
BHARTIYA DHARMASHASTRA: BRIDGING ANCIENT WISDOM AND MODERN HUMAN RIGHTS

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ABSTRACT

This article delves into the profound wisdom of the Dharma Shastra, ancient Indian texts rooted in Hindu philosophy, offering moral and ethical guidance for individuals, communities, and rulers. It sheds light on the concept of Dharma, often misconstrued as mere religion but, in fact, encompassing the well-being of all living beings. The article places particular emphasis on how Dharma is a universal natural law that is adaptable and relevant to various societies.

Moreover, it establishes a significant link between Dharma and the principles of human rights, tracing their origins back to ancient Indian scriptures. It highlights the duty-centred approach of ancient Indian philosophers, wherein individual rights were intricately linked with reciprocal responsibilities.

The article proceeds to draw significant lessons from ancient India for contemporary human rights, highlighting the rights to happiness, equality, education, protection, religious freedom, and social security. It emphasises the enduring relevance of these principles, integrated into India's legal and constitutional framework and aligned with international human rights agreements.

Through a comparative analysis of these two systems, the article reveals both commonalities and distinctions and explores the potential for reconciling them in the modern era. It argues

that despite the contemporary articulation of modern human rights through international agreements, they share a fundamental essence with the age-old ethical precepts of the Bhartiya Dharma Shastra.

In essence, this comprehensive article provides a profound exploration of the rich heritage of Bharatiya Dharmashastra and its contemporary relevance in the context of modern human rights, shedding light on enduring principles that have left an indelible mark on Indian society for centuries.

Keywords: *Ancient Indian Wisdom, Bharatiya Dharmashastra, Dharma, Duty-based rights, Human Rights.*

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1. INTRODUCTION

Bharatiya Dharmashastra, also known as Dharma Shastras, comprises a rich tapestry of ancient Indian texts that offer profound moral and ethical guidelines for individuals, communities, and rulers. Rooted in Hindu philosophy, this body of wisdom doesn't find its essence in a single comprehensive text but rather draws from several seminal works, including Manusmriti, Yajnavalkya Smriti, and Narada Smriti. These texts encompass a set of key principles that have left an indelible mark on Indian society for centuries. These principles encompass Dharma (righteousness), Karma (action), Achara (conduct), Varna (caste), Ashrama (stages of life), and Raja Dharma (duties of a ruler)¹. They collectively emphasise the significance of ethical conduct, fulfilling one's duty, and the intricate interplay between individuals and their societal and cultural milieu².

In contrast to the ancient Bhartiya Dharmashastra, modern human rights are a contemporary framework articulated through international declarations and treaties. These principles are universal and serve as the cornerstone of ensuring the dignity and well-being of individuals in today's diverse societies. They encompass fundamental concepts such as equality, freedom of religion and belief, freedom from discrimination, the right to life, the right to education, and the right to a fair trial. These modern human rights, although distinct in certain aspects from the ancient Indian ethical guidelines, carry the same essence and are essential in safeguarding the rights, freedoms, and fair treatment of individuals in our globalised world.

2. THE ORIGIN AND CONCEPT OF DHARMA

Dharma, often misconstrued as religion, holds a broader meaning in Sanskrit. It encompasses the well-being of all living beings. Its definition is intricate, as Bhishma states in Mahabharat. Prefixes to 'Dharma' restrict its meaning to religion, but fundamentally, it signifies that which uplifts living beings.

The origin of Dharma remains obscure, likely evolving collectively in ancient India. It encapsulates the duties, rights, and responsibilities of individuals, progressively expanding to cover various aspects where law is deemed necessary. Dharma reflects the wisdom of ancient Indian society, which was upheld and accepted by the people. Its authority was

¹ CHARLES J. NAEGELE, ANCIENT HISTORY OF INDIA (DK Print World Ltd 2011)

² KANE & PANDURANG VAMAN, HISTORY OF DHARMASTRA (Digital Library of India 1946)

unquestionable, even by the greatest of kings, for the strength of Dharma lay in public acceptance³.

