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Alessandro Giudice

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This entry delves into the origin, sources, and role of the Dharmaśāstra (science of *dharma*) in the historical and cultural context of ancient India. In contrast to other ancient civilizations (such as the Roman Republic and Empire), ancient Indian society was characterized by the lack of a uniform legal system, having instead multiple legal systems united by a common jurisprudence called Dharmaśāstra. The initial works within this tradition are the *Dharmasūtras*, four of which are handed down from manuscripts (i.e. the *āpastamba-*, *Gautama-*, *Baudhāyana-*, and *Vasiṣṭhadharmasūtra*), approximately dated from the third century BCE to the first century CE. These works are written in aphoristic prose (*sūtra*) and tend to preserve the entire scholarly debate about *dharma* rather than provide an unambiguous, authoritative version of the issues addressed. Such argumentative modality is innovated by the composition of the *Mānavadharmaśāstra*, the first *Dharmaśāstra* or *Smṛti* to be handed down, approximately dated to the second century CE. This work, written in verse (*śloka*) and ascribed to a divine figure, imposes its authority in the debate surrounding *dharma* by taking an assertive stance and eliminating all dissent in most cases. The *Mānavadharmaśāstra* innovation was then followed by later *Smṛti*s, of which only four major texts are handed down from manuscripts – the *Yājñavalkya-*, *Nārada-*, *Viṣṇu-*, and *Parāśarasmṛti* – dated approximately from the late fourth century to the eighth century CE. Following an examination of the genesis of the Dharmaśāstric tradition, connected to the (re-)Brahmanization of the Buddhist concept of *dharma*, this entry deals with the four *dharmamūlas* ('roots of law') on which the Dharmaśāstra is grounded, i.e. *śruti* ('revelation'), *smṛti* ('tradition'), *ācara* ('conduct'), and *ātmatuṣṭi* ('self-satisfaction' or 'personal preference'), along with its textual history. Finally, coming to the present day, this entry discusses the role of Dharmaśāstra in the living forms of Hinduism and, specifically, how it has survived in modern Hindu law.

Keywords: Dharma, Brahmanism, Law, Hindu law, Dharmaśāstra, Hindu jurisprudence, Legal systems, Sacred texts, Ancient India, Classical Hinduism, Colonial India

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1 Law and religion in ancient India: the broad concept of *dharma*

Law and religion are the foundational pillars that structure ancient civilizations from East to West, including, in its particularity, Indian civilization. Providing a clear and unequivocal definition for the universally recognized categories of 'law' and 'religion' is inherently challenging. This task becomes even more complicated when trying to delineate their boundaries within the context of ancient India. In many pre-modern legal traditions, such as the Indian one, there is no apparent dichotomy between law and religion. In these traditions, the modern concept of 'religion' seamlessly intertwines with that of 'law', resulting in the absence of a distinction between 'secularized law' and 'religious law'. Into the latter framework, the Brahmanical tradition fits neatly since such an *ex-post* distinction between 'law' and 'religion' is absent because they are encompassed – as non-unique constituents – within the broad concept of *dharma* (Sullivan and Yelle 2005: 5326).

1.1 A pre-history of *dharma* in Vedic sources

The concept of *dharma*, on which Hinduism in its entirety is grounded, is 'difficult to define because it disowns – or transcends – distinctions that seem essential to [non-Hindus], and because it is based upon beliefs that are as strange to [those outside Hinduism] as they are familiar to the Hindus' (Lingat 1973: 3). From an etymological perspective, the Sanskrit word-form *dharma-* (as well as its Vedic counterpart *dhárman-*, which it likely replaced) derives from the verbal base *dhṛ-* (etymologically meaning 'to hold', cf. Latin *frēnum*), traceable to a Proto-Indo-European *dʰer-*. Although the latter root also develops in many Indo-European languages (e.g. Neo-Persian *dharmān-* denoting 'medicine'), Sanskrit *dharma-* and, in earlier attestations, Vedic *dhárman-* lack a precise equivalent in the other Indo-European languages and cultures. In contrast to the related Vedic terms *ṛtá-* ('fixed order') and *vratá-* ('rule') – which have (at least) an Avestan equivalent (Vedic *ṛtá-* = Avestan *aša-*, both linked to the Proto-Indo-European root **her-*; Vedic *vratá-* = Avestan *urvāta-*, both linked to the PIE root *wer-/wrē-*) – no equivalent surfaces for Vedic *dhárman-* to suggest an Indo-Iranian **dharman-*, traceable to a hypothetical Indo-Iranian root **dʰar-* (Mayrhofer 1956–1980: 94–95 [vol. 2]; 278–279 [vol. 3]; Brereton 2004: 449). Therefore, the concept of *dharma* has been connoted as 'specifically Indo-Aryan' since its inception (Horsch 2004: 424).

In actuality, as for the modern side, the Sanskrit term *dharma* is untranslatable since there is no single English word translating it literally; at most, there are numerous concepts assimilated to it, such as 'duty', 'justice', 'ethics', 'religious merit', 'principle', 'right', and particularly, as anticipated above, 'law' and 'religion' (Flood 1996: 52). Sticking to its etymological sense, *dharma* is assimilable to the concept of order since such a word-form denotes 'what is firm and durable, what sustains and maintains, what hinders fainting and

falling' (Lingat 1973: 3). In Vedic times, the concept of order was expressed by another word-form, i.e. Vedic *ṛtá-* (already mentioned above), which denoted the natural and fixed order of beings. This Vedic concept was built around the idea that the microcosm (understood as the life of every human being) and the macrocosm (understood as the whole universe) were firmly interconnected so that the order of human actions followed the same structure as the cosmic order. Given the connection between cosmic and human phenomena, human beings intervene in the evolution of the world through their actions, particularly ritual action (Vedic *kárman-*). It is precisely to this 'impersonal' Vedic concept of order (*ṛta*) that, in the post-Vedic period, the concept of *dharma* succeeds, assuming a more personal character according to which the performance of every human being's duties is aimed at preserving the cosmic order (Francavilla 2018: 48–49).

