**Dharma : The Concept Of Law & Justice**

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**Abstract**

The purpose of this research paper is to do a detail analysis of the **concept of dharma** with regards to law. The term **Jurisprudence** is resultant from the latin word **jurisprudential** which means **either knowledge of law or skill in law**. The earliest mention of “**Dharma**” occurs in Vedic texts like the **Rig Veda** to mean the **foundation of the universe**. These religious texts claimed that God created life using by inculcating principles of Dharma into all living creatures. Therefore, salvation (or “moksha”) is the eternal Dharma for humans according to Hinduism.

The researcher has divided research paper into five chapters. Chapter 1 deals with introduction part and historical pat of law. Chapter 2 deals with origin, meaning and nature of law. Chapter 3 deals with the functioning and decline of dharma in the pre- and post-independence era. Chapter 4 deals with different laws that has been there in the constitution and the last chapter 5 deals with the comparison of concept of law with another basic concept.

Dharma, in concept deals with duty, religion and inseparable quality of a thing or orders i.e., virtuous conduct of righteous man and dharma in literal sense means ‘something which sustains or upholds’ and is a Sanskrit noun derived from root ‘**dhar**’. Dharma is semantic equivalent to the Greek word ‘**ethos**’. Dharma is the Indian version of **Natural law**, how Indians perceived it in ancient society but the vision of them was very far-fetched and is praised by many imminent personalities like Max Muller.

**KEY WORDS**: Dharma, concept of law, natural law, religion, puran. Etc.

**INTRODUCTION**

**Dharma** have been derived and supersede from the vedic concept of **Rita**, which literally meant, ‘**the straight line’**. Rita refers to the **Law of Nature**, it signifies moral laws, and based on righteousness. When something is Rita, it simply meant that **thing is true, right and nothing more**. Dharma signifies natural law. **Anything is right, just and moral is Dharma.**1

**Dharma** was a duty based legal system that is every individual owed a duty towards other member of the society and duty is something explained by Duguit as “**right possessed by every man.”** If we observe “**Puranas**” people of that time was guided by their **Karma**. They believed their **Karma is their Dharma**. That is Why Yudhistir from Mahabharat was known as “DharmaRaj”.

Madhavacharya says “It is most difficult to define Dharma. Dharma has been explained to be that which helps the upliftment of living beings. Therefore, that **which ensures welfare of living beings is surely Dharma**. The learned Rishis have declared that which sustains is Dharma.”2

The renowned Indian-American Hindu activist **Rajiv Malhotra** in his article **“Dharma is not the same as Religion”3**interpreted, the word “Dharma” has multiple meanings depending on the context in which it is used. These include: conduct**, duty, right, justice, virtue, morality, religion, religious merit, good work according to a right or rule, etc**. Dharma provides the principles for the harmonious fulfillment of all aspects of life, namely, the acquisition of wealth and power (artha), fulfillment of desires (kama), and liberation (moksha). Religion, then, is only one subset of Dharma’s scope.

1Bibhu Kaibalya Manik, KIIT School of Law, *Dharma as Law and Justice*, [www.slideshare.net](http://www.slideshare.net/)

2 Shantanu Rathore, Symbiosis Law School**,** Noida, *Dharma and Law*, May 13, 2015

3 Rajiv Malhotra, *Dharma Is Not the Same as Religion*, [www.huffingtonpost.in](http://www.huffingtonpost.in/)

**What Is Dharma**

As is the case with many other **Sanskrit** words, it is rather difficult to find an exact equivalent for the Sanskrit word ‘**Dharma**’ in English or any other. It has been translated as **ordinance, duty, right, justice, morality, law, virtue, religion, ethics, good works, code of conduct,** and so on. There is no word in any other language, corresponding to Dharma. Dharma has its legal, moral and social shades of meanings which are developed during the course of tradition and historical development.4

The word ‘**Dharma**’ has its root ‘**dhr**’5 meaning ‘**to uphold’, ‘to support’, and ‘to sustain’**.

