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Historical Overview of Duties of Sovereign and Its Reflection in The Constitution of India

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Abstract

Development of any nation depends heavily on the role played by the sovereign, whether that is an individual or a group of people, such as the government. This research paper analyses the ancient Indian literature that outlines the king's responsibilities and then provides an overview of how the same is reflected in the Indian Constitution and the contemporary Indian democratic system. Author has applied doctrinal methodology to conduct qualitative analysis of existing literature on the research problem.

The outcome of this research is that it has identified several common features between ancient Indian literature and the Modern-day Constitution of India. This research provides an overview of how the ancient concepts of *danda* i.e. punishment for maintaining law and order finds place in form of different penal laws and is being observed by the administrative forces under the vigil of judiciary. It finds the nexus between ancient concept of '*Dharma*' in modern day principle of '*Rule of Law*,' recognised by the Supreme Court of India and protected under the Constitution of India.

Keywords

Ancient, *Danda*, *Dharma*/Rule of Law, *King*/Sovereign, Democracy

Methodology

This research applies qualitative analytical method to understand the link between role and duties of sovereign in ancient India and in modern democratic India. A brief literature review of Ancient Indian text and modern-day Constitution is done.

INTRODUCTION

Sovereign (also known as ruler or king) is "one possessing or held to possess supreme political power or sovereignty." (Merriam-Webster. (n.d.))¹ Policies framed/determined by a sovereign will determine the fate of nation. Sovereign like Hitler will cause civil unrest, thereby putting the fate of nation in question whereas a good sovereign like Abraham Lincoln, Nelson Mandela will lead a nation to a respectful position. This research paper throws light on the tenets and duties of a good sovereign laid down in Ancient Indian statutes and its reflection in Indian Constitution.

LITERATURE REVIEW

Almost all the ancient Indian authorities provide for seven constituting elements of a state. These are, "(*rajya*) is constituted by seven elements *viz svamin* (ruler or sovereign), *amatya* (minister) *janapada* or *rastra* (the territory of the State and its people), *durga* (fortified city or capital), *kosa* (accumulated wealth in the ruler's treasury), *danda* (army), *mitra* (friends or allies)." (Kane P.V., 1946. P.17)² In ancient India, this set-up of the kingdom was referred to as *Saptanga* theory. (Mondal Puja)³ During the Mauryan Empire, Kautilya in his world-famous book in the *Arthshastra*, described the duties of a king in following words.

"In the happiness of his subjects lies the King's happiness; in their welfare his welfare; whatever pleases him he shall not consider as good, but whatever pleases his people he shall consider to be good." (Mondal Puja)

The first or most significant of the seven *Saptanga* is the ruler/King. Kautilya states that "the briefest exposition of the elements of *rajya* is to say that the king is the State." (Mondal Puja) Almost all the ancient authorities give importance to the role of King as it is the King who appoints/replaces ministers and ensures proper functioning of government to ensure prosperity (Yongmei, Que, & Zhongyi, 2021; Yongmei & Yiyang, 2021).

Pandit Nehru, the first prime minister of India, in his Azad Memorial Lectures on 'India to-day and to-morrow ((1959) p. 45) stated that, "All of us now talk of and demand rights and privileges but the teaching of the old *dharma* was about Duties and Obligations. Rights follow duties discharged." (Selected Works of Jawaharlal Nehru, 1959)⁴ Unfortunately this thought finds no place even in the Constitution of India. Fundamental rights have always been given preponderance over the duties. Even the judicial interpretation of the constitution of India seems to have overstressed the fundamental rights as against duties.

RULE OF LAW IN ANCIENT INDIA

In the *Shanti Parvan* ("Book of Consolation," 12th book) of the Mahabharata, contains a notable account of kingship, *rajadharma*, or the *dharma* (law, duty) of the king. While speaking, Bhishma makes reference to two separate beliefs about the beginning of royalty, each of which describes a time before there were no rulers.

According to one version, this era was one that was marked by uncertainty for the weak and unrestricted authority for the powerful; yet it was an era of peace and tranquilly. The former account moves directly from the insecurity of the pre-kingship era to the installation of king by the divine ruler for the protection and security of humankind. The latter account contains a theory of how humankind fell from this ideal state, which led to a need for institutionalised power, or kingship. Thus, it is acknowledged that kingship has a historical background. The primary duty of the king is to protect its subjects. *Dandaniti*, or the art of punishment was subjected to other duties such as, *rajadharma*, or *dharma*. The Mahabharata considers *dharma* (i.e. the moral law/ Rule of law), superior to the king.