3. DHARMA- UNIVERSAL NATURAL LAW

Dharma, as the natural law of universal relevance, envisions an ideal legal framework adaptable to all societies across time. It underscores the pivotal role of human reason in shaping just legal systems. Notably, in American constitutional law, natural law has shaped concepts like judicial review, due process, and contractual obligations. In India, Dharma's principles are integrated into the constitution to ensure justice and humane treatment, as evident in Articles 19⁴, 21⁵, 22, and 300-A.

Moreover, natural law finds expression through public opinion and legislative changes. Legislative amendments, as seen in Section 374 of the Indian Penal Code, draw from natural law to address pressing issues, such as crimes against women in police custody. Similarly, 'Brunahatya' (foeticide) concerns align with the moral and ethical values driven by natural law. These examples underscore Dharma's enduring impact on both legal interpretation and the shaping of legislation to uphold principles of justice and humanity.

4. DHARMA AND HUMAN RIGHTS

The principles of human rights in the Bharatiya tradition have deep historical roots. The Rigveda, among the earliest written records, champions the equality and brotherhood of all individuals. The Atharvana Veda stresses the equal entitlement of all to vital resources like water and food. The Vedas, along with the Upanishads, laid the foundation for 'Dharma,' encompassing human rights and responsibilities. Adhering to these principles was seen as essential for peace and societal well-being.

The Supreme Court of India affirms that these fundamental rights reflect the core values upheld since ancient Vedic times, aiming to preserve the dignity of every person, as

³ PARASARA & VAMAN SASTRI ISLAMAPUKAR, THE PARASARA DHARMA SAMHITA V1, PART 1 (Kessinger Publishing 2009)

⁴ State of Bombay v. R.M.D.C., (AIR 1957 SC 699)

⁵ Air India v Nergesh Meerza & Ors, 1981 AIR 1829

exemplified in cases like *Maneka Gandhi v. Union of India*⁶. India's profound ideal for human existence is encapsulated in a simple yet powerful prayer: "सर्वे भद्राणि कुर्यान् सर्वेषु भद्रानि भवन्तु" - "Let all people be happy" (Sarve Janaha Sukhino Bhavantu).

5. WISDOM ON DUTY BASED RIGHTS

In ancient India, influential philosophers devised a unique approach to safeguarding individual rights by coupling them with corresponding duties. They believed that while self-interest often fuels a sense of right, duty cultivates selflessness. This foundational idea shaped Indian culture, with individuals bound by reciprocal responsibilities.

Rather than prioritising individual rights, India's ancient thinkers championed a duty-centred society⁷. Here, an individual's right was the right to fulfil their duty, an idea vividly presented in ancient texts and exemplified in the Vishnu Purana. This approach stressed the significance of duty over self-indulgence.

Mahatma Gandhi, a symbol of India's values, described India as a "Karma Bhumi" (land of duty) in contrast to a "Bhoga Bhumi" (land of enjoyment)⁸. In this cultural context, everyone had a duty to others, intertwining individual rights with others' duties. This foundational value, deeply rooted in Vedic literature, finds expression in the popular declaration from the Bhagavad Gita: "Karmanyevadhikaraste" - "Your right is to perform your duty." This verse encapsulates the idea that every individual has a duty to others and the right to fulfil that duty, forming the bedrock for establishing and safeguarding human rights and preserving a just and selfless society.

6. LESSONS FROM ANCIENT INDIA FOR MODERN HUMAN RIGHTS

6.1 Right to Happiness

⁶ *Maneka Gandhi v. Union of India*, 1978 SCR (2) 621

⁷ In line with this approach, the Western jurist Duguit [1859-1928] proposed a theory highlighting the importance of a duty-based society for human well-being. He believed that the core of the law lay in duty, ensuring social solidarity by fulfilling one's responsibilities. According to him, the only right an individual could possess was the right to do their duty.

⁸ MAHATAMA GANDHI, MY PICTURE OF FREE INDIA (Bhartiya Vidya Bhavan 1965)

The desire for happiness is an inherent human right deeply rooted in Bhartiya culture. It encompasses all fundamental rights that contribute to fulfillment. While natural calamities can bring sorrow, man-made miseries like crime and terrorism can thwart happiness.