The famous verse from Mahabharat savs:-6

“They call it Dharma since it is Dharma that upholds people. That which upholds the created universe, supports it and sustains it, without which the universe just falls apart, is 'Dharma'. Dharma sustains and maintains the social, moral, political and economic order.” In the Rig Veda, the word appears to be used in the sense of upholder, supporter or sustainer7. Here Dharma is clearly used as masculine agent. In all other places, the word is used either in neuteral or in masculine gender.8

The Mahabharat, the great epic, contains an elaborate illustration of this topic. On being asked by Yudhisthira to explain the meaning and scope of Dharma, Bhisma who has mastered the knowledge of Dharma, explains thus:

“It is most difficult to define Dharma. Dharma has been explained to be what which helps the upliftment of living beings. Therefore, that which ensures the welfare of living beings is surely Dharma. The learned rishis have declared that what sustains this universe is Dharma”.9

In most cases, the meaning of Dharma is ‘religious ordinance or rites’10, like in Rig Veda11 and Vajasaneya Samhita12. Here the word is used in the meaning ‘fixed principles or rules of conduct’. In Atharvaveda, the word seems to be used in the sense of ‘merit acquired by the performance of religious rites’.

4shodhganga.inflibnet.ac.in/jspui/bitstream/10603/137697/7/07 5*abdakalpadrumam,* Vol II, Nag Publishers, Delhi, 1988, p. 783, 6 MB, Kamaparva, 69,58.

7 RV, X. 92. 2.

8shodhganga.inflibnet.ac.in/jspui/bitstream/10603/137697/7/07\_ 9 MB, Santiparva, 109. 9-11.

10 RV, I. 22.18, V. 26. 6, VIII. 43. 24, IX. 64.1.

11 Ibid., 1.164. 43, X. 90.16

12*Vajasaneya Samhitd,* 11. 3

**What Is Justice**

**Justice** is a broad notion that is based on a **concept of moral rightness that incorporates varying perspectives on fairness, ethics, rationality, religion and law**. It is one of the most important moral and political concepts.

The word comes from the Latin **jus**, meaning **right or law**. The Oxford English Dictionary defines the “just” person as one who typically “does what is morally right” and is disposed to “giving everyone his or her due,” The idol of Justice blindfolded with balance in hand gives the expression of balancing, weighing and impartial judging which applies to disputes and conflicts. For this purpose, justice becomes the referee to give decision of victory or defeat to parties. It seems that Justice has more utility for a conflict situation.

**It balances principles like liberty, equality etc also**. In other words **Justice is to provide ‘nyaya’ whenever the Dharma is abused**. It is awarded in all fairness. That means punishment is awarded to those who deviate from Dharma and follow ‘a Dharma’.13

Many jurists defined Dharma in their own way such as-

**H.L.A Hart-** Justice is moral rightness, just, rational, fair, equality, and varies from place to place, time to time, and person to person.

**Plato**- justice as a virtue which occurs within the state. He considered that justice as a political virtue.

**Salmond**- law is the body of principles recognized and applied by the states in the administration of justice.

**Roscoe pound**- Law is the body of principles recognized or enforced by public and regular court in the administration justice.

13https[://www.](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)s[lidesh](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)ar[e.net/BibhuKaibalyaManik/dharma-as-law-and-justice](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)

**Sources Of Dharma From Vedic Period To Modern Era**

Dharma originated from Vedas which are **Sruti** and they are the supreme source of knowledge for humans, as the narration of **what is heard** from the ancient priests that is Sruti and they contain narration on everything possible ranging from military to politics to common people’s life.14 Its other sources are **Smriti**, which are the **interpretation of Vedas** and four sages have propounded the Dharmasastras and are called Smritikars. They are:

Manu

Yagnavalkaya

Brihaspati

Narada

The other source has been Puranas which are eighteen in number and contains information about the creation and dynasties of god, sages and kings and detailed description of yugas. **All the sources are on the same footstep and no one has supremacy over the other.**

Idea which made people adhere to the Dharma can be illustrated by one verse from **Brihadaranyaka Upnishad** which is, “punyo vai punyena Karmana bhavati, Papah Papeneti”, meaning ‘**everyone becomes good by good deeds and bad by bad deeds’**, in other words ‘**every one reaps what he sows’** and what’s good is defined by Dharma.

