
time allowed for reply, as to the qualifications of witnesses
and as to 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). There were not
two sets of courts in ancient India as there were in England
before the fusion of Law and Equity, but all courts in ancient
and medieval India were required to administer the law of the
texts tempered by common sense and reason as laid down by Brhaspati
a decision should not be given by merely relying on the text of
the Sastra; when consideration of a matter is divorced from
reason and common sense loss of dharma results Narada, Brhaspati,
Katyayana the Agnipurana and others predicate several things
about vyavahara, such as that it is dviphala (has two results)
and so on. All these are brought together here below for convenience.
Vyavahara is; Catuspad - having four feet, viz. dharma, vyavahara,
caritra, rajasasana, according to Narada while according to

1. Arthasastra, 4.1,

dharmasca vyavaharasca caritram rajasasanaṃ vivadarthasca-
tuspadaḥ paścimaḥ purvavadhakaḥ tatra satye sthito dharma
vyavaharastu saksisu caritram samgrahe punsam rajnamajña
tusasanam
Yajñavalkya and Brhaspati they are the plaint, the reply, the proof (kriyā) and decision (nirnaya) or according to Katyāyana plaint, reply, pratyākalita and kriyā.

Dharma and the other three are really the four feet of nirnaya (final decision), which is one of the four stages of a law-suit (vyavahāra) and so only in a secondary or far-fetched sense they are the four pādas of vyavahāra. Each of these four is said to be of two kinds. A decision is said to be arrived at according to dharma when the wrong-doer admits his guilt or wrong-doing and the real owner secures his wealth

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1. Pratyākalita means according to Aparārka, the deliberation of the judge and sabhyas as to where the burden of proof lies and as to the method of proof. According to Mitakṣarā on Yaj. 11.8, pratyākalita in this sense is not a vyavahārapada, since it is not directly related to the litigants. According to Narada 11.21, Pratyākalita seems to mean an addition to the plaint or to the reply (i.e. a supplementary written statement) vādibhyāṃ likhitacchesam yatpunarvādinaṃ smṛtam tatpratyākalitaṃ nāma svapāda tasya liknyate.
or the relief due to him without having to undergo the trouble of a protracted trial by means of witnesses, documents and similarly a decision to be arrived at by ordeals is said to be one by dharma. Dharma and satya are often identified and here the wrong-doer tells the truth and the decision is therefore said to be by dharma. When a litigation is fought out in court by citing witnesses, the decision is said to be by vyavahāra 'witnesses' are mentioned only by way of illustration (and imply documents, possession and other means of proof). When a defendant is guilty of not giving a straight reply or when his reply is tainted with faults and so is unacceptable and a decision is given against him on that ground alone it is still a decision by vyavahāra. Caritra means 'the usages of a country, village or family' 'desāsthitiḥ pūrvakṛtā caritram samudāḥrtam'. This seems to be the sense of 'caritra' in 'phalakavāre caritratoti'. In prakīrṇaka 24, Narada seems to give the same sense 'sthītyartham prthivipalais caritra visayaḥ kṛtah'. Caritra also means 'anumāna' (possession and presumptions) (cf. anumanena nīrṇītam caritramiti kathyaḥ' - says Brhaspati).

Usage are the means of decision in certain cases apart from the question whether they are supported by the sūrtis or not. 'Caritram pustakaraṇa' means that such usages are valid.
means of decision if they have been written down or recorded by the king, while 'caritram tu svikaraṇe' means usages become the rule of decision when they are accepted as valid by the people and by the courts. When a king issues in a matter of dispute an order which is not opposed to smṛtis or local usages and which is thought out as the most appropriate one by the king's intellect or which is issued to decide a matter when the authorities on each of two sides are equally strong, it is a decision by royal command.

Where there are no witnesses nor documents nor possession and no room for ordeal and there are no texts and local usages it is the king who has to decide as best as he can.

According to Pitāmaha, the king may take cognizance of his own motion without dividing the vyavahārapadas into civil and criminal. They more or less deal with most of the subjects brought out in modern classifications but not in an orderly manner. They also divide laws into substantive and adjective or procedural. The vyavahārapadas correspond to the former and the rules about procedure, the appointment of judges and the constitution of courts, evidence and limitation are adjective law. Some of these are dealt with in the commentaries
and digests under a section called vyavahāramātrīka (the elements of judicial procedure) and the rules of evidence are stated in Yājñavalkya, Narada and others under the vyavahārapada ānādana once alone. It would be more convenient to deal with adjective law first. That law is now of antiquarian or academic interest only and will therefore be treated somewhat briefly. The smṛtis lay down a high level of judicial procedure, but the procedure must have been modified to suit the requirements of different times and the resources and inclinations of different kings. Some of the vyavahārapadas viz. ānādana (recovery of debt), stripumāyoga and dayabhaga (partition of heritage) are of great practical importance even now, as all Hindus are governed in matters of partition, inheritance, debts, marriage and sonship by the rules of Hindu Law gathered from the smṛtis and digests as modified by legislative enactments and judicial decisions.

