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**COMPARISON OF DHARMA-BASED PENAL SYSTEMS WITH
MODERN REHABILITATION LAWS AND A COMPARATIVE
ANALYSIS OF ANCIENT AND MODERN LEGAL SYSTEMS**Atharv Kaushik¹ & Avneesh Kumar Pandey²**Abstract**

The 'Bharata' has a long history of its emergence. It also applies to the evolution of its legal system. The ancient system of doing justice was crude but had ethics and morals. The concept was essentially based upon the 'Dharma' i.e., one's personal duty. They cared about a person's state of mind and how they felt about what they did. Doing something wrong was seen as a spiritual mistake and it was followed by the 'Prayashchitta.' It was a way for someone to reflect their actions and show that they truly apologize for their acceptance back into their society. The ancient *dharmic* scriptures mainly consist of the Dharmashastras, Smritis and the *Arthashastra*. The *Arthashastra* is of a larger focus for this study as its original manuscript is available.

The modern system that majorly emphasizes upon reformation and rehabilitation of individual that became essential in the pretext of Article 21 of the Constitution of India ensuring right to have personal dignity even to an accused. Rehabilitation can be achieved by several ways such as changing behavior of the person through counselling and job training. This change also appears in how the law safeguards women. In ancient times, rules depended on a leader's responsibility for a woman's honor and recognized her right to own her property (like *Stridhan*). Now, the law is about a woman's own choices and broader share in rights and resources of the society.

Conclusively, this study finds that both the old and new ways of doing things agree on one thing, i.e., just imprisoning someone isn't enough to make things right. By taking the old

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focus on being true apology and healing the community and mixing it with our modern focus on fair rights, we can create a kinder legal system that respects the people involved and reform the accused.

Keywords: *Dharma*, Rehabilitation, *Arthashastra*, Constitution of India.

INTRODUCTION

The path of Indian legal history is often framed as a movement from religion-based retribution to secular, scientific rehabilitation. However, a closer examination reveals that ancient Indian jurisprudence was not purely punitive but a deeply restorative system rooted in the concept of *Dharma*. In the ancient context, *Dharma* represented a holistic socio-legal order that governed every aspect of human conduct. Justice was seen as the primary instrument for upholding *Rta*, the underlying rhythm of the universe. Consequently, a crime was not merely a breach of a king's statute but a moral and spiritual disruption that necessitated the purification of the offender.

In the modern era, the foundation of authority has shifted from cosmic laws to the Constitution of India. The contemporary legal system operates on the principle of equal opportunity and the protection of individual rights. Central to this is the philosophy of legal aid, which aims to ensure that no citizen is deprived of justice due to economic or social disabilities. This transition from "cosmic duty" to "state-guaranteed rights" represents a significant shift in how society views the offender. While ancient law sought to "cleanse" the soul, modern law seeks to "reform" social behavior. Despite these different linguistic markers, the objective remains the same: the successful reintegration of the individual into the community.

Dharma

The foundational spiritual traditions of ancient India—including Hinduism, Buddhism, and Jainism—revolve around the central concept of *Dharma*, or *Dhamma*. This principle serves as a comprehensive ethical framework that individuals adapt throughout their lives to fulfill their responsibilities and refine their personal character. Though, *Dharma* in literal sense means “*that which sustains and upholds.*” And, there is no equivalent phrase in any other language where *Dharma* can be translated.^[3]

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Far from being a rigid or singular doctrine, Dharma is essentially multifaceted, meaning its application is often determined by the specific context of a situation and the social or moral standing of the person involved.

This flexibility is clearly demonstrated through the differing moral weights assigned to the act of killing. For instance, a common murderer is condemned and faces karmic or legal retribution because their actions stem from personal malice or selfish motives. Conversely, a soldier engaged in combat is viewed as fulfilling a righteous obligation to defend their country and its people. While both individuals participate in violence, the ethical distinction lies in their intent and their commitment to a higher service. In this view, taking a life is transformed from an immoral act into a necessary duty when it is done to uphold the safety of the collective.