**Shruti: What was heard:**

Vedas which are **shruti** approximately accepted to be 4000-1000 B.C. There are four Vedas which are:

Rig Yajur Sama

Atharva

Vedas depict the way of life of our ancestors, their way **of thinking, customs, and thoughts but doesn't deals with rules of law in any systematic manner**. At that time certain sets of rule existed which are adopted from Vedas

**Smriti: What has been remembered:**

Development of Law through custom continued till we come to the **Smritis.** With the Smritis

14Dr.Paras Diwan,Modern Hindu Law,Page-28(22nd Edition,2013)

ushered in the era of the systematic exposition of the rule and principle of law. Smritis divided into two parts which are –

Dharmasutras15

Gautam's Dharmasutras

Baudhayana's Dharmasutras

Vasistha's Dharmasutras

Vishnu’s Dharamsutras

Harita Dharmasutra

Dharmasastras

Achara (deals with rules of religious observances)

Vyavahara (deals with Civil law)

Prayaschita (deals Penance or expiation)

In **Vyavahara** the Smritikaras deals with law under 18 titles and 132 subtitles. They have discussed **rules of both substantive and Procedural law**16. There are many **commentators** of **Dharmashastras** but among them Manu**, Yajnavalkya and Naradacreated** a procedure to be followed by all. And such procedure is guided by Dharma. They define about the power and limits of a King, the status of individuals in the society, how the Danda works, the consequences of wrong and right acts of Man etc.

15Dr.Paras Diwan,Modern Hindu Law,Page-28(22nd Edition,2013)

16Dr.Paras Diwan,Modern Hindu Law,Page-28(22nd Edition,2013)

**Dharma During Various Ages:**

**Dharma and Justice during Islamic Rule:**

The end of Muslim rule in India was as spasmodic as its beginning. It took five hundred years for its establishment (712-1206) and one hundred and fifty years for its decline and fall (1707- 1857)

On the other hand, the five hundred yearlong Muslim rule did not fail to influence Indian political and cultural life in all its facets. Muslim rule apart, Muslim contact with India can be counted from the seventh century itself.

Naturally, the interaction of Muslim culture with the Hindu way of life, backed by the superimposition of Muslim rule in India, gave rise to a sort of a common Indian culture.

With the advent of Muslim rule, the place of **Dharma** was taken by **Koranic teachings along with Gita teachings**. Though the objective of both is same as Dharma but the path became different. Gradually the general perception about **Dharma converted to Religion**17

**Dharma and Justice during British Rule:**

With the onset of British rule, and their ignorance of the Indian laws had a devastating effect on the concept of Dharma as they found no laws here to govern people and they started to fix the issue by either importing **western law** or say **natural law with the devices of equality, justice and good conscience** or imposing western laws by means of codification in fields where no law was offered by either the Hindu’s or Muslim’s Natural law, teachings and customs.

To destroy the Indian economy they have introduced so many inhuman plans. Agriculture system which was backbone of Indian economy to destroy that Britishers started to open slaughter houses in India as they identified cattle are main resources for agriculture18. Cattles especially cows who are believed as sacred by Hindus were slaughtered and latter it caused Hindu Muslim enmity.