Justice was to be primarily dispensed by the king. He was an original court as well as an appellate tribunal. Smṛtis and digests insist that the king cannot dispense justice by himself alone, but must do so with the help and guidance of others. Manu and Yājñavalkya provide that the king wearing no gaudy dress or ornaments is to enter the sabhā (the Hall of Justice) for looking into the causes of litigants, accompanied by learned brahmins and minister's proficient in statecraft, is
to be free from hot temper and greed and decide according to the law laid down in Dharmaśastras. Katyāyana says the same thing and adds that a king who examines disputes in the presence of the judge, the ministers, learned brahmins, the purohita and the sabhīyas attains heaven. The king was not to decide by himself but was to follow the advice of his judge, though the responsibility even when he took advice was the king's.

Nārada says that the king has to abide by the view of the judge (prādvivākamate sthitah). Pitāmaha¹ states that a person even if he knows the rules (of dharma) should not give a decision single-handed. Justice was to be dispensed openly in the court and not secretly. Sukra states² that neither the king nor the judge

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1. Sarasvatīvilāsa, p.67,
   tasmānā vacyamekena vidhi jñaṇapī dharmaṁ
   iti pitāmahena ekasya dharmakatananiṣedhat

2. Sukra, IV. 5.6-7,
   naikah pāyecca kāryani vādinoḥ śṛṇuyādvacah
   rahasi ca nṛpaḥ prājñāḥ sabhyāścaiva kādācana
   paksapatadhiropasya kāraṇābhi ca pañca vai
   rāgalobhābhābhayadveṣa vādinośca rahāḥsrutih
nor the sabhyas were to hear a cause in secret and that there were five reasons that led to the charge of partiality in judges viz. hot temper, greed, threats, enmity and hearing disputes in private. Judicial action is divisible into two provinces, viz. that of law and that of fact. The latter is a field in which it is impossible to lay down rules for determination. On points of facts there was a vast scope for the king's or judge's discretion. And therefore the texts contented themselves by saying that the king or judge should keep an open or impartial mind, should be free from hot temper or greed, should hear causes under the glare of public view and should not decide at his own will alone but with the help of learned brahmins and sabhyas. As regards points of law the king or judge is required to decide according to the rules of Dharmāśāstra and where there are no texts the king should decide in accordance with the recognized custom of the country.

How the king directly dispensed justice is illustrated by the rules of Gautama and Manu. A thief who has stolen a brahmin's gold may run with dishevelled hair to the king carrying an iron club or a heavy bludgeon of khadira wood, may declare the sin committed by him and request the king to award punishment. The king may then strike him with the club. Whether the thief dies or lives after the king so strikes him he becomes free from the guilt. The king was also the highest court of appeal.
When owing to pressure of other weighty business the king cannot attend to the work of administering justice, the king should appoint a learned brahmin together with three sabhyas to decide the disputes of people.

A judge was generally styled praṇavivāka or sometimes dharmadhyakṣa or dharmpravaktr or dharmadānkarin. Praṇavivāka is an ancient word. It occurs in Gautamadharmasūtra. The word is a combination of 'praṇ' (one who puts questions to the suitors, from the root 'pracch') and 'vivāka' (who speaks out or analyses the truth, from the root 'vac' with 'vi'). The existence of the word praṇavivāka as early as Gautama (about 500 B.C.) and or prasnavivāka in the Vājasaneyīsambhīta and Taittirīyabrahmana clearly establishes that in ancient India judicial functions became separated very early from executive or political functions.

The chief judge was preferably a learned brahmin, Manu says that the king may prefer a brahmin who is not learned and maintains himself by the mere fact of his caste, but should never have a śūdra as the expounder of dharma and that the country whose king has a śūdra as judge to expound dharma comes to ruin as a cow sinks in mud. Manu and Brhaspati say that when in a sabhā three brahmans learned in the Vedas sit along
with the chief judge appointed by the king that is like the sabha of Brahma or it is like a sacrifice. The king was not to appoint as savhyas those who were ignorant of the usages of the country, who were atheists and devoid of the study of sastras, who were either puffed up, hot-tempered, greedy or distressed.

The chief justice (pradivaka) with the sabhyas constituted the court, being appointed (niyukta) by the king. It was stated above that the king was to enter the Hall of Justice with the chief justice, sabhyas and the brahmins. The distinction is that sabhyas were appointed by the king as judges, while the brahmins were persons who were well-versed in Dharmastra, who could attend the court, though not appointed (aniyukta) and whose opinions on difficult points of law were respectfully received by the judges. They (the learned brahmins) were in the position of amicus curiae. All and sundry were not to intermeddle in trials before the court, but only those who were learned in Dharmastra were allowed to express their opinions on knotty points. Mitaksara\textsuperscript{1} says that either a person should not enter a sabha or if he enters should say what is proper, that a man

\textsuperscript{1} Mitaksara on Yajnavalkya, 2.2,

\text{tatra brāhmaṇah aniyuktah sabhasadastu niyukta iti bhedaḥ}
remaining silent or declaring what is false becomes a sinner and that where in spite of the opinion of some or all sabhyas, justice is not done by the king, they become participators in the king's guilt.