Ultimately, an individual's Dharma is shaped by their dedication to justice, moral integrity, and the pursuit of righteousness. This personal path is not arbitrary but is anchored by the broader concept of Rta, or the universal Cosmic Law described in ancient Indian scriptures. By aligning one's actions with their specific duties, an individual maintains harmony with this natural order, ensuring that their life's work contributes to the balance of the universe rather than its disruption.

Dharma and Entropy: A Walk between opposite poles

In the language of modern physics, the universe is governed by entropy, a term that describes the inevitable slide toward randomness and disorder. According to the Second Law of Thermodynamics, energy naturally spreads out and structures eventually break down; in simple terms, the physical world is fundamentally predisposed to chaos. This scientific reality suggests a universe that is constantly "unraveling," moving away from complexity toward a state of uniform randomness.

Standing as a profound counterpoint to this physical decay is the ancient Indian principle of Dharma. Rooted in the Sanskrit word *dhri*, which means "to support" or "to uphold," Dharma represents the essential force of stability and cosmic alignment. While the physical world may drift toward noise and disintegration, Dharma serves as the conscious effort to maintain

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harmony, justice, and "stillness." It is the moral and spiritual framework that prevents society and the self from collapsing into the very chaos that entropy dictates.

Viewed together, Dharma and entropy represent two opposing poles of existence. Every living being essentially walks a path between them, navigating a material reality that is physically falling apart while striving to build an internal and social life that is ethically sound. From this perspective, living a life of Dharma is more than just a religious duty; it is a deliberate act of "upholding" the universe. It is the active pursuit of stability in a world of change, ensuring that our actions contribute to the balance of the cosmic order rather than its inevitable dissipation.

One person's wool is from another person's sheep- The interpretation of Dharma

Dharma remains delicate even within its stability. Its interpretation is predominantly influenced by an individual's life experiences and knowledge. In our ancient Indian epics, such as the Ramayana and the Mahabharata, Dharma is articulated as a guiding philosophy for all individuals. Certain incidents within these epics are perceived as conflicts between individuals over their philosophies or internal struggles. Two exemplary instances illustrate this concept. One originates from the Ramayana, where King Rama disowns and exiles his beloved wife upon discovering information about his subjects, despite his profound love for her. As the king, he possessed the authority to make any decision; nonetheless, he adhered to his Dharma and prioritised his duty as a monarch over his personal affections. Consequently, he is revered as *Mariyada Purushottama*.

Another example is from the Mahabharata where, during the *Dyut Sabha*, King Yudhishtira lost everything—his kingdom of *Indraprastha* his brothers and wife—to his cousin brother prince *Duryodhana* of Hasthinapur due to Shakuni's deceit. Queen Draupadi was then brought into the court and nearly disrobed, but Krishna intervened divinely to save her. Although many Dharma experts, including the king, were present, none took action, resulting in a grave injustice. This event also led to the Pandavas' exile and was one of the primary causes of the bloody Kurukshetra War.

The Composer of the Mahabharata, *Ved Vyasa*, himself criticizes the decisions taken in the name of Dharma. So the question arises as to when the composer of the greatest epic himself is criticizing the ancient legal system then how did this system work.

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The Ancient Indian Legal System

Law in the Vedic Period

The *Rig Veda* is India's oldest text that was composed during the Bronze Age and was orally passed on by the *Guru-Shishya tradition*. The *Rig Veda* is the foundation of the Indian Knowledge System (IKS). The Rig Vedic period represents the earliest phase of Indian legal thought. During this time, law was not codified or written in formal texts. Instead, it was deeply intertwined with religion, morality, and the natural order.

The central idea governing law in the Rig Vedic period was *Rta*, which referred to the universal order that sustained both nature and human society.

In the Rig Vedic times, Dharma emerged as an implied duty, righteousness, and proper conduct.

The King or *Rajan* had his power checked by customs, traditions, and collective bodies such as assemblies. Thus, the main role of the king was to protect people and uphold *Rta*. The King did not have absolute authority.