In Latter period Wine and Prostitution became the business which was banned before 1760. The civil rights and liberties enjoyed by people were taken away. Indians were treated ruthlessly and arbitrary suppressed in every sphere of life ranging from political to social and

17https[://www.](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)s[lidesh](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)ar[e.net/BibhuKaibalyaManik/dharma-as-law-and-justice](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)

18Robert Clive removed ban on Cow slaughter in 1760, *Why Cow Killing Started in India,*Manish Goyal (MBA)

, http[:/www.](http://www.savemothercow.com/story-hy-cow-killing-started-in-india/)s[avem](http://www.savemothercow.com/story-hy-cow-killing-started-in-india/)o[thercow.com/story-hy-cow-killing-started-in-india/](http://www.savemothercow.com/story-hy-cow-killing-started-in-india/)

economic. Indians fought back for the rights and Liberties that they enjoyed before under the Law of Dharma.

During his famous champaran trial, Gandhi ji remarked that he disobeyed the law not to show disrespect to British law, ‘but in obedience to higher law of our being – the vice of conscience’, by which he meant Dharma. The ruling of Monarch gradually came to an end and the British ruling system spreaded all over India. To continue their monarchy, they have played divide and rule policies. The discrimination among Hindu, Muslim, Sikh, Christian, is made to destroy the unity among the Indians.19

**Dharma in Post-Independence Era:**

The struggle for independence was the struggle for basic rights and civil liberties that one as a basic human being should enjoy and the same was kept in mind, while making The Constitution of India. The principles of natural law (Dharma) found its way into the constitution in the way of fundamental rights.

Dharma was codified. Dharma as we all know was a duty based legal system but the current legal system became a right based one. In many Supreme Court verdicts Dharma is explained in Indian scenario. In **Narayana Deekshitulu vs. State Of Andhra Pradesh & Ors**20, there is a comparison between the constitutional laws and Raja Dharma, the definition of Dharma is tried to be clarified by using different verses from everywhere, ‘**Dharma in context of Rajya only means law’** and Dharma is secular or maybe the most secular. The same view is held until now, by all the courts and is not disputed that Dharma is an eternal bliss, which has seen many pars and parcels of human life, mortals, but remained immortal.21

19https[://www.](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)s[lidesh](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)ar[e.net/BibhuKaibalyaManik/dharma-as-law-and-justice](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice) 201996 AIR 1765, JT 1996 (3) 482, https://indiankanoon.org/doc/28343/ 21https[://www.](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)s[lidesh](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)ar[e.net/BibhuKaibalyaManik/dharma-as-law-and-justice](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)

**Constitution And Dharma**

Unlike many countries of the world, in India there is a **freedom of religion** which is defined under **Article 25(1)** of its constitution. The most important feature of this is that it provides the **freedom not only to the individual but also to the groups.** Moreover, the Supreme Court also held in ***Ratilal Panchand vs. State of Bombay****22*that the freedom of religion extends to all persons including aliens of other countries also.

**Article 15(1)** of the constitution of India prevents to state from discriminating anybody on the ground of religion. It was also ordered by the Hon ‘able Supreme Court in ***Nain sukh Das vs. State of U.P 23***held that the constitutional mandate to the state not to discriminate on the ground of religion extends to political as well as other rights.

Under the “**Right to Freedom of Religion**” from **Article 25 to 28**, various provisions can be seen which again reinforce the ideal of secularism.

**Article 25** gives all persons in the country freedom of conscience and free profession, practice and propagation of religion. **Article 26** provides freedom to all religious denominations to establish and maintain institutions for religious purposes, manage its own religious affairs, acquire and administer movable or immovable property. Under **Article 27**, no person can be compelled by the government to pay taxes for promotion of any particular religion.

In ***Kesavanada Bharati V. State of Kerala****24*and in ***Indira Neharu Gandhi V. Rajnarain****25*the Supreme Court has observed that by secularism it is meant that the **State shall not discriminate against any citizen on the ground of religion** only and that the State shall have no religion of its own and all persons shall be equally entitled to the freedom of conscience and the right freely to profess, practice and Propagate religion. Under **Article 28**, religious instruction is banned from being given in educational institutions maintained wholly out of state funds.