A king strengthened by its citizens was considered as difficult to defeat and efficient in governing them. (*Shanti parva*; Rajadharmanushasana; p. 67)⁵ One of the important aspects of empowering the King is to confer upon him the power to punish (*danda*) the wrong doer. Manu explained the necessity of power to punish (*danda*) in following words.

"...if the king does not sedulously employ *danda* for punishing those that deserve it, the strong would torment the weak as fish are fried on a pike or as in water fish devour each other." This has been referred to as *matsyanyaya* (the maxim of the larger fish devouring the smaller ones or the Strong despoiling the weak.) *Kautilya* says "if *danda* he not employed, it gives rise to the condition of *matsyanyaya*, since in the absence of a chastiser the strong devour the weak." (Kane P.V., 1946. P. 21)

Hence, in order to ensure peace and harmony (law and order) and to avoid anarchy in the society, it is important to have system of *dandaneeti*. Contrariety (*vaiparitya*) or goodness/satisfactory state affairs (*swasthya*) both result from the king. If state is going through bad times, it clearly indicates that the king is practising *durneeti* (bad policies). Good times or bad times will depend upon application or non-application of *danda-neeti*. (Shloka 79)

DUTIES OF KING/SOVEREIGN

In the Mahabharata, it was laid down "A King who after having sworn that he shall protect his subjects fails to protect them should be executed like a mad dog. The people should execute a king who does not protect them, but deprives them of their property and assets and who takes no advice or guidance from anyone. Such a king is not a king but misfortune" (Dhavan S. S.)⁶

King's duty of protecting his state subjects even finds a support in western theory of social contract propounded by Thomas Hobbes. In the words of Hobbes

"...individuals agreed (in a social contract) to give their liberty into the hands of a sovereign, who was thenceforward absolute, on the sole condition that their lives were safeguarded by sovereign power." (Hobbes, 1651)⁷

The idea of social contract theory and responsibility of sovereign under the same was further developed by another western philosopher John Locke (in the second of the Two Treatises of Government, 1690) who stated that,

"...the obligation to obey civil government under the social contract was conditional upon the protection not only of the person but also of private property. Sovereigns who violated these terms could be justifiably overthrown."

Hence, one can conclude that both Indian and western philosophies consider the protection of state subjects is the primary duty of King/sovereign, failing which he shall be removed from his offices.

These provisions indicate that sovereignty was based on an implied social compact and if the King violated the traditional pact, he forfeited his kingship.

"In the *Mahabharata* it is related that a common fisherman refused to give his daughter in marriage to the King of *Hastinapur* unless he accepted the condition that his daughter's sons and not the heir apparent from a former queen would succeed to the throne. The renunciation of the throne and the vow of life-long celibacy (*Bhishma Pratigyan*) by Prince Deva Vrata is one of the most moving episodes in the *Mahabharata*. But its significance for jurists is that even the sovereign was not above the law. The great King of Hastinapur could not compel the humblest of his subjects to give his daughter in marriage to him without accepting his terms. It refutes the view that the kings in ancient India were Oriental despots who could do what they liked regardless of the law or the rights of their subjects." (Dhavan S. S.)

While describing duties of a ruler, Kautilya, in his book stated that, "a ruler should not keep the applicants waiting at his doorstep. If the king won't directly interact with his people and put the responsibility of handling common men on middlemen, it would create distance between government and common men. Common people will feel abandoned and helpless, and the enemies of state can take advantage of this situation. Therefore, the ruler should try to meet his people personally and make every possible effort to resolve their issues." (Dawn, 2009)⁸

King is expected to hear all urgent calls as any neglect of same, may render its accomplishment impossible. The happiness of king lies in the happiness, welfare of his subjects. A king shall not consider something to be good just because it pleases him. Whatever pleases his citizens must be considered to be good by the King. (R. Shamasastri, 1956)⁹

The Sukranitisara (H. 274-275) states that "a king, though of a noble pedigree, should be abandoned, if he violates dharma, if he hates good qualities (in others), lines of policy and the army and if his conduct would lead to the destruction of the kingdom." (Bhattacharya, 1882)¹⁰

CONSTITUTION AND DUTIES OF SOVEREIGN (Dharma and Danda)

Art. 75 of the Constitution of India provides for the appointment of the Prime Minister (hereinafter referred to as PM) who is considered to be the head of the Government and leads all the decision making along with his council of ministers. He is also considered to be the political head of all the armed forces. He, along with his council of ministers renders advice to the President of India in matters of National Importance. (Art. 74, the Constitution of India) He is the link between the

President of India and the council of ministers, parliament and council of ministers and decided upon the distribution of portfolios between ministers. He also controls the portfolios that are not designated any the ministers. He controls the foreign arrangements of the country. Hence, the position of PM can be compared to the one of King in ancient and medieval era.