To safeguard the right to happiness and prevent man-made miseries, the concept of "Dharma" was conceived, emphasising happiness for all without exception. Unlike the notion that the majority's happiness justifies the suffering of a few, Bhartiya culture champions the ideal that everyone possesses a "right to happiness."⁹

The state's duty was clear: to act in the people's best interests, ensuring the happiness of all. The "right to happiness" encompasses all specific human rights promoting well-being, deeply embedded in Hindu scriptures and our social and constitutional framework. The ideal "Let all people be happy" (Loka Samastha Sukhino Bhavantu) encapsulates the spirit of protecting individual rights that lead to happiness¹⁰.

Instead, the "right to happiness" for every individual was established as an ideal, expressed in ancient prayers:

6.2 Right to Equality

The right to equality is a fundamental and vital right, serving as a cornerstone in the pursuit of happiness. Unjust discrimination only leads to misery and unhappiness for those affected. This charter of equality, deeply rooted in the Vedas, particularly the Rigveda and Atharvanaveda, advocates the principle of universal brotherhood and cooperation.

The Rigveda asserts, "No one is superior or inferior; all are brothers. All should work for the welfare of all and progress together."¹¹ The Atharvanaveda highlights equal rights in resources, underscoring the importance of mutual cooperation for happiness and progress. These Vedic declarations emphasise the inherent dignity of individuals, affirming that all are children of God, making no one superior or inferior. Thus, cooperation and equality were integral to the concept of "Dharma" long before the establishment of the state.

⁹ The idea that the suffering of a few could justify the happiness of many was rejected in Bhartiya culture.

¹⁰ RAMA JOIS, SEEDS OF MODERN PUBLIC LAW IN ANCIENT INDIAN JURISPRUDENCE (Eastern Book Company 2000)

¹¹ Rigveda- Mandala-5, Sukta-60, Mantra-5

Interestingly, these ancient Vedic principles resonate with modern ideals. The 1948 Universal Declaration of Human Rights, in Article 1 and Article 7, underscores the equality and dignity of all human beings, echoing the age-old declaration from the Rigveda.

State's Duty of Equal Protection:

Upon the state's formation, rulers were entrusted with the duty of safeguarding the right to equality. This became an integral aspect of Rajadharma, akin to constitutional law. The principle compared a king's role to that of Mother Earth, equally supporting all living beings, highlighting the duty of providing impartial care to all citizens.

A thirteen-judge panel of the Supreme Court of India, in *Kesavananda Bharati v. State of Kerala*¹², affirmed the right to equality as a fundamental element of the Indian Constitution's unalterable basic structure. This right, along with the prohibition of discrimination, is enshrined in Articles 14, 15, and 16 of the Constitution of India¹³.

6.3 Right to Education

The right to education has deep-rooted origins, encompassing four sacred obligations towards the Creator, parents, teachers, and humanity, as per the Mahabharata. Specifically, the obligation 'Rishiruna'¹⁴ pertains to the duty of acquiring knowledge and using it for the betterment of society.

Education's importance in ancient Bharat is evident in a verse by Bhartruhari, equating a lack of education to being like an animal. The Supreme Court of India recognised education as a pious obligation, emphasising that it was never seen as a commodity but as a fundamental right¹⁵. The virtues of education are extolled in verses from "Hitopadesha," emphasising their role in intellectual culture, capacity, wealth, adherence to Dharma, and happiness. The Taithireeyopanishad underscores that a nation's true prosperity is tied to the character and education of its citizens.

¹² *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225

¹³ INDIA CONST. arts. 14, 15, 16.

¹⁴ By creating the pious obligation of "Rishiruna" through the acquisition and dissemination of knowledge, the human right to education was established and safeguarded. This duty was historically fulfilled through "Gurukulas" established by Rishis, and parents and teachers were entrusted with the duty of imparting education.

¹⁵ *Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666, 682.

In essence, the right to education, aligning with Article 26 of the Universal Declaration of Human Rights, signifies not just literacy but the holistic development of individuals and a nation's prosperity¹⁶.