According to Gautama¹ as interpreted by Aparārka, if there is a difference of opinion among the judges, the king is to seek the advice of those who are learned in the three Vedas (along with the other vidyās) and decide the matter finally.

The chief judge and the sabhyas² were not to hold conversation in private with any one of the litigants while

1. Gautamadharmaśutra, 11.25,

vipratipattau traiviḍīyavrddhebhyaḥ pratyavahṛtya niṣṭhāṃ gamayet
Aparārka, p.599,

vicāraṅgām anyonyaśvipratipattau traiviḍīyavrddhebhyaḥ samadhigata- 
caturdasa viḍyāsthanebhyo nyāyam pratyavahṛtyavagamya vyavahāram 
niṣṭhāṃ samāptim nirṇayaṃ gamayet

2. Katyayana, quoted by Aparārka, p.604,

anirṇīte tu yadyartho sambhāṣetāh rahorthinā / 
prādvivāko'tha dandyaḥ syāsabhyāscaiva visēṣatāḥ //
the suit was pending and if they did so they were liable to fine. Kautilya, prescribes fines and even corporal punishments for judges (dharmasthas) and pradestrs who corruptly give wrong decisions, cause loss or sentence to corporal punishment.

A court of justice was according to Bhāspati of four kinds, viz. one established (pratiṣṭhita) in a fixed place such as a town, apratiṣṭhita (not fixed in one place, but moving from place to place as on a circuit), mudrita (the court of a judge appointed by the king, who is authorised to use the royal seal), sāsita i.e. the court in which the king himself presides. Katyayana prescribes that the time for holding the court as laid down in the sastras in three parts of the day after the first part (when the day is divided into eight parts) i.e. from 7-30 A.M. to noon. The sabhā is said to have ten angas by Bhāspati.

1. Bhāspati, quoted by Aparārka, p.600,

pratiṣṭhita pure grame nānagrame pratiṣṭhita /
mudritadhya kgasamyukta rājayukta ca sāsitā //
viz. the king, the chief judge appointed by him, the sabhyas, 
smrī, gaṇaka (accountant), lekhaka (the scribe), gold, fire, 
water and svapuruṣa (a bailiff, otherwise called sadhyapāla).
The chief judge declares (the law), the king awards punishment, 
the sabhyas examine the dispute, smṛti (Dharmaśāstra) lays down the 
rule of decision, the success (of one party or the other) and the punishment; gold and fire are required for taking oaths, the water is for men when they feel thirsty, the ganaka counts the wealth or subject matter of dispute, the scribe writes down the pleadings, depositions and the decision, the puṣpa summons the sabhyas, the defendant, the witnesses and he guards the complainant and the defendant when they have furnished no surety (for appearance). It is further said that of these ten āngas (limbs) the king is the head, the judge the mouth etc. The ten āngas enumerated above (viz. king etc.) are respectively identified with the head, the mouth, the arms, the hands, the thighs (gaṇaka and lekhaka), the two eyes (gold and water), the beard, feet.

The court so far described (i.e. where the king or the chief justice appointed by him presided) was the highest one. But other tribunals were recognised by the smṛtis and digests
Yajñavalkya and Narada state that law-suits may be decided by village councils (kulāni), corporations (sreni), assemblies (pūga in Yajñavalkya gaṇa in Narada) the judges appointed by the king and the king himself, each later one being superior to each preceding one. The first three were practically arbitration tribunals like the modern pancayats. The several words here require explanation and they have been differently interpreted by different digest. The king was thus the highest court of appeal and next to him was the court of the judges appointed by him.

Bṛhaspati ordains that the kulas, srenis and gaṇas that are

1. Narada, 1.7,

kulāni sreṇyascaiva gaṇasacādhikṛto nṛpah /
pratisthā vyavahāraṇāṃ survebhyastuttarottaram //

2. Bṛhaspati, in Smrticandrika, 11.20,

vagdo dhiṃdasmścaiva viprayatavabhau smṛtu /
arthatadvadadhuktau rājathattaubhavapi //
rajanś ye viditaḥ saṃyakkulasreṇigaṇadayaḥ /
sahasanyāyavarjyāni kuryaḥ karyāni te nṛṇam //
well-known to the king may decide the disputes of litigants except those that fall under sahasa and that it was only the king who could carry out the order for fines or corporal punishments, i.e. the arbitration courts could only decide not involving sahasa and they had no power to execute their decrees about fines and corporal punishments, but that their decisions had to be filed with the king, who, if he did not disapprove of them, put them into execution. Pitamāha appears ¹ to mention three classes of state courts, while Yajñavalkya and Narada refer only to two (viz. that of the chief justice and that of the king himself): (a dispute decided in a village may be taken to the city and one examined in the city (court) to the king; a dispute decided by the king whether correctly or incorrectly cannot be reviewed. Besides these courts, it appears from Kautiliya that the village headman (gramika or gramakūṭa) exercised certain summary powers such as driving out of the village a thief or an adulterer and that he could try some offences (gramakūṭāmadhyaksam vā satri bruyat etc.).