1.2 The 'classical' meaning of *dharma* in Brahmanism

All major ancient Indian religious traditions, i.e. Brahmanism, Buddhism, and Jainism, are underpinned by the concept of *dharma* (Olivelle 2000: 14). However, as regards Brahmanism, its theological centrality is not inherent but, as explained with clarity by Patrick Olivelle (2004), developed during the post-Vedic period, stemming from interaction with Buddhism: *dharma* becomes central in Brahmanism due to the 're-semantization' by Brahmanical circles of the Buddhist concept of *dharma*, which is derived, in turn, from the Vedic concept of *dhárman* (in part differently connoted than its Sanskrit counterpart). The latter word-form has been attested since the earliest Vedic text, the *Ṛgvedasaṃhitā*, in which it occurs sixty-three times. The Rigvedic term *dhárman* has the following meanings: (a) the etymological one of 'foundation'; (b) starting from the etymological one, the meaning of 'cosmic foundation' and that of 'ritual foundation' (in the late Rigvedic books); (c) that of 'legal foundation' about royal authority (in the Rigvedic family books; Brereton 2004). After that, the term undergoes a drastic decrease in occurrences: for instance, it is attested just thirteen times in the *Atharvavedasaṃhitā*, but the semantic range covered remains similar to the Rigvedic one. Still, continuing in later Vedic literature, namely in the *Yajurvedasaṃhitā*, the *Brāhmaṇa*s, and ancient *Upaniṣad*s, its semantic range is reduced: the term is attested mainly as referring to the god Varuṇa and the king since it has been associated with the royal lexicon. Instead, starting from the Late Vedic works, such as the late *Upaniṣad*s, the *Śrautasūtra*s, and the *Gṛhyasūtra*s, the term *dharma* occurs with the classical meaning typical of Brahmanical ideology, even though its occurrences remain infrequent. It is only from the post-Vedic works, witnessing a surge in occurrences of the term, that *dharma* solidifies as a fundamental concept in Brahmanical ideology.

According to Olivelle (2004: 503–507; 2005c), the process of centralizing the concept of *dharma* was initially driven by the early Buddhist groups, not by the Brahmanical circles. At the beginning of the history of Buddhism, the early Buddhists borrowed the marginal concepts of Brahmanical ideology to articulate their own religion, particularly those related

to royal ideology. Among these, the concept of *dharma*, which has been ethicalized by the early Buddhists, assumed great prominence. A sign of the Buddhist matrix of this centralization is the use of the term *dharma* (in its Middle-Indo-Aryan forms, i.e. *dhamma-* or *dhrama-*) in the edicts of Aśoka (mid-third century BCE), strongly influenced by Buddhist ideology, where it is attested no fewer than 111 times. Due to competition with other religious groups, particularly Buddhism, important theological developments affected Brahmanism around the third century BCE or shortly before. In this theological renewal, the Buddhist renewed concept of *dharma* was re-appropriated by the Brahmanical groups, with a notable shift in the authoritative means of knowledge (pramāṇa) of *dharma*: this is one of the foundations of the 'science of *dharma*', i.e. the Dharmaśāstra. If, in Buddhism, its means of knowledge was the word of the Buddha (*buddhavacana*), in the Brahmanical Dharmaśāstra, the *pramāṇa* becomes the Veda (*śruti*) – i.e. the root *par excellence* of *dharma* (*dharmamūla*), at the first place in the hierarchy of the *dharma* sources. However, little is said in the Veda (*śruti*) about the renewed concept of *dharma*: the real roots of *dharma* become the tradition (*smṛti*) and conduct (*ācāra*) of the virtuous Brāhmaṇas, called *śiṣṭas* ('experts [of *dharma*]') (section 2).

2 Roots of *dharma* (*dharmamūla*) in Classical Hindu law

Regarding the roots of *dharma* (*dharmamūla*), one should not categorize the *dharmamūla*s as 'sources of law' in the Western sense of the label: the four roots of *dharma* expounded by Classical Hindu law cannot be compared to the sources of Roman law. In the latter legal tradition, 'sources of production' are distinguished from 'sources of cognition', which can be defined as follows: the 'sources of production' are the mechanisms bringing the norm into existence, whereas the 'sources of cognition' are means enabling one to become aware of it. As regards, for instance, Roman law (which was initially founded on the consuetudinary character of the customs, i.e. Latin *mores*), sources of production include laws, plebiscites, *senatus consulta* (decrees issued by the Senate), edicts, and responses of jurists (almost all transmitted through epigraphic sources), while the sources of cognition encompass the works of jurists (such as Gaius' *Institutiones*, written in the second half of the second century CE) and imperial codes (such as the *Corpus Iuris Civilis*, issued in 529–534 CE at the instance of Justinian I; Dalla and Lambertini 2006: 12–23). As far as the Brahmanical *dharma* is concerned, it cannot be traced back to this Western classification of sources of law. The *dharmamūla*s correspond to the means of knowledge (*pramāṇa*) of *dharma*, through which a member of Brahmanical society becomes aware of his duties, dependent on his social class and stage of life (*varṇāśramadharma*). Hence, unlike Roman law, there is no universal *dharma*, as *dharma* varies from individual to individual.