6.4 Right to Protection - Duties of Rulers

The right to protection for the people was established by placing duties upon rulers, an integral part of Rajadharma, the constitutional law in ancient Bharat. These principles applied universally to all rulers across the territory. Several duties of kings were outlined in verses, including punishing the wicked, honouring the good, justly enriching the treasury, ensuring impartial justice, and safeguarding the kingdom.

Rajadharma, as detailed in the Mahabharata and other texts, inspired and guided ancient kings. They adhered to these principles, upholding the supremacy of Dharma, akin to the modern concept of constitutional supremacy.

In Kamandaka¹⁷, it was explicitly stated that kings had a paramount duty to protect individuals from injustice, regardless of the wrongdoer's identity. This doctrine challenged the notion that "the king can do no wrong," highlighting the king's responsibility to safeguard the rights of his subjects. This underscores the significant importance placed on the human right to protection in ancient Bharat.

Duty to restore stolen property to the owner or to pay its value:

After the establishment of the state, rulers were tasked with a crucial duty: to return stolen property to its rightful owner. If that was not possible, the ruler had to compensate the owner for the property's value. In cases where a thief was caught but the stolen items couldn't be recovered, the thief had to pay if possible, or the king would bear the cost. An historical account from Rajatarangini demonstrates how King Chandrapida of Kashmir (680–688 AD) upheld the rule of law by protecting a cobbler's interests against his own officials¹⁸. This story highlights the triumph of justice and the rule of law as the seemingly powerless cobbler prevailed over the king's officers and the king himself.

¹⁶ The right to education, a fundamental human right per Article 26 of the Universal Declaration, strives for happiness and the comprehensive development of an individual's personality—intellectual, moral, and physical.

¹⁷ Kamandaka Nitisara, V. 82, 83

¹⁸ When the king's officers wanted to build a temple on the land of a cobbler named Charmakara, the cobbler refused to move. The king, instead of supporting the officers, reprimanded them and halted construction. He believed in upholding the law and fairness. Touched by the king's just decision, Charmakara offered his hut to the king, comparing it to the king's palace. The king, in a fair manner, bought the hut at a good price. Charmakara praised the king for following Rajadharma and hoped others would do the same.

6.5 Right to practice any religion

Ancient Bharat granted people the freedom to practice any religion of their choice, reflecting a belief in the unity of God alongside diverse worship practices¹⁹. This inclusivity was protected by a rule in Raja Dharma emphasising the state's duty to safeguard all religions without discrimination. Throughout its history, this principle guided Hindu kings, preventing religious persecution and upholding secular values.

The principles of Raja Dharma have strongly influenced India's Constitution, particularly Article 25²⁰, which affirms the freedom of religion. This commitment to secularism aligns with Article 18 of the Universal Declaration of Human Rights, emphasising the importance of religious freedom in India's constitution.

6.6 Right to Social Security

The entitlement to social security is a fundamental human right, recognising that not everyone has the means to lead a fulfilling life due to various challenges like poverty, disabilities, illness, or old age. In Indian culture, this right is embedded in the concept of "Dharma," which includes the duty to support dependents and share wealth. This principle emphasises selflessness and sacrifice without overburdening the state. Traditionally, Indian society has upheld these values, with earning family members viewing it as a sacred obligation to care for those in need²¹.

The Universal Declaration of Human Rights, in Article 22, also acknowledges the right to social security, emphasising a collective effort to ensure essential economic, social, and cultural rights. In India, the responsibility for social security has largely been borne by families rather than the state alone, reflecting a cultural tradition of support and sacrifice.

Duty to provide food to domestic servants:

When it comes to distributing food to all the guests, if there is a shortage of food, the homeowner may reduce the portions allocated to themselves, their spouse, and their children. However, there is an unequivocal mandate that the food meant for a servant must never be

¹⁹ This inclusivity is a distinctive feature of Hindu culture and civilization. It's beautifully expressed in the popular verse: "Just as rainwater from the sky flows into the same ocean, obeisance to God may be in any name, but the destination is the same - God, no matter the name."

²⁰ INDIA CONST. art 25

²¹ Swami Vivekananda emphasized these values, stating that they are the national ideals of India, promoting renunciation and service as the foundation of society.

diminished. This principle underscores the importance of treating domestic servants with fairness and respect.