¹ Pitamāha, in Smṛticandrika, 11.19,

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\begin{align*}
grāme dṛṣṭaḥ purāṃ yāyat pure dṛṣṭaṣtu rajani &  \\
rajanā dṛṣṭaḥ kudṛṣṭo va nāsti tasya punarbhavaḥ &
\end{align*}
\]
A few words may be said here about conflicts between smṛtis. In disputes between residents of the same country, the same city or the same hamlet of cowherds or of the same capital or village, the decision should be according to their own conventional usages, but in disputes between these and others (who are not residents of those respective places) the decision must be in accordance with the sacred texts. Another rule is that when there is an apparent conflict between two smṛtis, reasoning is to decide in ordinary life which should be followed or reasoning based on the actions of the aged and the experienced is to decide what text to follow and the business of the interpreter consists in holding that one of the smṛtis contains a general rule and the other an exception or that the two apply to different sets of circumstances (vิṣयव्यवस्था) or that an option may be intended. Another rule is that in the administration of justice Dharmasastra rules have superior force to those of Arthaśāstra.

1. Katyayana, quoted by Parasaramadhava, III, p.41,

desapattanagosthesu puragramesu vadinām /
tesam svasamayairdharmasāstratonyeputaiḥ saha //
The jury system was resorted to for setting complicated questions of fact. It is a very ancient system, being mentioned even by Gautama, e.g., 'the king, having received help from the heads of husbandmen, merchants, cowherds, money-lenders and artisans as regards disputes in their own groups, should finally decide what is just.'

It has already been stated above that the king is to decide according to the smārtis. He has also to take into consideration the duties and usages of the several varṇas and the eighteen low castes.

The eighteen low castes said to be outside the pale of the four varṇas and āśāramas are enumerated by Pitāmaха, viz., washerman, shoe-maker, nāṭa (dancer caste), bamboo-worker, fisherman, māccha, bhilla, abhira, matanga and nine others (the names of which are not given here as the text is corrupt).

1. Gautamadharmasūtra, 9.21-22;
   karṣakavānīkpaśupālakusidikāravaḥ sve sve varge
tebhyo yathādhikāramarthapratyavahṛtya dharmavyavasthā.

2. Harita, 11. p. 39;
   सास्त्रानि varṇadharmastu prakṛtinām ca bhūpatiḥ ।
   vyavahārasvarupam ca jñātvā tatsarvamacaret ॥
The foregoing gradations of tribunals did not all exist at all times in ancient and medieval India. One thing is, however, quite clear. There was always a court of the chief justice appointed by the ruling power and final appeal lay to the ruler himself. But as regards inferior tribunals usage varied.

In the period of Gautama the political constitution of the state was monarchical. We have already explained law, although the king was the chief executive of the state, actually he was the representative of the brahmins. The king had no power in his hand. He was a puppet in the hands of the brahmins. The military power of the kṣatriyas was totally ruined as they had to always stay under the pressure of the brahmins. As a result the liberal and broad-minded kṣatriyas became conservative. The king directed the administration with the help of the Veda, Dharmaśāstra, āṅga, upaveda, and purāṇa - 'tasya ca vyavahāro vedo dharmaśāstranyayang- anyupvededāḥ purāṇam'. The king had to always respect and obey the laws of the country, laws of the nation and laws of family if their laws were not non-Vedic and anti-Vedic 'desajatikula- dharmaśca āṃsāina-viruddhāḥ pramaṇam'.

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1. Gautamadharmaśūtra, ll.19
2. Ibid., ll.20
Besides all these, the king must be aware of the laws of special class of people as for instance the merchants, agriculturists and money-lenders. If there was any dispute regarding these classes of people, the king had to hear each and every one's laws through the representative of each and every class. The statement of Gautama is karṣakavanikapāsūpāla kusidīkaraṇaḥ sve sve vare i.e. the famous customs of the class cultivators, merchants, herdsmen and artisans will be recognised as proof.

There was a controversy between the western scholar Maxmüller and commentators. After studying their translation and commentary it seems that the cultivators, traders, herdsmen had right to frame laws. Maxmüller says - "The cultivators, traders, herdmen and artisans have authority to lay down rules for their respective classes".

From the above translation the part 'to lay down rules' clearly enumerates that the cultivators had authority to frame laws. Māskarī, one of the commentators of Gautamadharṣasūtra, seems to have influenced Maxmüller in this matter. It will be

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clear from Maskari's explanation - 'rājani prāṣṭumāśkye svavarga eva prāṣṭavya ityevamartha upadeśaḥ svavarga iti vaktavye vīpsāvacanaṃ na kevalam karṣakādaya eva svavarge pramāṇam kintu brahmanādayo' piti (maskaribhasya 11.23).