2.1 The treatment of *dharmamūla*s in Dharmaśāstric texts over centuries

Speculation about the roots of *dharma* takes place for the first and unique time – compared to earlier and parallel texts – within the Dharmaśāstra (Olivelle 2018a: 49). However, the treatment is not the same for all root texts and evolves over the centuries. According to the first *Dharmasūtra* in chronological order, the *Āpastambadharmasūtra*, the first and foremost authoritative *dharmamūla* is the custom of *dharma* knowers – that is, the custom of the experts on *dharma* (*śiṣṭa*) – while Vedic injunctions seem to hold a secondary role. In Olivelle's words (2000: 16), such injunctions serve 'as a check or a negative criterion'. This strategy is used by Āpastamba (and only by this author) to solve the issue that not all *dharma* rules encoded in the *Dharmasūtra* that are at stake are found in the Vedic texts. Here below is Āpastamba's text (ĀpDh 1.1.1–3):

> *athātas sāmayācārikān dharmān vyākhyāsyāmaḥ || 1 || dharmajñasamayaḥ pramāṇam || 2 || vedāś ca || 3 ||*
>
> (1) Now, we will discuss the rules (*dharma*) deriving from the customary practices: (2) [their] means of knowledge lies in the custom established by those knowing the *dharma* (3) and in the Vedic texts.

Starting from the second *Dharmasūtra*, *Gautamadharmasūtra*, the roots of *dharma* have been ordered in hierarchies ranging from a superior authoritative principle to a subordinate. (In brief, the fundamental idea is that, if a particular assertion lacks validation from a higher source, the rationale is sought from a lower one.) In this and the next two *Dharmasūtra*s (i.e. those of Baudhāyana and Vasiṣṭha), three *dharmamūla*s were recognized, namely:

(1) The first is revelation (*śruti*), which pertains to teachings found in the Vedic corpus, including the *Saṃhitā*s, *Brāhmaṇa*s, *Āraṇyaka*s, and *Upaniṣad*s.
(2) The second is the tradition (*smṛti*), which encompasses teachings found in post-Vedic scriptures, including the works (mostly written in aphoristic prose, i.e. *sūtra*) associated with the six ancillary sciences of the Veda (*vedāṅga*) – namely phonetics (*śikṣā*), ritual (*kalpa*), grammar (*vyākaraṇa*), Vedic exegesis (*nirukta*), metrics (*chandas*), and astrology (*jyotiṣa*) – the treatises (*Śāstras*), the epics (*Mahābhārata* and *Rāmāyaṇa*), and the *Purāṇa*s. Into this category, particularly connected to the ritual, fall normative texts such as the *Dharmasūtra*s and *Dharmaśāstra*s.
(3) The third is conduct (*ācāra*), which refers to the way of life of virtuous experts on *dharma* (*śiṣṭa*).

Their excerpts follow (GDh 1.1–2, BDh 1.1.1–4, VDh 1.4–7):

GDh 1.1–2: *vedo dharmamūlam || 1 || tadvidāṃ ca smṛtiśīle || 2 ||*

(1) The Veda is the root of *dharma*, (2) and so are the tradition (i.e. post-Vedic scriptures) and the practice of those who know it (i.e. *dharma*).

BDh 1.1.1–4: *upadiṣṭo dharmaḥ prati vedam || 1 || tasyānu vyākhyāsyāmaḥ || 2 || smārto dvitīyaḥ || 3 || tṛtīyaḥ śiṣṭāgamaḥ || 4 ||*

(1) The *dharma* is prescribed in each Veda (constituting the first *dharmamūla*).

(2) We will explain it in accordance with that (i.e. the Veda). (3) The second [*dharmamūla*] is what is recorded in the tradition (i.e. post-Vedic scriptures). (4) The third [*dharmamūla*] is the traditional practice of [*dharma*] experts.

VDh 1.4–7: *śrutismṛtivihito dharmaḥ || 4 || tadalābhe śiṣṭācāraḥ pramāṇam || 5 || śiṣṭaḥ punar akāmātmā || 6 || agṛhyamāṇakāraṇo dharmaḥ || 7 ||*

(4) The *dharma* is prescribed by the revelation and tradition (i.e. Vedic and post-Vedic scriptures). (5) In the absence of these, the means of knowledge is the conduct of sages. (6) Furthermore, the sage does not follow his own desire: (7) the *dharma* has no perceptible motive.

A fourth root of *dharma*, namely 'self-satisfaction' or 'personal preference' (*ātmatuṣṭi*), which pertains to what satisfies the *dharma* experts, was introduced by the *Mānavadharmaśāstra* (MDh 2.6–12):

vedo 'khilo dharmamūlaṃ smṛtiśīle ca tadvidām |
ācāraś caiva sādhūnām ātmanas tuṣṭir eva ca || 6 ||
yaḥ kaś cit kasya cid dharmo manunā parikīrtitaḥ |
sa sarvo 'bhihito vede sarvajñānamayo hi saḥ || 7 ||
sarvaṃ tu samavekṣyedaṃ nikhilaṃ jñānacakṣuṣā |
śrutiprāmāṇyato vidvān svadharme niviśeta vai || 8 ||
śrutismṛtyuditaṃ dharmam anutiṣṭhan hi mānavaḥ |
iha kīrtim avāpnoti pretya cānuttamaṃ sukham || 9 ||
śrutis tu vedo vijñeyo dharmaśāstraṃ tu vai smṛtiḥ |
te sarvārtheṣv amīmāṃsye tābhyāṃ dharmo hi nirbabhau || 10 ||
yo 'vamanyeta te mūle hetuśāstrāśrayād dvijaḥ |
sa sādhubhir bahiṣkāryo nāstiko vedanindakaḥ || 11 ||
vedaḥ smṛtiḥ sadācāraḥ svasya ca priyam ātmanaḥ |
etac caturvidhaṃ prāhuḥ sākṣād dharmasya lakṣaṇam || 12 ||