Last but not the least, under **Part 15** relating to conduct of elections, **Article 325** provides that “**no person can be ineligible for inclusion in an electoral roll or can claim inclusion in a special roll on the grounds of religion”**

221954 AIR 388, 1954 SCR 1035, https://indiankanoon.org/doc/1307370/

231953 AIR 384, 1953 SCR 1184, https://indiankanoon.org/doc/1101047/

24(1973) 4 SCC 225), https://indiankanoon.org/doc/257876/

25(1975 AIR 865, 1975 SCR (3) 333), https://indiankanoon.org/doc/1240174/

**Dharma And Religion**

Dharma and Secularism:

“**Sarva Dharma Sambhava**” which literally means that **all Dharmas (truths) are equal to or harmonious with each other”.** In recent times this statement has been taken as meaning “all religions are the same” – that all religions are merely different paths to God or the same spiritual goal. As we all know India is a secular country. That means there is **no official religion of India** and it also respects all the religion which are in its territory. In the landmark judgment of ***S.R. Bommai vs. Union of India****26,* the Supreme Court also held that **secularism is a part of the basic structure of the polity**.

The expression “**Socialist Secular**" was inserted in the preamble by the Constitution (**42nd Amendment) Act, 1976**. The object of inserting this expression was to spell out expressly the high ideas of socialism and secularism and the integrity of the Nation. In short, the object of the Government, in making this amendment was to make explicit what was already provided in the Constitution.27

**Dharma and Personal Law:**

Personal laws were first framed during the British Raj, mainly for Hindu and Muslim citizens. As Dharma was interpreted in different way and with different ideologies in various religions, the customs, social practices, life style of people were changed.

Hindu law started to been codified according to the changes in outlook and lifestyles, as it was realized that ancient way should yield to realistic approach of life. And For Islam believers Muslim law started to been codified. The Codifications were based on the customs and practices of people and the justice. Marriage, Guardianship, Adaptation, Succession, Maintenance were the main grounds emphasized.28

**Dharma and Uniform Civil Code:**

It was decided to add the implementation of a “**uniform civil code in Article 44 of the Directive principles”** of the Constitution.

**Uniform civil code** is the proposal **to replace the personal laws based on the scriptures and**

261994 AIR 1918, 1994 SCC (3) 1 , https://indiankanoon.org/doc/60799/ 27https[://www.](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)s[lidesh](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)ar[e.net/BibhuKaibalyaManik/dharma-as-law-and-justice](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice) 28https[://www.](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)s[lidesh](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)ar[e.net/BibhuKaibalyaManik/dharma-as-law-and-justice](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)

**customs of each major religious community** in India with a common set governing every citizen. These laws are distinguished from public law and cover marriage, divorce, inheritance, adoption and maintenance.

**Goa** has a common family law, thus being the **only Indian state to have a uniform civil code**. The Special Marriage Act, 1954 permits any citizen to have a civil marriage outside the realm of any specific religious personal law. It became one of the most controversial topics in contemporary politics during the ***Mohd. Ahmed Khan vs. Shah Bano Begum and Ors29*in 1985.** The debate then focused on the Muslim Personal Law, which is partially based on the Sharia law and remains unreformed since 1937, **permitting unilateral divorce and polygamy** in the country.30

**Riots in the name of Dharma*:***

With the flow of time and situation the Meaning and value of Dharma also changed. **Dharma became right instead of Duty and it divided into religions**. India faced so many Religious Riots after Independence. Such as Nokhali Riots (1946)so many hindus were killed during the division of Pakistan, Gujurat Riots(1969)so many Hindu Muslim were killed during this riot, 1984 Anti Sikh Riot which was faction of Indian National Congress and Sikh, 1992 Bombay Riot,2002 Gujurat Riot. Many lives were destroyed in the name of Religion. Dharma lost its identity in the name of religion.31

Religious Intolerance:

**“Intolerance is the act of refusal to accept, appreciate and respect any practices, beliefs, or opinions of the people of another group, religion, cast or customs”**. This Intolerance debate sprung from the Dadri incident of September 2015, where a Muslim man was killed by Hindu men of his own village, for allegedly slaughtering and eating cow meat. Many opposition leaders and intellectuals, artists protested such intolerance. The mainstream media turned a crime scene into a religious intolerance within few second. A crime done by a mob of a community became a identity of Nation.