Sabha and Samiti: Early Political and Legal Institutions

The *Sabha* and *Samiti* constituted two of the principal deliberative institutions referenced in the *Rig Veda*, reflecting the early structural foundations of governance in Vedic society. The *Atharva Veda* (7.12.1)^[4] symbolically characterizes these bodies as the twin daughters of *Prajapati*, thereby conveying the conceptual understanding that a stable and just political order is sustained through the operation of complementary institutional frameworks. This metaphor, while literary in form, underscores the functional interdependence of these assemblies in the administration of governance and justice.

The *Sabha*, generally identified as a council of elders, was composed of individuals distinguished by age, social standing, and intellectual authority. Its primary function was advisory in nature, assisting the king in matters of policy formulation and administrative decision-making. However, its role extended beyond consultation into the domain of adjudication. The *Sabha* exercised significant judicial authority, functioning in a manner analogous to a high adjudicatory body, wherein disputes were examined and resolved in accordance with prevailing norms and customary principles. This indicates that the

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dispensation of justice was not exclusively vested in the sovereign but was subject to collective deliberation within an institutional framework.

In contrast, the *Samiti* represented a broader and more inclusive assembly, often regarded as embodying the collective will of the community. Its composition was comparatively expansive, allowing for wider participation and thereby imparting to it a more representative and participatory character. The *Samiti* engaged in deliberations concerning matters of public importance, including questions of warfare, leadership, and general welfare. Its role in such discussions suggests the presence of an early form of consultative governance, wherein public opinion and collective considerations informed decision-making processes.

Collectively, the functioning of the *Sabha* and *Samiti* operated as an effective limitation on the concentration of royal authority. These institutions ensured that the exercise of power, particularly in judicial and administrative spheres, was mediated through processes of consultation and deliberation. In doing so, they reflect an embryonic form of checks and balances within Vedic polity. The existence of such mechanisms demonstrates that early Indian legal and political thought recognized the necessity of institutional restraint, participatory engagement, and normative accountability in the maintenance of social order and political legitimacy.

Manusmriti and Dharmashastras

The *Manusmriti* and the broader body of *Dharmashastras* mark an important phase in the evolution of ancient Indian legal thought, as they attempt to organize and articulate norms governing both social conduct and institutional order. These texts develop the concept of *dharma* as an overarching framework that integrates moral duties, social responsibilities, and legal principles. Among them, the *Manusmriti* holds particular prominence for its detailed treatment of issues such as family relations, property rights, governance, and the administration of justice.

A notable feature of the *Manusmriti* is its emphasis on the ethical dimensions of law. Rather than viewing law solely as a mechanism of punishment, it underscores the role of intention and moral responsibility in determining wrongdoing. The concept of expiation further reflects the idea that justice involves not only the imposition of penalties but also the restoration of

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moral balance. At the same time, the *Dharmashastras* were not rigid legal codes; they operated as normative guides, allowing room for interpretation and adaptation in accordance with customary practices and local conditions.

While these texts played a foundational role in shaping early legal and social frameworks, they also embody hierarchical assumptions that require critical examination in light of contemporary constitutional ideals. Nonetheless, their enduring significance lies in their effort to situate law within a broader ethical and philosophical context.

Law After Vedic Period

The Vedic period ends with the rise of the Magadha and the transition from the *Mahajanapadas* to the Age of Empires. It was the time when *Bimbisara* of the *Haryanaka* Dynasty (6th Century BC) founded Magadha (one of the 16 Empires). *Bimbisara* was succeeded by his son *Ajatashatru*, who was also contemporary to both Lord *Mahavira* and Lord *Buddha*. He founded the city of *Patalipura*. Thus he laid the foundation of the city that served as a center for administration for several centuries.