But the commentator Haradatta opposed their statements. He said - 'karṣakavanikpaśupālakusidikaravaḥ sve sve varge svavargasamveda pramāṇam'¹. It means that the merchants, herdsmen and money-lenders have authority to lay down rules for their own classes. Although they had authority to their respective classes, but it is reasonable to say that they had no authority to frame laws. If the statements of Maxmuller and of Maskari were accepted, then it proves that in the time of Gautama, there was existence of lower court in the state. But there was no existence of lower court in that time. Besides that there is no denying the fact that only brahmins had authority to frame laws in the time of Gautama, but nobody could frame it. Beni Prasad accepted this truth when he said "Having learnt the state of affairs from those who in each class have authority to speak the king shall give the legal decision"². The same statement is noticed in

¹. Haradattakṛtattamitakṣara, 11.21
². Gauṭamadharmsūtra, 11.12
Gautamadharma Sutra - "tebhyo yathādhikāramarthān pratyavahṛtya-dharmaśya-vasthā"). The brahmin will lay down laws after collecting the news from them according to their rights. The same statements are noticed in Vyāsa and Brhaspatismṛti - i.e.,

veniśilpi-prabhṛtiśu kṛṣirangopajīviśu /
āsakyo nirnayo hyanyaistādiya-reva karayet //

kīnāsāḥ karukāḥ śilpiśiśīśreṇinartakah /
linginastaskaran kuryāḥ svena dharmena nirnayaṃ //

From there we may conclude that the Veda was not only authentic book in the sphere of administration. As the king had to always take help and advice from the brahmins, he had to accept help from some special classes as merchants, cultivators, herdsmen and artisans etc.

The brahmins had authority to frame laws and the king had authority to administer it only. The king would never direct or control the administration of state alone. It was very difficult

1. Vyāsa in Parasāramādhava, p.42
2. Brhaspatismṛti, p.23
for the king to solve any complicated problem without the help of the brahmin who are learned in the Vedas. For that reason the learned brahmins, purohita and prādvivaka (judge) were always present in his court. Maximum seats were occupied by the brahmins who are learned in the Vedas. All these members always helped the king in judicial affairs. The king can never pass any remark according to his will. Gautama did not mention the number of members in king’s court. But in later age the composer of the śāstra or law-makers have mentioned the presence of definite number of members in king’s court. They have remarked that in the court three, five or seven members must be present. Manu and Brhaspati described that the court will be regarded as sacrifice

1. Gautamadharmasūtra, 2.4.26-27,
rajā prādvivako brahmaṇo va śāstravit prādvivakamadhyābhavet
prādvivaka - prochhatiti prāt vivica vaktiti vivakah
nyānkvadisu darsanadvrdhikute raja prādvivakaḥ syat
anyapare tu tasministena niyukto brahmaṇo va śastra vitatra manuḥ;
yadva svayo na kuryat tu nratikāryanirnayam /
tada niyunjyād vidvamsam brahmaṇam kāryanirnaye //
itī HaradattakrtamItaksarabhāṣyam.
where seven, five and three brahmins who are expert in worldly-
laws, vedāṅga and in religion, will take their seats.

The brahmins who are selected by the king in court, should be always learned in the Vedas, worldly-sastras and learned in vedāṅga — "lokavedavedāṅgavid". If in litigation there is controversy among the judges, the king after discussing the matter with the brahmins who are proficient in the three Vedas, will come to a decision.

1. Smṛticandrika, II., p.15,
   lokavedāṅgadharma jñānaḥ sapta pānca trayo'pi va /
   yatropaviśṭaviprahaṁ syuh sa yajnasadṛśisaṁhā //

2. Gautama-dharma-sūtra, 11.25,
   vipratipattau traividyavṛddhebhyaḥ pratyavahṛtya nistham gamayet.
The purohita and the pradivyaka (judge) took most important position in supervising the administration of the state. Purohita was the chief advisor of king. Gautama has described about purohita in the following sutrahmanam ca purodadhita vidyabhijnavagrupayah silasampannam nyayabrttam tapasvinam.

The king always selects purohita who is learned, comes from high dynasty, speaks well or good orator, handsome, aged, well-behaved righteous and virtuous.

Gautama was always very particular and careful to establish a brahmanical society and he was careful to make judges court as brahmanical court, because he prescribed more seats for the brahmins in judges court.

Pradivyaka or judge can be either king or the brahmin who is efficient in sastras. Same statement is noticed in

1. Gautamadharasutra, 11.12
2. Panchanam Tarkaratna, Unavimsatisamhita, XI. p.446.
Thus we may come to conclusion that the brahmin and the king both were equally responsible in administrative affairs. The brahmins had authority to frame laws and the king was liable to administer laws. In judicial matter only the king had authority to pronounce the verdict of judgement and also to administer punishment to criminals. The brahmins only guided him staying behind the curtain. In judicial affair the king and the brahmin were equally responsible, e.g. the statement of Gautama proves it - dvaḥ loke dhṛtavratau rāja brahmaṇaśca vahusrūtaḥ. In this world the king and the well-versed brahmin, both of them have taken oath (vow) (for directing and controlling administration). There was an explanation in Mitākṣara done by Haradatta i.e. "tau sarvasya sarvāpado dandaḍaśābhyām nivarayitārau".