Under the modern democratic form of government, "Police and Public Order are State subjects under the Seventh Schedule to the Constitution of India and therefore, it is the primary duty of the State Governments to prevent, detect, register and investigate crime and prosecute the criminals. Central Government, however, supplements the efforts of the State Governments by providing them financial assistance for modernization of their Police Forces in terms of weaponry, communication, equipment, mobility, training and other infrastructure under the Scheme of Modernization of State Police Forces. Further, intelligence inputs are regularly shared by the Central Security and Intelligence Agencies with the State Law Enforcement Agencies to prevent crime and law and order related incidents." (Ministry of Home Affairs, India, n.d.)¹¹

The concept of *Danda* provided for under the ancient literature and which now finds place in penal statutes of India, are to be implemented/enforced by state and central forces. It is the judiciary who keeps vigil on law-and-order situation by ensuring timely delivery of justice and by passing verdicts on *Danda* for individual wrongdoings. The philosophy of Mahabharata and social contract theory finds place under Article 352 of the Constitution of India which throws light on extreme emergency situations in which the sovereign (i.e., the government) fails to ensure law and order. It allows the President to declare emergency if "the security of India or a part of it is threatened by war or external aggression or armed rebellion." (Article 352 of the Constitution of India)

Kautilya had stressed upon dialogue between ruler and common people. In modern democratic set up such communication is ensured through the parliamentary system. PM and his council of ministers are answerable to the parliament (Lok Sabha and Rajya Sabha). In state, Chief Ministers and their council of ministers are answerable to the state legislature. Both parliament and state legislature have the representation of common people, who are entrusted with the duty to protect common good by ensuring the check on governmental decisions through system of parliamentary/legislative approval.

As required in *Sukraniti*, even the modern rulers are answerable to the common people and can be removed from their positions in case they lose the confidence of common people (which has to be proved by majority in Legislative House).

The ancient Indian concept of *dharma*, which ensures and subjects the king to the rule of law also finds place in modern democratic system. Although the term 'Rule of Law' (*Dharma*) finds no direct mention in the Constitution of India, it is often used and protected by the Judiciary. The judiciary has went on to the extent of declaring the 'Rule of Law' to be the basic structure of Indian Constitution,

thereby making it un-amendable by any law. (*Indira Nehru Gandhi v Raj Narain*, 1975)¹² The judiciary is considered to be the guardian of the Constitution and ultimately the 'Rule of Law.' Constitution ensures the same by making the Government answerable to the judiciary through power of judicial review under Article 32 and 226 of the Constitution of India. Article 14 further guarantees fundamental right to "equality before the law and equal protection of laws" to every individual in the society.

FINDINGS

Most of the principles laid down in Ancient Indian statutes finds mention in Indian Constitution and modern-day democracies around the world. Principles such as, Dharma ('Rule of Law') *Danda* (Punishment for crimes), duty of sovereign to ensure peace by administering *danda* (similar to Natural Law concept of 'social contract'), duty to be accessible and answerable to all citizens etc. are integral part of almost all the modern-day democratic governments around the world.

CONCLUSION

Ancient Indian literature has lucidly covered the rights of common people vis-vis the duties of sovereign. The most celebrated concept of modern-day democracies i.e. the 'Rule of Law' also finds a place under ancient Indian literature as '*Dharma*.' The Constitution of India has been drafted in such a careful manner, that on careful observation and interpretation, one can find all the ancient Indian tenets of rights, duties and rule of law (*dharma*) in it. The role of sovereign to ensure the protection of these tenets has in modern democratic form, has been handed over the independent body called as the Judiciary. Some of the medieval dynasties like Marathas, had started the practice of separate judicial council in form of "*Ashtapradamanas*" who under the guidance of King Shivaji, were looking after justice delivery. However, the modern judiciary is free from the legislative or judicial shackles, and can act independently to protect *dharma* i.e., the rule of law.

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