After the fall of the *Haryanaka* dynasty, *Shishunaga* dynasty ruled that was later replaced by the Nanda dynasty. It was during the reign of the last king of the Nanda dynasty that Alexander Invaded India and defeated King *Porus* or *Purushuttam* of the *Paurava* kingdom with the aid of King *Ambi* of Taxila. *Dhana Nanda* was the then ruler of Magadha and had the largest army. Alexander's soldiers were not willing to fight the great army of Magadha and returned to Mecedonia. *Dhana Nanda* was a tyrant who was also said to be the richest person of that times.

At the same time, *Acharya Vishnugupta*, who was a professor at the Taxila University, who was insulted by *Dhana Nanda* in his court, and *Vishnugupta* overthrew him after several years and put Chandragupta on throne with foundation of the Mauryan Dynansty.

Vishnugupta was also called by names *Kautilya* and *Chanakya*. He in his later life authored *Arthashastra* what became the basis of administrating the Kingdoms, Mauryan Empire as well as future empires to be formed.

Arthashastra

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Chanakya authored *Arthashastra* in his later years after serving as Prime Minister to the Mauryan Emperors. He precisely explained in the texts how to run the empire. *Arthashastra* primarily deals with the Economics and Polity but it also throws light over the Law, Crime and Sanctions at that times.

Megasthenes, the Greek ambassador to the court of Chandragupta, wrote *Indica*, though the original manuscript lost but it is the first account by a foreigner about India and was referred to by many writers of that time. ^[2]

The Comparison of the fragments of *Indica* available and the *Arthashastra*, the Mauryan empire had a highly developed and organized bureaucratic administration, and also had a very elaborate secret service system involving every section of the society. ^[2]

Sanctions

The *Arthashastra* tells us about the ways to suppress the crime. *Chanakya* has advised in his *Arthashastra* for imposition of stringent curfew from about two and a half hours after sunset to the same time before dawn. ^[3] This must have been done as the thieves and criminals are most active during this time. Though *Megasthenes* and other foreign travelers have defined Indians as law abiding, but *HsuanTsang* does not describe so. This may be due to passage of time and since he visited India during the time of *Harshavardhana* that comes after the 'Golden Age' of the *Guptas* when the punishments were very less.

Imprisonment, though not very common in Indian texts, were found to be prevailing. *Arthashastra* recommends forced labor in state mines or some other place as punishments, and it might have amounted to severe imprisonment. ^[3]

Arthashastra also prescribes death penalty for murder. Hanging for spreading false rumor, house-trespass or house-breaking and stealing king's animals such as horse and elephants. Burning alive was a punishment for sedition. ^[3]

Several other punishments such as beheading, tearing apart by oxen, shooting to death by arrows etc. Though *Arthashastra* in comparison to *Manusmriti* is soft against sexual crimes, where *Manu* have prescribed death penalty for adultery and sexual crimes. ^[3]

Modern Day Restorative and Rehabilitation by Penal Laws

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As seen previously, the punishments were punitive and harsh but that led to a disciplined and law abiding society as claimed by foreign travelers. ^[1] From the above it is also clear that the crime is not a day's talk. It is civilizational and it is interpreted indifferently at different times. For example, in the ancient Indian society, particularly among ruler and elite classes, polygamy was a common site. *Manusmriti* granted the man to remarry upon certain conditions like the wife only producing daughter, or if she is diseased or barren etc. But after the enforcement of the Hindu Marriage Act, 1955, the Bigamy became prohibited. ^[5]

Though both Ancient and Modern Indian legal systems use the Principles of Natural Justice, the Modern Law has advanced it to adopt in itself.

Natural Justice and Constitution of India

When there is fairness, reasonableness, equity and equality, Natural justice is applicable.