In this context the Hon’bl Chief Justice TS Thakur asserted that-:

“I do not want to say anything on how politicians use this and try to take advantage of it, but we are committed to uphold **the rule of law and protect the rights of all citizens**. These are

291985 AIR 945, 1985 SCR (3) 844 , https://indiankanoon.org/doc/823221/ 30https[://www.](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)s[lidesh](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)ar[e.net/BibhuKaibalyaManik/dharma-as-law-and-justice](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice) 31https[://www.](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)s[lidesh](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)ar[e.net/BibhuKaibalyaManik/dharma-as-law-and-justice](http://www.slideshare.net/BibhuKaibalyaManik/dharma-as-law-and-justice)

all matters of perception. There is nothing to fear till the judiciary is independent."32

**Religious Games Played by Politicians:**

India is a secular country people of many religions are living in various places of India. But the politicians play religious game for their own gain. To gain vote they sometimes make fake promises to certain communities. It is also noticed that Sometimes that the politicians gives provocative speeches during election campaign only for gain of vote from certain community. In October 2016 a seven-judge bench headed by Chief Justice of India (CJI) TS Thakur held while examining whether the 1995 ‘Hindutva judgment’33 needed to be reviewed. The Apex Court added-

“If a candidate or his/her agents use a religious speech delivered by a priest or a cleric to mobilize votes during campaigning it is tantamount to **'corrupt practice'**, the Supreme Court said on Wednesday. The election of such a candidate can be quashed, A religious leader delivering a speech at the behest of the candidate to influence voters of his community also amounted to "**corrupt practice**" because of the **candidate's consent and this could be a ground for disqualification.”34**

32 F. INDIA, <http://www.firstpost.com/india/intolerance-debate-what-chief-justice-ts-thakur-said-and-how-the-> media-interpreted-him-2536048.html

33 Famous 1995 verdict, known as the 'Hindutva judgment', a three-judge Supreme Court bench,headed by then Chief Justice J.S. Verma.

34 Dnaindia.com, <http://www.dnaindia.com/india/report-supreme-court-clamps-down-on-religious-speeches-in-> poll-ca mpaigns-2265738

**Conclusion**

Dharma and law as seen above may seem to be in contrast, but the ideology behind them is same. At large, law is a part of Dharma without disharmony and they constitute single integrated whole. Dharma on one hand is taken to be religious in recent society but in reality Dharma is duty and moral conscience. The Hon’able Supreme Court in many cases defined Dharma and its relation with morality and Indian Secularism.

Dharma has been and is guiding our conduct, moralities and laws in varying degree. One may not find any relation between the two on the face but on a deep analysis both are interrelated integrated whole. May be the perception of people is changed now regarding Dharma but objective of Dharma is still same. Only path became different.

When Dharma loses its identity or become diversified, justice **serves Nyaya to protect the Dharma.** Justice is not merely right determination and adjudication of disputes and enforcement of Law, but is so comprehensive in its meaning and import that it takes within its ambit the whole of political, social, juristic and moral idealism.

It is so, because Justice has reference to the whole of human existence which we want to realize by our thought, will and action. The mystery of Justice cannot be unraveled by human reason, logic or language completely. It has greater appeal to human soul. Justice as reality is only fully reflected in our conscience and felt through our intuition.

In today's world it can be said that we are facing problem like forceful conversion, terrorism, riots etc. only because of Dharma but the truth is these problems are being faced because we already have forgotten the real meaning of Dharma. But it is also truth that still morality, duty, rule of law is first priority of human being to create a civilized society which shows that Dharma shaped in recent system of governance in a implied manner. ‘Dharma’ is one of the many sources of modern law and is shaping society. Hence it can be said that Dharma and law are closely related and interwove.