1. Manusmrī, 8,9,
   yada svayam na kuryāt tu nṛpatih karyānirnayam /
   tada niyunjñat vidvāmsam brahmaṇam karyānirnayam //

2. Gautamaḥdharmaṣutra, 8,1

Besides the brahmins, learned in the Vedas, there were two assemblies who helped the king in complicated matters. One of them is 'samgha' or assembly of the persons who are learned in the Vedas and other is 'dasavara parisad'. Dasavara parisad consisted of minimum ten brahmins who are learned in the Vedas and other well versed brahmins. Among ten brahmins, four were learned in the Vedas, three were learned in regard of four orders of life and rest three were lawyers. Maskari has placed the two assemblies in the same status. But it is not true, because samgha consisted of only the brahmins who are learned in the Vedas, but 'dasavaranparisad' consisted of other brahmins who are expert in different sastras. There was a similarity with

1. Gautamadharma Sutra, 3. 10.47,

\[
\text{catvarascaturam pariaga vedanam praguttamam traya asraminaah}
\]

\[
\text{prthagdharma vidas traya etan dasavaaranparisadityaakaksate}
\]

\[
\text{caturnam vedanam pariaga sangnamadhyetaro rthajnasca}
\]

\[
evambhutas catavaro na caturvaidya ekaah asraminastrotye dhyaaya
\]

\[
\text{ukta brahmacari grhastho bhiksurvaikhanaasa iti tesuttamad-}
\]

\[
\text{vaikhanaasaptvurve traya asraminaah prthagdharmaasastravidastrayaah}
\]

\[
\text{prthagragrhapamekameva dharmasastram vidusam trayanam grahanam}
\]

\[
\text{ma bhuditi tan etan dasavaran parisad ityaakaksate dharmajnahn}
\]

\[
it Haradatta krtam itaksarabhasyam.
the word samgha noted by Gautama to 'tribal unity' or 'national assembly' of Vedic age. Besides that in the word samgha the characteristic of pañcarātra-dharma is noticed. Manu also referred to the same assembly. His statement proves it - i.e.

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catvāro va trayo vapi yam brūyur vedaparagāh
sa dharma iti viññeyo netaresām sahasraśaḥ
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The brahmīns of this assembly was always well-behaved and free from greed. As for instance Gautama states that any unknown matter should be solved by minimum ten brahmīns who are well-behaved, reasonable and out of lustre - anājñāte daśāvaraiḥ śiṣṭair unavidhiraubhādhaiḥ praśastam karyam.

These assemblies solved all the complicated matters regarding jurisdiction and administration of the king facing any difficulty. These assemblies had no authority to frame laws. The Veda was the source of their strength. The king was not allowed to do any work without the permission of the brahmīns. As for instance if any man is connected with theft, he will have to appologise by the permission of the assembly of persons who are

1. Gautamadharmaśūtra, 28.46
learned in the Veda (vedavid-samavāya) - e.g. anujñātām vā vedavid-samavāyavyacanaḥ. Haradatta and Maskari both of them accepted same opinion.

Thus it is obvious that Gautama was successful to establish a perfect brahmanical court (brahma-sabha).

We have already shown that in the period of Gautama even the king could not frame laws, only the brahmins could do it. But in later age, as in Nārada, Katyāyana and Brhaspatidharmaśāstra the laws made by the king were accepted and administered with full consent and honour. They considered the advancement of progressive society and framed laws accordingly. For the betterment of progressive society they did not depend upon the Veda. As for instance the statement of Yajñavalkya bears the truth -

nijadharmavirodhenā yastu samayiko bhavet /
so'pi yatnena samrakṣyo dharmo rājakṛtaśca //

1. Gautamadharmaśūtra, 12.49
2. tasya saṅghasya vacanadenujñām vā kartavya iti Haradattakrta mitakṣaraṁbhevyam (p.13.49)
3. vaksyamānandaśavaraparipṣadānujñāya vā evam ca svayamkaraṇe doso draṣṭavya iti Maskarībhāṣyam 12.49
4. Yajñavalkyaṁshūtra, 2.186
The meaning of the sloka is samayika-dharma i.e. conventional laws and the laws made by the king (rajakṛta-dharma) should be honoured and obeyed with proper care if they do not go against the personal laws (nijadharma).

Besides that in later age there were existence of many courts other than king's court. As for instance we can find the presence of many courts in the statement referred by Pitamaha, e.g.

grame drṣṭah puram yāyat pure drṣṭastu raṇani
raṇā drṣṭah kudṛṣṭo nasti tasya punarbhavah

This sloka refers to the existence of assembly for the solution of legal matter in village, town and the king's court.