(6) The root of *dharma* is the whole Veda; [the lower roots are] the tradition (i.e. post-Vedic scriptures) and the custom of those knowing it, the conduct of sages and what satisfies themselves. (7) Any *dharma* relating to anybody is declared by Manu: this is fully taught in the Veda since it contains all knowledge. (8) After examining the whole of this with the eyes of knowledge, a wise man should be intent on his *dharma* on the authority of the revelation (i.e. Veda). (9) Indeed, by following the *dharma* proclaimed in the revelation and tradition (i.e. Vedic and post-Vedic scriptures), the man attains fame in this world and incomparable happiness after death. (10) The Veda should be understood as revelation and Dharmaśāstra as tradition (i.e. as part of the post-Vedic scriptures). These two are indisputable for all matters since *dharma* originated from them. (11) Whatever twice-born man despises these two roots [of *dharma*] by appealing to the science of logic should be shunned by virtuous men because he is a disbeliever who despises the Veda. (12) The Veda, the tradition (i.e. post-Vedic scriptures), the conduct of virtuous men, and what is dear to themselves: they say this is the fourfold manifest characteristic of *dharma*.

In the normative treatises following Manu's, the treatment of *dharma* roots and their hierarchy – when present – remain the same, as witnessed by the *Yājñavalkyasmṛti* (YSm 1.7):

vedaḥ smṛtiḥ sadācāraḥ svasya ca priyam ātmanaḥ |

samyaksaṃkalpajaḥ kāmo dharmamūlam idaṃ smṛtam || 7 ||

The Veda, the tradition (i.e. post-Vedic scriptures), the conduct of virtuous men and what is dear to one's self, i.e. desire originating to make a good decision: this is prescribed as the [fourfold] root of *dharma*.

On the other hand, a deviation from Manu's position is made by the author(s) of the *Viṣṇusmṛti*, which, being a text compiled by and for Vaiṣṇava devotees, does not present the discussion about *dharma* roots: since the god Vishnu (Viṣṇu) is framed as teaching *dharma* within the treatise, there is no need for any other root but Vishnu himself (Olivelle 2009: 26).

2.2 The hermeneutics of the *dharmamūlas*

What do these roots of *dharma* consist of? The first two *dharmamūla*s are *śruti* (lit. 'listening' *śru-* 'to listen') and *smṛti* (lit. 'memory' *smṛ-* 'to remember'), which, following the scholarly interpretation, are mostly translated as 'revelation' and 'tradition' respectively. As evident from Manu's text, these two *dharmamūla*s constitute a single block from which *dharma* originates. On the one hand, the *śruti* refers to the body of oral Vedic texts, which are ascribed to a divine origin: traditionally, the *dharma* had 'revealed' itself to the

seven Vedic seers (*ṛṣi*), who directly perceived it. From this direct primordial vision, the subsequent traditional teaching derives its unquestionable truth and even its justification for existence (Torella 2008: 13). This is first asserted in Yāska's *Nirukta* (1.6.20):

> *sākṣātkṛtadharmāṇa ṛṣayo babhūvuḥ |*
>
> The seers were those before whose eyes the *dharma* stood.

Thus, despite what the label *śruti* might suggest, the *dharma* was *seen* and not *heard* by the seven seers, as witnessed even by the folk etymology of the word-form *ṛṣi-* (i.e. from the verbal root *dṛś-* 'to see'), which is unfounded from a linguistic standpoint (Mayrhofer 1956–1980: 125 [vol. 1]).

On the other hand, *smṛti* is traditionally interpreted as 'human-made' literature, complementary to the divine literature the *śruti* represents; it refers to post-Vedic scriptures. Sheldon Pollock (1997) demonstrated that, although not 'revealed', the authority of the *smṛti* is based directly on the Veda through the inference mechanism: thus, *smṛti* represents the 'remembrance of revelation'. This argument is grounded on a well-known passage from Jaimini's *Pūrvamīmāṃsāsūtra*, in which the terms *śruti* and *smṛti* are paired for the first time. Here, it is stated that the root of *dharma* is the Veda, but that, due to the equality of agents, inference (*anumāna*) can also be a means of knowing *dharma* (PMS 1.3.1–2):

> *dharmasya śabdamūlatvād aśabdam anapekṣaṃ syāt | api vā kartṛsāmānyāt pramāṇam anumānaṃ syāt |*
>
> (1) Since the root of *dharma* is the sacred word (i.e. the Veda), what is not the sacred word should be irrelevant. (2) However, since the agents are the same, inference could be a means of knowledge [of *dharma*].