^[6]The core principles of Natural justice are:

1. Rule against Bias (*Nemo Judex in Causa Sua*)
2. Rule of Fair Hearing (*Audi Alteram Partem*). ^[7]

In the Constitution of India, there is no direct reference to the idea of natural justice, instead it is incorporated in the provisions of Article 14 and Article 21 prohibiting arbitrariness and ensures equality before the law and the procedure that deprives a person of life and personal liberty must be fair, just and reasonable. ^[7]

Restorative Justice

Normally, until recent times, punitive justice was prevailing. But, post the Second World War, the new concept of the Restorative or Reformatory justice caught its pace. The signing of the Universal Declaration of Human Rights also had an effect as such. The social thought of hating the crime not the criminal plays a central role in application of restorative justice. It was in the western cultures that involved harshly punishing the offender. Any harm to the society that violated rules, the offender in proportion to that harm shall be punished. ^[8]

Restorative justice refers to a different way of responding to wrongdoing that emphasizes repairing relationships rather than punishment alone and therefore seeks to fulfill and improve the needs of all those affected by the wrong. Its aim is to offer help so that no one side -- from victims, to wrongdoers, to the public -- feels left behind in the criminal justice system. Core principles of restorative justice are three:

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1. Providing help and healing for victims by recognizing their hardships, giving them the chance to speak up in the process, and fulfilling their emotional, physical, or financial needs.
2. Helping offenders see what effects their deeds have now and strive both by putting them under active responsibility for their wrongdoing as well as in actively repairing the harm caused.
3. Involving households, community members, and institutions to help not only victims but offenders to rebuild trust on one hand and social harmony on the other. ^[8]

Indian Legal Systems and Modern Restorative Laws

With the adoption of the Constitution of India, the country, consistent with the principles enshrined in the Universal Declaration of Human Rights, slowly implemented a more restorative and reformative legal framework. During the British Raj, a penal system had developed that primarily served colonial interests, most notably severe punishment for people perceived as threats to imperial authority. Following the enactment of the Constitution of India, previously existing laws that did not meet the requirements of this constitutional law were either struck down or amended properly. Over time, statutes that became inconsistent with evolving constitutional values were removed, and a plethora of new laws were passed to keep up with society's changing needs.

The previously existing laws, such as- the Indian Penal Code, 1860 were amended as per the constitutional essence and following the principles of Natural Justice. Previously favouring the British Raj, now the new penal laws were more consistent with the modern restorative legal system.

Further amendments in the Constitution of India provided for Free Legal Aid (42nd Amendment Act, 1976) to the accused and the Legal Services Authorities Act, 1987 established National Legal Services Authority (NALSA).^[9] In the year 2023, the Indian Penal Code was itself replaced by the Bhartiya Nyaya Sanhita, 2023 providing a new punishment of community service for the purpose restoration and reformation of the accused.

The Public Interest Litigation was introduced in India with the filing of a writ of Habeas Corpus for the release of under-trial prisoners in Bihar who had not been convicted yet. The Supreme Court of India accepted the Writ Petition and ordered for release of such

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prisoners.^[9] ^[10] To prevent the misuse of PIL, the Supreme Court issued guidelines and imposed penalties.

The Indian Constitution and legal system ensures that the balancing of interests of the accused and the society is done. Thus for this balance the accused is tried and if found guilty he is punished. It is also essential that the accused is also given the right to free and fair trial. This is how the principles of Natural Justice are followed.

The Constitution of India also provides for the special privileges the women, children and other marginalized sections of the society. Laws like the Dowry Protection Act, the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, along with other laws, prevents the interests of these sections of the society.

Conclusion

From the above study, we can deduce that the ancient Indian Legal Systems to much an extent followed the principles that were at that time said to be of divine origin and the offences were a form of harm to morality and *Prayashchitta* was the one way to restore balance and *Dharma*. Penalty was harsh upon going into the period of the empires of India.

With the advent of the Europeans in the 1600s, the Indian society adopted the concepts of modern laws that were being developed in the western world, and that led to, after independence, the making and adoption of the Constitution, with Fundamental Rights acquiring the central position in functioning of a welfare state. This included rights of the individuals of the society, even guaranteed to the accused. Hence the penal systems evolved from punitive and retributive of that of the BritishRaj to the restorative forms. With the idea of changing the mindset of the offender, with the belief of reformation of the society.

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