The Gautama's time a few judicial laws (vyavahāra) were brought in. Gautama did not mention these judicial laws systematically or methodically. All these judicial laws were scattered in his book here and there. It signifies that Gautama did not give any importance to judicial laws. His main norm was to establish spiritual world over temporal world. That is why he was successful

1. Smrticandrika, II. p.19
to establish a brahmanical court. Among eighteen vivadapadas Gautama mentions only vakparusya, dandaparusya. He treats of some of the topics without specifying the technical names e.g., he refers to the subjects 'strisamgraha'² of theft of svamipalavivada of uñadana of nidhi of dayavibhaga-civil laws.

Gautama in judicial law viz. vakparusya and dandaparusya means that if sudra blames any twice-born caste and also hits them dangerously, then the king will pierce that limb by which the sudra has injured them. In strisamgraha Gautama prescribes for the death of an adulterer by cutting his internal limb. In steya Gautama says that the value of property which a sudra unrighteously acquires by theft, must be repaid eight fold. In svamipaladoșa, Gautama opines that if damage is done by cattle the responsibilities fall on the owner. If the cattle were allowed by a herdsman

1. Gautamadharmasutra, 12.1,
   sudro dvijatinabhisañdhayâbhînatya ca vagdandaparûsyabhîya mangaymocyo yenopahanyât.

2. Gautamadharmasutra, 12.3-3,
   aûryastrâybhigamane lingoddharûq svaharananamaca gopta ñeûdadh'adhikaû

3. Gautamadharmasutra, 12.12, aûtapûdyam steyakilvisam sudrasya

4. Gautamadharmasutra, 12.16-17,
   pûsûpidite svâmidoșa, pûlasamukte tu tasmin

5. Ibid., 12.39, nidhyanvadhiyacitavakritadhayo nasto sarvanani-

6. Ibid., 12.39, nidhyanvadhiyacitavakritadhayo nasto sarvanani-

ndîtanpurusâparadhene.
it falls on the latter. In ādāna judicial law Gautama fixes up the rate of interest. He says that the legal interest for money lent is at the rate of five māsas a month for twenty kārṣāpanas. Gautama add more in ādāna-law that the heirs shall pay the debt of a deceased person. In nidhi-judicial law Gautama states that if sealed deposits etc. are lost or damaged no person is liable to return it.

Gautama mentions about the method of punishment. He says that the award of punishment must be regulated by consideration of the status of criminal of his bodily strength and of the nature of the crime whether the offence is less or severe or the same offence has been repeated.

The statement of Gautama is - 'puruṣaśāktyaparādhanuvan-dhāvijñānamaddantaniyogaḥ'.

Gautama prescribes different types of punishment for different castes. Gautama, in regard to punishment, stresses upon penance for moral upliftment than judicial punishment administered by king, because Gautama stressed upon religion to establish a rigid Vedic society.

1. Gautamadharmasutra, 13.48
He prescribes severe punishment for the südra, if he listens intentionally to a recitation of the Veda his ears shall be filled with molten tin or lac if he recites, tongue shall be cut off, if he remembers his body shall be split into two pieces - e.g. - "atha hyāśya vedam upaśrṇvatas trapujatubhyām śrotrapati-puraṇam udaharane jihvācchedo dhāraṇe sarirabhedaḥ. In this period südra got capital punishment for severe crime. If a kṣatriya is rude towards the brahmin, he had to pay hundred rupees e.g. - satam kṣatriyo brahmāṇakroṣe. If the vaisya abuses the brahmin he has to pay two hundred and fifty rupees - 'addhyārdham vaisyāḥ'.

If a brahmin is rude towards the kṣatriya he has to pay only rupees fifty, e.g. - 'brahmanastu kṣatriye pāncāsat'. And if the brahmin behaves same with the vaisya and südra he has to pay rupees twentyfive only and nothing for the südra. e.g. "tadardham vaisye na südre kīncit". The law of punishment of Gautama regarding four castes has been compared with Manu and Yajnavalkya previously.

After foregoing the law of punishment we conclude that Gautama has strictly prescribed the law of punishment that śrāvakaṃ karṇ among four-castes. He was very severe to südra as he promulgated capital punishment for them, but under no

1. Gautamadharmasutra, 12.4
2. Ibid., 12.9-10
circumstances the twice-born-caste will accept capital punishment. In a word in Gautama's time there were two types of punishments — moral punishment and legal punishment. But he preferred to moral punishment i.e. penance enjoined by the brahmin, because he gave much importance upon brahmanical supremacy. In legal administration Gautama accepted the proof of witness. He prescribes that in disputed cases the truth shall be established by means of witness — e.g. — 'vāpātipattau sākṣiṁmitta satyavyavastha'. But a brahmin must not be forced to give evidence at the word of a non-brahmin except if he is mentioned in the (plaint) document. Gautama holds that no objection can be raised against witnesses in a case if a criminal is hurt — "na pīḍakrte nivandah". Gautama states that if the sacred law or the rules referring to worldly matters are violated, the guilt falls on the witnesses, the assessors, the king and the offenders. The witnesses shall be charged on oath to speak the truth. No guilt is incurred by giving false evidence, in case the life of a man depends there on, but this rule does not hold in cases of life of wicked person. The king, learned brāhmins or prādvivāka will direct the litigation. The litigant shall humbly go to seek the judge. To speak the truth before the judge is more important than all other duties. "sarvadharmaḥ bhya ganyah prādvivāke satyavacanam".