According to Jaimini, actions should be justified by the Veda (*śruti*). Nevertheless, in instances where explicit Vedic justification is lacking, they could be justified by non-Vedic texts from which lost Vedic texts could be inferred (*smṛti*). Thus, the 'human' tradition (*smṛti*) owes its authority to the Veda through inference of lost Vedic texts of which tradition preserves the memory, as its etymology suggests. The second *dharmamūla* is thus the means of preserving – through inference – lost Vedic knowledge that is no longer perceptible since it is no longer audible. As asserted by Olivelle (2000: 16), 'the theory of the "lost Veda" is used as a hermeneutical strategy to theoretically derive all *dharma* from the Veda, while in practice providing for other sources.' The Dharmaśāstra, along with the Mīmāṃsā philosophical tradition, bases the *smṛti* (and the other two *dharma*

roots) on the *śruti* to provide Brahmanical society with precepts grounded in the truth revealed in the Veda. Over time, as *śruti* and *smṛti* converge, the transmission of *smṛti* ceases to be framed solely as the work of human agents but as memory which is 'beyond human origin' (*apauruṣeya*), through which the genesis and structure of the world are also deemed as such.

The third *dharmamūla* is the conduct (*ācāra*) of sages (in fact, *sadācāra*, as labelled by Manu) who know the Veda: in case of the absence of a given norm, the means of knowing the *dharma* becomes the sages' mode of living. The place where decisions are made based on *ācāra* is the assembly (*pariṣad*), consisting of at least ten members, as taught by the Dharmaśāstric texts (GDh 28.48–53; BDh 1.1.7–16; VDh 3.20; MDh 12.110–115).

The last *dharmamūla* is what is traditionally interpreted as 'self-satisfaction' (*ātmatuṣṭi*), the inclusion of which among the roots of *dharma* has been the subject of debate among scholars. Robert Lingat (1973: 3–7) regarded its inclusion in the list of *dharmamūla*s as problematic, arguing that the first three roots are external to individuals and not intrinsic as the *ātmatuṣṭi*. According to the latter *dharmamūla*, humans are tasked with discerning the right action when faced with choices: this task could blur the line between this root and the previous, i.e. *ācāra*. The role of *ātmatuṣṭi* (which is very limited in Dharmaśāstric and Mīmāṃsic texts) might stem from the necessity to validate practices extending beyond strictly orthodox behaviour. Some scholars have reinterpreted *ātmatuṣṭi* as pivotal in universalizing, moralizing, and centralizing personal experience as a source of *dharma*: in particular, Werner F. Menski (2003: 125–130; 2006: 215–216) asserted that, in ascertaining the *dharma*, the hierarchy of roots is completely inverted, since the *ātmatuṣṭi* – interpreted as the self-satisfaction of 'doing the right thing in the right way at the right time' – should be considered as the first *dharmamūla* in chronological and factual factors. Following the same interpretation, Domenico Francavilla (2006: 175–176) concluded that the *ātmatuṣṭi*, rather than a 'last resort', is, in fact, 'the ultimate criterion' for assessing the appropriateness of behaviour. The need for appropriate action in specific contexts in the Indian normative framework justifies the recourse to this source of *dharma*. In a particular situation in which a norm taught by tradition (*smṛti*) or set by custom (*ācāra*) requires further contextualization, the appeal to the *ātmatuṣṭi* would be needed to approve or disapprove it.

Donald R. Davis (2007) opposes this position by considering the role of *ātmatuṣṭi* as a 'personal preference' and not as 'self-satisfaction' (therefore, not envisioned as an independent *dharma* source internal to human beings). This individual preference is restricted to three types of specific contexts: (i) situations where a technical choice (*vikalpa*) has to be made, i.e. where there is a conflict between the other three *dharmamūla*s; (ii) situations not regulated by the other three *dharmamūla*s; (iii) situations where people of impeccable virtue who have a thorough knowledge of the Veda operate.

Finally, as already alluded to above, even for the last two *dharmamūla*s, the connection with the Veda and its teaching is required to legitimate their authority: in the case of the conduct of virtuous men (*sadācāra*), this is assumed to be grounded on extant or lost Vedic texts, while, in the case of self-satisfaction or personal preference (*ātmatuṣṭi*), a subjective connection to the Veda is inferred (Francavilla 2018: 53).

3 The 'science of dharma' (Dharmaśāstra) in Classical Hindu law

Considering the breadth of the concept of *dharma* (section 1) and its roots (section 2), Classical Hindu law does not configure itself as a uniform system of positive law (*ius in civitate positum* or simply *ius positum*) but rather as a collection of systems grounded in natural law (*ius naturale*). This means that legal rules did not manifest separately from the norms governing the individuals' moral sphere, which was individually regulated by *dharma* based on the social class (*varṇa*), birth condition (*jāti*), and stage of life (*āśrama*) of each member of Indian society (Acquarone 2015: 9). Indeed, unlike for Roman law, Classical Hindu law could not be considered as a single legal system but rather a set of multiple local legal systems, featuring different rules and procedures of law, in which three principal legal actors or institutions operated, namely (i) the social groups, such as Brāhmaṇas, guilds (*śreṇi*), family clans (*kula*) and the rest; (ii) judging appointed by ruling kings; (iii) and, in a later period, the temples. These legal systems were, however, unified by a common jurisprudence or legal theory, namely the Dharmaśāstra (Davis 2008: 225–227; 2010b).

The Dharmaśāstra is, therefore, the precise subcategory of traditional 'human' texts that belong to the second *dharma* root (i.e. *smṛti*, relating to the whole body of post-Vedic scriptures) and are configured as normative texts (Lariviere 2005: 5343). As alluded to above (section 2), Indian *dharma* texts should not be equated to the Western-style 'sources of law': Dharmaśāstra texts are not comparable to Roman law codes, but rather to doctrinal works in which rules about *dharma* are selected, organized into a system and taught (Francavilla 2018: 51). Over the centuries, *dharma* literature has evolved through four principal types of works, of which a brief overview follows.