These significant rights align with the principles outlined in Article 23(3) of human rights, which asserts that "Every person who labours has the entitlement to just and equitable compensation, ensuring not only their own dignified existence but also that of their family, and if necessary, supplemented by additional social safeguards."²²

6.7 Special Rights of Women

Ancient Indian thought granted women special rights to protect them from harm by men, emphasising moral education and respect for womanhood. Women were seen as potential mothers, and men were encouraged to view them as divine treasures for family life. These cultural values promoted the idea that every woman, except for one's wife, should be treated as equal to a mother. Narayana's "Hitopadesha" emphasised this by treating all women as equal to one's mother.

Special provisions were created to protect women, with the concept of "Dharma" mandating protection from male family members and the state. The duty was clear: the father protects during childhood, the husband after marriage, and sons in old age. The intention was not to enslave women but to ensure their well-being.

In Hinduism, women are cherished and protected as the pride and strength of society, responsible for transmitting culture to their children. However, there's a growing need for women's protection due to increasing atrocities and obscenity. Women's organisations advocate for this protection, rooted in the historical principles of Dharma and Rajadharma.

Ancient Indian law exempted women, the state, and temples from adverse possession. Kautilya's Arthashastra recommended the death penalty for rape in state custody. According to Vasishta, if a girl is abducted and not married according to legal procedures, she can be married to another man. This provision aimed to protect the girl's social standing and dignity.

The Indian Supreme Court, in the Air India case, emphasised the need to protect and respect women's rights, particularly regarding employment during pregnancy. These special rights for women must be preserved to combat the increasing violence against them.

²² The provision emphasizes the fundamental right to fair and dignified treatment of workers, echoing the age-old wisdom of not reducing the portion designated for a servant in times of scarcity.

6.8 Humane Treatment in Custody and in Prison

Safeguarding the right to humane treatment for individuals in custody and within the confines of a prison was a critical concern. Even when a person was apprehended by public servants for alleged offenses or following conviction and sentencing, the protection of their human rights remained a paramount consideration. One of the provisions outlined below sheds significant light on this matter.

Preventing Interference with Detainees:

"Any official who obstructs or causes interference with prisoners in their daily activities, such as sleeping, sitting, or eating, shall be subject to penalties, starting from three panas and increasing."²³

6.9 Protection of Human Rights even during and after the war

The protection of human rights during and after conflicts has long been a core principle. Ancient codes set clear guidelines for ethical conduct in warfare, forbidding the use of certain weapons and emphasising the protection of vulnerable individuals. They emphasised conducting battles in accordance with Dharma, known as Dharmayudha.

Additionally, they outlined how conquered people should be treated, advocating for understanding their customs and placing a suitable ruler while respecting the rights and consent of the population. These regulations demonstrate a historical commitment to human rights and ethical conduct, even in times of war.

7. CONCLUSION

In summary, the comparison between Bhartiya Dharmashastra and modern human rights underscores their shared commitment to upholding the rights and well-being of individuals, despite their different historical and cultural contexts. While ancient Indian teachings, rooted in Hindu philosophy, emphasize principles like Dharma, Karma, and duty, modern human rights are founded on global declarations promoting equality, freedom, and justice. Examining these systems reveals a remarkable similarity in core principles, demonstrating their enduring relevance in today's interconnected world.

²³ Kautilya's Arthashastra, pg. 255, passage 235-S

The profound concept of Dharma in ancient Indian thought aligns with the natural law tradition inherent in modern human rights. Both traditions emphasize the importance of individual rights balanced with societal duties, reflecting reciprocal responsibilities. Lessons from ancient India underscore values such as happiness, education, religious freedom, and social security, which resonate in contemporary human rights principles and influence legal interpretations and legislation in present-day India.

Furthermore, historical codes of conduct in ancient India demonstrate a consistent commitment to human rights, including the humane treatment of prisoners, women's protection, and the preservation of rights during conflicts. This exploration highlights the evolution and adaptation of these concepts over time and their continued relevance in our complex, interconnected world. Ultimately, the harmonization of Bhartiya Dharmashastra and modern human rights enriches the global discourse on fairness, justice, and individual well-being, offering guidance toward a more equitable and compassionate future.

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