1. Gautamadharmsūtra, 14.1
2. Ibid., 14.9
3. Ibid., 14.11
4. Ibid., 14.12
5. Ibid., 14.26-27
6. Ibid., 14.31
Gautama cautions when he says urgent litigation must be done earlier; otherwise there may be a chance of danger—"atyayike ca".

Like other Dharmaśutrakaras Gautama mentions eight forms of marriages, law of inheritance and twelve kinds of sons. In regard to law of inheritance Gautama did not speak something new. Regarding the law of inheritance Gautama states that he who offers pinda, inherits the property. He mentions twelve kinds of sons and holds that among them first six kinds of sons will inherit paternal property and another six kinds of son have no authority to inherit. He says that in absence of first six kinds of sons the others may get one-fourth of paternal property. In a case of inheritance the importance of srotriya brahmin is noticed when Gautama says srotriya brahmin will inherit the property of the brahmin who has no son. This rule signifies that the right of division of property goes to the hand of Vedic brahmans also.

Gautama, opines that a man becomes owner by inheritance, purchase, partition, seizure or finding—e.g. svami rikthakraya-samvibhagaparigrahadhi gamaśu. Gautama explains the resource of treasure-trove. He mentions that those who find lost property the owner of which is not known shall announce it to the king.

1. Gautamadharmasūtra, XXVIII. 39.1
2. Ibid., X.39
One-fourth of the value goes to the finder and the remainder to the king. Gautama prescribes that treasure-trove is the property of a king - "nidhyadhigamajrajadhanaam". Gautama prescribes a few laws on commercial affairs. He mentions rates of taxes upon commodities. The merchant shall give every month one article of merchandise for less than the market value. The brahmins were exempted from tax.

In Gautamadharmasutra we find a law about theory of adverse possession. Gautama says that if anyone enjoys other property, excepting that in presence of its owner for ten years, he will be the owner of the property, excepting the property of invalid and deformed i.e. "ajatapaugandhana dasavarshabhuktam parihi samnidhan bhoktuhi". Although Gautama did not give much importance upon judicial laws, he did not fully ignore the chapter. So, there is no denying the fact that this book is first step for framing laws in sutra literature. After foregoing the discussion we come to conclusion that Gautama was successful to form a brahmanical society in one hand and on the other hand he was successful to form a brahmanical court by establishing brahmanical religion. He controlled the rigidity of society and state by the idealism of the Veda. Mass was fully aware of that if they disobey the Veda.

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1. Gautamadharmasutra, XIII.34
2. Sandhayamadharmasutra, X.43
Ibid., XIII.34
they will have to face the severity of penance for their moral rectification. That is why people did not dare involve themselves in any non-Vedic and anti-Vedic activities. Non-Vedic activities were most hated thing in society. As for instance Baudhāyana referred to a few customs for North India and South India which had no authority in the Veda, e.g. pañcadhā vīpratipattir dakṣinatstthorāṭḥ yathaitdānupetena saha bhojanaṃ striya saha bhojanaṃ paryuṣitabhōjanam matulapitrsvārduhitrgāmanam īpti athottaratā uṛṇāvikrayāḥ śīdhpānaṃ ubhayatodadbhirbhavyavahārāḥ śyudhikam samudrasamyananmiti tatra tatra deśaṇa-pramaṇyameva syāt. Gautama could not accept all these anti-Vedic activities. That is why Baudhāyana says that 'mithyaitaditi gautamaḥ'. Gautama for same reasons did not allow the village woman priests to attend the ceremony of śraddha. According to Gautama acceptance of vow for women was non-Vedic. If anybody did not perform śavitrivrata in scheduled period he was recognised as vṛatya or śudra. Although some non-Vedic activities crept into society, but by the rigidity of brahmanical religion he was successful to establish a Vedic society. But there was a great difference of opinion between the Dharmasastraṅkāras of later ages and Gautama. The law-makers of later ages were always aware of the broad mentality of mass and of the progressive society.

1. Baudhāyanaḥdharmaṣutra, 2.3-4, 6
2. Ibid., 2.7
Gautama liked to establish a society and a state on the basis of religion. In this respect he was more orthodox. The interest of individual was much important to him than the interest of mass - which was a great obstacle for formation of democracy. The reverse side was noticed in the Dharmasastras of later ages. As for citation one of the statement of Brhaspati-smṛti can be enumerated below:

pratilomeprasūtānām tathā durganivāsinām / 
ādyajatikulānam ca ye dharmāḥ prākpravartitaḥ // 
tathaiva te pāliyāḥ praśa prakṣubhyateanyathā / 
jano prakṛtisthitotra valaṁ kośaśca nasyati //

The code of conduct or law meant for the persons born of pratiloma marriage, residing at the castles, belonging to different country, nation and tribe. They are to be dealt with accordingly; otherwise the people become agitated. The wealth and force are lost.