3.1 *Dharmasūtra*s

The first textual type is that of root texts written (mainly) in aphoristic prose (*Dharmasūtra*s), of which the following four are handed down from manuscripts: (1) *Āpastambhadharmasūtra* (between the third century BCE and the early second century BCE); (2) *Gautamadharmasūtra* (between the late second century BCE and the early first century BCE); (3) *Baudhāyanadharmasūtra* (between the mid-first century BCE and the early first century CE); and (4) *Vasiṣṭhadharmasūtra* (between the early and the late first century CE) (Olivelle 2018b: 21). Traditionally, these texts, composed within the context of Vedic schools (*caraṇa*), were crafted as integral components – alongside

Gṛhya- and *Śrautasūtra*s – of Late Vedic *Kalpasūtra*s, which were texts detailing ritual practices (*kalpa*). While *Gṛhyasūtra*s and *Śrautasūtra*s focused on the domestic (*gṛhya*) and solemn rites (*śrauta*) performed by householders (*gṛhastha*), the *Dharmasūtra*s were dedicated to *dharma*, mainly outlining the rules of ethical conduct for householders. However, as Olivelle (2010: 29–32) proposed, the association of the *Dharmasūtra*s with *Gṛhya-* and *Śrautasūtra*s was not original. Due to the absence of any association between the term *śāstra* ('treatise') with *gṛhya* and *śrauta* and the consequent lack of a *Gṛhyaśāstra* and a *Śrautaśāstra* (unlike in the case of *dharma*), the *Dharmasūtra*s likely developed as an autonomous textual genre and only later connected to other Late Vedic works by the tradition as part of the *Kalpasūtra*s. Instead, it appears that, as a consequence of the theological developments of Brahmanism (section 1), the *Dharmasūtra*s arose as a reaction to the spread of non-Vedic ascetic movements, notably Buddhism. The *Dharmasūtra*s present the whole set of rules concerning the married householder, which was the only life model (*āśrama*) to be followed by twice-born men (according to some of them defending the *aikāśramya* theory, i.e. 'of a single life model'), and to promote the four-class system (*varṇa*), asserting the priority position of the Brāhmaṇas over members of the other social classes (i.e. Kṣatriyas, Vaiśyas, and Śūdras; Olivelle 1993: 73–83; 2018b: 16–17).

3.2 *Dharmaśāstras* or *Smṛti*s

The second textual type is that of root texts written in verse (*Dharmaśāstra*s or *Smṛti*s), of which, despite the likely high number of texts written (Kane 1962–1975.: 304 [vol. 1]), only five major works are handed down from manuscripts: (1) *Manusmṛti* or *Mānavadharmaśāstra* (composed in the mid-second century; Olivelle 2018b: 24); (2) *Yājñavalkyasmṛti* or *Yājñavalkyadharmaśāstra* (composed between the end of the fourth century CE and the beginning of the fifth century CE; Olivelle 2019: xiv); (3) *Nāradasmṛti* (composed between the fifth and the sixth centuries CE; Olivelle 2018b: 28); (4) *Viṣṇusmṛti* or *Vaiṣṇavadharmaśātra* (composed between the sixth and the eight centuries CE; Olivelle 2018b: 27); and (5) *Parāśarasmṛti* (composed in the eighth century CE; Olivelle 2018b: 27).

The first of these handed-down works, the *Smṛti* of Manu, has been groundbreaking for the genre itself since it introduced some innovations shared by all later works. Besides being redacted in verse (*śloka*), a mythological frame was set up for the work: its author(s) ascribed this treatise to a divine authority, namely the self-existent creator god Svayaṃbhū ('the Self-Existing'), who revealed the text to his son Manu; in the end, the treatise is present as words spoken by Manu's pupil Bhṛgu (MDh 1.58–60). Unlike the previous *Dharmasūtra*s, which took part in a debate animated by the various opinions of their authors, Manu's treatise, thanks to its divine ascription, presents itself as the only authoritative voice concerning the *dharma* issues, pulling it out of the animated

debate between peers. A renewed Brahmanical theology also finds its place in the work: namely, that of the classical system of life stages (*āśrama*), according to which a twice-born man must go sequentially through the four classical Brahmanical stages of life: Vedic student (*brahmacārin*), householder (*gṛhastha*), forest dweller (*vānaprastha*), and renunciant (*saṃnyāsin*). Finally, great attention is given to issues related to the king's governance of the territories and the administration of justice, including material from Kauṭilya's *Arthaśāstra*, the most prominent Indian treatise on politics and statecraft (Olivelle 1993: 177–182; 2018b: 23–25). Normative works after Manu's incorporate its innovations, progressively specializing, in most cases, in the treatment of judicial procedure (*vyavahāra*; Olivelle 2018b: 26-28). In this regard, the *Nāradasmṛti* undoubtedly stands out for its strictly judicial nature, since it deals only with the judicial procedure (*vyavahāra*), excluding – at least in the version handed down from manuscripts – proper conduct (*ācāra*) and expiation (*prāyaścitta*; Lariviere 2003: 1). Many other root works of this type have unfortunately been lost, despite their relevance in the development of Classical Hindu law, such as the case of the *Bṛhaspati-* and *Kātyāyanasmṛti* (Olivelle 2010: 49–50), which have been reconstructed through their quotations in the indirect tradition (Lingat 1973: 104–106), namely in Dharmaśāstric commentaries and digests (Kane 1933; Aiyangar 1941).

3.3 Commentaries

The third textual type is that of the commentaries (labelled as *Bhāṣya*s, *Ṭīkā*s, *Vivṛti*s, etc.), which began to appear around the seventh century. The authors of these works, rather than composing autonomous normative texts, seek to provide a comprehensive explanation of a single *Dharmasūtra* or *Dharmaśāstra* commenting on both linguistic aspects of their texts and issues of content, even adapting the norms no longer in force to the times commentaries were composed (Davis and Brick 2018: 30–32). This group of works includes significant texts such as Asahāya's commentary on the *Nāradasmṛti* (composed in the eighth century CE or earlier; Lariviere 2003: 16; Olivelle 2010: 52), Viśvārupa's *Bālākrīḍā* on the *Yājñavalkyasmṛti* (composed in early ninth century CE; Olivelle 2020: 37), and Medhātithi's *Manubhāṣya* on the *Mānavadharmaśāstra* (composed in the second half of the ninth century CE; Davis and Brick 2018: 38–39).

3.4 *Dharmanibandha*s

The fourth textual type is that of the legal digests (*Dharmanibandha*s or simply *Nibandha*s), starting from approximately the twelfth century CE. Rather than commenting on a single root text, the authors of legal digests selected quotations from *Dharmasūtra*s, *Smṛti*s and their commentaries, and, as for specific topics (such as pilgrimage and *pūjā* rituals), even from the *Purāṇa*s (Davis 2018: 374), and arranged them into thematic sections for the sake of preserving Dharmaśāstric teachings or employing them in the royal administration of territories; depending on the digest, quotations were collected

and ordered or were also discussed by the author(s) (Derrett 1973a: 52–59; Lariviere 2004; Rocher 2012: 52–57; De Simini 2015: 606; Davis and Brick 2018: 34–38). Of this extensive group of texts, the following relevant early works can be cited: Vijñāneśvara's *Mitākṣarā* (composed in the early twelfth century; Olivelle 2020: 37) and Aparārka's commentary (composed in the late twelfth century; Olivelle 2020: 37) – both structured as commentaries on the *Yājñavalkasmṛti* but pragmatically shaped as digests – as well as Lakṣmīdhara's *Kṛtyakalpataru* (composed in the twelfth century; Davis and Brick 2018: 41-42) and Devaṇabhaṭṭa's *Smṛticandrikā* (composed between the mid-twelfth century and the mid-thirteen century; Davis and Brick 2018: 42–43). The composition of legal digests, both of all-encompassing nature (such as Mitramiśra's *Vīramitrodaya*, composed in the seventeenth century; Kane 1962–1975.: 948 [vol. 1]) and those devoted to individual topics (such as the Jīmūtavāhana's *Dāyabhāga*, composed in the twelfth century; Rocher 2002: 9–24) – most of which were composed at the behest of kings and governors – continued at full force until the eighteenth century and, albeit in different ways, even after the British colonization of India (section 4).

4 The role of Dharmaśāstra in Anglo-Hindu and Modern Hindu law
4.1 Anglo-Hindu Law during the Colonial Period

Throughout the entire period of the Muslim invasions (which began in 711 CE), Hindu law was distinct from Islamic law and kept alive by Dharmaśāstric authors, who continued to produce jurisprudential works (particularly commentaries and digests: section 3; Michaels 2010; Acquarone 2015: 23–32). This was not the case, however, with the colonization of India by the British Empire. This resulted from an expansionist campaign undertaken in the eighteenth century by the British Empire, already anticipated by commercial expeditions in the previous century by the East India Company. Regarding the legal system of India, a crucial date is 21 August 1772, when the Orientalist Governor of Bengal (appointed as the Governor-General of Bengal by the *Regulating Act* of 1773) Warren Hastings (1732–1818) enacted *A Plan for the Administration of Justice in Bengal*, introducing the 'system of listed subjects'. Within courts presided over by British judges acting in consultation with Indian experts – *paṇḍit*s for the Hindus (labelled as Gentoos) and *mawlawi*s for the Muslims (labelled as Mahometans) – all civil lawsuits concerning inheritance and matters of marriage and caste were to be regulated by the teachings of the Dharmaśāstra on the Hindu side and by the precepts of Islamic jurisprudence on the Muslim side; all other matters were to be settled according to the principles of 'equity, justice, and good conscience'. This act was, indeed, the birth of the so-called Anglo-Hindu law as well as Anglo-Muhammadan law for Muslims.

Since the Dharmaśāstra (particularly, rules concerning judicial procedure) had been decreed as the sole basis for most private litigation, the British administrators, who did not know Sanskrit and consequently had no access to Hindu jurisprudential texts, had

to make up for their lack by resorting to the *paṇḍit*s. In addition to producing, as 'law officers' in the courts, legal determinations (*vyavasthā*) in Sanskrit and then translated into Persian, these *paṇḍit*s also served to legitimize British judgments in the eyes of Hindus. For these purposes (and even for legitimizing British operations on Indian soil in the West), Warren Hastings commissioned the compilation of a Dharmaśāstric digest – which, in his eyes, would have served as a Western-style 'legal code' – from a group of eleven *paṇḍit*s in 1773. The result was the redaction, between May 1773 and February 1775, of the *Vivādārṇavasetu* (literally, 'Bridge across the sea of litigation'; Rocher 1985: 351). Thanks to the East India Company's sponsorship, a Persian abridgement from a Bengali oral rendering of the Sanskrit original work was then translated into English by Halhed (1776) and published in London with the title *A Code of Gentoo Laws* (or *Ordinations of the Pundits*) – in which the label *Gentoo* (English borrowing from Latin *gentile*, 'non-Christian') stands for Hindu.

The British appropriation of the Dharmaśāstra was accomplished by the Orientalists based in Calcutta. In addition to Hastings, these included Sir William Jones (1746-1794) – who was, incidentally, the first English (and generally Western) translator of the *Mānavadharmaśāstra* (Jones 1794) – and Henry Thomas Colebrooke (1765–1837). This cultural operation (which led to the translation of other Dharmaśāstric works, especially digests) resulted in the incorporation of Dharmaśāstra into the administration of the colonial state (and its 'crystallization' as a system of positive law), mediated by the translations and consultations of Indian *paṇḍit*s, and the application of traditional Dharmaśāstric rules by British judges – some of which had never been fully applied in previous periods or had even been discarded by Indian monarchs (Derrett 1961: 24–27; Torri 2007: 355–364; Francavilla 2008: 71–73; Rocher 2010: 78–82; Acquarone 2015: 33–41). Nevertheless, from the inception of Anglo-Hindu law, some areas covered by Dharmaśāstra (such as those concerning commercial and criminal laws) were disregarded in favour of British laws. The Dharmaśāstra thus became the source for personal law, i.e. for those matters related to the person (primarily, family and inheritance laws) and the relevant religious membership, which laid the foundation for today's Indian personal law (Derrett 1961: 28–40; Lariviere 1989: 758–761; Davis 2010b: 25–26; Sturman 2010: 90–100; Williams 2010: 105–110).

Until Indian independence (achieved in 1947), Anglo-Hindu law was subject to major and minor reforms. One of the most significant is the deauthorization of Indian *paṇḍit*s (as well as Muslim *mawlawi*s) from the British administration of justice by Act XI of 1864. After that, this was founded on only written case law in the form of previous judicial decisions (then systematized into textbooks). Thus, the use of Dharmaśāstra as a primary source of law receded, and customary law largely took its place (Lariviere 1989: 761–764; Davis 2010b: 26–27; Rocher 2010: 82–88).

4.2 Modern Hindu law in today's legal system of India

Preceded by two key constitutional acts, namely the two *Government of India Act*s of 1919 and 1935 (which rehabilitated the involvement of Indians in judicial administration), it was the *Indian Independence Act* of 1947 that decreed – during the night of 14–15 August – India's independence from British rule. This official act was followed by the composition of the Constitution of India, approved on 26 November 1949 and entered into force on 26 January 1950 (Torri 2007: 608–610; Acquarone 2015: 63–78). The post-independence legal system of India is characterized by a pronounced legal pluralism in which different personal laws (Hindu, Muslim, Parsi, etc.) are juxtaposed (Williams 2006: 4–20). The so-called Modern Hindu law is part of this framework and resulted from four fundamental legislative acts (cumulatively referred to as *Hindu Code Bills*), namely, the *Hindu Marriage Act* (enacted in 1955), *Hindu Minority and Guardianship Act*, *Hindu Adoption and Maintenance Act*, and *Hindu Succession Act* (all three enacted in 1956). These represented an attempt to amend and codify extant Hindu norms. They have been followed by other subsequent reforms on specific institutions, such as the *Marriage (Amendment) Act* (enacted in 1974) and the *Prohibition of Child Marriage Act* (enacted in 2006), which – seeking to strike a balance between tradition and innovation – were mainly targeted at women and disadvantaged social groups.

In the reformed Modern Hindu law, the 'legal role' of Dharmaśāstra is minimal since, after the promulgation of the *Hindu Code Bills*, the official recourse to the Dharmaśāstra ceased (Francavilla 2008: 73–75; Davis 2018: 380–381). However, Dharmaśāstra remains relevant today to both certain living forms of Hinduism and Indological scholarship. In conclusion, we may turn to the words of Davis (2018: 381–382), which eloquently and succinctly encapsulate its significance:

> Dharmaśāstra remains an important symbol of Hindu society and identity, at least for upper-class and upper-caste segments of the population. Many Brahmin families, and some others, continue to consult *dharma* texts and family traditions based on them to conduct their domestic rites. That said, whatever importance Dharmaśāstra has today (and for many Hindus it is not much at all) depends on the image of this tradition as a repository of Hindu wisdom and normative standards. […] The experts of Hindu law, the Brahmin pandits who know and debate Dharmaśāstra, have all but disappeared. Hindu law, as preserved in a heavily abridged form in India's legislative and judicial systems, lacks a thriving independent class of experts to provide dynamism and fresh ideas that draw upon the traditional system. […] [T]he most active group studying Dharmaśāstra today, therefore, is the small community of university-based scholars around the world who continue to make the case that the tradition is incredibly subtle, complex, and influential. While acknowledging that the drive to push Dharmaśāstra studies into academic circles has contributed to its gradual disappearance outside of the university, we nevertheless

> continue to press the case that the history of Hinduism and the history of Dharmaśāstra remain inextricably linked and the two histories must be told together.

5 List of primary works

- *Āpastambadharmasūtra* (ĀpDh). Edited and translated in Olivelle 2000.
- *Baudhāyanadharmasūtra* (BDh). Edited and translated in Olivelle 2000.
- *Gautamadharmasūtra* (GDh). Edited and translated in Olivelle 2000.
- *Mānavadharmaśāstra* (MDh). Edited and translated in Olivelle 2005a.
- *Yājñavalkyasmṛti* (YSm). Edited in Olivelle 2020; translated in Olivelle 2019.
- *Vasiṣṭhadharmasūtra* (VDh). Edited and translated in Olivelle 2000.

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